



Member Companies of American International Group, Inc.®

Financial Institutions Risk ProtectorSM

POLICY NO:

REPLACEMENT OF
POLICY NO:

- ☐ American Home Assurance Company ☐ Illinois National Insurance Co.
☐ American International South Insurance Company ☐ National Union Fire Insurance Company of Pittsburgh, Pa.

(each of the above being a capital stock company)

Management and Professional Liability for Private Companies

NOTICES

COVERAGE WITHIN THIS POLICY IS GENERALLY LIMITED TO LOSS FROM CLAIMS FIRST MADE AGAINST INSURED DURING THE POLICY PERIOD AND REPORTED TO THE INSURER AS THE POLICY REQUIRES. DEFENSE COSTS REDUCE THE LIMITS OF LIABILITY (AND, THEREFORE, AMOUNTS AVAILABLE TO RESPOND TO SETTLEMENTS AND JUDGMENTS) AND ARE APPLIED AGAINST APPLICABLE RETENTIONS.

THE INSURER DOES NOT ASSUME ANY DUTY TO DEFEND UNLESS SUCH COVERAGE IS EXPRESSLY PROVIDED WITHIN A COVERAGE SECTION. WHERE THE INSURER HAS NO DUTY TO DEFEND, IT WILL ADVANCE DEFENSE COSTS, EXCESS OF THE APPLICABLE RETENTION, PURSUANT TO THE TERMS OF THIS POLICY PRIOR TO THE FINAL DISPOSITION OF A CLAIM. PLEASE REFER TO THE COVERAGE SECTIONS PURCHASED FOR DEFENSE RELATED DETAILS.

PLEASE READ THE POLICY CAREFULLY AND DISCUSS THE COVERAGE HEREUNDER WITH YOUR INSURANCE AGENT OR BROKER TO DETERMINE WHAT IS AND WHAT IS NOT COVERED.

DECLARATIONS

ITEMS			
1	NAMED ENTITY:	(the "Named Entity") MAILING ADDRESS:	
		STATE OF INCORPORATION/FORMATION:	
2	POLICY PERIOD:	From: <input type="text"/>	To: <input type="text"/>
		12:01 A.M. at the mailing address stated in Item 1 above	

ITEMS (continued)

3	COVERAGE SUMMARY							
	Liability Coverage Section		Premium	Separate Limit of Liability	Shared Limit of Liability	Retention*	Continuity Date	Retro Date
	D&O	D&O and Private Company	\$	\$	\$ With:	Securities Claims: \$ All Other Claims: \$	XX/XX/XX	XX/XX/XX
	EPL	Employment Practices	\$	\$	\$ With:	All Claims: \$		
	FLI	Fiduciary	\$	\$	\$ With:	All Claims: \$		
	BPL	Bankers Professional	\$	\$	\$ With:	All Claims: \$		
	ICL	Insurance Company	\$	\$	\$ With:	All Claims: \$		
	NAS	AIG netAdvantage® Security & Privacy	\$	\$	\$ With:	All Claims: \$		
	CCP	Employed Lawyers	\$	\$	\$ With:	All Claims: \$		
	4	TOTAL PREMIUM		\$	<p>*With respect to the D&O, EPL, FLI and CCP Coverage Sections only, no Retention amount is applicable to Non-Indemnifiable Loss.</p> <p>*No Retention amount is applicable to Costs of Investigation for Derivative Claims, Employment Crisis Management Fund, Voluntary Compliance Loss and HIPAA Penalties.</p> <p>*With respect to the NAS Coverage Section only, a separate Retention amount is applicable to Class Action Claims as set forth in Clause 6 of the NAS Coverage Section.</p>			
5	OTHER LIMITS OF LIABILITY		(a) POLICY AGGREGATE LIMIT OF LIABILITY:			\$		
			(b) Derivative Investigation Sublimit of Liability for D&O, if purchased:			\$ 250,000		
			(c) Employment Crisis Management Fund for EPL, if purchased:			\$		
			(d) Voluntary Compliance Loss Sublimit of Liability for FLI, if purchased:			\$		
			(e) HIPAA Penalties Sublimit of Liability for FLI, if purchased:			\$ 25,000		
			(f) Regulatory Action Sublimit of Liability for NAS, if purchased:			\$		
6	NAME AND ADDRESS OF INSURER							
	This policy is issued only by the insurance company indicated in this Item 6.							

PRODUCER:
PRODUCER LICENSE NO.:
ADDRESS:

IN WITNESS WHEREOF, the **Insurer** has caused this policy to be signed on the Declarations by its President, a Secretary and its duly authorized representative.

PRESIDENT

SECRETARY

AUTHORIZED REPRESENTATIVE

COUNTERSIGNATURE

DATE

COUNTERSIGNED AT

AIG Financial Institutions Risk ProtectorSM

GENERAL TERMS AND CONDITIONS

In consideration of the payment of the premium, and in reliance upon the statements made to the **Insurer** by application, including its attachments and the material incorporated therein, which form a part of this policy, the **Insurer** agrees as follows:

1. TERMS AND CONDITIONS

These General Terms and Conditions shall be applicable to all **Coverage Sections**, unless otherwise explicitly stated to the contrary in either these General Terms and Conditions or the relevant **Coverage Section**. The terms and conditions set forth in each **Coverage Section** shall only apply to that particular **Coverage Section** and shall in no way be construed to apply to any other **Coverage Section** of this policy.

2. DEFINITIONS

- (a) **"Affiliate"** means: (i) any person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is in common control with, the **Company**; or (ii) any person or entity that directly, or indirectly through one or more intermediaries, is a successor in interest to the **Company**.
- (b) **"Bodily Injury"** means physical injury, sickness, disease (other than emotional distress or mental anguish), including death resulting therefrom.
- (c) **"Claim"** means **Claim**, as that term is defined within each **Coverage Section**.
- (d) **"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**.
- (e) **"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), if any.
- (f) **"Continuity Date"** means the date set forth in Item 3 of the Declarations with respect to each **Coverage Section**.
- (g) **"Coverage Section(s)"** means each **Coverage Section** that is purchased by the **Insured** as indicated in Item 3 of the Declarations.
- (h) **"Defense Costs"** means reasonable and necessary fees, costs and expenses consented to by the **Insurer** (including premiums for any appeal bond, attachment bond, or similar bond arising out of a covered judgment, but without any obligation to apply for or furnish any such bond), resulting solely from the investigation, adjustment, defense and appeal of a **Claim** against the **Insureds**, but excluding any compensation of any **Individual Insured** of the **Company**. **Defense**

Costs shall not include any fees, costs or expenses incurred prior to the time that a **Claim** is first made against an **Insured**.

- (i) **"Director(s) or Officer(s)"** means any:
 - (1) past, present and future duly elected or appointed director or officer of a corporation and member of the management board of a limited liability company (or equivalent positions);
 - (2) with respect to operations of the **Company** in a **Foreign Jurisdiction**, such past, present and future persons in duly elected or appointed positions of the **Company** that are equivalent to an executive position listed in paragraph (1) of this definition; and
 - (3) past, present and future general counsel and risk manager (or equivalent position) of the **Named Entity**.
- (j) **"Discovery Period"** means **Discovery Period**, as that term is defined in Clause 8 of the General Terms and Conditions.
- (k) **"Domestic Partner"** means any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Named Entity** or any **Subsidiary**.
- (l) **"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, seasonal and temporary employee in his or her capacity as such. An individual who is leased to the **Company**, 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 is provided to the **Company's** employees.
- (m) **"Financial Insolvency"** means the: (i) appointment by any state or federal official, agency or court of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate a **Company**; or (ii) the **Company** becoming a debtor-in-possession pursuant to the United States bankruptcy law, and as to both (i) or (ii), the equivalent status outside the United States.
- (n) **"Foreign Jurisdiction"** means any jurisdiction, other than the United States or any of its territories or possessions.
- (o) **"Indemnifiable Loss"** means **Loss** for which the **Company** has indemnified or is permitted or required to indemnify any **Individual Insureds**.
- (p) **"Individual Insured(s)"** means an **Individual Insured**, as that term is defined within each **Coverage Section**.
- (q) **"Insured(s)"** means an **Insured**, as that term is defined within each **Coverage Section**.
- (r) **"Insurer"** means the entity listed in Item 6 of the Declarations.
- (s) **"Loss"** means **Loss**, as that term is defined within each **Coverage Section**.

- (t) **"Named Entity"** means the entity listed in Item 1 of the Declarations.
- (u) **"Non-Indemnifiable Loss"** means **Loss** for which a **Company** has neither indemnified nor is permitted or required to indemnify an **Individual Insured**.
- (v) **"Outside Entity"** means any: (1) not-for-profit organization; or (2) other entity listed as an **"Outside Entity"** in an endorsement attached to this policy.
- (w) **"Outside Entity Executive"** means any: (1) **Director(s) or Officer(s)** of the **Company** who is or was acting at the specific written request or direction of the **Company** as a **Director(s) or Officer(s)** of an **Outside Entity**; or (2) any other person listed as an **Outside Entity Executive** in an endorsement attached to this policy.
- (x) **"Policy Aggregate Limit of Liability"** means the **Policy Aggregate Limit of Liability** stated in Item 5(a) of the Declarations.
- (y) **"Policy Period"** means the period of time from the inception date shown in Item 2 of the Declarations to the earlier of the expiration date shown in Item 2 of the Declarations or the effective date of cancellation of this policy.
- (z) **"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.
- (aa) **"Property Damage"** means damage to, or destruction of tangible or intangible property, including the loss of use thereof, or the loss of use of tangible or intangible property which has not been damaged or destroyed.
- (bb) **"Related Wrongful Act"** means a **Wrongful Act**, which is the same, related or continuous, or a **Wrongful Act** which arises from a common nucleus of facts. **Claims** can allege **Related Wrongful Acts** regardless of whether such **Claims** involve the same or different claimants, **Insureds** or legal causes of action.
- (cc) **"Retaliation"** means a retaliatory act of an **Insured** alleged to be in response to any of the following activities: (1) the disclosure or threat of disclosure by an **Employee** of the **Company** or an **Outside Entity** to a superior or to any governmental agency of any act by an **Insured** which act is alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder; (2) the actual or attempted exercise by an **Employee** of the **Company** or an **Outside Entity** of any right that such **Employee** has under law, including rights under worker's compensation laws, the Family and Medical Leave Act, the Americans with Disabilities Act or any other law relating to employee rights; (3) the filing of any claim under the Federal False Claims Act or any other federal, state, local or foreign "whistle-blower" law; or (4) strikes of an **Employee** of the **Company** or an **Outside Entity**.
- (dd) **"Securities Claim"** means a **Claim** (including a civil lawsuit or criminal proceeding brought by the Securities & Exchange Commission) made against an **Insured** anywhere in the world alleging a violation of any law, regulation or rule, whether statutory or common law, which is:

- (1) brought by any person or entity alleging, arising out of, based upon or attributable to, in part or in whole, the purchase or sale, or offer or solicitation of an offer to purchase or sell, any securities of the **Company**, or
- (2) brought by a security holder of the **Company**, whether directly, by class action, or derivatively on the behalf of the **Company**, or otherwise, with respect to such security holder's interest in securities of such **Company**.

The foregoing definition of **Securities Claim** shall not include any **Claim** brought by any **Director or Officer** or **Employee** of a **Company** alleging, arising out of, based upon or attributable to the loss of, or failure to receive or obtain, the benefit of stock, stock warrants, stock options or other securities of a **Company**.

- (ee) **"Separate Limit of Liability"** means each **Separate Limit of Liability**, if any, stated in Item 3 of the Declarations.
- (ff) **"Shared Limit of Liability"** means each **Shared Limit of Liability**, if any, stated in Item 3 of the Declarations, which limit of liability shall be shared between all of the **Coverage Sections** which are listed below such **Shared Limit of Liability** in the Declarations.
- (gg) **"Subsidiary"** means:
 - (1) any for-profit organization that is not formed as a partnership or joint venture, whose securities are not publicly traded, which on or before the inception of the **Policy Period** is more than 50% owned by the **Named Entity**, either directly or indirectly through one or more of its **Subsidiaries**;
 - (2) automatically any for-profit organization that is not formed as a partnership or joint venture, whose securities are not publicly traded and whose assets total less than 25% of the total consolidated assets of the **Company** at the date such organization is acquired and which organization becomes a **Subsidiary** during the **Policy Period**. The **Named Entity** shall provide the **Insurer** with full particulars of the new **Subsidiary** before the end of the **Policy Period**; and
 - (3) automatically any for-profit organization that is not formed as a partnership or joint venture, whose securities are not publicly traded and whose assets total 25% or more of the total consolidated assets of the **Company** at the date such organization is acquired, but such entity shall be a **Subsidiary** only: (i) for a period of ninety (90) days from the date the organization became a **Subsidiary**; or (ii) until the end of the **Policy Period**, whichever ends or occurs first (hereinafter **"Auto-Subsidiary Period"**); provided that the **Named Entity** or any other **Insured** shall report such **Subsidiary** to the **Insurer**, in writing, prior to the end of the **Policy Period**.

The **Insurer** shall extend coverage for any **Subsidiary** described in (gg)(3) above, and any **Individual Insured** thereof, beyond its respective **Auto-Subsidiary Period** if during such **Auto-Subsidiary Period**, the **Named Entity** shall have provided the **Insurer** with full particulars of the new **Subsidiary** and agreed to any additional premium and amendment of the provisions of this policy as required by the **Insurer** relating to such **Subsidiary**. Further, coverage as shall be afforded to any **Subsidiary** and any **Individual Insured** thereof is conditioned upon the **Named**

Entity paying when due any additional premium required by the **Insurer** relating to such **Subsidiary**.

An organization becomes a **Subsidiary** when the **Named Entity** owns more than a 50% ownership interest in such **Subsidiary**, either directly, or indirectly through one or more of its **Subsidiaries**. An organization ceases to be a **Subsidiary** when the **Named Entity** ceases to own more than 50% ownership interest in such **Subsidiary**, either directly, or indirectly through one or more of its **Subsidiaries**.

In all events, coverage as is afforded under this policy with respect to a **Claim** made against **Individual Insureds** of any **Subsidiary**, or any **Subsidiary** shall only apply for **Wrongful Acts** committed or allegedly committed after the effective time that such **Subsidiary** became a **Subsidiary** and prior to the time that such **Subsidiary** ceased to be a **Subsidiary**.

(hh) **"Wrongful Act"** means a **Wrongful Act**, as that term is defined within each **Coverage Section**.

3. EXTENSIONS

Subject otherwise to the terms herein, this policy shall cover **Loss** arising from any **Claim** made against: (i) 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 Acts** upon which such **Claims** are based were committed; or (ii) 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 **Wrongful Act** of the spouse or **Domestic Partner**, but shall apply only to **Claims** arising out of any **Wrongful Acts** of an **Individual Insured**, subject to the policy's terms, conditions and exclusions.

4. EXCLUSIONS

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

- (a) arising out of, based upon or attributable to the gaining of any profit or advantage to which any judgment, final adjudication or any alternative dispute resolution proceeding adverse to the **Insured(s)** establishes the **Insured(s)** were not legally entitled;
- (b) alleging, arising out of, based upon or attributable to the facts alleged, or to the same as or a **Related Wrongful Act** alleged or contained in any **Claim** which has been reported, or in any circumstances of which notice has been given, under any policy of which this policy is a renewal or replacement or which it may succeed in time;
- (c) alleging, arising out of, based upon or attributable to, directly or indirectly, as of the **Continuity Date**, any pending or prior: (1) litigation; or (2) administrative or regulatory proceeding or investigation of which an **Insured** had notice, or alleging any **Wrongful Act** which is the same as

or a **Related Wrongful Act** to that alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation;

- (d) alleging, arising out of, based upon or attributable to, directly or indirectly, any actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants**; or for any direction or request to test, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**; provided, however, this exclusion shall not apply:
 - (i) with respect to the D&O Coverage Section only, to:
 - (1) **Non-Indemnifiable Loss**, other than **Non-Indemnifiable Loss** constituting **Cleanup Costs**; or
 - (2) a **Securities Claim**, other than:
 - (a) **Loss** constituting **Cleanup Costs**; or
 - (b) any **Securities Claim** brought derivatively on behalf of a **Company** by a securities holder of such **Company** alleging, arising out of, based upon, or attributable to, directly or indirectly, **Cleanup Costs**;
 - (ii) with respect to the EPL Coverage Section only, to any **Claim** for **Retaliation**;
 - (iii) with respect to the FLI Coverage Section only, to **Non-Indemnifiable Loss** from a **Claim** alleging damage to a **Plan** (as defined in the FLI Coverage Section);
- (e) alleging, arising out of, based upon or attributable to, directly or indirectly, **Bodily Injury** or **Property Damage**; provided, however, this exclusion shall not apply:
 - (i) with respect to the D&O Coverage Section only, to any **Securities Claim**; and
 - (ii) with respect to the FLI Coverage Section only, to **Defense Costs** incurred in the defense of a **Claim** alleging a **Breach of Fiduciary Duty** (as defined in the FLI Coverage Section);
- (f) for violation(s) of any of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act (except the Equal Pay 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 amendments thereto or any similar federal, state, local or foreign statutory law or common law; provided, however, that with respect to the EPL Coverage Section only, this exclusion shall not apply to a **Claim** for **Retaliation**; provided, further that solely with respect to violations of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974 and the Consolidated Omnibus Budget Reconciliation Act, this exclusion shall not apply to the extent coverage is afforded pursuant to the FLI Coverage Section;
- (g) alleging, arising out of, based upon, or attributable to, directly or indirectly, the refusal, failure or inability of any **Insured(s)** to pay wages or overtime pay for services rendered (hereinafter, "**Earned Wages**") (as opposed to tort-based back pay or front pay damages) or for improper payroll deductions taken by any **Insured(s)** from any **Employee(s)** or purported employee(s), including, but not limited to, (i) any unfair business practice claim alleged because of the failure to pay **Earned Wages**, or (ii) any **Claim** seeking **Earned Wages** because any **Employee(s)** or purported employee(s) was improperly classified or mislabeled as "exempt;" or
- (h) alleging, arising out of, based upon or attributable to, directly or indirectly, any obligation pursuant to any workers' compensation, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar benefits; provided, however, this exclusion shall not apply:

- (1) with respect to the EPL Coverage Section only, to a **Claim for Retaliation**; and
- (2) to the extent coverage is afforded pursuant to the FLI Coverage Section only.

For the purpose of determining the applicability of the foregoing exclusion 4(a): (1) the facts pertaining to and knowledge possessed by any **Insured** shall not be imputed to any other **Individual Insured**; and (2) facts pertaining to and knowledge possessed by any past, present or future chairman of the board, president, chief executive officer, chief operating officer, chief financial officer or general counsel (or equivalent positions) of the **Company** shall be imputed only to the **Company**.

5. AGGREGATE LIMIT OF LIABILITY (FOR ALL LOSS UNDER THIS POLICY COMBINED - INCLUDING DEFENSE COSTS)

The **Policy Aggregate Limit of Liability** stated in Item 5(a) of the Declarations is the maximum limit of the **Insurer's** liability for all **Loss** under all **Coverage Sections** combined, arising out of all **Claims** first made against the **Insureds** during the **Policy Period** or the **Discovery Period** (if applicable); provided, however, the **Policy Aggregate Limit of Liability** for the **Discovery Period** shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** for the **Policy Period**. Further, a **Claim** which is made subsequent to the **Policy Period** or **Discovery Period** (if applicable) which pursuant to Clause 7(b) or 7(c) is considered made during the **Policy Period** or **Discovery Period**, shall also be subject to the **Policy Aggregate Limit of Liability** stated in Item 5(a) of the Declarations and subject to the applicable **Separate Limits of Liability** or **Shared Limit of Liability**, if any.

If **Separate Limits of Liability** are stated in Item 3 of the Declarations, then each such **Separate Limit of Liability** shall be the maximum limit of the **Insurer's** liability for all **Loss** arising out of all **Claims** first made against the **Insureds** during the **Policy Period** or the **Discovery Period** (if applicable) with respect to the applicable **Coverage Section** as stated on the Declarations; provided, however, the **Separate Limit of Liability** for the **Discovery Period** shall be part of, and not in addition to, the **Separate Limit of Liability** for the **Policy Period**. The **Separate Limit of Liability** shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** for all **Loss** under this policy as stated in Item 5(a) of the Declarations and shall in no way serve to increase the **Policy Aggregate Limit of Liability** as therein stated.

If **Shared Limits of Liability** are stated in Item 3 of the Declarations, then each such **Shared Limit of Liability** shall be the maximum limit of the **Insurer's** liability for all **Loss** arising out of all **Claims** first made against the **Insureds** during the **Policy Period** or the **Discovery Period** (if applicable) with respect to all **Coverage Sections** for which such **Shared Limit of Liability** is applicable, as indicated on the Declarations; provided, however, with respect to all **Coverage Sections** that have a **Shared Limit of Liability**, the **Shared Limit of Liability** for the **Discovery Period** shall be part of, and not in addition to, the **Shared Limit of Liability** for the **Policy Period**. Any **Shared Limit of Liability** shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** for all **Loss** under this policy as stated in Item 5(a) of the Declarations and shall in no way serve to increase the **Policy Aggregate Limit of Liability** as therein stated.

Defense Costs are not payable by the **Insurer** in addition to the **Policy Aggregate Limit of Liability** or any **Separate Limit of Liability** or **Shared Limit of Liability**. **Defense Costs** are part of **Loss** and as such are subject to the **Policy Aggregate Limit of Liability** for **Loss** and any applicable **Separate Limit of Liability** or **Shared Limit of Liability**. Amounts incurred for **Defense Costs** shall be applied against the **Retention** amount.

6. RETENTION CLAUSE

The **Insurer** shall only be liable for the amount of **Loss** arising from a **Claim** which is in excess of the applicable Retention amount stated in Item 3 of the Declarations, such Retention amount to be borne by the **Company** and/or the **Insureds** and shall remain uninsured, with regard to: (i) all **Indemnifiable Loss**; and (ii) **Loss** of the **Company**; provided that solely with respect to the Security & Privacy Coverage Section, BPL Coverage Section and ICL Coverage Section, such Retention amount shall be borne by the **Company** and/or the **Insureds** and shall remain uninsured, with regard to all **Loss**. A single Retention amount shall apply to **Loss** arising from all **Claims** alleging the same **Wrongful Act** or **Related Wrongful Act**. In the event a **Claim** triggers more than one amount stated in Item 3 of the Declarations, only the highest such amount shall apply, which amount shall apply to all **Loss** under such **Claim**.

In the event a **Company** refuses to pay an applicable Retention due to **Financial Insolvency**, then the **Insurer** shall commence advancing **Loss** within the Retention, subject to the other terms, conditions and exclusions of this policy, provided that the **Insurer** shall be entitled to recover the amount of **Loss** advanced within the Retention from the **Company** pursuant to Clause 11 of the General Terms and Conditions.

7. NOTICE/CLAIM REPORTING PROVISIONS

Notice hereunder shall be given in writing to **AIG Domestic Claims, Inc., Financial Lines, 175 Water Street, 9th Floor, New York, NY 10038** to the attention of "**D&O Segmentation Unit.**" Notice shall include and reference the **Policy Number** as indicated in the Declarations. If mailed, the date of mailing shall constitute the date that such notice was given and proof of mailing shall be sufficient proof of notice.

A **Claim** shall be considered to have been first made against an **Insured** when written notice of such **Claim** is received by any **Insured**, by the **Company** on the behalf of any **Insured**, or by the **Insurer**, whichever comes first.

- (a) The **Company** or the **Insureds** shall, as a condition precedent to the obligations of the **Insurer** under this policy, give written notice to the **Insurer** of any **Claim** made against an **Insured** or an **Employment Crisis** (as defined in the EPL Coverage Section) as soon as practicable and either:
 - (1) any time during the **Policy Period** or during the **Discovery Period** (if applicable); or
 - (2) within forty-five (45) days after the end of the **Policy Period** or the **Discovery Period** (if applicable), as long as such **Claim** was first made against an **Insured** within the final thirty (30) days of the **Policy Period** or the **Discovery Period** (if applicable).
- (b) If written notice of a **Claim** has been given to the **Insurer** pursuant to Clause 7(a) above, then any **Claim** which is subsequently made against the **Insureds** and reported to the **Insurer** alleging a **Related Wrongful Act** to the **Claim** for which such notice has been given shall be considered made at the time such notice was given.

- (c) If during the **Policy Period** or **Discovery Period** (if applicable), the **Company** or the **Insureds** shall become aware of any circumstances which may reasonably be expected to give rise to a **Claim** being made against the **Insureds** and shall give written notice to the **Insurer** of the circumstances and the reasons for anticipating such a **Claim**, with full particulars as to dates, persons and entities involved, then any **Claim** which is subsequently made against the **Insureds** and reported to the **Insurer** alleging, arising out of, based upon or attributable to such circumstances or alleging any **Related Wrongful Act** to such circumstances, shall be considered made at the time such notice of such circumstances was given.

8. DISCOVERY CLAUSE

Except as indicated below, if the **Named Entity** shall cancel or the **Named Entity** or the **Insurer** shall refuse to renew this policy, the **Named Entity** shall have the right to a period of either one, two or three years following the effective date of such cancellation or nonrenewal (herein referred to as the "**Discovery Period**") upon payment of the respective "**Additional Premium Amount**" described below in which to give to the **Insurer** written notice of **Claims** first made against the **Insureds** during said **Discovery Period** for any **Wrongful Act** occurring prior to the end of the **Policy Period** and otherwise covered by this policy. The rights contained in this paragraph shall terminate, however, unless written notice of such election together with the additional premium due is received by the **Insurer** within thirty (30) days of the effective date of cancellation or nonrenewal.

The **Additional Premium Amount** for: (1) one year shall be 75% of the "full annual premium" indicated in Item 4 of the Declarations; (2) two years shall be 150% of the "full annual premium" indicated in Item 4 of the Declarations; and (3) three years shall be a reasonable premium amount to be mutually agreed upon by the **Named Entity** and the **Insurer**.

In the event of a **Transaction** (as defined in Clause 10 below), the **Named Entity** shall have the right, within thirty (30) days before the end of the **Policy Period**, to request an offer from the **Insurer** of a **Discovery Period** (with respect to **Wrongful Acts** occurring prior to the effective time of the **Transaction**) for a period of no less than three (3) years or for such longer or shorter period as the **Named Entity** may request. The **Insurer** shall offer such **Discovery Period** pursuant to such terms, conditions and premium as the **Insurer** may reasonably decide. In the event of a **Transaction**, the right to a **Discovery Period** shall not otherwise exist except as indicated in this paragraph.

The **Discovery Period** is not cancelable by the **Insureds** or the **Insurer**, except that the **Insurer** may cancel the **Discovery Period** for non-payment of premium. This Clause 8 and the rights contained herein shall not apply to any cancellation resulting from non-payment of premium.

9. CANCELLATION CLAUSE

This policy may be canceled by the **Named Entity** at any time only by mailing written prior notice to the **Insurer** or by surrender of this policy to the **Insurer** or its authorized agent.

This policy may be canceled by or on the behalf of the **Insurer** only in the event of non-payment of premium by the **Named Entity**. In the event of non-payment of premium by the **Named Entity**, the **Insurer** may cancel this policy by delivering to the **Named Entity** or by mailing to the **Named Entity**, by registered, certified, or other first class mail, at the **Named Entity's** address as shown in Item 1(a) of the Declarations, written notice stating when, not less than the minimum time allowed pursuant to

the applicable state law, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice. The **Policy Period** terminates at the date and hour specified in such notice, or at the date and time of surrender. The **Insurer** shall have the right to the premium amount for the portion of the **Policy Period** during which the policy was in effect.

If this policy shall be canceled by the **Named Entity**, the **Insurer** shall retain the customary short rate proportion of the premium herein.

10.CHANGE IN CONTROL OF NAMED ENTITY

If during the **Policy Period**:

- (a) the **Named Entity** shall consolidate with or merge into, or sell all or substantially all of its assets to any other person or entity or group of persons or entities acting in concert; or
- (b) any person or entity or group of persons or entities acting in concert shall acquire an amount of the outstanding securities representing more than 50% of the voting power for the election of directors of the **Named Entity**, or acquires the voting rights of such an amount of such securities;

(either of the above events herein referred to as the "**Transaction**"),

then this policy shall continue in full force and effect as to **Wrongful Acts** occurring prior to the effective time of the **Transaction**, but there shall be no coverage afforded by any provision of this policy for any **Wrongful Act** occurring after the effective time of the **Transaction**. This policy may not be canceled after the effective time of the **Transaction** and the entire premium for this policy shall be deemed earned as of such time. The **Named Entity** shall also have the right to an offer by the **Insurer** of a **Discovery Period** described in Clause 8 above.

The **Named Entity** shall give the **Insurer** written notice of the **Transaction** as soon as practicable, but not later than thirty (30) days after the effective date of the **Transaction**.

11.SUBROGATION AND RIGHT OF DIRECT RECOVERY AGAINST INSURED

- (a) In the event of any payment under this policy, the **Insurer** shall be subrogated to the extent of such payment to all the **Insureds'** rights of recovery thereof, and the **Insureds** 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 **Insureds**. In no event, however, shall the **Insurer** exercise its rights of subrogation against an **Insured** under this policy unless the **Insurer** is seeking recovery from the **Company** pursuant to subparagraph (b)(i) of this Clause.
- (b) In the event that the **Insurer** shall for any reason pay **Indemnifiable Loss** on behalf of an **Insured Person**, the **Insurer**:
 - (i) shall be subrogated to the **Insured Person's** right of recovery from the **Company**, or in the event of a bankruptcy of the **Company**, from the debtor-in-possession (or equivalent status outside the United States), of the amount of such **Loss** equal to the amount of the Retention not satisfied by the **Company** (hereinafter "**Retention Loss**"); and
 - (ii) shall have a direct contractual right under the policy to recover from the **Company**, or in the event of a bankruptcy of the **Company**, from the debtor-in-possession (or equivalent status

outside the United States), the **Retention Loss**. Such direct contractual right of recovery against the **Company** shall be in addition to and independent of the **Insurer's** subrogation rights pursuant to subparagraph (b)(i) above.

- (c) The **Insurer** shall have a direct contractual right under the policy to recover **Loss** paid under the policy from each and every **Insured**, severally and according to their respective interests, in the event and to the extent that such **Insureds** shall not be entitled under this policy to payment of such **Loss**.
- (d) Solely with respect to the FLI Coverage Section, in the event this policy has been purchased by an **Insured** other than a **Plan** (as defined in the FLI Coverage Section), the **Insurer** shall have no right of recourse against an **Insured**. Notwithstanding the foregoing, the **Insurer** shall have a right of recourse against an **Insured** arising out of a **Claim** by an **Insured** against another **Insured** unless such **Claim** is instigated and continued totally independent of, and totally without the solicitation of, assistance of or active participation by the **Insured** claimed against.

12. OTHER INSURANCE

Solely with respect to the EPL Coverage Section, unless expressly written to be excess over other applicable insurance, it is intended that the insurance provided by the EPL Coverage Section shall be primary.

With respect to all **Coverage Sections** other than the EPL Coverage Section, such insurance as is provided by this policy shall apply only as excess over any other valid and collectible insurance, unless such other insurance is written only as specific excess insurance over the **Policy Aggregate Limit of Liability** provided by this policy. This policy specifically shall be excess of any other policy pursuant to which any other insurer has a duty to defend a **Claim** for which this policy may be obligated to pay **Loss**.

In the event of a **Claim** against an **Insured** arising out of his or her service as an **Outside Entity Executive**; or a **Claim** against an **Insured** for the **Insured's** liability with respect to a leased **Employee**, coverage as is afforded by this policy shall be specifically excess of indemnification provided by such **Outside Entity** or such leasing company and any insurance provided to such **Outside Entity** or such leasing company.

Further, in the event other insurance is provided to the **Outside Entity** or leasing company referenced in the above paragraph, or is provided under any pension trust or employee benefit plan fiduciary liability insurance policy, and such other insurance is provided by the **Insurer** or any member company of American International Group, Inc. (AIG) (or would be provided but for the application of the retention amount, exhaustion of the limit of liability or failure to submit a notice of a **Claim**), then the **Insurer's** maximum aggregate limit of liability for all **Loss** combined in connection with a **Claim** covered, in part or in whole, by this policy and such other insurance policy issued by AIG, shall not exceed the greater of the **Policy Aggregate Limit of Liability** or any **Separate Limit of Liability** or **Shared Limit of Liability** of this policy or the limit of liability of such other AIG insurance policy.

13. NOTICE AND AUTHORITY

It is agreed that the **Named Entity** shall act on behalf of its **Subsidiaries** and all **Insureds** with respect to the giving of notice of a **Claim**, the giving and receiving of notice of cancellation and nonrenewal, the payment of premiums and the receiving of any return premiums that may become due under this

policy, the receipt and acceptance of any endorsements issued to form a part of this policy, the exercising or declining of the right to tender the defense of a **Claim** to the **Insurer** and the exercising or declining to exercise any right to a **Discovery Period**.

14.ASSIGNMENT

This policy and any and all rights hereunder are not assignable without the prior written consent of the **Insurer**, which shall be in the sole and absolute discretion of the **Insurer**.

15.DISPUTE RESOLUTION PROCESS

- (a) It is hereby understood and agreed that all disputes or differences which may arise under or in connection with this policy, whether arising before or after termination of this policy, and including any determination of the amount of **Loss**, shall be submitted to the alternative dispute resolution process set forth in this Clause 15.
- (b) The **Insurer** and **Insured(s)** shall, in the first instance, seek to resolve all such disputes governed by this Clause 15 and referred to in the preceding paragraph (collectively "disputes," or individually "dispute") through non-binding mediation administered by the American Arbitration Association. It shall be a condition precedent to the right(s) of the **Insurer** and **Insured(s)** to commence an arbitration or judicial proceeding that the **Insurer** and **Insured(s)** first seek to resolve all such disputes by non-binding mediation. In the event that the **Insurer** or an **Insured** shall commence an arbitration or judicial proceeding in violation of this paragraph, the other party shall have the right, but not the obligation, to seek the dismissal of or a stay of such arbitration or judicial proceeding. The costs incurred, including legal fees, in seeking such dismissal or stay shall be paid by the party commencing the arbitration or judicial proceeding in violation of this Clause 15.
- (c) After the date on which the mediation terminates pursuant to the terms set forth in Appendix GTC-1 to this policy, the **Insurer** and **Insureds** shall wait at least sixty (60) days prior to filing an arbitration or judicial proceeding. Either the **Insurer** or an **Insured** may elect to file arbitration or a judicial proceeding; provided, however, that such **Insured** shall have the right to reject the **Insurer's** choice of either arbitration or a judicial proceeding prior to or after such proceeding is commenced, but only so long as such rejection shall be in writing and mailed to the **Insurer** within fourteen (14) days from the date on which the **Insurer** demands arbitration or commences a judicial proceeding. In the event an **Insured** rejects the **Insurer's** choice pursuant to the terms of this paragraph, such **Insured's** choice of either arbitration or a judicial proceeding shall control. In the event the dispute between the **Insurer** and **Insured(s)** that is the subject of this Clause 15 concerns a **Claim**, the rejection notice shall be addressed to the claims department responsible for handling such **Claim**.
- (d) Any such mediation, arbitration or judicial proceeding shall be subject to the terms and conditions set forth in Appendix GTC-1 to this policy.
- (e) Notwithstanding any preceding provision in this Clause 15, this Clause 15 shall not apply or govern any dispute concerning the issue of whether the policy, for any reason, is void or voidable.

16.ACTION AGAINST INSURER

Except as provided in Clause 15 above, no action shall lie against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of the **Insureds'** obligation to pay shall have been finally determined either by judgment against the **Insureds** after actual trial or by written agreement of the **Insureds**, the claimant and the **Insurer**.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the **Insurer** as a party to any action against the **Insureds** or the **Company** to determine the **Insureds'** liability, nor shall the **Insurer** be impleaded by the **Insureds** or the **Company** or their legal representatives. Bankruptcy or insolvency of the **Company** or the **Insureds** or of their estates shall not relieve the **Insurer** of any of its obligations hereunder.

17.CHANGE IN THIS POLICY

Notices to any agent or broker or knowledge possessed by any agent or broker or by any other person shall not effect a waiver or a change in any part of this policy or estop the **Insurer** from asserting any right under the terms of this policy, nor shall the terms of this policy be waived or changed except by endorsement issued to form a part of this policy and signed by an authorized representative of the **Insurer**.

18.TERRITORY

Where legally permissible, this policy shall apply to any **Claim** made against any **Insured** anywhere in the world. Payment of **Loss** under this policy shall only be made in full compliance with all United States of America economic or trade sanction laws or regulations, including, but not limited to, sanctions, laws and regulations administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC").

19.HEADINGS

The descriptions in the headings of this policy are solely for convenience, and form no part of the terms and conditions of coverage.

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AIG Financial Institutions Risk ProtectorSM

DIRECTORS, OFFICERS AND PRIVATE FINANCIAL INSTITUTION LIABILITY COVERAGE SECTION ONE ("D&O COVERAGE SECTION")

Notice: Pursuant to Clause 1 of the General Terms and Conditions, the General Terms and Conditions are incorporated by reference into, made a part of, and are expressly applicable to this Coverage Section, unless otherwise explicitly stated to the contrary in either the General Terms and Conditions or in this Coverage Section.

In consideration of the payment of the premium, and in reliance upon the statements made to the **Insurer** by application, including its attachments and the material incorporated therein, which form a part of this policy, the **Insurer** agrees as follows:

1. INSURING AGREEMENTS

COVERAGE A: INDIVIDUAL INSURED INSURANCE

This policy shall pay the **Loss** of each and every **Individual Insured** arising from a **Claim** first made against such **Individual Insureds** during the **Policy Period** or the **Discovery Period** (if applicable) and reported to the **Insurer** pursuant to the terms of this policy for any **Wrongful Act** of such **Individual Insured**, except when and to the extent that the **Company** has indemnified such **Individual Insureds**. The **Insurer** shall, in accordance with Clause 5 of this **Coverage Section**, advance **Defense Costs** of such **Claim** prior to its final disposition.

COVERAGE B: PRIVATE COMPANY INSURANCE

This policy shall pay the **Loss** of the **Company** arising from a:

- (i) **Claim** first made against the **Company**, or
- (ii) **Claim** first made against an **Individual Insured**,

during the **Policy Period** or the **Discovery Period** (if applicable) and reported to the **Insurer** pursuant to the terms of this policy for any **Wrongful Act**, but, in the case of (ii) above, only when and to the extent that the **Company** has indemnified the **Individual Insured** for such **Loss** pursuant to law, common or statutory, or contract, or the charter or by-laws of the **Company** duly effective under such law which determines and defines such rights of indemnity. The **Insurer** shall, in accordance with Clause 5 of this **Coverage Section**, advance **Defense Costs** of such **Claim** prior to its final disposition.

COVERAGE C: COSTS OF INVESTIGATION FOR DERIVATIVE CLAIMS

This policy shall pay the **Costs of Investigation** of the **Company** arising from a **Company Shareholder Derivative Investigation** first made by the **Company** against one or more of its **Directors or Officers** during the **Policy Period** or the **Discovery Period** (if applicable) and reported to the **Insurer** pursuant to

the terms of this policy for any **Wrongful Act** in their respective capacities as **Directors or Officers** of the **Company**.

It shall be the duty of the **Company** and not the duty of the **Insurer** to conduct, investigate and evaluate any **Company Shareholder Derivative Investigation** against its own **Directors and Officers**; provided that the **Insurer** shall be entitled to effectively associate in the investigation and evaluation, and the negotiation of any settlement of any such **Company Shareholder Derivative Investigation**.

Nothing in this Coverage C shall be construed to afford coverage under this policy for any **Claim** brought by the **Company** against one or more of its own **Directors or Officers**, other than **Costs of Investigation** incurred in a covered **Company Shareholder Derivative Investigation**. Payment of any **Costs of Investigation** under this policy shall not waive any of the **Insurer's** rights under this policy or at law.

The **Company** shall be entitled to payment under this Coverage C as reimbursement of its covered **Costs of Investigation** ninety (90) days after a final decision by the **Company**, as a result of the **Company Shareholder Derivative Investigation**, not to bring a civil proceeding in a court of law against any individual **Director or Officer** of the **Company** has been communicated to both the **Insurer** and the **Complaining Shareholders**; provided that such payment shall be subject to an undertaking by the **Company**, in a form acceptable to the **Insurer**, that such reimbursement shall be paid back by the **Company** to the **Insurer** in the event the **Company** or the **Complaining Shareholders** bring a **Claim**, before the expiration of the statute of limitations for such **Claim**, against the **Director or Officer** of the **Company** alleging a **Wrongful Act** or underlying fact or circumstance the subject of which was part of the **Company Shareholder Derivative Investigation**.

No Retention amount is applicable to Coverage C.

2. DEFINITIONS

(a) "**Claim**" means:

- (1) a written demand for monetary, non-monetary or injunctive relief (including any request to toll or waive any statute of limitations); or
- (2) a civil, criminal, administrative, regulatory or arbitration proceeding for monetary, non-monetary or injunctive relief which is commenced by:
 - (i) service of a complaint or similar pleading; or
 - (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 paragraph (2) of this definition, may be commenced; or
 - (ii) in the case of an investigation by the SEC or a similar state or foreign government authority, after the service of a subpoena upon such **Individual Insured**.

The term "**Claim**" shall include any **Company Shareholder Derivative Investigation**, but solely with respect to the coverage provided under Coverage C.

- (b) **"Company Shareholder Derivative Investigation"** means an investigation by the **Company** (including its board of directors (or equivalent management body) or any committee of the board of directors of the **Company**) as to whether or not the **Company** should commence a civil proceeding in a court of law against one or more **Director(s) or Officer(s)** of such **Company** in direct response to a written demand by one or more shareholders of a **Company**, other than shareholders who are **Insureds** (**"Complaining Shareholders"**), upon the board of directors (or equivalent management body) of such **Company** to bring, on behalf of the **Company**, a civil proceeding in a court of law against a **Director or Officer** of the **Company** for a **Wrongful Act** of such **Director or Officer** of the **Company**.
- (c) **"Costs of Investigation"** means reasonable and necessary costs, charges, fees and expenses (including but not limited to attorney's fees and expert's fees but not including any settlement, judgment or damages and not including any compensation, salaries or fees of any **Director or Officer** or **Employee** of the **Company**) incurred by the **Company** (including its board of directors (or equivalent management body) or any committee of the board of directors of the **Company**) incurred solely in connection with a **Company Shareholder Derivative Investigation**.
- (d) **"Individual Insured(s)"** means any:
- (1) **Director(s) or Officer(s)** of the **Company**;
 - (2) **Employee(s)** of the **Company**; and
 - (3) **Outside Entity Executive(s)**.
- (e) **"Insured(s)"** mean:
- (1) any **Individual Insured**; and
 - (2) the **Company**.
- (f) **"Loss"** means damages, judgments (including pre-judgment and post-judgment interest on that part of any judgment paid under this **Coverage Section**), settlements and **Defense Costs**; however, **Loss** (other than **Defense Costs**) shall not include: (1) civil or criminal fines or penalties; (2) taxes; (3) any amount for which the **Insureds** are not financially liable or which are without legal recourse to the **Insureds**; and (4) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.

Notwithstanding the foregoing paragraph, **"Loss"** shall specifically include (subject to this policy's other terms, conditions and limitations, including but not limited to Exclusions (a) and (b) of this **Coverage Section** and Exclusion (a) of the General Terms and Conditions): (1) civil penalties assessed against any **Individual Insured** pursuant to Section 2(g) (2)(B) of the Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-2(g)(2)(B); and (2) punitive, exemplary and multiple damages. Enforceability of this paragraph shall be governed by such applicable law that most favors coverage for such penalties and punitive, exemplary and multiple damages. For purposes of such coverage, "applicable law" includes, but is not limited to, the following jurisdictions: (a) where the **Wrongful Act** actually or allegedly took place; (b) where the damages are awarded; (c) where the **Named Entity** resides, is incorporated or has its principal place of business; and (d) where the **Insurer** is incorporated or has its principal place of business.

In the event of a **Claim** alleging that the price or consideration paid or proposed to be paid for the acquisition or completion of the acquisition of all or substantially all the ownership interest in or

assets of an entity is inadequate, **Loss** with respect to such **Claim** shall not include any amount of any judgment or settlement representing the amount by which such price or consideration is effectively increased; provided, however, that this paragraph shall not apply to **Defense Costs** or to any **Non-Indemnifiable Loss** in connection therewith.

The term "**Loss**" shall include **Costs of Investigation**, but solely with respect to the coverage provided by Coverage C.

- (g) "**Settlement Opportunity**" means an **Insurer** recommended settlement that is within the **Policy Aggregate Limit of Liability** or **Separate Limit of Liability**, if any, and that is acceptable to the claimant, provided that the **Insureds** consent to such settlement within thirty (30) days of the date the **Insureds** are first made aware of the **Settlement Opportunity**, or in the case of a **Settlement Opportunity** which arises from a settlement offer by the claimant, then within the time permitted by the claimant to accept such settlement offer, but in all events no later than thirty (30) days after the settlement offer was made.
- (h) "**Wrongful Act**" means any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act:
- (1) with respect to any **Director or Officer** or **Employee** of the **Company**, by such **Director or Officer** or **Employee** in his or her capacity as such or any matter claimed against such **Director or Officer** or **Employee** solely by reason of his or her status as such;
 - (2) with respect to any **Outside Entity Executive**, by such **Outside Entity Executive** in his or her capacity as such or any matter claimed against such **Outside Entity Executive** solely by reason of his or her status as such; or
 - (3) with respect to Coverage B(i), by the **Company**.

3. EXCLUSIONS

In addition to the exclusions set forth in Clause 4 of the General Terms and Conditions, the **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

- (a) arising out of, based upon or attributable to the committing of any deliberate criminal, fraudulent or dishonest act or any willful violation of any statute, rule or law, if any judgment, final adjudication or any alternative dispute resolution proceeding adverse to the **Insured(s)** establishes that such deliberate criminal, fraudulent, dishonest act or willful violation of any statute, rule or law occurred;
- (b) arising out of, based upon or attributable to payments to an **Insured** of any remuneration without the previous approval of the stockholders of the **Company**, if any judgment, final adjudication or any alternative dispute resolution proceeding adverse to the **Insured** establishes such payment to be illegal;
- (c) alleging, arising out of, based upon, or attributable to, directly or indirectly resulting from, in consequence of, or in any way involving, employment of any individual or any employment practice (including but not limited to wrongful dismissal, discharge or termination, discrimination, harassment, retaliation or other employment-related claim);

- (d) with respect to serving in a capacity as an **Outside Entity Executive**, for any **Wrongful Act** occurring prior to the **Continuity Date** if the **Insured** knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim** under this policy;
- (e) alleging, arising out of, based upon or attributable to, directly or indirectly, any actual or alleged act or omission of an **Individual Insured** serving in his or her capacity as a **Director or Officer** or **Employee** of any entity that is not the **Company** or an **Outside Entity**, or by reason of his or her status as a **Director or Officer** or **Employee** of such other entity;
- (f) for any **Wrongful Act** arising out of an **Individual Insured** serving in a capacity as an **Outside Entity Executive**, if such **Claim** is brought by the **Outside Entity** or a director, officer, trustee or governor thereof;
- (g) alleging, arising out of, based upon or attributable to, directly or indirectly, the purchase by the **Company** of securities of a "publicly traded entity" in a transaction which resulted, or would result, in such entity becoming an **Affiliate** or **Subsidiary** of the **Company**; provided, however, this exclusion shall not apply in the event that within thirty (30) days prior to it becoming an **Affiliate** or **Subsidiary**, the **Named Entity** gives written notice of the transaction to the **Insurer** together with full particulars and underwriting information required and agrees to any additional premium or amendment of the provisions of this policy required by the **Insurer** relating to the transaction. Further, coverage as shall be afforded to the transaction is conditioned upon the **Named Entity** paying when due any additional premium required by the **Insurer** relating to the transaction. An entity is a "publicly traded entity" if any securities of such entity have previously been subject to a public offering;
- (h) with respect to Coverage B(i) only:
- (1) for any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, trade secret or any other intellectual property rights;
 - (2) alleging, arising out of, based upon or attributable to, directly or indirectly, any actual or alleged contractual liability of any **Insured** under any contract or agreement (either oral or written);
 - (3) seeking fines or penalties or non-monetary relief against the **Company**; provided, however, that this subsection (3) shall not apply to any **Securities Claim**;
- (i) which is brought by, on behalf of or in the right of, the **Company** or any **Individual Insured** other than an **Employee** who is not a **Director or Officer**; or which is brought by any security holder or member of the **Company**, whether directly or derivatively, unless such security holder's or member'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 **Individual Insured** of the **Company** or the **Company**; provided, however, this exclusion shall not apply to:
- (1) any **Claim** brought by an **Individual Insured** 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) 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**, if any;

- (3) any **Claim** brought by any past **Director or Officer** of a **Company** who has not served as a duly elected or appointed director, officer, trustee, governor, management committee member, member of the management board, general counsel or risk manager (or equivalent position) of or consultant for 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 or Officer** of a **Company** formed and operating in a **Foreign Jurisdiction** against such **Company** or any **Director or Officer** 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
- (5) any **Securities Claim**, provided that 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, any **Company** or any **Director or Officer** of the **Company**; provided, however, solely with respect to this subsection (5):
 - (a) a **Director or Officer** of the **Company** engaging in any protected activity specified in 18 U.S.C. 1514A(a) ("whistleblower" protection pursuant to the Sarbanes-Oxley Act of 2002) or any protected activity specified in any other "whistleblower" protection pursuant to any similar state, local or foreign securities laws; shall not be deemed to trigger this exclusion.

Notwithstanding the forgoing exception, this Exclusion (i) shall apply where the actions of any **Director or Officer** of the **Company** includes the filing of any proceeding or voluntarily testifying, voluntarily participating in or voluntarily assisting (other than de minimis assistance) in the filing or prosecution of any proceeding against an **Insured** relating to any violation of any rule or regulation of the Securities and Exchange Commission or any similar provision of any federal, state, local or foreign rule or law relating to fraud against shareholders, other than such actions in connection with a proceeding that is brought by the Securities and Exchange Commission, any similar state, local or foreign regulatory body that regulates securities, or any state, local or foreign law enforcement authority;

- (j) alleging, arising out of, based upon or attributable to, directly or indirectly, any **Insured(s)'** performance of or failure to perform professional services for others for a fee, or any act(s), error(s) or omission(s) relating thereto;
- (k) for emotional distress, or for injury from libel or slander, or defamation or disparagement, or for injury from a violation of a person's right of privacy; provided, however, that this exclusion shall not apply to any **Securities Claim**; or
- (l) alleging, arising out of, based upon or attributable to, directly or indirectly, any public offering of securities by the **Company**, an **Outside Entity** or an **Affiliate** or alleging a purchase or sale of such securities subsequent to such public offering;

provided, however, that this exclusion shall not apply to:

- (1) 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 not be conditioned upon payment of any additional premium; however, the **Named Entity** shall give the **Insurer** written notice of any public offering exempted pursuant to Section 3(b), together with full

particulars and as soon as practicable, but not later than thirty (30) days after the effective date of the public offering; or

- (2) any public offering of securities (other than a public offering described in subsection (1) above), as well as any purchase or sale of such securities subsequent to such public offering, in the event that within thirty (30) days prior to the effective time of such public offering: (i) the **Named Entity** shall give the **Insurer** written notice of such public offering together with full particulars and underwriting information required thereto, and (ii) the **Named Entity** accepts such terms, conditions and additional premium required by the **Insurer** for such coverage. Such coverage is also subject to the **Named Entity** paying when due any such additional premium. In the event the **Company** gives written notice with full particulars and underwriting information pursuant to (i) above, then the **Insurer** must offer a quote for coverage under this subsection (2).

For the purpose of determining the applicability of the foregoing Exclusions 3(a) and 3(b): (1) the facts pertaining to and knowledge possessed by any **Insured** shall not be imputed to any other **Individual Insured**; and (2) facts pertaining to and knowledge possessed by any past, present or future chairman of the board, president, chief executive officer, chief operating officer, chief financial officer or general counsel (or equivalent positions) of the **Company** shall be imputed only to the **Company**.

4. LIMIT OF LIABILITY

Clause 5 of the General Terms and Conditions is modified to the extent necessary to provide the following:

The maximum limit of the **Insurer's** liability for **Costs of Investigation** arising from all **Company Shareholder Derivative Investigations** combined occurring during the **Policy Period** or the **Discovery Period** (if applicable), in the aggregate, shall be \$250,000 (hereinafter, "**Derivative Investigation Sublimit of Liability**"). The **Derivative Investigation Sublimit of Liability** shall be the aggregate limit of the **Insurer's** liability under this policy for all **Company Shareholder Derivative Investigations** regardless of the number of **Company Shareholder Derivative Investigations** occurring during the **Policy Period** or the **Discovery Period** (if applicable). The **Derivative Investigation Sublimit of Liability** shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** stated in Item 5(a) of the Declarations of this policy or any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this **Coverage Section** as stated in Item 3 of the Declarations, and will in no way serve to increase the **Insurer's Policy Aggregate Limit of Liability** or any **Separate Limit of Liability** or **Shared Limit of Liability** as stated therein.

5. DEFENSE COSTS, SETTLEMENTS, JUDGMENTS (INCLUDING THE ADVANCEMENT OF DEFENSE COSTS)

The **Insurer** does not assume any duty to defend. The **Insureds** shall defend and contest any **Claim** made against them.

Notwithstanding the foregoing, the **Insureds** shall have the right to tender the defense of any **Claim** to the **Insurer**, which right shall be exercised in writing by the **Named Entity** on behalf of all **Insureds** to the **Insurer** pursuant to the notice provisions of Clause 7 of the General Terms and Conditions. This right shall terminate if not exercised within thirty (30) days of the date the **Claim** is first made

against an **Insured**, pursuant to Clause 7 of the General Terms and Conditions. Further, from the date the **Claim** is first made against the **Insureds** to the date when the **Insurer** accepts the tender of the defense of such **Claim**, the **Insureds** shall take no action, or fail to take any required action, that prejudices the rights of the **Insureds** or the **Insurer** with respect to such **Claim**. Provided that the **Insureds** have complied with the foregoing, the **Insurer** shall be obligated to assume the defense of the **Claim**, even if such **Claim** is groundless, false or fraudulent. The assumption of the defense of the **Claim** shall be effective upon written confirmation sent thereof by the **Insurer** to the **Named Entity**. Once the defense has been so tendered, the **Insured** shall have the right to effectively associate with the **Insurer** in the defense and negotiation of any settlement of any **Claim**, subject to the provisions of this Clause 5. However, the **Insurer** shall not be obligated to defend such **Claim** after the **Policy Aggregate Limit of Liability** or **Separate Limit of Liability** or **Shared Limit of Liability**, if any, has been exhausted, or after an **Insured's** rejection of a **Settlement Opportunity**.

When the **Insurer** has not assumed the defense of a **Claim** pursuant to this Clause 5, the **Insurer** shall advance nevertheless, at the written request of the **Insured**, **Defense Costs** prior to the final disposition of a **Claim**. Such advanced payments by the **Insurer** shall be repaid to the **Insurer** by the **Insureds** or the **Company**, severally according to their respective interests, in the event and to the extent that the **Insureds** or the **Company** shall not be entitled under the terms and conditions of this policy to payment of such **Loss**.

The **Insureds** shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment, or incur any **Defense Costs** without the prior written consent of the **Insurer**. Only those settlements, stipulated judgments and **Defense Costs**, which have been consented to by the **Insurer**, in writing, shall be recoverable as **Loss** under the terms of this policy. The **Insurer's** consent shall not be unreasonably withheld, provided that the **Insurer**, when it has not assumed the defense of a **Claim** pursuant to this Clause 5, shall be entitled to fully and effectively associate in the defense and negotiation of any settlement of any **Claim**, and provided further that in all events the **Insurer** may withhold consent to any settlement, stipulated judgment or **Defense Costs**, or any portion thereof, to the extent such **Loss** is not covered under the terms of this policy.

The **Insurer** shall have the right to fully and effectively associate with the **Company** in the defense of any **Claim** that appears reasonably likely to involve the **Insurer**, including but not limited to negotiating a settlement. The **Company** and the **Insureds** shall give the **Insurer** full cooperation and such information as it may reasonably require.

In the event the **Insureds** do not consent to the first **Settlement Opportunity**, then, subject to the **Policy Aggregate Limit of Liability** and **Separate Limit of Liability** or **Shared Limit of Liability**, if any, the **Insurer's** liability for all **Loss** on account of such **Claim** shall not exceed: (1) the amount for which the **Insurer** could have settled such **Claim** plus **Defense Costs** incurred as of the date such settlement was proposed in writing by the **Insurer** ("**Settlement Opportunity Amount**"), plus (2) 60% of covered **Loss** in excess of such **Settlement Opportunity Amount**, it being a condition of this insurance that the remaining 40% 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 applicable Retention amount stated in Item 3 of the Declarations.

With respect to: (i) **Defense Costs** jointly incurred by, (ii) any joint settlement entered into by, or (iii) any judgment of joint and several liability against the **Company** and any **Individual Insured** in connection with any **Claim**, there shall be a fair and equitable allocation as between the **Company**

and any such **Individual Insured**, taking into account the relative legal and financial exposures and the relative benefits obtained by any such **Individual Insured** and the **Company**, without any presumption that the coverage afforded to the **Individual Insured** shall in any way reduce the allocation to the **Company** which shall not be insured for such allocation. In the event that a determination as to the amount of **Defense Costs** to be advanced under the policy cannot be agreed to, then the **Insurer** shall advance **Defense Costs** excess of any applicable Retention amount which the **Insurer** states to be fair and equitable until a different amount shall be agreed upon or determined pursuant to the provisions of this policy and applicable law.

This Clause 5 shall not be applicable to **Costs of Investigation**.

6. PRE-AUTHORIZED DEFENSE ATTORNEYS

This Clause 6 applies only to **Securities Claims**. Affixed as Appendix DO-1 hereto and made a part of this policy is a list of panel counsel law firms (herein "**Panel Counsel Firms**") from which a selection of legal counsel shall be made to conduct the defense of any **Securities Claim** against any **Insured** pursuant to the terms set forth below.

In the event the **Insurer** has assumed the defense pursuant to Clause 5, then the **Insurer** shall select a **Panel Counsel Firm** to defend the **Insureds**. In the event the **Insureds** are already defending a **Claim**, then the **Insureds** shall select a **Panel Counsel Firm** to defend the **Insureds**.

The selection of the **Panel Counsel Firm**, whether done by the **Insurer** or the **Insureds**, shall be from the list of **Panel Counsel Firms** and be from the jurisdiction in which the **Claim** is brought. In the event a **Securities Claim** is brought in a jurisdiction not included on the appropriate list, the selection shall be made from a listed jurisdiction which is the nearest geographic jurisdiction to either where the **Securities Claim** is maintained or where the corporate headquarters or state of formation of the **Named Entity** is located. In such instance, however, the **Insurer** shall, at the written request of the **Named Entity** assign a non-**Panel Counsel Firm** of the **Insurer's** choice in the jurisdiction in which the **Securities Claim** is brought to function as "local counsel" on the **Claim** to assist the **Panel Counsel Firm**, which will function as "lead counsel" in conducting the defense of the **Securities Claim**.

With the express prior written consent of the **Insurer**, an **Insured** may select (in the case of the **Insured** defending the **Securities Claim**), or cause the **Insurer** to select (in the case of the **Insurer** defending the **Securities Claim**), a **Panel Counsel Firm** different from that selected by other **Insured** defendants if such selection is required due to an actual conflict of interest.

The list of **Panel Counsel Firms** may be amended from time to time by the **Insurer**. However, no change shall be made to the specific list attached to this policy during the **Policy Period** without the consent of the **Named Entity**.

7. REPRESENTATIONS AND SEVERABILITY

In granting coverage under this **Coverage Section**, it is agreed that the **Insurer** has relied upon the statements, warranties and representations contained in the application for this policy (including materials submitted thereto and, if this is a renewal application, all such previous policy applications for which this policy is a renewal) as being accurate and complete. All such statements, warranties and representations are the basis for this **Coverage Section** and are to be considered as incorporated into this **Coverage Section**.

The **Insureds** agree that in the event that such statements, warranties and representations 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 **Coverage Section** shall be void *ab initio* solely with respect to any of the following **Insureds**:

- (a) solely with respect to **Loss** other than **Non-Indemnifiable Loss**, any **Individual Insured** who knew as of the inception date of the **Policy Period** the facts that were not accurately and completely disclosed in the application;
- (b) a **Company**, under Clause 1. Insuring Agreements, **COVERAGE B(ii)**, to the extent it indemnifies any **Individual Insured** referenced in (a) above; and
- (c) a **Company**, under Clause 1. Insuring Agreement, **COVERAGE B(i)**, if any past or present chief executive officer, chief financial officer or general counsel (or any equivalent position) of the **Company** knew as of the inception date of the **Policy Period**, the facts that were not accurately and completely disclosed in the application;

whether or not such **Individual Insured** knew that such facts were not accurately and completely disclosed in the application.

Except as provided in (a) through (c) above, no **Individual Insured's** knowledge shall be imputed to any other **Insured**.

Solely with respect to any **Non-Indemnifiable Loss** of any **Individual Insured**, under no circumstances shall the coverage provided by this **Coverage Section** be deemed void, whether by rescission or otherwise, but such coverage will be subject to all other terms, conditions and exclusions of the policy.

8. ORDER OF PAYMENTS

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

- (a) first, pay **Loss** for which coverage is provided under Coverage A of this **Coverage Section**; then
- (b) only after payment of **Loss** has been made pursuant to Clause 8(a) above, with respect to whatever remaining amount of the **Policy Aggregate Limit of Liability** or **Separate Limit of Liability** or **Shared Limit of Liability**, if any, is available after such payment, at the written request of the **Named Entity**, either pay or withhold payment of such other **Loss** for which coverage is provided under Coverage B(ii) of this **Coverage Section**; and then
- (c) only after payment of **Loss** has been made pursuant to Clause 8(a) and Clause 8(b) above, with respect to whatever remaining amount of the **Policy Aggregate Limit of Liability** or **Separate Limit of Liability** or **Shared Limit of Liability**, if any, is available after such payment, at the written request of the **Named Entity**, either pay or withhold payment of such other **Loss** for which coverage is provided under Coverages B(i) and C of this **Coverage Section**.

In the event the **Insurer** withholds payment pursuant to Clause 8(b) and/or Clause 8(c) above, then the **Insurer** shall at such time and in such manner as shall be set forth in written instructions of the **Named Entity** remit such payment to the **Company** or directly to or on behalf of an **Individual Insured**.

The bankruptcy or insolvency of any **Company** or any **Individual Insured** shall not relieve the **Insurer** of any of its obligations to prioritize payment of covered **Loss** under this policy pursuant to this Clause 8.

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EMPLOYMENT PRACTICES LIABILITY COVERAGE SECTION TWO ("EPL COVERAGE SECTION")

*This policy provides the **Insured** with access to EPL Pak[®] Premier services which aid the **Insured** in mitigating employment practices exposures by helping the **Insured** comply with changing employment statutes and new court decisions. EPL Pak[®] Premier incorporates a variety of services to assist the **Insured** with loss prevention, through programs designed to assist the **Insured** with proactive management and compliance with changing federal and state employment laws. A full description of the services provided by EPL Pak[®] Premier is set forth in the letter to the Named Entity accompanying this policy.*

Notice: Pursuant to Clause 1 of the General Terms and Conditions, the General Terms and Conditions are incorporated by reference into, made a part of, and are expressly applicable to this Coverage Section, unless otherwise explicitly stated to the contrary in either the General Terms and Conditions or in this Coverage Section.

In consideration of the payment of the premium, and in reliance upon the statements made to the **Insurer** by application, including its attachments and the material incorporated therein, which form a part of this policy, the **Insurer** agrees as follows:

1. INSURING AGREEMENTS

COVERAGE A. EMPLOYMENT PRACTICES LIABILITY INSURANCE

This policy shall pay the **Loss** of each and every **Insured** arising from a **Claim** first made against such **Insured** during the **Policy Period** or **Discovery Period** (if applicable) and reported to the **Insurer** pursuant to the terms of this policy for any **Wrongful Act**. The **Insurer** shall, in accordance with Clause 5 of this **Coverage Section**, advance **Defense Costs** of such **Claim** prior to its final disposition.

COVERAGE B. EMPLOYMENT CRISIS MANAGEMENT INSURANCE

This policy shall pay the **Employment Crisis Management Loss** of a **Company** solely with respect to an **Employment Crisis** occurring during the **Policy Period** or the **Discovery Period** (if applicable) and reported to the **Insurer** pursuant to the terms of this policy, up to the amount of the respective **Employment Crisis Management Fund**, from first dollar; provided that payment of any **Employment Crisis Management Loss** under this policy shall not waive any of the **Insurer's** rights under this policy or at law. This Coverage B shall apply regardless of whether a **Claim** is ever made against an **Insured** arising from such **Employment Crisis** and, in the case where a **Claim** is made, regardless of whether the amount is incurred prior to or subsequent to the making of the **Claim**.

The **Insured** shall notify the **Insurer** of an **Employment Crisis** in accordance with the notice provisions of Clause 7 of the General Terms and Conditions.

No Retention amount is applicable to Coverage B.

2. DEFINITIONS

(a) **"Claim"** means:

- (1) a written demand for monetary or non-monetary relief (including any request to toll or waive any statute of limitations); or
- (2) a civil, 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 (in the case of a criminal proceeding); or
 - (iii) receipt or filing of a notice of charges.

The term **Claim** shall include an Equal Employment Opportunity Commission ("EEOC") (or similar federal, state or local agency) proceeding or investigation 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.

- (b) **"Employment Crisis"** has the meaning as defined in Appendix EP-1 attached to this policy.
- (c) **"Employment Crisis Management Fund"** has the meaning as defined in Appendix EP-1 attached to this policy.
- (d) **"Employment Crisis Management Loss"** has the meaning as defined in Appendix EP-1 attached to this policy.
- (e) **"Individual Insured(s)"** means any **Director or Officer, Outside Entity Executive or Employee** of the **Company**.
- (f) **"Insured(s)"** means:
- (1) any **Individual Insured**; and
 - (2) the **Company**.
- (g) **"Loss"** means damages (including front pay and back pay), judgments (including pre-judgment and post-judgment interest on that part of any judgment paid under this **Coverage Section**), settlements, **Defense Costs** and **Employment Crisis Management Loss**; however, **Loss** (other than **Defense Costs**) shall not include: (1) civil or criminal fines or penalties; (2) taxes; (3) any amount for which the **Insureds** are not financially liable or which are without legal recourse to the **Insureds**; (4) employment-related benefits, stock options, perquisites, deferred compensation or any other type of compensation other than salary, wages or bonus compensation; (5) any liability or costs incurred by any **Insured** to modify any building or property in order to make said building or property more accessible or accommodating to any disabled person; or any liability or costs incurred in connection with any educational, sensitivity or other corporate program, policy or

seminar relating to a **Claim** alleging discrimination or other **Wrongful Act**; or (6) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.

Notwithstanding the foregoing paragraph, "**Loss**" shall specifically include (subject to this policy's other terms, conditions and limitations, including but not limited to Exclusion (a) of this **Coverage Section** and Exclusion (a) of the General Terms and Conditions) punitive, exemplary and multiple damages. Enforceability of this paragraph shall be governed by such applicable law that most favors coverage for such penalties and punitive, exemplary and multiple damages. For purposes of such coverage, "applicable law" includes, but is not limited to, the following jurisdictions: (a) where the **Wrongful Act** actually or allegedly took place; (b) where the damages are awarded; (c) where the **Named Entity** resides, is incorporated or has its principal place of business; and (d) where the **Insurer** is incorporated or has its principal place of business.

- (h) "**Settlement Opportunity**" means an **Insurer** recommended settlement that is within the **Policy Aggregate Limit of Liability** or **Separate Limit of Liability**, if any, and that is acceptable to the claimant, provided that the **Insureds** consent to such settlement within thirty (30) days of the date the **Insureds** are first made aware of the **Settlement Opportunity**, or in the case of a **Settlement Opportunity** which arises from a settlement offer by the claimant, then within the time permitted by the claimant to accept such settlement offer, but in all events no later than thirty (30) days after the settlement offer was made.
- (i) "**Wrongful Act**" means any actual or alleged:
- (1) wrongful dismissal, discharge or termination (either actual or constructive), including breach of an implied contract;
 - (2) harassment (including sexual harassment, whether "quid pro quo", hostile work environment or otherwise);
 - (3) discrimination (including, but not limited to, discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy, or disability);
 - (4) **Retaliation**;
 - (5) employment-related misrepresentation(s) to an **Employee** or applicant for employment with the **Company**;
 - (6) wrongful failure to employ or promote;
 - (7) employment-related libel, slander, humiliation, defamation or invasion of privacy, including the giving of negative or defamatory statements in connection with an **Employee** reference;
 - (8) wrongful deprivation of career opportunity with the **Company**, wrongful demotion or negligent **Employee** evaluation;
 - (9) wrongful discipline;
 - (10) failure to grant tenure; and

- (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, mental anguish, failure to provide or enforce adequate or consistent corporate policies and procedures, or violation of an individual's civil rights;

but only if the **Wrongful Act(s)** relates to an **Employee(s)**, or applicants for employment, with the **Company** or an **Outside Entity**, whether direct, indirect, intentional or unintentional.

With respect to any customer or client of the **Company**, whether individually or as a class or group, **Wrongful Act** shall mean only any actual or alleged sexual harassment or violation of an individual's civil rights relating to such sexual harassment, whether direct, indirect, intentional or unintentional.

3. EXCLUSIONS

In addition to the exclusions set forth in Clause 4 of the General Terms and Conditions, the **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

- (a) arising out of, based upon or attributable to the committing of any deliberate criminal, fraudulent or dishonest act or any willful violation of any statute, rule or law, if any judgment, final adjudication or any alternative dispute resolution proceeding adverse to the **Insured(s)** establishes that such deliberate criminal, fraudulent, dishonest act or willful violation of any statute, rule or law occurred;
- (b) alleging, arising out of, based upon or attributable to, directly or indirectly, any actual or alleged contractual liability of the **Company** or any other **Insured** under any express contract or agreement; provided, however, that this exclusion shall not apply to the extent any liability does not arise under such express contract or agreement;
- (c) with respect to serving in a capacity as an **Outside Entity Executive**, for any **Wrongful Act** occurring prior to the **Continuity Date** if the **Insured** knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim** under this policy;
- (d) alleging, arising out of, based upon or attributable to, directly or indirectly, any actual or alleged act or omission of an **Individual Insured** serving in his or her capacity as a **Director or Officer or Employee** of any entity that is not the **Company** or an **Outside Entity**, or by reason of his or her status as a **Director or Officer or Employee** of such other entity;
- (e) for any **Wrongful Act** arising out of an **Individual Insured** serving in a capacity as an **Outside Entity Executive**, if such **Claim** is brought by the **Outside Entity** or a director, officer, trustee or governor thereof; or
- (f) alleging, arising out of, based upon or attributable to, directly or indirectly, any **Claim** brought by a securities holder of the **Company**, an **Outside Entity** or an **Affiliate** in their capacity as such whether directly, derivatively on behalf of the **Company**, or an **Affiliate**, or by class action.

For the purpose of determining the applicability of the foregoing Exclusion 3(a), the **Wrongful Act** of an **Insured** shall not be imputed to any other **Insured**.

Clause 3 of this **Coverage Section** and Clause 4 of the General Terms and Conditions shall not be applicable to **Employment Crisis Management Loss**.

4. LIMIT OF LIABILITY

Clause 5 of the General Terms and Conditions is modified to the extent necessary to provide the following:

The maximum limit of the **Insurer's** liability for **Employment Crisis Management Loss** arising from all **Employment Crises** combined occurring during the **Policy Period** or the **Discovery Period** (if applicable), in the aggregate, shall be the amount set forth in Item 5(c) of the Declarations as the **Employment Crisis Management Fund**. The **Employment Crisis Management Fund** shall be the aggregate limit of the **Insurer's** liability under this policy for all **Employment Crises** regardless of the number of **Employment Crises** occurring during the **Policy Period** or the **Discovery Period** (if applicable). The **Employment Crisis Management Fund** shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** stated in Item 5(a) of the Declarations of this policy or any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this **Coverage Section** as stated in Item 3 of the Declarations, and will in no way serve to increase the **Insurer's Policy Aggregate Limit of Liability** or any **Separate Limit of Liability** or **Shared Limit of Liability** as stated therein.

5. DEFENSE COSTS, SETTLEMENTS, JUDGMENTS (INCLUDING THE ADVANCEMENT OF DEFENSE COSTS)

The **Insurer** does not assume any duty to defend. The **Insureds** shall defend and contest any **Claim** made against them.

Notwithstanding the foregoing, the **Insureds** shall have the right to tender the defense of any **Claim** to the **Insurer**, which right shall be exercised in writing by the **Named Entity** on behalf of all **Insureds** to the **Insurer** pursuant to the notice provisions of Clause 7 of the General Terms and Conditions. This right shall terminate if not exercised within thirty (30) days of the date the **Claim** is first made against an **Insured**, pursuant to Clause 7 of the General Terms and Conditions. Further, from the date the **Claim** is first made against the **Insureds** to the date when the **Insurer** accepts the tender of the defense of such **Claim**, the **Insureds** shall take no action, or fail to take any required action, that prejudices the rights of the **Insureds** or the **Insurer** with respect to such **Claim**. Provided that the **Insureds** have complied with the foregoing, the **Insurer** shall be obligated to assume the defense of the **Claim**, even if such **Claim** is groundless, false or fraudulent. The assumption of the defense of the **Claim** shall be effective upon written confirmation sent thereof by the **Insurer** to the **Named Entity**. Once the defense has been so tendered, the **Insured** shall have the right to effectively associate with the **Insurer** in the defense and negotiation of any settlement of any **Claim**, subject to the provisions of this Clause 5. However, the **Insurer** shall not be obligated to defend such **Claim** after the **Policy Aggregate Limit of Liability** or **Separate Limit of Liability** or **Shared Limit of Liability**, if any, has been exhausted, or after an **Insured's** rejection of a **Settlement Opportunity**.

When the **Insurer** has not assumed the defense of a **Claim** pursuant to this Clause 5, the **Insurer** shall advance nevertheless, at the written request of the **Insured**, **Defense Costs** prior to the final disposition of a **Claim**. Such advanced payments by the **Insurer** shall be repaid to the **Insurer** by the

Insureds or the **Company**, severally according to their respective interests, in the event and to the extent that the **Insureds** or the **Company** shall not be entitled under the terms and conditions of this policy to payment of such **Loss**.

The **Insureds** shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment, or incur any **Defense Costs** without the prior written consent of the **Insurer**. Only those settlements, stipulated judgments and **Defense Costs**, which have been consented to by the **Insurer**, in writing, shall be recoverable as **Loss** under the terms of this policy. The **Insurer's** consent shall not be unreasonably withheld, provided that the **Insurer**, when it has not assumed the defense of a **Claim** pursuant to this Clause 5, shall be entitled to fully and effectively associate in the defense and negotiation of any settlement of any **Claim**, and provided further that in all events the **Insurer** may withhold consent to any settlement, stipulated judgment or **Defense Costs**, or any portion thereof, to the extent such **Loss** is not covered under the terms of this policy.

The **Insurer** shall have the right to fully and effectively associate with the **Company** in the defense of any **Claim** that appears reasonably likely to involve the **Insurer**, including but not limited to negotiating a settlement. The **Company** and the **Insureds** shall give the **Insurer** full cooperation and such information as it may reasonably require.

In the event the **Insureds** do not consent to the first **Settlement Opportunity**, then, subject to the **Policy Aggregate Limit of Liability** and **Separate Limit of Liability** or **Shared Limit of Liability**, if any, the **Insurer's** liability for all **Loss** on account of such **Claim** shall not exceed: (1) the amount for which the **Insurer** could have settled such **Claim** plus **Defense Costs** incurred as of the date such settlement was proposed in writing by the **Insurer** ("**Settlement Opportunity Amount**"), plus (2) 60% of covered **Loss** in excess of such **Settlement Opportunity Amount**, it being a condition of this insurance that the remaining 40% 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 applicable Retention amount stated in Item 3 of the Declarations.

This Clause 5 shall not be applicable to **Employment Crisis Management Loss**.

6. PRE-AUTHORIZED DEFENSE ATTORNEYS

This Clause 6 applies to any **Claim**: (a) alleging discrimination; (b) alleging **Retaliation**; or (c) brought in the form of a class action (each of the foregoing hereinafter referred to as a "**Designated Employment Practices Claim**"). Affixed as Appendix EP-2 hereto and made a part of this policy is a list of panel counsel law firms (herein "**Panel Counsel Firms**") from which a selection of legal counsel shall be made to conduct the defense of any **Designated Employment Practices Claim** against any **Insured** pursuant to the terms set forth below.

In the event the **Insurer** has assumed the defense pursuant to Clause 5, then the **Insurer** shall select a **Panel Counsel Firm** to defend the **Insureds**. In the event the **Insureds** are already defending a **Claim**, then the **Insureds** shall select a **Panel Counsel Firm** to defend the **Insureds**.

The selection of the **Panel Counsel Firm**, whether done by the **Insurer** or the **Insureds**, shall be from the list of **Panel Counsel Firms** and be from the jurisdiction in which the **Claim** is brought. In the event a **Designated Employment Practices Claim** is brought in a jurisdiction not included on the appropriate list, the selection shall be made from a listed jurisdiction which is the nearest geographic

jurisdiction to either where the **Designated Employment Practices Claim** is maintained or where the corporate headquarters or state of formation of the **Named Entity** is located. In such instance, however, the **Insurer** shall, at the written request of the **Named Entity** assign a non-**Panel Counsel Firm** of the **Insurer's** choice in the jurisdiction in which the **Designated Employment Practices Claim** is brought to function as "local counsel" on the **Designated Employment Practices Claim** to assist the **Panel Counsel Firm**, which will function as "lead counsel" in conducting the defense of the **Designated Employment Practices Claim**.

With the express prior written consent of the **Insurer**, an **Insured** may select (in the case of the **Insured** defending the **Designated Employment Practices Claim**), or cause the **Insurer** to select (in the case of the **Insurer** defending the **Designated Employment Practices Claim**), a **Panel Counsel Firm** different from that selected by other **Insured** defendants if such selection is required due to an actual conflict of interest.

The list of **Panel Counsel Firms** may be amended from time to time by the **Insurer**. However, no change shall be made to the specific list attached to this policy during the **Policy Period** without the consent of the **Named Entity**.

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**FIDUCIARY LIABILITY INSURANCE
COVERAGE SECTION THREE
("FLI COVERAGE SECTION")**

Notice: Pursuant to Clause 1 of the General Terms and Conditions, the General Terms and Conditions are incorporated by reference into, made a part of, and are expressly applicable to this Coverage Section, unless otherwise explicitly stated to the contrary in either the General Terms and Conditions or in this Coverage Section.

In consideration of the payment of the premium, and in reliance upon the statements made to the **Insurer** by application, including its attachments and the material incorporated therein, which form a part of this policy, the **Insurer** agrees as follows:

1. INSURING AGREEMENTS

- (a) Solely with respect to **Claims** first made against an **Insured** during the **Policy Period** or the **Discovery Period** (if applicable) and reported to the **Insurer** pursuant to the terms of this policy, and subject to the other terms, conditions and limitations of this policy, this policy shall pay the **Loss** of each and every **Insured** arising from a **Claim** first made against an **Insured** for any **Wrongful Act** by any such **Insured** or by any employee for whom such **Insured** is legally responsible.
- (b) Solely with respect to **CAP Penalties** and **Delinquent Filer Penalties** assessed against an **Insured**, and **Voluntary Fiduciary Correction Loss** incurred by an **Insured**, during the **Policy Period** or the **Discovery Period** (if applicable) and reported to the **Insurer** pursuant to the terms of this policy, and subject to the other terms, conditions and limitations of this policy, this policy shall:
 - (i) pay the **CAP Penalties** and **Delinquent Filer Penalties**; and
 - (ii) reimburse the **Voluntary Fiduciary Correction Loss**,

of each and every **Insured**, collectively not to exceed the amount of the **Voluntary Compliance Loss Sublimit of Liability**, as defined in Clause 5 of this **Coverage Section**; provided that the **Insured** shall select a **Panel Counsel Firm** as provided in Clause 6 of this **Coverage Section**.

The payment of any **Voluntary Compliance Loss** under this policy shall not waive any of the **Insurer's** rights under this policy or at law, including in the event that a **Voluntary Compliance Loss** results in a **Claim**.

- (c) Solely with respect to **HIPAA Penalties** incurred by an **Insured** during the **Policy Period** or the **Discovery Period** (if applicable) and reported to the **Insurer** pursuant to the terms of this policy, and subject to the other terms, conditions and limitations of this policy, this policy shall pay the **HIPAA Penalties** of each and every **Insured**, collectively not to exceed the amount of the **HIPAA Penalties Sublimit of Liability**, as defined in Clause 5 of this **Coverage Section**.

2. DEFENSE AGREEMENT

- (a) **INSURER'S DUTY TO DEFEND**

Except as hereinafter stated, the **Insurer** shall have both the right and duty to defend any **Claim** against an **Insured** alleging a **Wrongful Act**, even if such **Claim** is groundless, false or fraudulent.

The **Insured** shall have the right to effectively associate with the **Insurer** in the defense of any **Claim**, including, but not limited to, negotiating a settlement, subject to the provisions of this clause. However, the **Insurer** shall not be obligated to defend any **Claim** after the **Policy Aggregate Limit of Liability** or any **Separate Limit of Liability** or **Shared Limit of Liability** has been exhausted, or pursuant to subparagraph (b) below, after the rejection of a settlement offer.

(b) GENERAL PROVISIONS (applicable to (a) above)

The **Insurer** shall advance **Defense Costs** prior to the final disposition of a **Claim**, subject to the other provisions of this policy. Such advance payments by the **Insurer** shall be repaid to the **Insurer** by the **Insureds**, severally according to their respective interests, in the event and to the extent that the **Insureds** shall not be entitled under the terms and conditions of this policy to payment of such **Loss**.

The **Insured** shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment, or incur any **Defense Costs** without the prior written consent of the **Insurer**. Only those settlements, stipulated judgments and **Defense Costs** which have been consented to by the **Insurer** shall be recoverable as **Loss** under the terms of this policy.

The **Insureds** shall give the **Insurer** full cooperation and such information as the **Insurer** may reasonably require. The **Insurer** may make any settlement of any **Claim** it deems expedient with respect to any **Insured** subject to such **Insured's** written consent. If any **Insured** withholds consent to such settlement, the **Insurer's** liability for all **Loss** on account of such **Claim** shall not exceed: (1) the amount for which the **Insurer** could have settled such **Claim** plus **Defense Costs** incurred as of the date such settlement was proposed in writing by the **Insurer** (herein, the "**Settlement Opportunity Amount**"), plus (2) 60% of covered **Loss** in excess of such **Settlement Opportunity Amount**, it being a condition of this insurance that the remaining 40% of such **Loss** excess of the **Settlement Opportunity Amount** shall be carried by the **Insureds** at their own risk and be uninsured.

3. DEFINITIONS

- (a) "**Administrator**" means an **Insured** with respect to any **Wrongful Act** described in subparagraph (2) of the definition of "**Wrongful Act**" in this **Coverage Section**.
- (b) "**Benefits**" means any obligation under a **Plan** to a participant or beneficiary under a **Plan** which is a payment of money or property, or the grant of a privilege, right, option or perquisite.
- (c) "**Breach of Fiduciary Duty**" means a violation of the responsibilities, obligations or duties imposed upon **Insureds** by **ERISA**.
- (d) "**CAP Penalties**" means fines, penalties, sanctions, voluntary correction fees, compliance fees or user fees assessed against or collected from an **Insured** by the Internal Revenue Service ("**IRS**") pursuant to a written agreement to correct an inadvertent **Plan** defect under an Employee Plans Compliance Resolution System, provided that such agreement to correct such **Plan** defect was

entered into in writing by the **Insured** with the **IRS** during the **Policy Period** (or during the policy period of a policy issued by the **Insurer** of which this policy is a continuous renewal).

(e) **"Claim"** means:

- (1) a written demand for monetary, non-monetary or injunctive relief; or
- (2) a civil, criminal or arbitration proceeding for monetary, non-monetary or injunctive relief which is commenced by:
 - (i) service of a complaint or similar pleading; or
 - (ii) return of an indictment (in the case of a criminal proceeding); or
 - (iii) receipt or filing of a notice of charges; or
- (3) a formal agency adjudicative proceeding anywhere in the world to which an **Insured** is subject.

(f) **"Consulting Fees"** means fees charged by a third party actuary, benefits consultant or accountant resulting solely from the correction of an actual or potential **Breach of Fiduciary Duty**, but excluding any fees, costs or expenses associated with: (i) a **Plan** audit; or (ii) identifying, finding or assessing such **Breach of Fiduciary Duty**.

(g) **"Defense Expenses"** means reasonable and necessary attorney's fees, costs or expenses consented to in writing by the **Insurer** resulting solely from the correction of an actual or potential **Breach of Fiduciary Duty**, but excluding any fees, costs and expenses associated with finding or assessing such **Breach of Fiduciary Duty** and any compensation of **Individual Insureds** or employees of an **Insured**.

(h) **"Delinquent Filer Penalties"** means penalties assessed by the U.S. Department of Labor or the **IRS** under a Delinquent Filer Voluntary Compliance Program for inadvertent failure to file Form 5500, provided that the failure to file such Form 5500 occurred during the **Policy Period** (or during the policy period of a policy issued by the **Insurer** of which this policy is a continuous renewal).

(i) **"Employee Benefit Law"** means **ERISA** or any similar common or statutory law of the United States, Canada or any state or other jurisdiction anywhere in the world to which a **Plan** is subject.

(1) Solely with respect to paragraph (2) of the definition of **Wrongful Act, Employee Benefit Law** shall also include Part 164 of the regulations under the Health Insurance Portability and Accountability Act of 1996, unemployment insurance, Social Security, government-mandated disability benefits or similar law.

(2) In no event shall **Employee Benefit Law**, other than as set forth in paragraph (1) of this definition of **Employee Benefit Law**, include any law concerning worker's compensation, unemployment insurance, Social Security, government-mandated disability benefits or similar law.

(j) **"ERISA"** means the Employee Retirement Income Security Act of 1974 (including, but not limited to, amendments relating to the Consolidated Omnibus Budget Reconciliation Act of 1985, Health Insurance Portability and Accountability Act of 1996 as it relates to Sections 102(b) and 104(b)(1) of **ERISA**, the Newborns' and Mothers' Health Protection Act of 1996, the Mental Health Parity Act of 1996, and the Women's Health and Cancer Rights Act of 1998), and including any amendment or revision thereto.

- (k) **"ESOP"** means any employee stock ownership plan as defined in **ERISA**, or any other **Plan** under which investments are made primarily in securities of or issued by (i) the **Company**, (ii) the parent of the **Company**, (iii) any acquired **Subsidiary**, or (iv) any parent of any acquired **Subsidiary**, or whose assets at any time within twelve months prior to the inception date of this policy were comprised of 10% or more of securities of the **Company**, the parent of the **Company**, any acquired **Subsidiary**, or any parent of any acquired **Subsidiary**.
- (l) **"Fiduciary"** means a fiduciary as defined in any applicable **Employee Benefit Law** with respect to a **Plan**, or a person or entity who exercises discretionary control respecting the management of a **Plan** or the disposition of its assets.
- (m) **"HIPAA Penalties"** means civil money penalties imposed upon an **Insured** for violation of the privacy provisions of the Health Insurance Portability and Accountability Act of 1996.
- (n) **"Individual Insured"** means any past, present or future natural person director, officer or employee of the **Company** or, if applicable, of a **Plan**, and as to all of the above, in his or her capacity as a **Fiduciary, Administrator** or trustee of a **Plan**.
- (o) **"Insured(s)"** means:
- (1) any **Individual Insured**;
 - (2) any **Plan(s)**;
 - (3) the **Company**; and
 - (4) any other person or entity in his, her or its capacity as a **Fiduciary, Administrator** or trustee of a **Plan** who is included in the definition of **"Insured"** by specific written endorsement attached to this policy.
- (p) **"Loss"** means damages, judgments (including pre and post-judgment interest on that part of any judgment paid under this **Coverage Section**), settlements and **Defense Costs**; however, **Loss** (other than **Defense Costs**) shall not include: (1) civil or criminal fines or penalties imposed by law, except (i) to the extent set forth in Item 5(d) of the Declarations for **Voluntary Compliance Loss**, (ii) **UK Fines and Penalties**, (iii) the five percent (5%) or less civil penalty imposed upon an **Insured** under Section 502(i) of **ERISA**, (iv) the twenty percent (20%) or less penalty imposed upon an **Insured** under Section 502(l) of **ERISA**, with respect to covered settlements or judgments under this **Coverage Section**, and (v) to the extent set forth in Item 5(e) of the Declarations for **HIPAA Penalties**; (2) the multiplied portion of multiplied damages; (3) taxes or tax penalties; (4) any amount for which an **Insured** is not financially liable or which is without legal recourse to the **Insured**; (5) **Benefits**, or that portion of any settlement or award in an amount equal to such **Benefits**, unless and to the extent that recovery of such **Benefits** is based upon a covered **Wrongful Act** and is payable as a personal obligation of an **Individual Insured**; or (6) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.

Where permitted by law, **Loss** shall include punitive or exemplary damages imposed upon any **Insured**, subject to the policy's other terms, conditions and exclusions, including but not limited to Exclusion (a) of this Coverage Section and Exclusion (a) of the General Terms and Conditions.

Loss shall include **Voluntary Compliance Loss** and **HIPAA Penalties**.

(q) **"Non-Qualified Plan"** means any of the following plans for a select group of management or highly compensated directors, officers and/or employees: deferred compensation plan, supplemental executive retirement plan, top-hat plan or excess benefit plan.

(r) **"Plan"** means:

(i) any **Non-Qualified Plan**; or

(ii) any payroll deduction IRA (Individual Retirement Account), SEP (Simplified Employee Pension Plan), SARSEP (Salary Reduction Simplified Employee Pension Plan) or SIMPLE IRA (Savings Incentive Match Plan for Employees), established or administered by the **Company**, solely for the benefit of the employees and/or the **Directors or Officers**; or

(iii) any plan as defined under **Employee Benefit Law**, other than a **Non-Qualified Plan**, which is:

(1) a welfare plan, as defined under **Employee Benefit Law** which was, is now, or hereinafter becomes sponsored solely by the **Company**, or sponsored jointly by the **Company** and a labor organization, solely for the benefit of the employees and/or the **Director(s) or Officer(s)** of the **Company**;

(2) a pension plan as defined under **Employee Benefit Law** (other than an **ESOP** or stock option plan) which was, on or prior to the inception date of the policy, sponsored solely by the **Company**, or sponsored jointly by the **Company** and a labor organization, solely for the benefit of the employees and/or the **Director(s) or Officer(s)** of the **Company**, provided that at any time prior to the inception date of this policy such plan has been reported in writing to the **Insurer** by the **Named Entity** pursuant to the terms of the application for this policy, or any prior policy or its application issued by the **Insurer** (or any other member company of American International Group, Inc.) and the **Named Entity** shall have paid any required premium relating to such plan;

(3) subject to the requirements of sub-paragraphs (1) and (2) above, any pension or welfare plan that was sold, spun-off or terminated during or prior to the inception date of this policy, but solely with respect to **Wrongful Acts** that occurred prior to the date of such sale or spin-off, or in the case of a terminated plan, prior to the final date of asset distribution of such plan, provided that notice of such sale, spin-off or termination is provided to the **Insurer** before the end of the **Policy Period**;

(4) a pension plan as defined in **Employee Benefit Law** (other than an **ESOP** or stock option plan) which:

(a) is acquired during the **Policy Period** as a result of the **Company's** acquisition of a **Subsidiary** whose assets total more than 25% of the total consolidated assets of the **Company** as of the inception date of this policy; or

(b) is acquired during the **Policy Period** and such plan's assets total more than 25% of the total consolidated assets of all covered pension plans as of the inception date of this policy, or

(c) is created during the **Policy Period**,

but only upon the condition that within ninety (90) days of its acquisition or creation, the **Named Entity** shall have provided the **Insurer** with a completed application for such new plan and agreed to any additional premium or amendment of the provisions of the policy required by the **Insurer** relating to such new plan;

- (5) a pension plan which, during or prior to the **Policy Period** of this policy, has been merged into or consolidated with a pension plan for which coverage is afforded under this policy; and
- (6)(i) a plan which is both a welfare plan and a pension plan as defined in **Employee Benefit Law** (other than an **ESOP** or stock option plan) subject to the requirements of this Definition (r);
- (ii) the following government-mandated programs: unemployment insurance, Social Security or disability benefits, solely with respect to a **Wrongful Act** defined in subparagraph (2) of the definition of "**Wrongful Act**" in this **Coverage Section**;
- (iii) any other plan, fund or program, including an **ESOP**, which is included in the definition of "**Plan**" by specific written endorsement attached to this policy.

Notwithstanding the foregoing, the term "**Plan**" shall not include any multiemployer plan as defined under any **Employee Benefit Law**.

- (s) "**UK Fines and Penalties**" means civil fines and penalties assessed against an **Insured** by either the Pensions Ombudsman appointed by the Secretary of State for Social Services in the United Kingdom or by the Pensions Regulator in the United Kingdom or any successor body thereto, subject to the other terms, conditions and exclusions of the policy.
- (t) "**Voluntary Compliance Loss**" means **CAP Penalties**, **Delinquent Filer Penalties** and **Voluntary Fiduciary Correction Loss**.
- (u) "**Voluntary Fiduciary Correction Loss**" means damages, **Defense Expenses** and **Consulting Fees** incurred in connection with the U.S. Department of Labor's ("**DOL**") Voluntary Fiduciary Correction Program as set forth in the Federal Register, resulting from an inadvertent **Breach of Fiduciary Duty** occurring during the **Policy Period** (or during the policy period of a policy issued by the **Insurer** of which this policy is a continuous renewal), provided that such compliance with the **DOL's** Voluntary Fiduciary Correction Program results in the **Insured** obtaining a "No Action" letter from the **DOL**; however, **Voluntary Fiduciary Correction Loss** shall not include: (1) civil or criminal fines or penalties imposed by law; (2) punitive or exemplary damages; (3) the multiplied portion of multiplied damages; (4) taxes or tax penalties; (5) any amount for which an **Insured** is not financially liable or which is without legal recourse to the **Insured**; (6) **Benefits**, or that portion of damages equal to such **Benefits**; (7) matters of which the **Insured** had knowledge prior to the inception date of this policy or the first policy issued by the **Insurer** to the **Named Entity** of which this policy is a continuous renewal; or (8) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.
- (v) "**Wrongful Act**" means:
 - (1) as respects an **Insured**: a violation of any of the responsibilities, obligations or duties imposed upon **Fiduciaries** by **Employee Benefit Law** with respect to a **Plan**; or any matter claimed against an **Insured** solely by reason of his, her or its status as a **Fiduciary**, but only with respect to a **Plan**; and
 - (2) as respects an **Administrator**, any act, error or omission solely in the performance of one or more of the following administrative duties or activities, but only with respect to a **Plan**:
 - (i) counseling employees, participants and beneficiaries; or
 - (ii) providing interpretations; or
 - (iii) handling of records; or

(iv) activities effecting enrollment, termination or cancellation of employees, participants and beneficiaries under the **Plan**,
or any matter claimed against an **Insured** solely by reason of his, her or its status as an **Administrator**, but only with respect to a **Plan**;

(3) as respects an **Individual Insured**, any matter claimed against him or her arising out of his or her service as a **Fiduciary** or **Administrator** of any multiemployer plan as defined by **ERISA**, but only if such service is at the specific written request or direction of the **Company** and such multiemployer plan is added by specific written endorsement attached to this policy, identified as a multiemployer plan and any required premium is paid. In no event shall coverage under this policy extend to a **Claim** against a multiemployer plan itself, its contributing employer(s) or any other fiduciaries or administrators of such plan, other than an **Individual Insured**.

4. EXCLUSIONS

In addition to the exclusions set forth in Clause 4 of the General Terms and Conditions, the **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

- (a) arising out of, based upon or attributable to the committing of any criminal or deliberate fraudulent act, or knowing or willful violation of any statute, rule or law, including, but not limited to **Employee Benefit Law** if a judgment or final adjudication or an alternative dispute resolution proceeding adverse to the **Insured(s)** establishes such criminal or deliberate fraudulent act, or knowing or willful violation of any statute, rule or law, including but not limited to **Employee Benefit Law**;
- (b) for discrimination in violation of any law, except that this exclusion shall not apply to discrimination in violation of **Employee Benefit Law**;
- (c) for failure to fund a **Plan** in accordance with **Employee Benefit Law** or the **Plan** instrument or the failure to collect contributions owed to the **Plan**; except that this exclusion shall not apply to **Defense Costs**;
- (d) alleging, arising out of, based upon or attributable to any act or omission in his, her or its capacity as a **Fiduciary** or **Administrator** of any plan, fund or program, other than a **Plan** as defined in this policy, or by reason of his, her or its status as a **Fiduciary** or **Administrator** of such other plan, fund or program;
- (e) for emotional distress of any person; except that this exclusion shall not apply to **Defense Costs** incurred in the defense of a **Claim** for **Breach of Fiduciary Duty**; or
- (f) alleging, arising out of, based upon or attributable to any **Wrongful Act** as respects the **Plan** taking place at any time when the **Company** did not sponsor such **Plan** or when the **Individual Insured** was not a **Fiduciary**, **Administrator**, trustee, **Director(s)** or **Officer(s)**, or employee of the **Company** or if applicable, a **Plan**.

For the purpose of determining the applicability of the foregoing Exclusion 4(a), the facts pertaining to and knowledge possessed by any **Insured** shall not be imputed to any other **Individual Insured**.

5. LIMIT OF LIABILITY

Clause 5 of the General Terms and Conditions is modified to the extent necessary to provide the following:

The maximum limit of the **Insurer's** liability for all **Voluntary Compliance Loss** occurring during the **Policy Period** or the **Discovery Period** (if applicable), in the aggregate, shall be the amount set forth in Item 5(d) of the Declarations ("**Voluntary Compliance Loss Sublimit of Liability**"). The **Voluntary Compliance Loss Sublimit of Liability** shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** stated in Item 5(a) of the Declarations of this policy or any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this **Coverage Section** as stated in Item 3 of the Declarations, and will in no way serve to increase the **Insurer's Policy Aggregate Limit of Liability** or any **Separate Limit of Liability** or **Shared Limit of Liability** as stated therein.

The maximum limit of the **Insurer's** liability for all **HIPAA Penalties** occurring during the **Policy Period** or the **Discovery Period** (if applicable), in the aggregate, shall be \$25,000 ("**HIPAA Penalties Sublimit of Liability**"). The **HIPAA Penalties Sublimit of Liability** shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** stated in Item 5(a) of the Declarations of this policy and any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this **Coverage Section** as stated in Item 3 of the Declarations, and will in no way serve to increase the **Insurer's Policy Aggregate Limit of Liability** or any **Separate Limit of Liability** or **Shared Limit of Liability** as stated therein.

6. PRE-AUTHORIZED DEFENSE ATTORNEYS

This Clause 6 applies only to: (1) a **Claim** brought by any government entity; (2) a request for coverage for a **Voluntary Compliance Loss**; or (3) a **Claim** brought in the form of a class or representative action. Affixed as Appendix FL-1 hereto and made a part of this policy is a list of panel counsel law firms ("**Panel Counsel Firms**") from which a selection of legal counsel shall be made to conduct the defense of any **Claim** against any **Insured** to which this Clause 6 applies and pursuant to the terms set forth below.

The **Insurer** shall select a **Panel Counsel Firm** to defend the **Insureds**. Upon the written request of the **Named Entity**, the **Insurer** may consent to a different **Panel Counsel Firm** selected by the **Named Entity** to defend the **Insureds**, which consent shall not be unreasonably withheld.

The selection of a **Panel Counsel Firm** from the attached list to defend the **Claim** against the **Insureds** shall not be restricted to the jurisdiction in which the **Claim** is brought.

The list of **Panel Counsel Firms** may be amended from time to time by the **Insurer**. However, no change shall be made to the specific list attached to this policy during the **Policy Period** without the consent of the **Named Entity**. At the request of the **Named Entity**, the **Insurer** may in its discretion add one or more law firms to the attached list of **Panel Counsel Firms** for the purposes of defending the **Claim** made against the **Insureds**. The list of **Panel Counsel Firms** may also be amended to add, at the sole discretion of the **Insurer**, a non-**Panel Counsel Firm** for the purpose of acting as "local counsel" to assist an existing **Panel Counsel Firm**, which **Panel Counsel Firm** will act as "lead counsel" in conducting the defense of the **Claim**, for **Claims** brought in a jurisdiction in which the chosen **Panel Counsel Firm** does not maintain an office.

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**BANKERS PROFESSIONAL LIABILITY
COVERAGE SECTION FOUR
("BPL COVERAGE SECTION")**

Notice: Pursuant to Clause 1 of the General Terms and Conditions, the General Terms and Conditions are incorporated by reference into, made a part of, and are expressly applicable to this Coverage Section, unless otherwise explicitly stated to the contrary in either the General Terms and Conditions or in this Coverage Section.

In consideration of the payment of the premium, and in reliance upon the statements made to the **Insurer** by application, including its attachments and the material incorporated therein, which form a part of this policy, the Insurer agrees as follows:

1. INSURING AGREEMENT

This policy shall pay the **Loss** of each and every **Insured** arising from a **Claim** first made against such **Insured** during the **Policy Period** or **Discovery Period** (if applicable) and reported to the **Insurer** pursuant to the terms of this policy for any **Wrongful Act** of the **Insured** in the rendering of or failure to render **Professional Services**. The **Insurer** shall, in accordance with Clause 4 of this **Coverage Section**, advance **Defense Costs** of such **Claim** prior to its final disposition.

2. DEFINITIONS

(a) "**Claim**" means:

- (1) a written demand for monetary or non-monetary relief (including any request to toll or waive any statute of limitations); or
- (2) a civil, administrative or arbitration proceeding for monetary or non-monetary relief which is commenced by:
 - (i) service of a complaint or similar pleading; or
 - (ii) receipt or filing of a notice of charges.

(b) "**Individual Insured**" means any **Director or Officer** or **Employee** of the **Company**.

(c) "**Insured**" means:

- (i) any **Individual Insured**; and
- (ii) the **Company**.

(d) "**Investment Banking**" means, but is not limited to, the underwriting, syndicating or promotion of any debt or equity security; any actual, alleged or threatened merger, acquisition, divestiture, tender offer, proxy contest, leveraged buy-out, going private transaction, reorganization (voluntary or involuntary), capital restructuring, recapitalization, spin-offs, primary or secondary offerings of securities (regardless of whether the offering is a public offering or a private placement), dissolution or sale of all or substantially all of the assets or stock of a business entity or any effort to raise or furnish capital or financing for any enterprise or entity, or any acquisition or sale of

securities by the **Company** for its own account or any disclosure requirements in connection with any of the foregoing. **Investment Banking** also includes the rendering of any advice or recommendations or the rendering of a fairness opinion in connection with any of the foregoing.

- (e) "**Lending Act**" means any act performed by an **Insured** for a customer or client of the **Company** arising from the extending or refusing to extend credit or the granting or refusing to grant a loan.
- (f) "**Loan Servicing**" means the servicing of any loan, lease or extension of credit (whether consumer, commercial, mortgage banking or otherwise, but not including merger or acquisition activities, or leveraged or management buyouts). **Loan Servicing** includes, but is not limited to, the following servicing activities: record keeping, billing and disbursements of principal or interest, receipt or payment of insurance premiums and taxes, credit reporting or statements of a customer's creditworthiness, determination of the depreciation amount of property (but not projections of or an appraisal for residual or future value of property). **Loan Servicing** shall not include any **Lending Acts**.
- (g) "**Loss**" means damages, judgments (including pre-judgment and post-judgment interest on that part of any judgment paid under this **Coverage Section**), settlements and any **Defense Costs**; provided, however, that **Loss** (other than **Defense Costs**) shall not include: (1) civil fines or penalties; (2) taxes; (3) punitive or exemplary damages; (4) the multiplied portion of multiplied damages; (5) any liability or cost incurred by any **Insured** in complying with any judgment, award or settlement for non-monetary relief; (6) loss of, or diminution in value of, money, securities, property or other items of value in the custody or control of the **Insured**, or its agents, or in transit; (7) any amount for which an **Insured** is not financially liable or which is without legal recourse to the **Insured**; or (8) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.

Notwithstanding the foregoing paragraph, **Loss** shall specifically include (subject to this policy's other terms, conditions and limitations, including but not limited to Exclusions (a) and (b) of this **Coverage Section** and Exclusion (a) of the General Terms and Conditions) awards of punitive or exemplary damages in an amount not greater than two times the amount of compensatory damages awarded. Enforceability of this paragraph shall be governed by such applicable law that most favors coverage for such punitive and exemplary damages. For purposes of such coverage, "applicable law" includes, but is not limited to, the following jurisdictions: (a) where the **Wrongful Act** actually or allegedly took place; (b) where the damages are awarded; (c) where the **Named Entity** resides, is incorporated or has its principal place of business; and (d) where the **Insurer** is incorporated or has its principal place of business.

- (h) "**Professional Services**" means those services, including online banking services, of the **Company** as set forth in an endorsement to this policy by the **Insurer**, which services are permitted by law or regulation, to be rendered by an **Insured** pursuant to a written agreement with the customer or client as long as such service is rendered for or on behalf of a customer or client of the **Company**: (i) in return for a fee, commission or other compensation ("**Compensation**"), or (ii) without **Compensation** as long as such non-compensated services are rendered in conjunction with services rendered for **Compensation**.

(i) **"Retroactive Date"** means the date set forth as such in Item 3 of the Declarations.

(j) **"Wrongful Act"** means:

- (1) with respect to **Directors or Officers** and **Employees**, any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act by such **Insureds** in their respective capacities as such, or any matter claimed against such **Insured** solely by reason of their status as **Directors or Officers** or **Employees**; or
- (2) with respect to the **Company**, any actual or alleged breach of duty, neglect, error, misstatement, omission or act by the **Company**.

3. EXCLUSIONS

In addition to the exclusions set forth in Clause 4 of the General Terms and Conditions, the **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

- (a) alleging, arising out of, based upon or attributable to any criminal, malicious, dishonest or fraudulent act, error or omission of any **Insured** or any other person for whose actions an **Insured** is legally responsible; or arising out of or alleging any conflict of interest, acting in bad faith or gaining of any profit or advantage to which an **Insured** (or any other person for whose actions an **Insured** is legally responsible) was not legally entitled; however, if such allegations are subsequently disproven by a final adjudication favorable to the **Insured** or such other person then the **Insurer** shall reimburse the **Insured** for all **Defense Costs** reasonably incurred by the **Insured** in connection therewith for which the **Insured** is entitled under the terms, conditions and exclusions of this policy;
- (b) arising out of, based upon or attributable to any **Wrongful Act** committed by an **Insured** or by any other person for whose actions an **Insured** is legally responsible with knowledge that it was wrongful;
- (c) alleging, arising out of, based upon or attributable to, directly or indirectly, a **Wrongful Act** which occurred prior to the **Retroactive Date** or after the end of the **Policy Period**. **Loss(es)** arising out of the same or **Related Wrongful Act(s)** shall be deemed to arise from the first such same or **Related Wrongful Act**;
- (d) alleging, arising out of, based upon or attributable to, directly or indirectly, the bankruptcy of, or suspension of payment by, any broker or dealer in securities or commodities, or any bank or banking firm other than the **Company**;
- (e) alleging, arising out of, based upon or attributable to, directly or indirectly, emotional distress or mental anguish of any person;
- (f) alleging, arising out of, based upon or attributable to, directly or indirectly, the publication, utterance or conveyance of a libel or slander, or other defamatory or disparaging material, or discrimination, or the wrongful entry or eviction or other invasion of the right of privacy;
- (g) alleging, arising out of, based upon or attributable to, directly or indirectly, any **Lending Act**, including, but not limited to, any pattern or practice of discrimination by the **Insured** in refusing to make a loan, lending and/or financing for dwellings, or extending credit on

the basis of race, marital status, national origin, age, religion, disability, receipt of public assistance, or postal zip codes, regardless of the applicant's credit record, with respect to persons or properties in specified geographic areas, including, but not limited to, any actual or alleged violations of the Fair Housing Act, the Equal Credit Opportunity Act, any regulations pursuant thereto, or any similar state law or regulation;

- (h) alleging, arising out of, based upon or attributable to, directly or indirectly, any dispute involving fees, commissions or other charges for any **Professional Service** rendered or required to be rendered by the **Insured**, or that portion of any settlement or award representing an amount equal to such fees, commissions or other compensations; provided, however, that this exclusion shall not apply to **Defense Costs** incurred in connection with a **Claim** alleging a **Wrongful Act**;
- (i) brought by, on the behalf of or in the right of any **Insured** or its successors or assigns, other than an **Employee** who is not a **Director or Officer**; or which is brought by any security holder or member of the **Company**, whether directly or derivatively, unless such security holder's or member'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 **Individual Insured** of the **Company** or the **Company**; or which is brought by or on the behalf of any business enterprise which is operated or managed or owned, directly or indirectly, in whole or in part by any **Insured**;
- (j) brought by or on behalf of any governmental, quasi-governmental or self-regulatory entity, whether directly or indirectly, and whether brought in its capacity as receiver, conservator, liquidator, security holder or assignee of the **Company**, its security holders, its depositors or its creditors or in any other capacity and whether brought in its own name or in the name of any other entity however, this exclusion shall not apply to any **Claim** by any such entity or bureau to enforce its rights as a direct customer or client of the **Insured**;
- (k) alleging, arising out of, based upon, or attributable to, directly or indirectly, employment of any individual or any employment practice (including but not limited to wrongful dismissal, discharge or termination, discrimination, harassment, retaliation or other employment-related claim);
- (l) alleging, arising out of, based upon or attributable to, directly or indirectly, any employee benefit plan sponsored or established by the **Company**;
- (m) alleging, arising out of, based upon or attributable to, directly or indirectly, **Investment Banking**;
- (n) alleging, arising out of, based upon or attributable to, directly or indirectly, any use by any **Insured** of, or actual or alleged aiding or abetting by any **Insured** in the use of, or actual or alleged participation after the fact by any **Insured** in the use of, non-public information in a manner prohibited by the laws of the United States including but not limited to the Insider Trading and Securities Fraud Enforcement Act of 1988 (as amended), Section 10(b) of the Securities Exchange Act of 1934 (as amended) and Rule 10(b)(5) thereunder, any state, commonwealth, territory or subdivision thereof, or the laws of any other jurisdiction, or any rules or regulations promulgated under any of the foregoing;

- (o) alleging, arising out of, based upon or attributable to, directly or indirectly, the **Company** making, on behalf of a client or customer, an investment in 5% or more of the stock or ownership rights or interests of any one corporation or entity; provided, however, this exclusion shall not apply: (1) so long as such investment was at the specific written instruction of a client or customer to whom a trust agreement has granted power to direct the **Company** with respect to such investment; and (2) so long as the **Company** has no discretion with respect to such investment.
- (p) alleging, arising out of, based upon or attributable to, directly or indirectly, activities in connection with any equity security priced under \$5.00; however, this exclusion, shall not apply if the security is:
- (1) registered, or approved for registration upon notice of issuance, on a national securities exchange;
 - (2) authorized, or approved for authorization upon notice of issuance, for quotation in the NASDAQ system; or
 - (3) issued by an investment company registered under the Investment Company Act of 1940 (as amended);
- (q) alleging, arising out of, based upon or attributable to, directly or indirectly:
- (1) any inability or failure to pay, collect or safeguard funds;
 - (2) any defective title or deed;
 - (3) the failure of any real or personal property to have at any point in time any projected, estimated, represented, warranted or guaranteed economic value;
 - (4) any loans that are owned by the **Insured** for more than 12 months. Mortgages held in the name of the **Insured** under mortgage-backed security pools shall be deemed to be not owned by the **Insured**,
 - (5) any transaction in which any **Insured** has a financial interest as a buyer or seller of real property;
 - (6) the performance or failure to perform services for any person or entity:
 - (i) which is owned by or controlled by any **Insured**;
 - (ii) which owns or controls any **Insured**;
 - (iii) which is affiliated with any **Insured** through any common ownership or control; or
 - (iv) in which any **Insured** is a **Director or Officer**, partner or principal stockholder;
- (r) alleging, arising out of, based upon or attributable to, directly or indirectly, any mechanical, electrical, or electronic failure, breakdown, or malfunction of any machine or system with respect to machines. For purposes of this exclusion, "system" shall include, but not be limited to, all hardware, software and power supplies;
- (s) alleging, arising out of, based upon or attributable to, directly or indirectly, (i) any failure or inability of the **Security** of the **Insured's** computer system to mitigate loss from or prevent a computer attack; (ii) the physical theft of hardware or firmware controlled by the **Insured** (or components thereof) on which electronic data is stored, by a person other than an **Insured**, from a premises occupied and controlled by the **Insured**; or (iii) any failure or inability described in (i) or (ii), resulting from the theft of a password or access code by non-electronic means in direct violation of the **Insured's** specific written **Security** policies or procedures. "**Security**" means hardware, software or firmware whose function or purpose is to mitigate loss from or prevent a computer attack. **Security** includes, without limitation, firewalls, filters, DMZ's, computer virus protection

software, intrusion detection, the electronic use of passwords or similar identification of authorized users. **Security** also includes the **Insured's** specific written policies or procedures intended to directly prevent the theft of a password or access code by non-electronic means;

- (t) with respect to **Loan Servicing**, alleging, arising out of, based upon or attributable to, directly or indirectly, any willful or intentional non-compliance with any statute or regulation; or
- (u) for any actual or alleged violation of any law, whether statutory, regulatory or common law, with respect to any of the following activities: anti-trust, business competition, unfair trade practices or tortious interference in another's business or contractual relationships; provided, however, this exclusion shall not apply to any **Non-Indemnifiable Loss**.

For the purpose of determining the applicability of the foregoing Exclusions 3(a) and 3(b): (1) the facts pertaining to and knowledge possessed by any **Insured** shall not be imputed to any other **Individual Insured**; and (2) facts pertaining to and knowledge possessed by any **Individual Insured** shall be imputed only to the **Company**.

4. **DEFENSE COSTS, SETTLEMENTS AND JUDGMENTS (INCLUDING ADVANCEMENT OF DEFENSE COSTS)**

- (1) The **Insurer** does not assume any duty to defend. The **Insureds** shall defend and contest any **Claim** made against them.

Notwithstanding the foregoing, the **Insurer** may, in its absolute discretion, assume the defense and/or investigation of any **Claim** for which reasonable grounds exist for possible involvement of the **Insurer**. In such an event, the **Insured** shall promptly reimburse the **Insurer** for those **Defense Costs** incurred by the **Insurer** to the extent of the Retention amount, or which the **Insureds** are not otherwise entitled under the terms and conditions of this policy to payment of such **Loss**. In no event will the **Insurer** have the obligation to continue to defend any **Claim** (if it has assumed the defense pursuant to this paragraph) once the **Policy Aggregate Limit of Liability** stated in Item 5(a) of the Declarations or any **Separate Limit of Liability** or **Shared Limit of Liability** stated in Item 3 of the Declarations has been exhausted.

When the **Insurer** has not assumed the defense of a **Claim** pursuant to this Clause 4, the **Insurer** shall advance nevertheless, at the written request of the **Insured**, **Defense Costs** prior to the final disposition of a **Claim**. Such advanced payments by the **Insurer** shall be repaid to the **Insurer** by the **Insureds** or the **Company**, severally according to their respective interests, in the event and to the extent that the **Insureds** or the **Company** shall not be entitled under the terms and conditions of this policy to payment of such **Loss**.

- (2) In the event that the **Insurer** does not assume the defense and/or investigation of a **Claim** pursuant to paragraph (1) above, it shall nevertheless have the right to fully and effectively associate with the **Insured** in the defense of any **Claim** that appears reasonably likely to involve the **Insurer**, including but not limited to negotiating a

settlement. The **Insured** shall give the **Insurer** full cooperation and such information as it may reasonably require.

- (3) Neither the **Insurer** nor the **Insured** shall admit or assume any liability, enter into any settlement, stipulate to any judgment or incur any **Defense Costs** without the prior written consent of the other; however, if the **Insurer** recommends settlement of a **Claim** which is agreeable to the claimant and the **Insured** refuses, then the **Insurer's** liability for **Loss** shall be fixed at the amount so recommended together with such **Defense Costs** incurred as of the date the recommendation was made, and shall withdraw from the defense of the **Claim** (if it has assumed the **Insured's** defense). Only those settlements, stipulated judgments and **Defense Costs**, which have been consented to by the **Insurer**, in writing, shall be recoverable as **Loss** under the terms of this policy. The **Insurer's** consent shall not be unreasonably withheld, provided that the **Insurer**, when it has not assumed the defense of a Claim pursuant to this Clause 4, shall be entitled to fully and effectively associate in the defense and negotiation of any settlement of any **Claim**, and provided further that in all events the **Insurer** may withhold consent to any settlement, stipulated judgment or **Defense Costs**, or any portion thereof, to the extent such loss is not covered under the terms of this policy.

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**INSURANCE COMPANY LIABILITY
COVERAGE SECTION FIVE
("ICL COVERAGE SECTION")**

Notice: Pursuant to Clause 1 of the General Terms and Conditions, the General Terms and Conditions are incorporated by reference into, made a part of, and are expressly applicable to this Coverage Section, unless otherwise explicitly stated to the contrary in either the General Terms and Conditions or in this Coverage Section.

In consideration of the payment of the premium, and in reliance upon the statements made to the **Insurer** by application, including its attachments and the material incorporated therein, which form a part of this policy, the **Insurer** agrees as follows:

1. INSURING AGREEMENT

This policy shall pay the **Loss** of each and every **Insured** arising from a **Claim** first made against such **Insured** during the **Policy Period** or **Discovery Period** (if applicable) and reported to the **Insurer** pursuant to the terms of this policy for any **Wrongful Act** of the **Insured** in the rendering of or failure to render **Professional Services**. The **Insurer** shall, in accordance with Clause 4 of this **Coverage Section**, advance **Defense Costs** of such **Claim** prior to its final disposition.

2. DEFINITIONS

(a) "**Claim**" means:

- (1) a written demand for monetary relief; or
- (2) a civil, administrative or arbitration proceeding for monetary relief which is commenced by:
 - (i) service of a complaint or similar pleading; or
 - (ii) receipt or filing of a notice of charges.

(b) "**Individual Insured**" means any **Director or Officer** or **Employee** of the **Company**.

(c) "**Insured**" means:

- (i) any **Individual Insured**; and
- (ii) the **Company**.

(d) "**Loss**" means damages, judgments (including pre-judgment and post-judgment interest on that part of any judgment paid under this **Coverage Section**), settlements and any **Defense Costs**; provided, however, that **Loss** (other than **Defense Costs**) shall not include: (1) civil fines or penalties; (2) taxes; (3) punitive or exemplary damages; (4) the multiplied portion of multiplied damages; (5) any liability or cost incurred by any **Insured** in complying with any judgment, award or settlement for non-monetary relief; (6) any amounts for which the **Insured** is or is alleged to be liable under any insurance or reinsurance policy, contract, treaty, binder, slip, certificate, cover note, agreement, suretyship, endorsement, endowment or annuity; (7) any amounts for which the **Insured** is entitled to indemnity and/or payment under any other insurance or reinsurance contract; (8) any amount for which an **Insured** is not financially liable

or which is without legal recourse to the **Insured**; or (9) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.

Notwithstanding the foregoing paragraph, **Loss** shall specifically include (subject to this policy's other terms, conditions and limitations, including but not limited to Exclusions (a) and (b) of this **Coverage Section** and Exclusion (a) of the General Terms and Conditions) punitive or exemplary damages and the multiplied portion of multiplied damages. Enforceability of this paragraph shall be governed by such applicable law that most favors coverage for such punitive and exemplary damages. For purposes of such coverage, "applicable law" includes, but is not limited to, the following jurisdictions: (a) where the **Wrongful Act** actually or allegedly took place; (b) where the damages are awarded; (c) where the **Named Entity** resides, is incorporated or has its principal place of business; and (d) where the **Insurer** is incorporated or has its principal place of business.

- (e) "**Professional Services**" means services rendered or required to be rendered solely in the conduct of the **Insured's** claims handling and adjusting, risk management, safety engineering, safety inspections and loss control operations, salvage operations, recovery subrogation services, premium financing operations, or actuarial consulting services.
- (f) "**Wrongful Act**" means:
 - (1) with respect to **Directors or Officers** and **Employees**, any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act by such **Insureds** in their respective capacities as such, or any matter claimed against such **Insured** solely by reason of their status as **Directors or Officers** or **Employees**; or
 - (2) with respect to the **Company**, any actual or alleged breach of duty, neglect, error, misstatement, omission or act by the **Company**.

3. EXCLUSIONS

In addition to the exclusions set forth in Clause 4 of the General Terms and Conditions, the **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

- (a) alleging, arising out of, based upon or attributable to any criminal act;
- (b) alleging, arising out of, based upon or attributable to any dishonest or fraudulent act or omission; provided, however, that this exclusion shall not apply to any **Claim** seeking both compensatory and punitive damages based upon or arising out of allegations of both fraud and bad faith in the rendering of or failure to render **Professional Services**;
- (c) alleging, arising out of, based upon or attributable to, directly or indirectly, (1) false arrest, detention or imprisonment; (2) libel, slander, disparagement, defamation or violation of the right of privacy; (3) wrongful entry or eviction, or invasion of any right of private occupancy; (4) discrimination; or (5) emotional distress or mental anguish of any person;
- (d) brought by, on the behalf of or in the right of any **Insured**; provided, however, that this exclusion shall not apply to a **Claim** by any **Insured** in its capacity as a policyholder or customer or client of the **Company**;
- (e) alleging, arising out of, based upon or attributable to, directly or indirectly, premiums, return premiums, commissions or tax monies, or arising out of any commingling of funds;
- (f) alleging, arising out of, based upon or attributable to, directly or indirectly, any allegations that any **Insured** intentionally or negligently permitted, or aided or abetted others in using, was aware of others using, or was a participant or connected in any way in the use of an

agreement or other arrangement between an insurance broker or insurance agent and an insurance carrier involving the payment of increased fees, commissions or other compensation based on the volume, profitability or type of business referred to the insurance carrier, whether referred to as a Market Placement Agreement, Market Service Agreement, Placement Services Agreement or Contingent Commission Agreement or similar agreement or arrangement, however named.

This policy shall exclude such **Loss** regardless of the form, style, or denomination of any such **Claim**, regardless of whether the **Claim** is criminal, administrative or civil, and shall specifically apply but not be limited to **Claims** alleging bid rigging, bribes or kickbacks, schemes to provide fictitious quotes, conflict of interest, breach of contract, failure to supervise, negligent supervision or negligence of any contract, controlling person liability, breach of fiduciary duty, personal profiting, improper, undisclosed or unlawful fees, commissions or charges of any kind, criminal activity, market manipulation, violation of any law related to the insurance industry, misrepresentation, estoppel or repudiation of any commitment and any other theory of liability;

- (g) alleging, arising out of, based upon or attributable to, directly or indirectly, claim reserves;
- (h) alleging, arising out of, based upon or attributable to, directly or indirectly, any warranties or guaranties, estimates of probable construction costs, or costs exceeding estimates made in connection with **Professional Services**;
- (i) brought by any pool, association or syndicate (including any officer, director or employee thereof) in which any of the **Insureds** are participants, or by any participant (including any officer, director or employee thereof) in any such pool, association or syndicate involving the business or operations of such pool, association or syndicate;
- (j) alleging, arising out of, based upon or attributable to, directly or indirectly, the bankruptcy, insolvency, receivership, liquidation or inability of any **Insured** to pay claims or perform **Professional Services**;
- (k) alleging, arising out of, based upon or attributable to, directly or indirectly, the performance of or failure to perform services for any person or entity:
 - (1) which is owned by or controlled by any **Insured**; or
 - (2) which owns or controls any **Insured**; or,
 - (3) which is affiliated with any **Insured** through any common ownership or control;
- (l) alleging, arising out of, based upon or attributable to, directly or indirectly, the actual or alleged harmful properties of asbestos;
- (m) brought by any reinsurer of any **Insured**;
- (n) alleging, arising out of, based upon or attributable to, directly or indirectly, the underwriting, marketing or selling of any insurance policy or annuity, or any other insurance or investment product;
- (o) alleging, arising out of, based upon or attributable to, directly or indirectly, infringement of any patent, copyright or trademark, or servicemark;
- (p) alleging, arising out of, based upon or attributable to, directly or indirectly, any allegations that any **Insured** intentionally or negligently permitted, or aided or abetted others in using, was aware of others using, or was a participant or connected in any way in the use of a finite risk reinsurance agreement, transaction or arrangement, or financial reinsurance agreement, transaction, or arrangement, including but not limited to, any agreement, transaction or

arrangement involving aggregate stop loss covers, finite quota shares, funded catastrophe contracts, loss portfolio transfers and adverse loss development covers, or any other similar agreement, transaction or arrangement, however named.

This policy shall exclude such **Loss** regardless of the form, style, or denomination of any such **Claim**, regardless of whether the **Claim** is criminal, administrative or civil, and shall specifically apply but not be limited to any **Claim** alleging failure to supervise, negligent supervision or negligence of any contract, improper revenue or expense recognition or improper accounting of any kind, securities violations, fraud, breach of fiduciary duty, personal profiting, improper, undisclosed or unlawful fees, commissions or charges of any kind, criminal activity, market manipulation, violation of any law related to the insurance industry, misrepresentation, or any other theory of liability; or

- (q) for any actual or alleged violation of any law, whether statutory, regulatory or common law, with respect to any of the following activities: anti-trust, business competition, unfair trade practices or tortious interference in another's business or contractual relationships; provided, however, this exclusion shall not apply to any **Non-Indemnifiable Loss**.

For the purpose of determining the applicability of the foregoing Exclusions 3(a) and 3(b): (1) the facts pertaining to and knowledge possessed by any **Insured** shall not be imputed to any other **Individual Insured**; and (2) facts pertaining to and knowledge possessed by any **Individual Insured** shall be imputed only to the **Company**.

4. DEFENSE COSTS, SETTLEMENTS AND JUDGMENTS (INCLUDING ADVANCEMENT OF DEFENSE COSTS)

- (1) The **Insurer** does not assume any duty to defend. The **Insureds** shall defend and contest any **Claim** made against them.

Notwithstanding the foregoing, the **Insurer** may, in its absolute discretion, assume the defense and/or investigation of any **Claim** for which reasonable grounds exist for possible involvement of the **Insurer**. In such an event, the **Insured** shall promptly reimburse the **Insurer** for those **Defense Costs** incurred by the **Insurer** to the extent of the Retention amount, or which the **Insureds** are not otherwise entitled under the terms and conditions of this policy to payment of such **Loss**. In no event will the **Insurer** have the obligation to continue to defend any **Claim** (if it has assumed the defense pursuant to this paragraph) once the **Policy Aggregate Limit of Liability** stated in Item 5(a) of the Declarations or any **Separate Limit of Liability** or **Shared Limit of Liability** stated in Item 3 of the Declarations has been exhausted.

When the **Insurer** has not assumed the defense of a **Claim** pursuant to this Clause 4, the **Insurer** shall advance nevertheless, at the written request of the **Insured**, **Defense Costs** prior to the final disposition of a **Claim**. Such advanced payments by the **Insurer** shall be repaid to the **Insurer** by the **Insureds** or the **Company**, severally according to their respective interests, in the event and to the extent that the **Insureds** or the **Company** shall not be entitled under the terms and conditions of this policy to payment of such **Loss**.

- (2) In the event that the **Insurer** does not assume the defense and/or investigation of a **Claim** pursuant to paragraph (1) above, it shall nevertheless have the right to fully and effectively associate with the **Insured** in the defense of any **Claim** that appears reasonably likely to involve the **Insurer**, including but not limited to negotiating a settlement. The **Insured** shall give the **Insurer** full cooperation and such information as it may reasonably require.

(3) Neither the **Insurer** nor the **Insured** shall admit or assume any liability, enter into any settlement, stipulate to any judgment or incur any **Defense Costs** without the prior written consent of the other; however, if the **Insurer** recommends settlement of a **Claim** which is agreeable to the claimant and the **Insured** refuses, then the **Insurer's** liability for **Loss** shall be fixed at the amount so recommended together with such **Defense Costs** incurred as of the date the recommendation was made, and shall withdraw from the defense of the **Claim** (if it has assumed the **Insured's** defense). Only those settlements, stipulated judgments and **Defense Costs**, which have been consented to by the **Insurer**, in writing, shall be recoverable as **Loss** under the terms of this policy. The **Insurer's** consent shall not be unreasonably withheld, provided that the **Insurer**, when it has not assumed the defense of a Claim pursuant to this Clause 4, shall be entitled to fully and effectively associate in the defense and negotiation of any settlement of any **Claim**, and provided further that in all events the **Insurer** may withhold consent to any settlement, stipulated judgment or **Defense Costs**, or any portion thereof, to the extent such loss is not covered under the terms of this policy.

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AIG Financial Institutions Risk ProtectorSM

AIG NETADVANTAGE[®] SECURITY & PRIVACY LIABILITY COVERAGE SECTION SIX ("SECURITY & PRIVACY COVERAGE SECTION")

Notice: Pursuant to Clause 1 of the General Terms and Conditions, the General Terms and Conditions are incorporated by reference into, made a part of, and are expressly applicable to this Coverage Section, unless otherwise explicitly stated to the contrary in either the General Terms and Conditions or in this Coverage Section.

In consideration of the premium charged, and in reliance upon the statements made to the **Insurer** by application, including its attachments and the material incorporated therein, which form part of this policy, the **Insurer** agrees as follows:

1. INSURING AGREEMENT – SECURITY & PRIVACY LIABILITY COVERAGE

This policy shall pay **Loss** of an **Insured** arising from a **Claim** first made against an **Insured** and reported to the **Insurer** in writing during the **Policy Period** or **Discovery Period** (if applicable), for the **Insured's Wrongful Act(s)**.

2. DEFENSE COSTS, CHARGES AND EXPENSES

- (a) The **Insurer** has the right and duty to defend a **Suit** brought against an **Insured** for covered **Wrongful Acts** occurring during the **Policy Period**, even if the **Suit** is groundless or fraudulent.
- (b) The **Insurer** shall pay **Defense Costs** the **Insured** incurs with the **Insurer's** prior written consent in the defense of a **Suit** for covered **Wrongful Acts** occurring during the **Policy Period**.
- (c) The **Insurer** has the right, but not the duty, to investigate any **Claim** against any **Insured**. In the event the **Insurer** investigates any **Claim** and the **Insured** incurs **Defense Costs** with the **Insurer's** prior written consent as a result of such investigation, the **Insurer** shall pay such **Defense Costs**. The **Insurer** has the right, but not the duty, to settle any **Claim**, with the **Insured's** written consent, against an **Insured**.
- (d) The **Insured** may settle any **Claim** or **Suit** to which the insurance under this **Coverage Section** applies provided that the **Insured** does so (1) on behalf of all **Insureds**, and (2) without incurring **Loss** in excess of the applicable Retention.
- (e) The **Insurer's** duty to defend under this **Coverage Section** ends after the **Policy Aggregate Limit of Liability** or any **Separate Limit of Liability** or **Shared Limit of Liability** has been exhausted by payment of **Loss**, including **Defense Costs**. In addition, the **Insurer's** duty to defend ends if the **Insured** fails or refuses to consent to a settlement of a **Claim** that the **Insurer** recommends and that the claimant will accept. The **Insured** must then defend the **Claim** at the **Insured's** own expense. As a consequence of such failure or refusal, the **Insurer's** liability for **Loss** shall not exceed the amount for which the **Insurer** could have settled such **Claim** had the **Insured** consented or cooperated, plus **Defense Costs** incurred prior to the date of such failure or refusal.
- (f) The **Insurer** has the right, but not the duty, to defend any **Regulatory Action**. The **Insurer** shall pay for **Defense Costs** any **Insured** incurs with the **Insurer's** prior written consent in the defense of a **Regulatory Action** for covered **Wrongful Acts**.

3. DEFINITIONS

- (a) **"Advertising"** means the material in any publicity or promotion including branding, co-branding, sponsorships and/or endorsements.
- (b) **"Claim"** means:
- (1) a written or oral demand for money, services, non-monetary relief or injunctive relief;
 - (2) a **Suit**; or
 - (3) a **Regulatory Action**.
- (c) **"Class Action Claim"** means any **Claim** arising out of a **Wrongful Act** which resulted in a **Privacy Peril**:
- (1) brought on behalf of a class or putative class of plaintiffs (whether or not certified as such);
 - (2) otherwise brought on a representative basis; or
 - (3) alleging or arising from the same **Related Wrongful Act** as any **Claim** described in the preceding subparagraphs 3(c)(1) or 3(c)(2).
- (d) **"Computer Attack"** means **Unauthorized Access, Unauthorized Use**, receipt or transmission of a **Malicious Code**, or a **Denial of Service Attack** which:
- (1) alters, copies, misappropriates, corrupts, destroys, disrupts, deletes, damages or prevents, restricts or hinders access to, a **Computer System**;
 - (2) results in the disclosure of private or confidential information stored on a **Computer System**;
or
 - (3) results in **Identity Theft**;
- whether any of the foregoing is intentional or unintentional, malicious or accidental, fraudulent or innocent, specifically targeted at the **Insured** or generally distributed, and regardless of whether the perpetrator is motivated for profit.
- (e) **"Computer System"** means computer hardware, software, firmware, and components thereof, including electronic data stored thereon, which are linked together through a network of two or more computers, including such networks accessible through the **Internet**, intranets, extranets, or virtual private networks.
- (f) **"Confidential Corporate Information"** means any **Trade Secret**, data, design, interpretation, forecast, formula, method, practice, process, record, report or other item of information of a non-**Insured** third party, and which is (i) in the **Insured's** care, custody or control; (ii) not available to the general public, and is: (iii) provided to the **Insured** under a mutually agreed to written confidentiality/non-disclosure agreement; or (iv) marked "confidential" or otherwise specifically designated in writing as "confidential" by such third party.
- (g) **"Damages"** means the amount that the **Insured** shall be legally required to pay because of judgments or arbitration awards rendered against the **Insured**, or for settlements negotiated by the **Insurer** or the **Insured** in accordance with Clause 2, DEFENSE COSTS, CHARGES AND EXPENSES, including, but not limited to:
- (1) pre-judgment interest;
 - (2) post-judgment interest that accrues after entry of a judgment and before the **Insurer** has paid, offered to pay or deposited in court that part of the judgment within the **Policy Aggregate Limit of Liability** or any applicable **Separate Limit of Liability** or **Shared Limit of Liability**; or
 - (3) subject to this policy's other terms, conditions, exclusions and other limitations, including but not limited to exclusions relating to profit or advantage, fraud or criminal acts: (i) punitive, (ii)

exemplary and (iii) multiple damages; provided, however, the enforceability of this subparagraph 3(g)(3) shall be governed by such applicable law that most favors coverage for such punitive, exemplary and multiple damages.

This definition is subject to the limitations set forth in the definition of **Loss**.

(h) **"Denial of Service Attack"** means an attack launched by a person(s) that sends an excessive volume of electronic data to a **Computer System** in order to deplete such **Computer System's** capacity, and prevents those who are authorized to do so from gaining access to such **Computer System** in a manner in which they are legally entitled. Provided, however a depletion in the **Insured's Computer System's** capacity shall not be considered a **Denial of Service Attack** if caused by a mistake in determining capacity needs.

(i) **"Failure of Security"** means:

- (1) the actual failure and inability of the **Security** of the **Insured's Computer System** to mitigate loss from or prevent a **Computer Attack**; or
- (2) physical theft of hardware or firmware controlled by the **Insured** (or components thereof) on which electronic data is stored, by a person other than an **Insured**, from a premises occupied and controlled by the **Insured**.

Failure(s) of Security shall also include such actual failure and inability above, resulting from the theft of a password or access code by non-electronic means from the **Insured's** premises, the **Insured's Computer System** or the **Directors or Officers**, or **Employees** of a **Company** in direct violation of the **Insured's** specific written **Security** policies or procedures.

(j) **"Identity Theft"** the misappropriation of **Private Information** that has resulted in, or could result in the wrongful or fraudulent use of such information, including without limitation, fraudulently emulating the identity of an individual or corporation.

(k) **"Individual Insured"** means **Employees** of the **Company**.

(l) **"Information Holder"** means a third party that the **Insured** has provided **Personally Identifiable Information** to and with whom the **Insured** has entered into a contract that requires such party to protect such **Personally Identifiable Information**.

(m) **"Insured(s)"** means (1) any **Individual Insured**; and (2) the **Company**.

(n) **"Insured's Computer System"** means a **Computer System** under the ownership, operation or control of the **Company**.

(o) **"Internet"** means the worldwide public network of computers commonly known as the Internet, as it currently exists or may be manifested in the future.

(p) **"Loss"** means **Damages** and **Defense Costs**; however, **Loss** shall not include:

- (1) compensation, benefits, overhead, charges or expenses of an **Insured** or its **Employees**;
- (2) production costs or the cost of recall, reproduction, reprinting, or correction of material by any person or entity;
- (3) **Insured's** cost of providing, correcting or re-performing or completing any professional services;
- (4) any costs or expenses incurred by any person or entity to withdraw or recall material, media, medium (including CD's, DVD's, cassettes and LP's), products (including products of others which incorporate the **Insured's** products) or professional services from the marketplace, or from loss of use arising out of such withdrawal or recall;

- (5) civil or criminal fines or penalties;
 - (6) taxes;
 - (7) any amounts for which an **Insured** is not financially liable or which are without legal recourse to an **Insured**;
 - (8) the costs and expenses of complying with any injunctive or other form of equitable relief;
 - (9) the monetary value of any electronic fund transfer or transaction by the **Insured** or on the **Insured's** behalf, which is lost or diminished during transfer into, out of or between the **Insured's** accounts;
 - (10) liquidated damages; or
 - (11) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.
- (q) **"Malicious Code"** means an unauthorized corrupting or harmful piece of code. **Malicious Code** includes, but is not limited to, computer viruses, "Trojan horses," "worms," and "time or logic bombs."
- (r) **"Material"** means content in any form, including written, printed, video, electronic, digital, or digitized content:
- (1) in broadcasts, including, but not limited to, television, motion picture, cable, satellite television and radio broadcasts;
 - (2) in publications, including, but not limited to, newspaper, newsletter, magazine, book and other literary, monograph, brochure, directory, screen play, film script, playwright and video publications;
 - (3) in **Advertising**; or
 - (4) displayed on an **Internet** site.
- (s) **"Personally Identifiable Information"** means any of the following in the **Insured's** care, custody or control: (1) information from which an individual may be uniquely and reliably identified or contacted, including without limitation, an individual's name, address, telephone number, social security number, account relationships, account numbers, account balances, account histories and passwords; (2) information concerning an individual that would be considered "nonpublic personal information" within the meaning of Title V of the Gramm-Leach Bliley Act of 1999 (Public Law 106-102, 113 Stat. 1338) (as amended) and its implementing regulations; and (3) information concerning an individual that would be considered "protected health information" within Health Insurance Portability and Accountability Act of 1996 (as amended) and its implementing regulations.
- (t) **"Privacy Peril"** means any actual or alleged:
- (1) unauthorized disclosure by the **Insured** of **Private Information** or failure by the **Insured** to protect **Private Information** from misappropriation, including, without limitation, any unintentional violation of the **Insured's Privacy Policy** or misappropriation that results in **Identity Theft**;
 - (2) failure by an **Information Holder** to protect **Personally Identifiable Information** from misappropriation, provided that any failure to protect such information shall not include any intentional, dishonest, fraudulent, criminal or malicious act, error or omission if committed by:
 - (i) the **Information Holder**;

- (ii) any elected or appointed officer, or director of the **Information Holder**; or,
 - (iii) any employee (other than officers) or independent contractors employed by an **Information Holder** if any elected or appointed officer of an **Information Holder** possessed, at any time, knowledge of the intentional, dishonest, fraudulent, criminal or malicious act committed by such employee or independent contractor that caused a direct loss to an **Insured** or any other person.
- (3) failure by the **Insured** to disclose or warn of an actual or potential **Identity Theft**, but only if such **Identity Theft** resulted directly from 3(t)(1) or 3(t)(2) above; or
- (4) violation of any federal, state, foreign or local privacy statute alleged in connection with a **Claim for Damages** from 3(t)(1), 3(t)(2) or 3(t)(3) above.
- (u) **"Privacy Policy"** means an organization's policies and practices intended to protect the confidentiality of **Private Information**, including without limitation, statements in written or electronic form regarding the collection, dissemination or treatment of **Personally Identifiable Information**.
- (v) **"Private Information"** means:
- (1) **Personally Identifiable Information**; or
 - (2) **Confidential Corporate Information**.
- (w) **"Regulatory Action"** means a request for information, civil investigative demand or civil proceeding commenced by service of a complaint or similar pleading, brought by, or on behalf of, a governmental agency that alleges a **Privacy Peril** as defined in subparagraph 3(t)(4) of the definition of **Privacy Peril**, which may reasonably be expected to give rise to a covered **Suit**.
- (x) **"Retroactive Date"** means the applicable date set forth in Item 3 of the Declarations.
- (y) **"Security"** means hardware, software or firmware whose function or purpose is to mitigate loss from or prevent a **Computer Attack**. **Security** includes, without limitation, firewalls, filters, DMZ's, computer virus protection software, intrusion detection, the electronic use of passwords or similar identification of authorized users. **Security** also includes the **Insured's** specific written policies or procedures intended to directly prevent the theft of a password or access code by non-electronic means.
- (z) **"Suit"** means a civil proceeding for monetary, non-monetary or injunctive relief that is commenced by service of a complaint or similar pleading; provided, however, **Suit** shall not include a **Regulatory Action**. **Suit** shall also include a binding arbitration proceeding in which **Damages** are alleged and to which the **Insured** must submit or does submit with the **Insurer's** prior written consent.
- (aa) **"Trade Secret"** means information (including any idea) that has been reduced to a written or electronic form, including a formula, compilation, pattern, program, device, method, process, or technique which:
- (1) derives independent economic value, actual or potential, from not being generally known and not being readily ascertainable through proper means by other persons who can obtain economic advantage from its disclosure or use;
 - (2) is the subject of reasonable efforts to maintain its secrecy; and
 - (3) is used, capable of being used, or intended to be used in commerce.

- (bb) "**Unauthorized Access**" means the gaining of access to a **Computer System** by an unauthorized person or persons.
- (cc) "**Unauthorized Use**" means the use of a **Computer System** by an unauthorized person or persons or an authorized person or persons in an unauthorized manner.
- (dd) "**Wrongful Act(s)**" means any actual or alleged breach of duty, neglect, act, error or omission committed or omitted on or after the **Retroactive Date**, which resulted in a **Failure of Security** or a **Privacy Peril**.

4. EXCLUSIONS

In addition to the exclusions set forth in Clause 4 of the General Terms and Conditions, the **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

- (a) alleging, arising out of or resulting, directly or indirectly, from any dishonest, fraudulent, criminal or malicious act, error or omission, or any intentional or knowing violation of the law or of the **Insured's Privacy Policy**, or gaining of any profit or advantage to which the **Insured** is not legally entitled, if any of the aforementioned is committed by any of the **Insured's**:
- (1) **Directors or Officers**, whether acting alone or in collusion with other persons; or
 - (2) **Employees** (other than those referenced in subparagraph 4(a)(1) above) or independent contractors employed by the **Insured** if any of those referenced in sub-paragraph 4(a)(1) above possessed, at any time, knowledge of any dishonest, fraudulent, malicious, or criminal acts committed by such **Employee** or independent contractor that caused a direct loss to an **Insured** or any other person;
- (b) alleging, arising out of or resulting, directly or indirectly, from any:
- (1) purchase, sale, offer of or solicitation of an offer to purchase or sell securities, or violation of any securities law, including provisions of the Securities Act of 1933, or the Securities Exchange Act of 1934, as amended;
 - (2) violation of the Organized Crime Control Act of 1970 (commonly known as "Racketeer Influenced And Corrupt Organizations Act" or "RICO"), as amended;
 - (3) breach of fiduciary duty, responsibility, or obligation in connection with any employee benefit or pension plan, including violation of the responsibilities, obligations or duties imposed upon fiduciaries by the Employee Retirement Income Security Act of 1974 as amended;
 - (4) antitrust violations, restraint of trade, or unfair competition, or violations of the Sherman Act, the Clayton Act or the Robinson-Patman Act, as amended;
 - (5) regulation promulgated under the foregoing laws; or
 - (6) any federal, state, local or foreign laws (a) similar to the foregoing laws (including "Blue Sky" laws) or (b) regulating the same or similar conduct or services, whether such law is statutory, regulatory or common law;
- (c) alleging, arising out of or resulting, directly or indirectly, from any employment practices or any discrimination against any person or entity on any basis, including but not limited to: race, creed, color, religion, ethnic background, national origin, age, handicap, disability, sex, sexual orientation or pregnancy;

- (d) alleging, arising out of or resulting, directly or indirectly, from any infringement of any patent, copyright, trademark, trade dress, trade name, service mark or other intellectual property;
- (e) alleging, arising out of or resulting, directly or indirectly, from any misappropriation of any **Trade Secret** by, or with active cooperation, participation, or assistance of, any **Insured**, any of the **Insured's** former employees, subsidiaries, directors, officers, partners, trustees, or any of the **Insured's** successors or assignees;
- (f) alleging, arising out of or resulting, directly or indirectly, from any:
- (1) false arrest, detention or imprisonment;
 - (2) libel, slander or defamation of character;
 - (3) wrongful entry or eviction; or,
 - (4) malicious prosecution;
- (g) alleging, arising out of or resulting, directly or indirectly, from any (1) false or deceptive **Advertising** or misrepresentation in **Advertising** of the **Insured's** products or services, or (2) unfair competition based on such **Advertising**, including, but not limited to, **Advertising** related violations of any local, state or federal consumer protection or privacy laws;
- (h) brought by or on behalf of:
- (1) the Federal Trade Commission ("FTC"), the Department of Health and Human Services ("HHS"), the Office of Civil Rights ("OCR"), the Federal Communications Commission ("FCC") or any other federal, state or local government agency, or foreign government agency, provided, in accordance with subparagraph 2(f) of the policy, subparagraph 4(h)(1) shall not apply to any **Defense Costs** arising out of a covered **Regulatory Action**; or
 - (2) the American Society of Composers, Authors and Publishers, the Society of European Stage Authors and Composers, Broadcast Music, Inc., or any other licensing or rights organizations in such entity's regulatory, quasi-regulatory or official capacity, functions or duties;
- (i) alleging, arising out of or resulting, directly or indirectly, from any **Failure of Security, Wrongful Act**, circumstance or event committed, omitted or occurring prior to the **Continuity Date** if on or before the **Continuity Date**, the **Insured** knew or could have reasonably foreseen that such **Wrongful Act**, circumstance or event could give rise to a **Claim** against an **Insured** or **Loss**;
- (j) alleging, arising out of or resulting, directly or indirectly, from any **Failure of Security, Wrongful Act** or **Loss**, based upon, relating to or in connection with any act, error or omission, occurring, committed or omitted prior to the applicable **Retroactive Date**;
- (k) alleging, arising out of or resulting, directly or indirectly, from any liability or obligation under any contract or agreement or out of any breach of contract; however, this exclusion does not apply to:
- (1) any liability or obligation an **Insured** would have in the absence of such contract or agreement, or
 - (2) with respect to a **Privacy Peril**, any liability or obligation under a confidentiality or non-disclosure agreement;
- (l) alleging, arising out of or resulting, directly or indirectly, from any guarantee or express warranty; inaccurate, inadequate, or incomplete description of the price of goods, products or services; or any failure of goods, products or services to conform with an advertised quality or performance; or liquidated damages; or the collection of or seeking the return of fees or royalties or other

compensation paid to an **Insured**; or the **Insured's** cost of providing, correcting or re-performing or completing any services; or any **Insured's** fees, cost or profit guarantees, cost representations, contract price, or estimates of probable costs or cost estimates being exceeded;

(m) alleging, arising out of or resulting, directly or indirectly, from any satellite failure;

(n) brought, directly or indirectly, by or on behalf of:

(1) any **Insured**, provided, however, this sub-paragraph (1) shall not apply to any otherwise covered **Claim** made by any past, present or future **Employee** of the **Company** for a **Wrongful Act**, but only if such **Employee** did not commit, participate in or contribute to such **Wrongful Act(s)** or **Failure of Security**;

(2) any business entity that is controlled, managed or operated, directly or indirectly, in whole or in part, by the **Insured**; or,

(3) any parent company, **Subsidiary**, director, officer, partner, trustee, successor or assignee of the **Insured**, or any person or entity affiliated with the **Insured** or such business entity through common majority ownership or control;

(o) alleging, arising out of or resulting, directly or indirectly, from:

(1) fire, smoke, explosion, lightning, wind, water, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, act of God or any other physical event, however caused;

(2) strikes or similar labor action, war, invasion, act of foreign enemy, hostilities or warlike operations (whether declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power, or any action taken to hinder or defend against these actions;

(3) electrical or mechanical failures, including any electrical power interruption, surge, brownout or blackout; provided, however, this subparagraph 4(o)(3) shall not apply to electrical or mechanical failures, other than satellite failures, where such failure was the result of the **Insured's Wrongful Act**; or,

(4) arising out of or resulting, directly or indirectly, from any failure of telephone lines, data transmission lines or other infrastructure comprising or supporting the **Internet**, unless such lines or infrastructure were under the **Insured's** operational control;

(p) alleging, arising out of or resulting, directly or indirectly, from any of the following:

(1) any shortcoming in **Security** that the **Insured** knew about prior to the inception of this policy;

(2) the **Insured's** failure to take reasonable steps, to use, design, maintain and upgrade its **Security**; or

(3) the inability to use, or lack of performance of, software: (a) due to expiration, cancellation, or withdrawal of such software; (b) that has not yet been released from its development stage; or (c) that has not passed all test runs or proven successful in applicable daily operations;

(q) with respect to a **Privacy Peril**, alleging, arising out of or resulting, directly or indirectly, from any of the following:

(1) the collection of **Private Information**, including, without limitation (i) such collection by means of electronic "cookies", "spiders", spybots, spambots, spyware, adware, wire-tapping, **Malicious Code**, key-stroke logging, tracking devices, radio frequency identification tags (RFID

tags), bugging or video camera; or (ii) the failure to provide adequate notice regarding: (i) the purposes for which the **Private Information** is collected and used; (ii) contact information for inquiries or complaints; (iii) those parties to which the **Private Information** could be disclosed to; (iv) "opt out" choices of the individual or entity from whom the **Insured** is collecting the **Private Information**; and (v) the means the **Insured** offers for limiting use or disclosure of the **Private Information**; provided, however, that this exclusion shall not apply to any otherwise covered **Claim** for a **Wrongful Act** that resulted in a **Privacy Peril**;

- (2) the integrity of **Private Information**, including whether the **Private Information** is: (i) relevant and reliable for the purpose for which it is collected or to be used; (ii) accurate; (iii) complete; or (iv) current;
- (3) the **Insured's** provision of, or failure to provide, access to **Private Information** to those individuals or entities with an actual or alleged right to such access, including, without limitation, failing to provide an individual or entity the ability to correct, amend or delete **Private Information**;
- (4) the **Insured's** distribution of unsolicited marketing, e-mail or **Advertising**, including without limitation unsolicited electronic messages, chat room postings, bulletin board postings, newsgroup postings, "pop-up" or "pop-under" **Internet** advertising or fax-blasting, direct mailing or telemarketing; provided, however, this exclusion shall not apply to any **Claim** for a **Wrongful Act** that resulted in a **Privacy Peril**; or
- (5) the **Insured's** distribution, creation, exhibition, performance, preparation, printing, production, publication, release, display, research or serialization of any **Material**.

5. LIMIT OF LIABILITY

Clause 5 of the General Terms and Conditions is modified to the extent necessary to provide the following:

The maximum limit of the **Insurer's** liability for **Defense Costs** for all **Regulatory Actions** combined occurring during the **Policy Period** or the **Discovery Period** (if applicable), in the aggregate, shall be the amount set forth in Item 5(f) of the Declarations as the Regulatory Action Sublimit of Liability ("**Regulatory Action Sublimit of Liability**"). The **Regulatory Action Sublimit of Liability** shall be the maximum limit of the **Insurer** under this policy regardless of the number of persons, occurrences, **Regulatory Actions** or entities covered by this **Coverage Section**, or claimants or **Regulatory Actions** brought against any **Insured** during the **Policy Period** or the **Discovery Period** (if applicable); provided, however, that the **Regulatory Action Sublimit of Liability** shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** stated in Item 5(a) of the Declarations of this policy and any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this **Coverage Section** as stated in Item 3 of the Declarations, and will in no way serve to increase the **Insurer's Policy Aggregate Limit of Liability** or any **Separate Limit of Liability** or **Shared Limit of Liability** as stated therein.

6. SPECIAL CLASS ACTION RETENTION

With respect to a **Privacy Peril** only, for each **Class Action Claim**, the **Insurer** shall only be liable for the amount of **Loss** arising from such **Class Action Claim** that exceeds the applicable Retention amount for such **Claim**. Accordingly, the Retention amount for each **Class Action Claim** shall be the greater of one hundred thousand dollars (\$100,000) or two hundred percent (200%) of the Retention amount set forth in Item 3 of the Declarations.

7. WHAT YOU MUST DO IN THE EVENT OF A CLAIM

- (a) In addition to providing notice as required Clause 7 of the General Terms and Conditions, each **Insured** must also:
- (1) send the **Insurer** copies of all demands, suit papers, other legal documents and invoices for **Defense Costs** received by such **Insured**, as soon as practicable;
 - (2) immediately record the specifics of any **Claim** and the date such **Insured** first received such **Claim**;
 - (3) take prompt and reasonable steps to minimize the **Loss** and take reasonable steps to prevent further **Loss**;
 - (4) at the **Insurer's** request, report such **Loss** to the Federal Bureau of Investigation (FBI), a computer emergency response team (CERT), information sharing and analysis center (ISAC) or any other central reporting or investigative organization which the **Insurer** may designate;
 - (5) upon the **Insurer's** request, furnish to the **Insurer** any and all documentation within such **Insured's** possession; and
 - (6) give the **Insurer** and any counsel the **Insurer** selects to represent an **Insured** in connection with a **Suit** or to investigate any **Claim**, full cooperation and such information as the **Insurer** or such counsel may reasonably require, including, but not limited to, assisting the **Insurer** or such counsel in:
 - (a) any investigation of a **Claim**, **Loss** or other matter relating to the coverage afforded under this policy (including submission to an examination by the **Insurer** or its designee, under oath if required by the **Insurer**);
 - (b) making settlements;
 - (c) enforcing any legal rights the **Insured** or **Insurer** may have against any person or entity who may be liable to the **Insured**;
 - (d) attending depositions, hearings and trials;
 - (e) securing and giving evidence, and obtaining the attendance of witnesses; and
 - (f) any inspection or survey conducted by the **Insurer**.
- (b) No **Insured** shall admit any liability, assume any financial obligation or pay any money in connection with any **Claim** without the **Insurer's** prior consent. If any **Insured** does, it will be at such **Insured's** own expense. The foregoing sentences of this Paragraph 6(b) shall not apply to a settlement pursuant to Coverage 2(d) of this **Coverage Section** so long as such **Insured** provides the **Insurer** written notice of such settlement as soon as practicable, but in no case later than thirty (30) days after such settlement is reached in principle.
- (c) In all events, no **Insured** shall take any action, or fail to take any required action, without the **Insurer's** written consent, which prejudices the **Insurer's** rights under this policy.

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EMPLOYED LAWYERS PROFESSIONAL LIABILITY INSURANCE COVERAGE SECTION SEVEN ("EMPLOYED LAWYERS COVERAGE SECTION")

Notice: Pursuant to Clause 1 of the General Terms and Conditions, the General Terms and Conditions are incorporated by reference into, made a part of, and are expressly applicable to this Coverage Section, unless otherwise explicitly stated to the contrary in either the General Terms and Conditions or in this Coverage Section.

In consideration of the payment of the premium, and in reliance upon the statements made to the **Insurer** by application, including its attachments and the material incorporated therein, which form a part of this policy, the **Insurer** agrees as follows:

1. INSURING AGREEMENTS

COVERAGE A: EMPLOYED LAWYER INSURANCE

This policy shall pay on behalf of the **Employed Lawyer** all sums which the **Employed Lawyer** shall become legally obligated to pay as **Damages** arising from a **Claim** first made against the **Employed Lawyer** during the **Policy Period** or **Discovery Period** (if applicable) and reported to the **Insurer** pursuant to the terms of this policy for any **Wrongful Act** of the **Employed Lawyer**, except when and to the extent that the **Employer** has indemnified such **Employed Lawyer**.

COVERAGE B: EMPLOYER INDEMNIFICATION

This policy shall pay on behalf of the **Employer** all sums which the **Employer** may be required or permitted by law to indemnify an **Employed Lawyer** for any sum which the **Employed Lawyer** becomes legally obligated to pay as **Loss** arising from a **Claim** first made against the **Employed Lawyer** during the **Policy Period** or the **Discovery Period** (if applicable) and reported to the **Insurer** pursuant to the terms of this policy for any **Wrongful Act** of the **Employed Lawyer** while acting in the course of said **Employed Lawyer's** employment by the **Employer**, but only when and to the extent that the **Employer** has indemnified the **Employed Lawyer** for such **Loss** pursuant to law, common or statutory, or contract, or the charter or by-laws of the **Employer** duly effective under such law which determines and defines such rights of indemnity.

COVERAGE C: DEFENSE COSTS, CHARGES AND EXPENSES

The **Insurer** shall have the right and duty to defend, subject to the applicable Retention amount and subject to and as part of the applicable Limits of Liability, any **Claim** against the **Employed Lawyer** seeking **Damages** which are payable under the terms of this policy, even if any of the allegations of the **Claim** are groundless, false or fraudulent. The **Insurer** shall be entitled to exercise all rights of an **Employed Lawyer** in the choice of arbitrators and in the conduct of any arbitration proceeding involving a **Claim** covered by this policy.

The **Insurer** shall have the right to make any investigation it deems necessary and, with the written consent of the **Employed Lawyer**, settle any **Claim** covered by this policy. If the **Employed Lawyer** shall refuse to consent to any settlement recommended by the **Insurer** and acceptable to the claimant

and elects to contest the **Claim**, then the **Insurer's** liability shall not exceed the amount for which the **Insurer** would have been liable for **Loss** if the **Claim** had been so settled when and as recommended, and the **Insurer** shall have no liability for **Defense Costs** accruing thereafter, and the **Insurer** shall have the right to withdraw from the further defense thereof by tendering control of said defense to the **Employed Lawyer**.

The **Employed Lawyer** shall not, except at the **Employed Lawyer's** own cost, admit liability, voluntarily make any payment, assume any obligation or incur any expenses without the written consent of the **Insurer**.

The **Insurer** shall not be obligated to pay any **Loss**, or to undertake or continue defense of any **Claim** after the applicable limit of the **Insurer's** liability has been exhausted by payment of **Loss** or after deposit of the applicable limit of the **Insurer's** liability in a court of competent jurisdiction, and in such a case, the **Insurer** shall have the right to withdraw from the further defense thereof by tendering control of said defense to the **Employed Lawyer**.

2. DEFINITIONS

(a) "**Claim**" means:

- (1) a written demand for monetary, non-monetary or injunctive relief;
- (2) a civil, administrative, regulatory or arbitration proceeding for monetary, non-monetary or injunctive relief which is commenced by service of a complaint or similar pleading; or
- (3) a judicial, administrative, bar association or other proceeding against an **Employed Lawyer** solely concerning the eligibility or license of such **Employed Lawyer** to practice law.

(b) "**Damages**" means a monetary judgment award or monetary settlement arising from a **Claim**, but does not include fines, sanctions or statutory penalties whether imposed by law or otherwise, nor the return of or restitution of legal fees, costs and expenses.

(c) "**Employed Lawyer**" means:

- (1) any person admitted to practice law who is, was or becomes employed as a lawyer full time and salaried by the **Employer**, but only as regards **Wrongful Acts** which occur during the term of such employment; and
- (2) non-lawyer employees of the **Employer** who are, were or become assistants of an **Employed Lawyer** as defined in sub-paragraph (1) above, while acting under the direction and control of such **Employed Lawyer** in the performance of professional services on behalf of the **Employer**.

(d) "**Employer**" means the **Named Entity** and any **Subsidiary** thereof.

(e) "**Executive**" means any:

- (1) past, present or future duly elected or appointed director, officer, trustee or governor of the **Employer**, management committee member of a joint venture and member of the management board of a limited liability company (or equivalent position) of the **Employer**; or
- (2) past, present or future general counsel and risk manager (or equivalent position) of the **Employer**.

(f) "**Individual Insured**" means any **Employed Lawyer**.

(g) **"Insured(s)"** means:

- (1) any **Employed Lawyer**; and
- (2) any **Employer**, but solely with respect to Coverage B and such **Employer's** indemnification of an **Employed Lawyer**.

This **Coverage Section** affords no coverage for **Defense Costs** incurred by, settlements by or on behalf of, contractual obligations of, or judgments against any entity whether arising out of a **Claim** made against an **Employer**, based upon any legal obligation to pay any amount that an **Employer** has or may have to a claimant, or derived from the acts or omissions of **Employed Lawyers**.

No **Employer** is covered in any respect under Coverage A or Coverage C of this **Coverage Section**. An **Employer** is covered, subject to this **Coverage Section's** terms, conditions, exclusions and other limitations only with respect to its indemnification of **Employed Lawyers** under Coverage B as respects a **Claim** against such **Employed Lawyers**.

(h) **"Legal Services"** means any professional legal services rendered by:

- (1) an **Employed Lawyer** in his or her capacity as an **Employee** of an **Employer**; and
- (2) any **Employed Lawyer** while a full time, permanent **Employee** of an **Employer**, including, but not limited to, any moonlighting or *pro bono* services.

(i) **"Loss"** means **Damages** and **Defense Costs**; provided, however, **Loss** shall not include: (1) civil or criminal fines or penalties; (2) punitive or exemplary damages; (3) the multiplied portion of multiplied damages; (4) taxes; (5) any amount for which the **Insureds** are not financially liable or which are without legal recourse to the **Insureds**; and (6) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.

(j) **"Personal Injury Peril"** means the following offenses:

- (1) false arrest, detention or imprisonment, wrongful entry or eviction or other invasion of the right of private occupancy, or malicious prosecution; or
- (2) the publication or utterance of a libel or slander or other defamatory or disparaging material, or a publication or an utterance in violation of an individual's right of privacy.

(k) **"Wrongful Act"** means any actual or alleged:

- (1) negligent act, error, omission, breach of duty, misstatement or misleading statement; or
- (2) **Personal Injury Peril**;

committed or omitted in the performance of **Legal Services**.

3. EXCLUSIONS

Exclusion 4(a) (profit or advantage) and the paragraph following Exclusion 4(h) of the General Terms and Conditions do not apply to this **Coverage Section**.

In addition to the exclusions set forth in Clause 4 of the General Terms and Conditions, except as indicated in the preceding paragraph, the **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

- (a) arising out of, based upon or attributable to the committing in fact of any criminal, fraudulent or dishonest act by an **Employed Lawyer**; provided, however, the **Insurer** shall defend such **Claim**

alleging the foregoing conduct, until there is a judgment, final adjudication, adverse admission or finding of fact against the **Employed Lawyer** as to such conduct, at which time the **Insured** shall reimburse the **Insurer** for **Defense Costs**;

- (b) against an **Employed Lawyer** that is brought, directly or indirectly, by or on behalf of any: (1) **Employed Lawyer**; (2) **Employer**; (3) business entity that is controlled, managed or operated, directly or indirectly, in whole or in part, by the **Employer**; (4) parent company, partner, trustee, successor or assignee of the **Employer**, or any person or entity affiliated with the **Employer**; (5) receiver, conservator, trustee, creditor or assignee of creditors or for the benefit of creditors or similar representative in the event of the insolvency or bankruptcy of the **Employer**; or (6) security holder or member of the **Employer**, whether directly or derivatively, unless such security holder or member claim is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of an **Employed Lawyer**, the **Employer** or any **Executive** of the **Employer**; provided, however, this exclusion shall not apply to **Defense Costs** incurred in the defense of any **Claim** brought by or on behalf of the **Employer**;
- (c) for discrimination or other unfair employment practices; provided, however, this exclusion shall not apply to any **Claim** alleging a **Wrongful Act** in the performance of **Legal Services**;
- (d) arising out of any breach of fiduciary duty, responsibility, or obligation in connection with any employee benefit or pension plan, including violations of the responsibilities, obligations or duties imposed upon fiduciaries by the Employee Retirement Income Security Act of 1974, as amended, or similar statutory or common law of the United States of America or any state or jurisdiction therein;
- (e) alleging, arising out of, based upon, or in connection with any offering of securities by the Company or alleging a purchase or sale of such securities subsequent to such offering;
- (f) arising out of mental anguish, emotional distress or humiliation; provided, however, this exclusion shall not apply to any **Claim** alleging the foregoing if such allegations result from a **Personal Injury Peril**;
- (g) alleging, arising out of, based upon or attributable to any actual or alleged act or omission of an **Employed Lawyer** serving in the capacity of an **Executive**; provided, however, this exclusion shall not apply to alleging a **Wrongful Act** in the performance of **Legal Services**;
- (h) against an **Employed Lawyer** for a **Wrongful Act** that was committed or allegedly committed at a time when the **Employed Lawyer** was not employed by the **Employer**; or
- (i) alleging, arising out of, based upon or attributable to any violation of the provisions of the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, any regulation promulgated under the foregoing statutes or any federal, state, local or foreign laws (i) similar to the foregoing laws (including "Blue Sky" laws) or (ii) regulating the same or similar conduct whether such law is statutory, regulatory or common law.

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APPENDIX GTC-1
DISPUTE RESOLUTION PROCESS

Any mediation, arbitration or judicial proceeding commenced in accordance with Clause 15 of the General Terms & Conditions, shall be subject to the terms and conditions set forth below:

A. General Terms

- (1) At any mediation or arbitration commenced pursuant to Clause 15 of the General Terms & Conditions, there shall be present a representative of the **Company** with full authority to settle or compromise any dispute under the policy, or in the case of an **Insured Person** that is a party to a mediation or arbitration, such **Insured Person** shall be present at the mediation or arbitration unless otherwise agreed to by the **Insurer**.
- (2) The mediator or arbitrators shall give due consideration to the general principles of the law of the state where the **Named Entity** is incorporated in the construction or interpretation of the provisions of this policy.
- (3) Any mediation, arbitration or judicial proceeding held pursuant to the terms of Clause 15 of the General Terms & Conditions shall be conducted in New York, New York; Atlanta, Georgia; Chicago, Illinois; Denver Colorado; in the state designated in Item 1 of the Declarations as the mailing address of the **Named Entity**; or in the state where the **Named Entity** is incorporated, unless otherwise agreed to by the parties.
- (4) Unless otherwise agreed to, all expenses of the mediation or arbitration, other than defense costs which are the sole responsibility of each party, shall be borne equally by the parties to the mediation or arbitration, including any filing fee or mediator's or arbitrator's fee.
- (5) In all instances under Clause 15 of the General Terms & Conditions where the **Insureds** are provided with a choice of alternatives and cannot unanimously agree on which alternative to choose, the right of election on behalf of the **Insureds** shall rest with the **Named Entity**, and such election shall be binding on all **Insureds**, including without limitation an **Insured's** choice of either arbitration or a judicial proceeding pursuant to paragraph (c) of Clause 15 of the General Terms & Conditions.

B. Non-Binding Mediation

- (1) The **Insurer** and **Insured(s)** shall attempt in good faith to settle their disputes by mediation in accordance with the American Arbitration Association's ("**AAA**") then-prevailing Commercial Mediation Rules (hereinafter "**Mediation Rules**"). The mediation shall be terminated upon the occurrence of any one of the following events:

- (a) the execution of a settlement agreement by the parties;
 - (b) a written declaration of the mediator that further efforts are unlikely to result in a settlement agreement;
 - (c) mutual agreement of the **Insurer** and **Insured(s)** that further efforts are unlikely to result in a settlement agreement;
 - (d) if within sixty (60) days after the first day of mediation, a settlement agreement has not been reached and the parties have not otherwise agreed to extend the time for the mediation; or
 - (e) as otherwise provided by the **AAA** or the **Mediation Rules**.
- (2) Notwithstanding any rule governing the conduct of the mediation, the parties shall attempt in good faith to mutually agree to the appointment of a mediator. In the event the parties cannot agree, the mediator shall be appointed pursuant to the **Mediation Rules**. A condition precedent to the selection of any mediator, whether such mediator is mutually agreed upon or appointed pursuant to the **Mediation Rules**, is that he or she be "disinterested" as that term is defined in paragraph C.(1) below and be an active or retired attorney who has practiced law for at least ten (10) years in the area of commercial litigation.

C. Arbitration

- (1) Subsequent to the termination of the mediation process pursuant to paragraph B.(1) above, either the **Insurer** or the **Insured(s)** may submit their dispute for arbitration to the **AAA**. The arbitration shall be conducted in accordance with the then-prevailing Commercial Arbitration Rules (hereinafter "**Arbitration Rules**"). Upon application of one or more of the parties to the arbitration, the arbitrators will decide if any inconsistency exists between the **Arbitration Rules**, the provisions of Clause 15 of the General Terms & Conditions and this Appendix. If any such inconsistency exists, the provisions of Clause 15 of the General Terms & Conditions and this Appendix will control and supersede the **Arbitration Rules**. The arbitration shall be conducted by a panel of three disinterested individuals. All **Insureds** shall jointly select one disinterested arbitrator and the **Insurer** shall select one disinterested arbitrator. The arbitrators selected by the **Insureds** and the **Insurer** shall then mutually select a third disinterested arbitrator. "Disinterested" for purposes of Clause 15 of the General Terms & Conditions and this Appendix shall mean:
- (a) an individual who, in the five years preceding the date on which he or she is selected to be an arbitrator, has not represented or been an adversary of any **Insured** or the **Insurer** in any civil, criminal, administrative, regulatory or arbitration proceeding or in any civil, criminal, administrative or regulatory investigation, and has not made any demand for monetary or non-monetary relief of any **Insureds** or the **Insurer** that the **Insureds** or the **Insurer** disputed;
 - (b) an individual who has no financial or personal interest, direct or indirect, in the outcome of the arbitration; and
 - (c) an individual who provides a written, signed statement representing that he or she has not, in the five years preceding the date on which he or she was selected to be an arbitrator, represented or been an adversary of any **Insured** or the **Insurer** in any civil, criminal, administrative, regulatory or arbitration proceeding or in any civil, criminal, administrative or regulatory investigation,

and has not made any demand for monetary or non-monetary relief of any **Insureds** or the **Insurer** that the **Insureds** or the **Insurer** disputed. The individual will also state in writing that he or she is aware of no circumstances that would interfere with his or her ability to render a fair, unbiased decision in the arbitration.

- (2) If the arbitrators selected by the **Insureds** and the **Insurer** cannot agree upon a third disinterested arbitrator then each arbitrator shall provide the other with a list of three proposed disinterested arbitrators. The arbitrators shall then flip a coin and the loser of the coin toss shall choose an arbitrator from the winner's list. The third arbitrator shall decide any and all disputes among the **Insureds** and the **Insurer** concerning whether or not the arbitrators chosen by the **Insureds** and **Insurer** are disinterested. That decision shall be final and binding and not subject to any appeal.
- (3) A condition precedent to the selection of the third disinterested arbitrator, regardless of the selection method as set forth in the preceding paragraph, is that he or she be an active or retired attorney with at least 10 years of experience practicing primarily in property/casualty insurance coverage law at a law firm, or as in-house counsel at an insurance company or reinsurance company, insurance broker or agent, or other company.
- (4) In the event of arbitration, the decision of the arbitrators shall be final and binding and provided in writing to both parties, and the arbitrators' award shall not include attorneys fees or other costs. The award shall not include punitive, exemplary or multiple damages, or any similar form of damages designed to punish or penalize a party. Should the arbitrators include punitive or exemplary damages, or attorneys fees or other costs in the award, then the arbitrators' decision and award shall be automatically null and void and have no effect on the parties in the arbitration, unless all such parties against whom such damages or fees or costs are awarded agree in writing, in their sole and absolute discretion, to waive the requirements of this paragraph.

APPENDIX EP-1

EMPLOYMENT CRISIS MANAGEMENT INSURANCE

For the Employment Crisis Management Insurance coverage only, the following Definitions apply:

- (a) **"Allegation"** means any complaint, whether written or verbal, communicated to the **Company's** human resources department by:
 - (i) an individual who believes that he or she was a victim of the alleged **Wrongful Act**; or
 - (ii) such individual's direct or indirect supervisor, if such supervisor is an **Employee** and such supervisor's conduct is not the subject matter of the alleged **Wrongful Act**.
- (b) **"Discovery"** means either:
 - (i) an observation by any **Senior Executive** or any human resources manager; or
 - (ii) an internal investigation conducted by the **Company**, at the **Company's** own expense, which concludes that there is a reasonable basis to believe that an **Wrongful Act** has occurred.
- (c) **"Employment Crisis"** means an **Allegation**, **Discovery** or **Media Report** of a **Wrongful Act**, specifically including, but not limited to, a hostile work environment, which, in the good faith opinion of the **Company's** general counsel (or equivalent position), resulted or is reasonably likely to result, in any:
 - (i) civil action or compliance audit by the EEOC or any similar state agency or commission;
 - (ii) civil or criminal action alleging sexual harassment or conduct by an executive officer;
 - (iii) civil class action;
 - (iv) civil action involving multiple plaintiffs; or
 - (v) civil action by a person alleging retaliatory conduct by an Insured in response to such person's actions or threatened actions as a "whistleblower".

Provided, however, that the term **Employment Crisis** shall not include any:

- (1) preparing, revising or rewriting of personnel policies or procedures;
- (2) sensitivity or awareness training;
- (3) accommodations made by the **Company** pursuant to the Americans With Disabilities Act;
- (4) **Claim** which has been reported, or any circumstances of which notice has been given, under any policy of which this policy is a renewal or replacement or which it may succeed in time;
- (5) pending or prior litigation, or EEOC (other similar foreign, state or local) litigation or proceeding, as of the **Employment Crisis Continuity Date**;

- (6) **Claim** alleging, arising out of, based upon or attributable to, directly or indirectly, any actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants** or other hazardous materials; or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants** or other hazardous materials; or
- (7) **Claim** alleging, arising out of, based upon or attributable to, directly or indirectly, the hazardous properties of nuclear materials; provided, however, the foregoing shall not apply to any **Employment Crisis** arising from the ownership of, operation of, construction of, management of, planning of, maintenance of or investment in any nuclear facility.

An **Employment Crisis** shall first commence when the **Company's** general counsel first has knowledge of the **Allegation, Discovery or Media Report** giving rise to the **Employment Crisis**, and shall conclude at the earliest of: (1) the time when the **Employment Crisis Management Firm** advises the **Company** that the **Employment Crisis** no longer exists; or (2) when the **Employment Crisis Management Fund** has been exhausted.

- (d) **"Employment Crisis Continuity Date"** means the Employment Practices Liability **Continuity Date** set forth in Item 3 of the Declarations.
- (e) **"Employment Crisis Management Firm"** means any public relations firm, media management consultant, investigative firm or law firm hired by the **Company** to perform **Employment Crisis Management Services** in connection with the **Employment Crisis**. Below is a list of firms which have been pre-approved by the **Insurer** and may be hired by the **Company** without further approval by the **Insurer**. In the event the **Company** chooses to retain the services of an entity not listed on the attached list, the **Company** must obtain the written consent of the **Insurer**, which shall not be unreasonably withheld.
- (f) **"Employment Crisis Management Fund"** means the dollar amount set forth as such in Item 5 of the Declarations.
- (g) **"Employment Crisis Management Loss"** means any of the following amounts incurred during the pendency of the **Employment Crisis**, regardless of whether a **Claim** is ever made against an **Insured** arising from the **Employment Crisis**, and in the case where a **Claim** is made, regardless of whether the amount is incurred prior to or subsequent to the making of the **Claim**:
 - (1) amounts for which the **Company** is legally liable for the reasonable and necessary fees and expenses incurred by an **Employment Crisis Management Firm** in the performance of **Employment Crisis Management Services** for the **Company** arising from an **Employment Crisis**; and
 - (2) amounts for which the **Company** is legally liable for the reasonable and necessary printing, advertising, mailing of materials, or travel by directors, officers, employees or agents of the **Company** or the **Employment Crisis Management Firm**, solely in connection with the **Employment Crisis**.
- (h) **"Employment Crisis Management Services"** means those services performed by an **Employment Crisis Management Firm** in advising the **Company** on minimizing

potential harm to the **Company** arising from the **Employment Crisis**; including, but not limited to, maintaining and restoring public and employee confidence in the **Company**.

- (i) **"Media Report"** means any of the following publications or reports received in the geographic area of the **Company**: (i) a daily newspaper of general circulation; (ii) a weekly, monthly or quarterly newsletter or magazine of general circulation; (iii) a newsletter or trade publication applicable to the **Company's** industry; or (iv) a radio or television newscast.
- (j) **"Senior Executive"** means a director or duly appointed or elected corporate officer of the **Company**.

LIST OF PRE-APPROVED EMPLOYMENT CRISIS MANAGEMENT FIRMS

Firm	Primary Contact	Address
Abernathy MacGregor Scanlon	James T. MacGregor (212) 371-5999	501 Madison Avenue New York, NY 10022
Burson-Marsteller	Michael Claes (212) 614-5236	230 Park Avenue South New York, NY 10003-1566
Kekst and Company	Andrew Baer (212) 593-2655	437 Madison Avenue New York, NY 10022
Kroll Associates	Richard G. McCormick (212) 833-3385	900 Third Avenue New York, NY 10022
Robinson Lerer & Montgomery	Michael Gross (212) 484-7721	75 Rockefeller Plaza , 6 th floor New York, NY 10019
Sard Verbinnen & Co.	Paul Verbinnen or Gorge Sard (212) 687-8080	630 Third Avenue New York, NY 10017
Sitrick & Company	Michael Sitrick (310) 788-2850	2029 Century Park East, Suite 1750 Los Angeles, CA 90067

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED