



[VARIABLE – Form Name]

GENERAL TERMS AND CONDITIONS **("General Terms and Conditions")**

In consideration of the payment of the premium, and each of their respective rights and obligations in this policy, the **Insureds** and the **Insurer** agree as follows:

1. TERMS AND CONDITIONS

These **General Terms and Conditions** shall apply to all **Coverage Sections**, unless any **Coverage Section** states specifically that all or part of these **General Terms and Conditions** shall not apply to such **Coverage Section**. The definitions, terms, conditions and limitations set forth in each **Coverage Section** shall apply only to that particular **Coverage Section**.

2. RETENTION

The **Insurer** shall be liable only for the amount of **Loss** arising from each **Claim** or group of **Related Claims** that exceeds the Retention amount stated in Item 6 of the Declarations as applicable to the **Coverage Section** affording coverage to such **Claim** or group of **Related Claims**. Amounts within such Retention shall remain uninsured.

A single Retention amount shall apply to each **Claim** or group of **Related Claims**. If a **Claim** or a group of **Related Claims** triggers more than one **Coverage Section** all of which are subject to a **Shared Limit of Liability**, the highest applicable Retention amount shall apply to such **Claim** or group of **Related Claims**.

If a **Claim** or a group of **Related Claims** triggers more than one **Coverage Section** at least one of which is subject to a **Separate Limit of Liability**, the Retention applicable to **Loss** in connection with such **Claim** or group of **Related Claims** under any such **Coverage Section** subject to a **Separate Limit of Liability** shall apply separately to such **Loss**, and the applicable Retention for such **Coverage Section** shall not be satisfied by payments of **Loss** made towards the Retention required under any other **Coverage Section**.

3. LIMITS OF LIABILITY

The **Policy Aggregate** is the **Insurer's** maximum liability for all **Loss** under all **Coverage Sections** combined. Under no circumstances shall the **Insurer** be responsible to pay any **Loss** in excess of the **Policy Aggregate**. The term "**Limits of Liability**" refers to the several types of limits provided under this policy, including the **Policy Aggregate**, any **Separate Limits of Liability**, any **Shared Limits of Liability**, and any sublimits of liability set forth in any applicable **Coverage Sections**.

If **Separate Limits of Liability** are stated in Item 6 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. Each **Separate Limit of Liability** shall be part of, and not in addition to, the **Policy Aggregate** for all **Loss** under this policy and shall in no way serve to increase the **Policy Aggregate** as therein stated.

If **Shared Limits of Liability** are stated in Item 6 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. In the event that the amount stated as a **Shared Limit of Liability** in Item 6 of the Declarations for a **Coverage Section** is less than the amount(s) stated for the other **Coverage Section(s)** with which it shares such **Shared Limit of Liability**, such lesser amount stated in Item 6 shall serve as the limit of liability for all **Loss** in the aggregate under such **Coverage Section**, subject to reduction through any prior payments of **Loss** under such **Shared Limit of Liability**. Each **Shared Limit of Liability** shall be part of, and not in addition to, the **Policy Aggregate** for all **Loss** under this policy and shall in no way serve to increase the **Policy Aggregate** as therein stated.

Each sublimit of liability set forth in any **Coverage Section** is the maximum limit of the **Insurer's** liability for all **Loss** in the aggregate under this policy that is subject to that sublimit of liability. All sublimits of liability shall be part of, and not in addition to, the **Policy Aggregate** and any applicable **Separate Limit of Liability** or **Shared Limit of Liability**.

All **Related Claims** that pursuant to the applicable *Notice and Reporting Clause* are considered made or received during the **Policy Period** or **Discovery Period** (if applicable), shall also be subject to the applicable **Limits of Liability** set forth in this policy. Each of the **Limits of Liability** for the **Discovery Period** (if applicable) shall be part of, and not in addition to, each of the corresponding **Limits of Liability** for the **Policy Period**.

Defense Costs are not payable by the **Insurer** in addition to the **Limits of Liability**. **Defense Costs** are part of **Loss** and as such are subject to the **Limits of Liability** for **Loss**.

4. DISCOVERY

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 up to six (6) years following the effective date of such cancellation or nonrenewal ("**Discovery Period**"), upon payment of an **Additional Premium Amount** described in each **Coverage Section**, in which to give written notice to the **Insurer** of: (i) **Claims** first made against an **Insured**; (ii) if provided by a purchased **Coverage Section**, **Pre-Claim Inquiries** first received by an **Insured Person**; and (iii) circumstances of which an **Organization** or an **Insured** shall become aware, in any such case, during the **Discovery Period** and solely with respect to any covered acts, errors, omissions, failures or violations (including but not limited to **Wrongful Acts**, **Privacy Events** and **Security Failures**) occurring prior to the end of the **Policy Period** and otherwise covered by this policy.

In the event of a **Transaction**, the **Named Entity** shall have the right to request an offer from the **Insurer** of a **Discovery Period** with respect to covered acts, errors, omissions, failures or violations (including but not limited to **Wrongful Acts**, **Privacy Events** and **Security Failures**) occurring prior to the effective time of the **Transaction** and otherwise covered by this policy. The **Insurer** shall offer such **Discovery Period** pursuant to such terms, conditions, exclusions and additional 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.

If the **Named Entity** exercises its right to purchase a **Discovery Period**, that period incepts at the end of the **Policy Period** or, if purchased in the event of a **Transaction**, as of the effective time of such **Transaction**.

The right to purchase a **Discovery Period** shall terminate unless written notice of election, together with any additional premium due, is received by the **Insurer** no later than thirty (30) days after the effective date of the cancellation, nonrenewal or **Transaction**.

Any **Discovery Period** is not cancelable and the additional premium charged is non-refundable in whole or in part. This *Discovery Clause* shall not apply to any cancellation resulting from non-payment of premium.

5. TRANSACTIONS

In the event of a **Transaction**, this policy shall continue in full force and effect only as to those covered acts, errors, omissions, failures or violations (including but not limited to **Wrongful Acts**, **Privacy Events** and **Security Failures**) occurring prior to the effective time of the **Transaction** and otherwise covered by this policy, and no portion of the premium paid for this policy shall be refundable. The **Named Entity** shall also have the right to an offer by the **Insurer** of a **Discovery Period** described in Clause 4 above.

This policy may not be canceled after the effective time of the **Transaction**.

Notwithstanding the foregoing, this policy may continue in full force and effect as to those covered acts, errors, omissions, failures or violations (including but not limited to **Wrongful Acts**, **Privacy Events** and **Security Failures**) occurring subsequent to the effective time of the **Transaction** and otherwise covered by this policy, if:

- (a) within thirty (30) days subsequent to the effective time of such **Transaction** the **Insurer** has been provided with full particulars of the **Transaction**, the related entity(ies) and any other information requested by the **Insurer**; and
- (b) the **Insurer** waives the restrictions set forth above with respect to such **Transaction** by written endorsement to this policy and the **Named Entity** or its successor has paid any additional premium and accepted any amendments to this policy required by the **Insurer**.

6. EXTENSIONS

(a) *Worldwide Territory*

The coverage afforded by this policy shall apply anywhere in the world.

(b) *Passport*

If a **Coverage Section** is listed in Item 7 of the Declarations, then such **Coverage Section** and the applicable provisions of these **General Terms and Conditions** shall act as a master policy solely with respect to the coverage provided by such **Coverage Section**. The coverage afforded by such **Coverage Section** shall be provided in conjunction with the Passport foreign underlyer policy issued in each jurisdiction selected by the **Named Entity**. The specific structure of the coverage provided by such **Coverage Section** in conjunction with each Passport foreign underlyer policy is set forth in the Passport Structure Appendix for such **Coverage Section** that is attached to this policy.

(c) Spousal, Domestic Partner and Legal Representative Extension

If a **Claim** against an **Insured Person** includes a **Claim** against: (1) the lawful spouse or legally recognized domestic partner of such **Insured Person**; or (2) a property interest of such spouse or domestic partner; and in either such case, such **Claim** arises from any actual or alleged **Wrongful Acts** of such **Insured Person**, this policy shall pay covered **Loss** arising from the **Claim** made against such spouse or domestic partner or the property of such spouse or domestic partner to the extent that such **Loss** does not arise from a **Claim** for any actual or alleged act, error or omission of such spouse or domestic partner. This policy shall pay covered **Loss** arising from a **Claim** made against the estates, heirs, or legal representatives of any deceased **Insured Person**, and the legal representatives of any **Insured Person** in the event of incompetence, insolvency or bankruptcy, who was an **Insured Person** at the time the **Wrongful Acts** upon which such **Claim** is based were alleged to have been committed.

7. CANCELLATION

- (a) *By Named Entity*: 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's** authorized agent or to the **Insurer**.
- (b) *By the Insurer*: This policy may be canceled by the **Insurer** only in the event of non-payment of premium by delivering to the **Named Entity** by registered, certified or other first class mail, at the **Named Entity Address**, written notice stating when, not less than fifteen (15) days, the cancellation shall be effective. Proof of mailing or delivery of such notice as aforesaid shall be sufficient proof of notice and this policy shall be deemed canceled as to all **Insureds** at the date and hour specified in such notice.
- (c) *Return of Premium*: If this policy shall be canceled, the **Insurer** shall retain the pro rata proportion of the premium hereon.

8. RECOVERY OF LIMITS

In the event the **Insurer** recovers amounts it paid under this policy, the **Insurer** shall reinstate the **Limits of Liability** of this policy to the extent of such recovery, less its costs incurred in administering and obtaining such recovery. The **Insurer** assumes no duty to seek a recovery of any amounts paid under this policy.

9. NOTICE AND AUTHORITY

Except for the giving of a notice of **Claim**, which shall be governed by the *Notice and Reporting Clause* of the applicable **Coverage Section**, all notices required under this policy to be given by an **Insured** to the **Insurer** shall be given in writing to the **Insurer** at the **Insurer Address**. It is agreed that the **Named Entity** shall act on behalf of all **Insureds** with respect to the giving of notice of a **Claim**, **Pre-Claim Inquiry**, **Crisis** or circumstances, the giving and receiving of notice of conditional renewal, premium increase, nonrenewal and cancellation, 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**, **Crisis** or circumstance to the **Insurer**, and the exercising or declining to exercise any right to a **Discovery Period**.

10. ASSIGNMENT

This policy and any and all rights hereunder are not assignable without the prior written consent of the **Insurer**.

11. ACTION AGAINST INSURER

Except as provided in any *Alternative Dispute Resolution Clause* of a **Coverage Section**, 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 an **Insured's** obligation to pay shall have been finally determined either by judgment against such **Insured** after actual trial or by written agreement of such **Insured**, the claimant and the **Insurer**.

Any **Insured** or the legal representative thereof who has secured such judgment or written agreement shall be entitled thereafter 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 an **Insured** or the **Named Entity** to determine an **Insured's** liability, nor shall the **Insurer** be impleaded by any **Insured** or by any spouse, domestic partner or legal representative thereof.

12. BANKRUPTCY

Bankruptcy or insolvency of any **Insured** or of their estates shall not relieve the **Insurer** of any of its obligations under this policy.

In such event, the **Insurer** and each **Insured** agree to cooperate in any efforts by the **Insurer** or any **Insured** to obtain relief for the benefit of the **Insured Persons** from any stay or injunction applicable to the distribution of the policy proceeds.

13. CONFORMANCE TO LAW

In the event that there is an inconsistency between: (i) any period of limitation in this policy relating to the giving of notice of cancellation or discovery/extended reporting election, and (ii) the minimum or maximum period required by applicable law, where such law allows, the **Insurer** will resolve the inconsistency by applying the notice period that is more favorable to the **Insureds**. Otherwise, the notice period is hereby amended to the extent necessary to conform to applicable law.

Coverage under this policy shall not be provided to the extent prohibited by any law.

14. CURRENCY

All premiums, limits, retentions, **Loss** and other amounts under this policy are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or other elements of **Loss** are stated or incurred in a currency other than United States of America dollars, payment of covered **Loss** due under this policy (subject to the terms, conditions and limitations of this policy) will be made either in such other currency (at the option of the **Insurer** and if agreeable to the **Named Entity**) or, in United States of America dollars, at the rate of exchange published in The Wall Street Journal on the date the **Insurer's** obligation to pay such **Loss** is established (or if not published on such date the next publication date of The Wall Street Journal).

15. HEADINGS

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

16. DEFINITIONS

(a) *Terms Appearing in **Bold** in Each Coverage Section*

Terms appearing in **bold** in a **Coverage Section** shall have the meaning and/or value ascribed to them in the *Definitions Clause* of that **Coverage Section**. If a term appearing in **bold** in a **Coverage Section** is not defined in the *Definitions Clause* of that **Coverage Section**, then the meaning and/or value ascribed to such term in the Declarations or below in Clause 16(c) *Definitions of General Applicability* shall apply for purposes of coverage provided under that particular **Coverage Section**.

Certain terms, including without limitation the following, appear in **bold** and are defined in more than one **Coverage Section**: (1) **Claim**; (2) **Crisis**; (3) **Defense Costs**; (4) **Insured**; (5) **Insured Person**; (6) **Loss**; (7) **Pre-Claim Inquiry**; (8) **Privacy Event**; (9) **Related Claim**; (10) **Security Failure**; (11) **Wrongful Act**. Each of these terms shall have the meaning ascribed to the term in a **Coverage Section** in which the term appears, but that meaning shall apply solely for purposes of coverage provided under that particular **Coverage Section**.

(b) *Terms Appearing in **Bold** in These **General Terms and Conditions***

Terms appearing in **bold** in these **General Terms and Conditions** and not defined below in Clause 16(c) *Definitions of General Applicability* shall have the meaning and/or value ascribed to them in the Declarations or in a particular **Coverage Section** for purposes of coverage provided under that particular **Coverage Section**.

(c) *Definitions of General Applicability*

Continuity Date	means the date set forth in Item 6 of the Declarations with respect to each Coverage Section .
Coverage Section	means each Coverage Section that is purchased by the Named Entity as reflected in Item 6 of the Declarations.
E-Consultant Firm	means a pre-approved e-discovery consulting firm. A list of pre-approved E-Consultant Firms is accessible through the online directory at http://www.aig.com/us/panelcounseldirectory under the "e-Consultant Panel Members" link.
E-Discovery	means the development, collection, storage, organization, cataloging, preservation and/or production of electronically stored information.
E-Discovery Consultant Services	means solely the following services performed by an E-Consultant Firm : (1) assisting the Insured with managing and minimizing the internal and external

costs associated with **E-Discovery**;

- (2) assisting the **Insured** in developing or formulating an **E-Discovery** strategy which shall include interviewing qualified and cost effective **E-Discovery** vendors;
- (3) serving as project manager, advisor and/or consultant to the **Insured**, defense counsel and the **Insurer** in executing and monitoring the **E-Discovery** strategy; and
- (4) such other services provided by the **E-Discovery Consultant Firm** that the **Insured**, **Insurer** and **E-Discovery Consultant Firm** agree are reasonable and necessary given the circumstances of the **Claim**.

Enforcement Body

means: (1) any federal, state, local or foreign law enforcement authority or other governmental investigative authority (including, but not limited to, the U.S. Department of Justice, the U.S. Securities and Exchange Commission and any attorney general), or (2) the enforcement unit of any securities or commodities exchange or other self-regulatory organization.

Foreign Jurisdiction

means any jurisdiction, other than the United States of America or any of its territories or possessions.

Organization

means:

- (1) the **Named Entity**;
- (2) each **Subsidiary**; and
- (3) in the event a bankruptcy proceeding shall be instituted by or against any of the foregoing entities, the resulting debtor-in-possession (or equivalent status outside the United States of America), if any.

Policy Period

means the period of time from the **Inception Date** to the earlier of the **Expiration Date** or the effective date of cancellation of this policy. The **Policy Period** incepts and expires as of 12:01 A.M. on such dates at the **Named Entity Address**.

Retroactive Date

means the date set forth in Item 6 of the Declarations as such for each **Coverage Section**.

Separate Limit of Liability

means the applicable **Separate Limit of Liability**, if any, stated in Item 6 of the Declarations.

Shared Limit of Liability

means the applicable **Shared Limit of Liability**, if any, stated in Item 6 of the Declarations, which limit of liability shall be shared between all of the **Coverage Sections** which are listed as being subject to such **Shared Limit of Liability** in the Declarations.

Transaction

means:

- (1) the **Named Entity** consolidating with or merging into another entity such that the **Named Entity** is not the surviving entity, or selling all or substantially all of its assets to any other person or entity or group of persons or entities acting in concert;
- (2) any person or entity or group of persons or entities acting in concert acquiring **Management Control** of the **Named Entity**; or

- (3) any additional meaning ascribed to the term **Transaction** in any **Coverage Section**, but such additional meaning shall apply solely to the coverage provided by such **Coverage Section**.

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EMPLOYMENT EDGE[®] EMPLOYMENT PRACTICES LIABILITY ("EPL 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 **EPL Coverage Section**, unless otherwise explicitly stated to the contrary in this **EPL Coverage Section**.

In consideration of the payment of the premium, and each of their respective rights and obligations in this policy, the **Insureds** and the **Insurer** agree as follows:

1. INSURING AGREEMENTS

All coverage granted for **Loss** under this **Coverage Section** is provided solely with respect to **Claims** first made against an **Insured** during the **Policy Period** or any applicable **Discovery Period** and reported to the **Insurer** as required by this **Coverage Section**, except to the extent coverage is extended pursuant to the *Claims Savings Clause* of this **Coverage Section** to a **Claim** first made prior to the **Policy Period**. Subject to the foregoing and the other terms, conditions and limitations of this policy, this **Coverage Section** affords the following coverage:

A. Employment Practices Liability Coverage

This policy shall pay the **Loss** of each and every **Insured** arising from a **Claim** made against such **Insured** for any **Employment Practices Violation**.

B. Third Party Violation Coverage

This policy shall pay the **Loss** of each and every **Insured** arising from a **Claim** made against such **Insured** for any **Third Party Violation**.

C. Wrongful Internet Activity Coverage

This policy shall pay the **Loss** of an **Organization** arising from any **Claim** made against such **Organization** for its actual or alleged liability for any **Wrongful Internet Activity** of an **Employee**.

2. EXTENSIONS

A. First Dollar E-Discovery Consultant Services

For any **Class Action Claim**, no Retention shall apply to the first \$25,000 in **Defense Costs** incurred as **E-Discovery Consultant Services**.

B. Global Liberalization

For **Loss** from that portion of any **Claim** maintained in a **Foreign Jurisdiction** or to which the law of a **Foreign Jurisdiction** is applied, the **Insurer** shall apply the terms and conditions of this **Coverage Section** as amended to include those of the **Foreign Policy** in the **Foreign Jurisdiction**

that are more favorable to **Insureds** in the **Foreign Jurisdiction**. This *Global Liberalization Clause* shall not apply to any provision of any policy that has worldwide effect, including but not limited to any provision addressing limits of liability (primary, excess or sublimits), retentions, other insurance, non-renewal, duty to defend, defense within or outside limits, taxes, conformance to law or excess liability coverage, any claims made provisions, and any endorsement to this policy that excludes or limits coverage for specific events or litigation or that specifically states that it will have worldwide effect.

3. EXCLUSIONS

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

- (1) *Conduct* arising out of, based upon or attributable to any deliberate criminal or deliberate fraudulent act by the **Insured** if established by any final, non-appealable adjudication in any action or proceeding other than an action or proceeding initiated by the **Insurer** to determine coverage under the policy; provided, however, the **Wrongful Act** of an **Insured** shall not be imputed to any other **Insured** for the purpose of determining the applicability of this exclusion;
- (2) *Pending & Prior Litigation* alleging, arising out of, based upon or attributable to, as of the **Continuity Date**, any pending or prior: (a) litigation; or (b) **EEOC** proceeding or investigation of which any **Insured** had notice; or alleging or derived from the same or essentially the same facts as alleged in such pending or prior litigation or proceeding or investigation;
- (3) *Prior Notice* alleging, arising out of, based upon or attributable to the facts alleged, or to the same or 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 providing coverage in whole or in part for **Wrongful Acts** which was in force prior to the **Inception Date** of this policy;
- (4) *Bodily Injury & Property Damage* for bodily injury (other than emotional distress or mental anguish), sickness, disease, or death of any person, or damage to or destruction of any tangible property, including the loss of use thereof;
- (5) *ERISA* for any violation of responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or any similar provisions of any state, local or foreign statutory or common law;
- (6) *Compensation & Labor Liability* (a) for any violation of responsibilities, obligations or duties imposed by the Fair Labor Standards Act (except the Equal Pay Act) (FLSA), the National Labor Relations Act (NLRA), the Worker Adjustment and Retraining Notification (WARN) Act, the Consolidated Omnibus Budget Reconciliation Act (COBRA), the Occupational Safety and Health Act (OSHA), any rules or regulations of the foregoing promulgated thereunder, and amendments thereto or any similar federal, state, local or foreign law or amendment to a law; or

(b) alleging, arising out of, based upon or attributable to any of the circumstances described in any of the following:

(i) the refusal, failure or inability of any **Insured** to pay wages or overtime pay (or amounts representing such wages or overtime pay) for services rendered or time spent in connection with work related activities (as opposed to tort-based back pay or front pay damages for torts other than conversion);

(ii) improper deductions from pay taken by any **Insured** from any **Employee** or purported **Employee**; or

(iii) failure to provide or enforce legally required meal or rest break periods;

provided, however, the foregoing Exclusions 6(a) and 6(b) shall not apply to the extent that a **Claim** is for **Retaliation**;

(7) *Benefits*

for any obligation pursuant to any worker's compensation, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law; provided, however, this exclusion shall not apply to the extent that a **Claim** is for **Retaliation**;

(8) *Contract*

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

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

(ii) **Loss** constituting **Defense Costs**; or

(9) *Securities Claim*

alleging, arising out of, based upon or attributable to any **Claim** brought by any holder of securities representing the debt or equity of the **Organization** or an **Outside Entity**, in their capacity as such, whether directly, derivatively on behalf of the **Organization** or **Outside Entity**.

4. RETENTION

In addition to the provisions in Clause 2. RETENTION of the General Terms and Conditions, in no event shall a Retention be applied to the first \$25,000 in **Defense Costs** incurred as **E-Discovery Consultant Services**.

If an **Organization** is unable to advance, pay or indemnify covered **Loss** of an **Insured Person** within the applicable Retention amount due to **Financial Insolvency**, then the **Insurer** shall advance such amounts on behalf of the **Insured Person** until either: (i) an **Organization** has agreed to make such payments, or (ii) the Retention has been satisfied. In no event shall any such advancement by the **Insurer** relieve any **Organization** of any duty it may have to provide advancement, payment or indemnification to any **Insured Person**. The **Insurer** shall be entitled to recover the amount of **Loss** advanced within the Retention from the **Organization** pursuant to the subrogation provisions of this **Coverage Section**.

5. NOTICE AND REPORTING

Notice hereunder shall be given in writing to the **Insurer** at the **Claims Address** indicated in the Declarations. If mailed or transmitted by electronic mail, the date of such mailing or transmission shall constitute the date that such notice was given and proof of mailing or transmission shall be sufficient proof of notice.

(a) *Reporting a Claim* An **Organization** or an **Insured** shall, as a condition precedent to the obligations of the **Insurer** under this **Coverage Section**, notify the **Insurer** in writing of a **Claim** made against an **Insured** as soon as practicable after the **Named Entity's** Human Resources Manager, Risk Manager or General Counsel (or equivalent position) first becomes aware of the **Claim**. In all events, notification must be provided no later than sixty (60) days after the end of the **Policy Period** or the **Discovery Period** (if applicable).

(b) *Relation Back to the First Reported Claim* Solely for the purpose of establishing whether any subsequent **Related Claim** was first made during the **Policy Period** or **Discovery Period** (if applicable), if during any such period a **Claim** was first made and reported in accordance with Clause 5(a) above, then any **Related Claim** that is subsequently made against an **Insured** and that is reported in accordance with Clause 5(a) above shall be deemed to have been first made at the time that such previously reported **Claim** was first made.

With respect to any subsequent **Related Claim**, this policy shall not cover **Loss** incurred before such subsequent **Related Claim** is actually made against an **Insured** and reported to the **Insurer**.

(c) *Claims Savings Clause* 1. Notwithstanding Clause 5(b), with respect to any **Claim** which (i) first becomes a **Litigated Matter** during the **Policy Period** or **Discovery Period** (if applicable); and (ii) is a **Related Claim** with respect to an **Administrative Claim** which was first made against an **Insured** prior to the **Policy Period**, the **Insurer** shall not deny coverage for such **Claim** based upon late notice of such **Claim** or based upon such **Claim** first being made prior to the **Policy Period**, provided that:

(a) the **Claim** was first made against the **Insured** at a time during which the **Named Entity** was insured under a **Prior AIG Policy**;

(b) upon the **Claim** first becoming a **Litigated Matter**, the **Claim** was reported in accordance with Clause 5(a) above; and

(c) no **Insured** has made a monetary settlement offer to a claimant or responded to a monetary demand from or on behalf of a claimant with respect to such **Claim**.

2. Coverage under this **Coverage Section** for any **Claim** afforded coverage pursuant to this Clause 5(c) shall be the lesser of:

- (a) the coverage which would have been provided under this **Coverage Section** for such **Claim** had the **Claim** been made during the **Policy Period** and reported to the **Insurer** as required by this **Coverage Section**; or
- (b) the coverage, if any, which would have been provided under the **Prior AIG Policy** for such **Claim** if the **Insured** had properly provided notice of such **Claim** in accordance with the provisions of the **Prior AIG Policy**,

taking into account all provisions of each policy, including, without limitation, applicable limits of liability (as reduced by payments made under such policy), retentions, exclusions and other restrictions contained in each policy.

Notwithstanding the foregoing, nothing in this Clause 5(c) shall be construed to increase the **Limits of Liability** of this policy or to provide coverage under the **Prior AIG Policy**, nor shall this Clause 5(c) ever result in providing coverage under this policy for **Loss** for which coverage is in fact provided (or would be provided but for the exhaustion of the limit of liability) under the **Prior AIG Policy**.

3. This Clause 5(c) shall not apply to any **Claim** which:

- (a) prior to the **Policy Period** was a **Litigated Matter**; or
- (b) is a **Related Claim** with respect to a **Claim** which prior to the **Policy Period** was a **Litigated Matter**.

(d) *Relation Back to Reported Circumstances Which May Give Rise to a Claim*

If during the **Policy Period** or **Discovery Period** (if applicable) an **Organization** or an **Insured Person** becomes aware of and notifies the **Insurer** in writing of circumstances that may give rise to a **Claim** being made against an **Insured** and provides details as required below, then any **Claim** that is subsequently made against an **Insured** that arises from such circumstances and that is reported in accordance with Clause 5(a) above shall be deemed to have been first made at the time of the notification of circumstances for the purpose of establishing whether such subsequent **Claim** was first made during the **Policy Period** or during the **Discovery Period** (if applicable). Coverage for **Loss** arising from any such subsequent **Claim** shall only apply to **Loss** incurred after that subsequent **Claim** is actually made against an **Insured** and reported to the **Insurer**. In order to be effective, notification of circumstances must specify the facts, circumstances, nature of the alleged **Wrongful Act** anticipated and reasons for anticipating such **Claim**, with full particulars as to dates, persons and entities involved.

6. DISCOVERY PREMIUM

In the event the **Named Entity** or the **Insurer** shall cancel or refuse to renew this **Coverage Section**, the **Additional Premium Amount** for: (a) one year shall be no more than 125% of the **Full Annual Premium**; and (b) two to six years shall be an amount to be determined by the **Insurer**. As used herein, "**Full Annual Premium**" means the premium level in effect for this **Coverage Section** immediately prior to the end of the **Policy Period**.

In the event of a **Transaction**, the **Additional Premium Amount** shall be an amount to be determined by the **Insurer**.

7. DEFENSE AND SETTLEMENT

A. For Claims

- (1) *No Duty to Defend* The **Insureds** shall defend and contest any **Claim** made against them. The **Insurer** does not assume any duty to defend.
- (2) *Right to Tender Defense* 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**. This right shall terminate if not exercised within thirty (30) days of the date the **Claim** is first made against an **Insured**. 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 thereof sent 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 the negotiation of any settlement of any **Claim**. However, the **Insurer** shall not be obligated to defend such **Claim** after the **Policy Aggregate** or any applicable **Separate Limit of Liability** or **Shared Limit of Liability** has been exhausted, or after an **Insured's** rejection (or failure or refusal to accept within the time prescribed in the "Settlement Opportunity" paragraph of this Clause 7) of a **Settlement Opportunity**.

(3) *Advancement*

When the **Insurer** has not assumed the defense of a **Claim** pursuant to subparagraph (2) of this Clause 7, it shall advance, excess of any applicable Retention, covered **Defense Costs** on a current basis, but no later than ninety (90) days after the **Insurer** has received itemized bills for those **Defense Costs**. Such advance payments by the **Insurer** shall be repaid to the **Insurer** by each and every **Insured Person** or **Organization**, severally according to their respective interests, in the event and to the extent that any such **Insured Person** or **Organization** shall not be entitled under this **Coverage Section** to payment of such **Loss**.

(4) *Claims Participation and Cooperation*

When the **Insurer** has not assumed the defense of a **Claim** pursuant to subparagraph (2) of this Clause 7, the **Insurer** shall have the right, but not the obligation, to fully and effectively associate with each and every **Insured** in the defense and prosecution of any **Claim** that involves, or appears reasonably likely to involve the **Insurer**, including, but not limited to, negotiating a settlement. Each and every **Insured** shall give the **Insurer** full cooperation and such information as it may reasonably require.

The failure of any **Insured Person** to give the **Insurer** cooperation and information as required in the preceding paragraph shall not impair the rights of any other **Insured Person** under this **Coverage Section**.

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**. Such consent shall not be unreasonably withheld.

(5) *Full Settlement Within Retention/ Consent Waived*

If all **Insured** defendants are able to dispose of all **Claims** which are subject to one Retention (inclusive of **Defense Costs**) for an amount not exceeding the Retention, then the **Insurer's** consent shall not be required for such disposition.

(6) *Settlement Opportunity*

In the event the **Insureds** do not consent to the first **Settlement Opportunity** 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), then the **Insurer's** liability for all **Loss** on account of such **Claim** shall not exceed: (a) 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 (b) 70% of covered **Loss** in excess of such **Settlement Opportunity Amount**, it being a condition of this insurance that the remaining 30% of such **Loss** excess of the **Settlement Opportunity Amount** shall be carried by the

Organization and the **Insureds** at their own risk and be uninsured. Notwithstanding the foregoing, this paragraph shall not apply unless the **Settlement Opportunity Amount** exceeds the remaining applicable Retention amount.

B. Pre-Authorized Defense Attorneys For Designated Employment Practices Claims

The list of approved panel counsel law firms ("**Panel Counsel**") is accessible through the online directory at <http://www.aig.com/us/panelcounseldirectory> under the "Public and Private Companies (Employment Practices Liability)" link. The list provides a choice of law firms from which a selection of legal counsel shall be made by the **Insureds** (or, in the event the **Insurer** has assumed the defense pursuant to Clause 7.A(2) of this **Coverage Section**, the **Insurer**) to conduct the defense of any **Designated Employment Practices Claim** made against the **Insureds**.

With the express prior written consent of the **Insurer**, an **Insured** may select a **Panel Counsel** different from that selected by another **Insured** defendant if such selection is required due to an actual conflict of interest or is otherwise reasonably justifiable. The list of **Panel Counsel** may be amended from time to time by the **Insurer**. However, if a firm is removed from the list during the **Policy Period**, the **Insureds** shall be entitled to select such firm to conduct the defense of any **Designated Employment Practices Claim** made against such **Insureds** during the **Policy Period**.

The **Insureds** (or, in the event the **Insurer** has assumed the defense pursuant to Clause 7.A of this **Coverage Section**, the **Insurer**) shall select a **Panel Counsel** to defend the **Designated Employment Practices Claim** made against the **Insureds** in the jurisdiction in which the **Designated Employment Practices Claim** is brought. In the event the **Claim** is brought in a jurisdiction not included on the list, **Panel Counsel** shall be selected in the listed jurisdiction which is the nearest geographic jurisdiction to either where the **Designated Employment Practices Claim** is brought or where the corporate headquarters of the **Named Entity** is located. In such instance the **Insureds** also may, with the express prior written consent of the **Insurer**, which consent shall not be unreasonably withheld, select a non-**Panel Counsel** in the jurisdiction in which the **Designated Employment Practices Claim** is brought to function as "local counsel" on the **Claim** to assist the **Panel Counsel** which will function as "lead counsel" in conducting the defense of the **Designated Employment Practices Claim**.

C. Pre-Approved E-Consultant Firms

The list of pre-approved **E-Consultant Firms** is accessible through the online directory at <http://www.aig.com/us/panelcounseldirectory> under the "e-Consultant Panel Members" link. The list provides the **Insureds** with a choice of firms from which a selection of an **E-Consultant Firm** shall be made. Any **E-Consultant Firm** may be hired by an **Insured** to perform **E-Discovery Consultant Services** without further approval by the **Insurer**.

8. SUBSIDIARY COVERAGE

A. Subsidiary Additions

In addition to the definition of "**Subsidiary**" set forth in Clause 12. DEFINITIONS of this **Coverage Section**, **Subsidiary** also means any for-profit entity: (1) of which the **Named Entity** first had **Management Control** during the **Policy Period**, whether directly or indirectly through one or more other **Subsidiaries**; and (2) whose:

- (a) total number of **Employees** is less than the lesser of: (i) 20% of the total **Employees** of each and every **Organization** as of the **Inception Date** of this policy; or (ii) five hundred (500); or

(b) total number of **Employees** does not satisfy the criteria set forth in subparagraph (a), above, but such entity shall be a "**Subsidiary**" only: (i) for a period of sixty (60) days from the date the **Named Entity** first had **Management Control** of such entity; or (ii) until the end of the **Policy Period**, whichever expires or ends first (the "**Auto-Subsidiary Period**");

provided that, with respect only to entities described in subparagraph (b) above, 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 subparagraph (b) above, and any **Insured Person** 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 required by the **Insurer** relating to such **Subsidiary**. Further, coverage as shall be afforded to any **Subsidiary** and any **Insured Person** thereof is conditioned upon the **Named Entity** paying when due any additional premium required by the **Insurer** relating to such **Subsidiary**.

B. Former Subsidiaries

In the event the **Named Entity** loses **Management Control** of a **Subsidiary** during or prior to the **Policy Period**, coverage with respect to such **Subsidiary** and its **Insured Persons** shall continue until termination of this policy but only with respect to **Claims** for **Wrongful Acts** that occurred or are alleged to have occurred during the time that the **Named Entity** had **Management Control** of such entity either directly or indirectly through one or more of its **Subsidiaries**.

C. Scope Of Subsidiary Coverage

Coverage as is afforded under this **Coverage Section** with respect to a **Claim** made against any **Subsidiary** and/or any **Insured Person** thereof shall only apply for **Wrongful Acts** committed or allegedly committed during the time that such **Subsidiary** and such **Insured Person** meet the respective definitions of **Subsidiary** and **Insured Person** set forth in this **Coverage Section**.

9. APPLICATION AND UNDERWRITING

A. Application And Reliance

The **Insurer** has relied upon the accuracy and completeness of the statements, warranties and representations contained in the **Application**. All such statements, warranties and representations are the basis for this **Coverage Section** and are to be considered as incorporated into this **Coverage Section**.

B. Severability Of The Application

The **Application** shall be construed as a separate application for coverage by each **Insured Person**. With respect to the **Application**, no knowledge possessed by any **Organization** or any **Insured Person** shall be imputed to any other **Insured Person**.

If the statements, warranties and representations in the **Application** were not accurate and complete and materially affected either the acceptance of the risk or the hazard assumed by the **Insurer** under this **Coverage Section**, then the **Insurer** shall have the right to void coverage under this **Coverage Section**, *ab initio*, with respect to:

(1) **Loss** of any **Insured Person** who knew, as of the inception date of the **Policy Period**, the facts

that were not accurately and completely disclosed; and

- (2) **Loss** of an **Organization**, if any **Insured Person** who is or was a chief executive officer, general counsel, director of human resources or risk manager (or equivalent position) of the **Named Entity** knew, as of the inception date of the **Policy Period**, the facts that were not accurately and completely disclosed.

The foregoing applies even if the **Insured Person** did not know that such incomplete or inaccurate disclosure had been provided to the **Insurer** or included within the **Application**.

10. PAYMENTS AND OBLIGATIONS OF ORGANIZATIONS AND OTHERS

A. *Other Insurance And Indemnification*

Unless expressly written to be excess over other applicable insurance, it is intended that the insurance provided by this **Coverage Section** shall be primary.

In the event a **Claim** is made against an **Outside Entity Executive**, or a **Claim** is made against an **Insured** for the **Insured's** liability with respect to a leased **Employee** or independent contractor **Employee** as described in the definition of "**Employee**", coverage as is afforded by this **Coverage Section** shall be specifically excess of any: (a) indemnification provided by such **Outside Entity** or leasing company; and (b) any other insurance provided to such **Outside Entity**, leasing company or independent contractor.

B. *Subrogation*

To the extent of any payment under this **Coverage Section**, the **Insurer** shall be subrogated to all of the **Organizations'** and **Insureds'** rights of recovery. Each **Organization** and each **Insured Person** shall execute all papers reasonably required and provide reasonable assistance and cooperation in securing or enabling the **Insurer** to exercise subrogation rights or any other rights, directly or in the name of the **Organization** or any **Insured Person**.

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

In no event, however, shall the **Insurer** exercise its rights of subrogation against an **Insured** under this **Coverage Section** unless the Conduct Exclusion applies with regard to such **Insured**; provided, however, this sentence shall not apply to subrogation against the **Organization** as described in the second paragraph of this Clause 10.B.

11. ALTERNATIVE DISPUTE RESOLUTION

ADR Options

All disputes or differences which may arise under or in connection with this **Coverage Section**, whether arising before or after termination of this policy, including any determination of the amount of **Loss**, shall be submitted to an alternative dispute resolution (ADR) process as provided in this Clause. The **Named Entity** may elect the type of ADR process discussed below; provided, however, that absent a timely election, the **Insurer** may elect the type of ADR. In that case, the **Named Entity** shall have the right to reject the **Insurer's** choice of the type of ADR process at any time prior to its commencement, after which, the **Insured's** choice of ADR shall control.

Mediation

In the event of mediation, either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until the mediation shall have been terminated and at least ninety (90) days shall have elapsed from the date of the termination of the mediation.

Arbitration

In the event of arbitration, the decision of the arbitrator(s) shall be final, binding and provided to both parties, and the arbitration award shall not include attorney's fees or other costs.

ADR Process

Selection of Arbitrator(s) or Mediator: The **Insurer** and the **Named Entity** shall mutually consent to: (i) in the case of arbitration, an odd number of arbitrators which shall constitute the arbitration panel, or (ii) in the case of mediation, a single mediator. The arbitrator, arbitration panel members or mediator must be disinterested and have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. In the absence of agreement, the **Insurer** and the **Named Entity** each shall select one arbitrator, the two arbitrators shall select a third arbitrator, and the panel shall then determine applicable procedural rules.

ADR Rules: In considering the construction or interpretation of the provisions of this policy, the mediator or arbitrator(s) must give due consideration to the general principles of the law of the **State of Formation** of the **Named Entity**. Each party shall share equally the expenses of the process elected. At the election of the **Named Entity**, either choice of ADR process shall be commenced in New York, New York; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; or in the state reflected in the **Named Entity Address**. The **Named Entity** shall act on behalf of each and every **Insured** under this *Alternative Dispute Resolution Clause*. In all other respects, the **Insurer** and the **Named Entity** shall mutually agree to the procedural rules for the mediation or arbitration. In the absence of such an agreement, after reasonable diligence, the arbitrator(s) or mediator shall specify commercially reasonable rules.

12. DEFINITIONS

The following definitions shall apply only for purposes of coverage provided under this **Coverage Section**. Terms appearing in **bold** in this **Coverage Section** but not defined herein shall have the meaning and/or value ascribed to them in the Declarations or in the *Definitions Clause* of the **General Terms and Conditions**.

- Administrative Claim** means an administrative or regulatory investigation:
- (1) by the **EEOC**; or
 - (2) of a violation of the Uniformed Services Employment and Reemployment Rights Act, when such investigation is conducted by the United States Department of Labor, Veterans Employment and Training Service, Justice Department or Office of Special Counsel;
- which, in either case, is commenced by the filing of a notice of charges or similar document of which notice has been given to an **Insured**.
- The term "**Administrative Claim**" shall not mean or include any **Litigated Matter**.
- Application** means:
- (1) the written statements and representations made by an **Insured** and provided to the **Insurer** during the negotiation of this policy, or contained in any application or other materials or information provided to the **Insurer** in connection with the underwriting of this policy; and
 - (2) all warranties executed by or on behalf of an **Insured** and provided to the **Insurer** in connection with the underwriting of this policy or the underwriting of any other employment practices (or equivalent) liability policy issued by the **Insurer**, or any of its affiliates, of which this policy is a renewal, replacement or which it succeeds in time.
- Claim** means:
- (1) a written demand for monetary, non-monetary or injunctive relief, including, but not limited to, any demand for mediation, arbitration or any other alternative dispute resolution process, or any request to toll or waive the statute of any limitations;
 - (2) a civil, criminal, administrative, regulatory or arbitration proceeding for monetary, non-monetary or injunctive relief which is commenced by: (a) service of a complaint or similar pleading; (b) return of an indictment, information or similar document (in the case of a criminal proceeding); or (c) receipt or filing of a notice of charges;
 - (3) an administrative or regulatory investigation by the **EEOC**, which is commenced by the filing of a notice of charges, service of a complaint or similar document of which notice has been given to an **Insured**; or
 - (4) an administrative or regulatory investigation of violations of the Uniformed Services Employment and Reemployment Rights Act when such investigation is conducted by the United States Department of Labor, Veterans Employment and Training Service, Justice Department

or Office of Special Counsel and is commenced by the filing of a notice of charges, service of a complaint or similar document of which notice has been given to an **Insured**.

However, in no event, shall the term "**Claim**" include any labor or grievance proceeding which is subject to a collective bargaining agreement.

Class Action Claim means any **Claim** brought: (1) by or on behalf of an actual or alleged class (whether or not certified as such); or (2) by the **EEOC** on behalf of any group of three or more complainants, plaintiffs or potentially aggrieved parties.

Class Action Retention means the Retention applicable to **Loss** that arises out of a **Class Action Claim**.

Defense Costs means reasonable and necessary fees, costs and expenses consented to by the **Insurer** (including the cost of **E-Discovery Consultant Services** and 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/or appeal of a **Claim** against an **Insured**. **Defense Costs** shall not include the compensation of any **Insured Person**.

Designated Employment Practices Claim means a **Claim**: (1) alleging discrimination or **Retaliation**; or (2) that is a **Class Action Claim**.

EEOC means the Equal Employment Opportunity Commission, or any similar state, local or foreign agency.

Employee means any past, present or future employee, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any full-time, part-time, seasonal and temporary employee, in his or her capacity as such. An individual who is leased to the **Organization** or is contracted to perform work for the **Organization**, or who is an independent contractor for the **Organization**, shall also be an **Employee**.

Employment Practices Violation means any actual or alleged:

- (1) wrongful dismissal, discharge or termination (either actual or constructive) of employment, including breach of an implied contract;
- (2) harassment (including workplace bullying, sexual harassment whether "quid pro quo", hostile work environment or otherwise, including "same-sex" sexual harassment);
- (3) discrimination (including, but not limited to, discrimination based upon age, gender, gender identity or expression, race, color, national origin, religion, sexual orientation or preference, genetic information, pregnancy, military status, employment status or disability);
- (4) **Retaliation**;
- (5) employment-related misrepresentation(s) to an **Employee** of any **Organization**;
- (6) employment-related libel, slander, humiliation, defamation or invasion of privacy;

- (7) false arrest or false imprisonment;
- (8) wrongful failure to employ or promote;
- (9) wrongful deprivation of career opportunity, wrongful demotion or negligent **Employee** evaluation, including the giving of negative or defamatory statements in connection with an employee reference;
- (10) wrongful discipline;
- (11) failure to grant tenure; or
- (12) with respect to any of the foregoing items (1) through (11) of this definition: negligent hiring, retention, training or supervision, infliction of emotional distress or mental anguish, failure to provide or enforce adequate or consistent corporate policies and procedures, or violation of an individual's civil rights;

but only if the **Employment Practices Violation** relates to an **Employee** of or an applicant for employment with an **Organization** or an **Outside Entity**, whether committed directly, indirectly, intentionally or unintentionally.

Executive

means any:

- (1) past, present and future duly elected or appointed director, officer, trustee or governor of a corporation, management committee member of a joint venture or member of the management board of a limited liability company (or equivalent position), in his or her capacity as such; and
- (2) past, present and future person in a duly elected or appointed position in an entity organized and operated in a **Foreign Jurisdiction** that is equivalent to an executive position listed in subparagraph (1) above, or a member of the senior-most executive body (including, but not limited to, a supervisory board), in his or her capacity as such.

**Financial
Insolvency**

means: (1) the appointment by any government official, agency, commission, court or other governmental authority of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate an insolvent **Organization**; (2) the filing of a petition under the bankruptcy laws of the United States of America; or (3), as to both (1) or (2), any equivalent events outside the United States of America.

Foreign Policy

means the standard employment practices liability policy (including all mandatory endorsements, if any) approved by the **Insurer** or any of its affiliates to be sold within a **Foreign Jurisdiction** that provides coverage substantially similar to the coverage afforded under this **Coverage Section**. If more than one such policy exists, then "**Foreign Policy**" means the standard basic policy form most recently offered for sale for comparable risks by the **Insurer** or any of its affiliates in that **Foreign Jurisdiction**.

Insured

means any:

- (1) **Insured Person**; or

(2) **Organization.**

Insured Person

means any:

(1) **Executive** of an **Organization**;

(2) **Employee** of an **Organization**; provided, however, an individual who is leased to the **Organization** or is contracted to perform work for the **Organization**, or who is an independent contractor for the **Organization**, shall be an **Insured Person** only if the **Organization** provides indemnification to such individual in the same manner as is provided to the **Organization's** employees; or

(3) **Outside Entity Executive.**

Litigated Matter

means any civil, criminal, administrative, regulatory or arbitration proceeding for monetary, non-monetary or injunctive relief which is commenced by: (1) service of a complaint or similar pleading; or (2) return of an indictment, information or similar document (in the case of a criminal proceeding).

Loss

means damages, settlements, judgments (including back pay and front pay, pre/post-judgment interest on a covered judgment), and **Defense Costs**; however, "**Loss**" shall not include: (1) civil or criminal fines or penalties; (2) taxes; (3) any amounts for which an **Insured** is not financially liable or which are without legal recourse to an **Insured**; (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**; and (6) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed. **Defense Costs** shall be provided for items specifically excluded from **Loss** pursuant to subparagraphs (1) through (6) above of this Definition, subject to the other terms, conditions and exclusions of this policy.

Loss shall specifically include (subject to this policy's other terms, conditions and limitations, including but not limited to the Conduct Exclusion), punitive, exemplary and multiple damages (including the multiple or liquidated damages awards under the Age Discrimination in Employment Act and the Equal Pay Act). Enforceability of this paragraph shall be governed by such applicable law that most favors coverage for such penalties and punitive, exemplary and multiple damages.

Loss shall also include any attorney fees awarded to a prevailing plaintiff's counsel pursuant to a covered judgment against an **Insured** or which the **Insurer** has agreed to pay as part of a covered settlement of a **Claim** against an **Insured**.

Management Control

means:

- (1) owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of: the Board of Directors of a corporation; the management committee members of a joint venture; or the members of the management board of a limited liability company; or
- (2) having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of an **Organization**, to elect, appoint or designate a majority of: the Board of Directors of a corporation; the management committee of a joint venture; or the management board of a limited liability company.

Outside Entity means any: (1) not-for-profit entity; or (2) other entity listed as an “**Outside Entity**” in an endorsement attached to this **Coverage Section**.

Outside Entity Executive means any: (1) **Executive** or **Employee** of an **Organization** who is or was acting at the specific request or direction of an **Organization** as an **Executive** of an **Outside Entity**, in his or her capacity as such; or (2) any other person listed as an **Outside Entity Executive** in an endorsement attached to this **Coverage Section**, in his or her capacity as such.

In the event of a disagreement between the **Organization** and an **Outside Entity Executive** as to whether such **Insured** was acting “at the specific request or direction of the **Organization**,” this **Coverage Section** shall abide by the determination of the **Organization** on this issue and such determination shall be made by written notice to the **Insurer** within ninety (90) days after the **Claim** against such **Outside Entity Executive** is made. In the event no notice of any such determination is given to the **Insurer** within such period, this **Coverage Section** shall apply as if the **Organization** determined that such **Outside Entity Executive** was not acting at the **Organization’s** specific request or direction.

Prior AIG Policy means a valid and collectible employment practices liability policy providing substantially the same or similar coverage as is provided by this **Coverage Section**, issued to the **Name Entity** by the **Insurer** (or any other insurance company affiliate thereof), of which this **Coverage Section** is a continuous renewal.

Related Claim means a **Claim** alleging, arising out of, based upon or attributable to any facts or **Wrongful Acts** that are the same as or related to those that were alleged in another **Claim** made against an **Insured**.

Retaliation means a retaliatory act of an **Insured** alleged to be in response to the actual or attempted exercise by an **Employee** of the **Organization** or an **Outside Entity** of any right that such **Employee** has under law, including, without limitation, any of the following activities: (1) the disclosure or threat of disclosure by an **Employee** of the **Organization** 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 exercise of 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 **Organization** or an **Outside Entity**.

Settlement Opportunity

means an **Insurer** recommended settlement that is within the **Policy Aggregate** and the applicable **Separate Limit of Liability** or **Shared Limit of Liability**, and that is acceptable to the claimant.

Subsidiary

means:

(1) any for-profit entity of which the **Named Entity** has or had **Management Control** on or before the **Inception Date** of the policy either directly or indirectly through one or more of its other **Subsidiaries**; and

(2) any not-for-profit entity sponsored exclusively by an **Organization**.

A for-profit entity ceases to be a **Subsidiary** when the **Named Entity** no longer maintains **Management Control** of such entity either directly or indirectly through one or more of its **Subsidiaries**. A not-for-profit entity ceases to be a **Subsidiary** when such entity is no longer sponsored exclusively by an **Organization**.

Third-Party Violation

means any actual or alleged harassment or unlawful discrimination, as described in subparagraphs (2) and (3) of the definition of **Employment Practices Violation**, or the violation of the civil rights of an individual relating to such harassment or discrimination, when such acts are alleged to be committed against any individual other than an **Insured Person** or applicant for employment with the **Organization** or with an **Outside Entity**, including, but not limited to, students, patients, members, customers, vendors and suppliers.

Third Party Retention

means the Retention applicable to **Loss** that arises out of any **Third-Party Violation** alleging a **Third-Party Violation**.

Wrongful Act

means any **Employment Practices Violation**, **Third-Party Violation** or **Wrongful Internet Activity**.

Wrongful Internet Activity

means any actual or alleged:

(1) **Employment Practices Violation** alleged by an **Employee**; or

(2) **Third Party Violation**,

when committed by an **Employee** by means of the internet, including, but not limited to, social networking activities, regardless of whether such internet activity is during or after work hours or on or off the work premises. For purposes of the application of this definition, an individual shall be deemed to be an **Employee** regardless of whether such individual was acting in his or her capacity as an **Employee**.



FIDUCIARY LIABILITY INSURANCE EDGE[®] EMPLOYEE BENEFIT PLAN FIDUCIARY LIABILITY
("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 **FLI Coverage Section**, unless otherwise explicitly stated to the contrary in this **FLI Coverage Section**.

In consideration of the payment of the premium and each of their respective rights and obligations in this policy, the **Insureds** and the **Insurer** agree as follows:

1. INSURING AGREEMENTS

All coverage granted for **Loss** under this **Coverage Section** is provided solely with respect to: (i) **Claims** first made against an **Insured**; and (ii) **Voluntary Compliance Losses** first ascertained by or assessed against an **Insured**, in each such event, during the **Policy Period** or any applicable **Discovery Period** and reported to the **Insurer** as required by this **Coverage Section**. **Claims** that are fact-finding investigations which do not allege a **Wrongful Act** and **Claims** that are **Internal Appeals** shall each be deemed first made when they are reported. Subject to the foregoing and the other terms, conditions, and limitations of this policy, this **Coverage Section** affords the following coverage:

A. *Insured Person Coverage*

This policy shall pay the **Loss** of any **Insured Person** that no **Organization** or **Plan** has indemnified or paid, and that arises from any **Claim**:

- (1) made against such **Insured Person** for any **Wrongful Act** of such **Insured Person**; or
- (2) that is a fact-finding investigation which does not allege in writing a **Wrongful Act** or that is an **Internal Appeal**, if an **Insured** elects to give notice.

B. *Indemnification of Insured Person Coverage*

This policy shall pay the **Loss** of an **Organization** or **Plan** that arises from any **Claim**:

- (1) made against any **Insured Person** for any **Wrongful Act** of such **Insured Person**; or
- (2) that is a fact-finding investigation which does not allege in writing a **Wrongful Act** or that is an **Internal Appeal**, if an **Insured** elects to give notice;

but only to the extent that such **Organization** or **Plan** has indemnified such **Loss** of, or paid such **Loss** on behalf of, the **Insured Person**.

C. *Organization And Plan Coverage*

This policy shall pay the **Loss** of any **Organization** or **Plan** arising from any **Claim**:

- (1) made against such **Organization** or **Plan** for any **Wrongful Act** of such **Organization** or **Plan** (or of any employee for whom such **Organization** is legally responsible); or
- (2) that is a fact-finding investigation which does not allege in writing a **Wrongful Act** or that is an **Internal Appeal**, if an **Insured** elects to give notice.

D. Voluntary Compliance Loss Coverage

This policy shall pay any **Voluntary Compliance Loss** first ascertained by or assessed against an **Insured**, subject to the aggregate sublimit of liability set forth in Clause 7 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 circumstances giving rise to such **Voluntary Compliance Loss** result in a **Claim**.

2. EXTENSIONS

A. Settlor Capacity

Wrongful Act shall include any actual or alleged act, error or omission by an **Insured** in a settlor capacity as respects a **Plan**.

B. Disproven Allegation Protection

In the event that an allegation which triggers potential coverage under this **Coverage Section** is disproven, so that a **Claim** is outside the scope of coverage under this **Coverage Section**, the **Insurer** shall not seek recovery of amounts that it has previously paid. Situations that would trigger this protection include, but are not limited to when it is proven that:

- (1) an **Executive** or employee of the **Organization** who was alleged to be a **Plan** fiduciary was not in fact a **Plan** fiduciary;
- (2) an alleged **Plan** was not a plan or was not a covered **Plan**; or
- (3) an **Organization** alleged to be the sponsor of a **Plan** was not in fact the sponsor of such plan.

C. Independent Fiduciary Fees

Loss shall include reasonable and necessary fees and expenses of an independent fiduciary if such fiduciary is retained to review a proposed settlement of a covered **Claim**. **Loss** shall also include reasonable and necessary fees and expenses of any law firm hired by such independent fiduciary to facilitate a review of such proposed settlement.

D. Managed Care Coverage

This policy shall pay the **Loss** of an **Insured** arising from a **Claim** made against such **Insured** alleging improper or negligent selection of a **Managed Care Services** provider or denial or delay of any benefit under a health care, pharmaceutical, vision, or dental **Plan** of an **Insured**.

E. LMRA Coverage

If, and during the time that, coverage is provided under this **Coverage Section**, then this policy shall also pay the **Loss** of an **Insured** arising from an allegation that such **Insured** violated Section 301 of the Labor Management Relations Act ("LMRA") relating to alleged violations of collectively bargained contracts in connection with a **Plan**.

F. First Dollar E-Discovery Consultant Services

For any **Claim**, no Retention shall apply to the first \$25,000 in **Defense Costs** incurred as **E-Discovery Consultant Services**.

G. Global Liberalization

For **Loss** from that portion of any **Claim** maintained in a **Foreign Jurisdiction** or to which the law of a **Foreign Jurisdiction** is applied, the **Insurer** shall apply the terms and conditions of this **Coverage Section** as amended to include those of the **Foreign Policy** in the **Foreign Jurisdiction** that are more favorable to **Insureds** in the **Foreign Jurisdiction**. This *Global Liberalization Clause*

shall not apply to any provision of any policy that has worldwide effect, including but not limited to any provision addressing limits of liability (primary, excess or sublimits), retentions, other insurance, non-renewal, duty to defend, defense within or outside the limits, taxes, conformance to law or excess liability coverage, any claims made provisions, and any endorsement to this policy that excludes or limits coverage for specific events or litigation or that specifically states that it will have worldwide effect.

3. INDEMNIFICATION PROTECTIONS

A. *Advancement*

If for any reason (including, but not limited to insolvency) an **Organization** and the relevant **Plan** fail or refuse to advance, pay or indemnify covered **Loss** of an **Insured Person** within the applicable Retention, if any, then the **Insurer** shall advance such amounts on behalf of the **Insured Person** until either (i) an **Organization** or **Plan** has agreed to make such payments, or (ii) the Retention has been satisfied. In no event shall any such advancement by the **Insurer** relieve any **Organization** or any relevant **Plan** of any duty it may have to provide advancement, payment or indemnification to any **Insured Person**.

Advancement, payment or indemnification of an **Insured Person** by the **Organization** or **Plan** is deemed "failed" if it has been requested by an **Insured Person** in writing and has not: been provided by; agreed to be provided by; or acknowledged as an obligation by an **Organization** or **Plan** within sixty (60) days of such request; and advancement, payment or indemnification by the **Organization** or **Plan** is deemed "refused" if such **Organization** or **Plan** gives a written notice of the refusal to the **Insured Person**. Advancement, payment or indemnification of an **Insured Person** by the **Organization** or **Plan** shall only be deemed "failed" or "refused" to the extent such advancement, payment or indemnification is not: provided; agreed to be provided; or acknowledged by and collectible from any **Organization** or **Plan**. Any payment or advancement by the **Insurer** within an applicable Retention shall apply toward the exhaustion of the **Limits of Liability**.

B. *Order Of Payments*

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

- (1) First, pay all **Loss** covered under Insuring Agreement A. *Insured Person Coverage*;
- (2) Second, only after payment of **Loss** has been made pursuant to subparagraph (1) above and to the extent that any amount of the applicable **Separate Limit of Liability** or **Shared Limit of Liability** shall remain available, at the written request of the chief executive officer of the **Named Entity**, either pay or withhold payment of **Loss** covered under Insuring Agreement B. *Indemnification Of Insured Person Coverage*; and
- (3) Lastly, only after payment of **Loss** has been made pursuant to subparagraphs (1) and (2) above and to the extent that any amount of the applicable **Separate Limit of Liability** or **Shared Limit of Liability** shall remain available, at the written request of the chief executive officer of the **Named Entity**, either pay or withhold payment of **Loss** covered under Insuring Agreement C. *Organization and Plan Coverage* and Insuring Agreement D. *Voluntary Compliance Loss Coverage*.

In the event the **Insurer** withholds payment pursuant to subparagraphs (2) and/or (3) above, then the **Insurer** shall, at such time and in such manner as shall be set forth in instructions of the chief executive officer of the **Named Entity**, remit such payment to an **Organization** or directly to or on behalf of an **Insured**.

4. DEFENSE AGREEMENTS

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 4. The **Insurer** shall not, however, be obligated to defend any **Claim** after the **Policy Aggregate** or any applicable **Separate Limit of Liability** or **Shared Limit of Liability** has been exhausted.

B. *Insured's Option to Assume Defense*

Notwithstanding the above, the **Insureds** shall have the right to assume the defense of any **Claim** made against them. This right shall be exercised in writing by the **Named Entity** on behalf of all **Insureds** within sixty (60) days of the reporting of the **Claim** to the **Insurer**. Upon receipt of such written request, the **Insurer** shall tender the defense of the **Claim** to the **Insureds**. Once the defense has been so tendered, the **Insurer** cannot re-assume the defense of the **Claim**. The **Insurer** shall have the right, but not the obligation, to effectively associate with the **Insureds** in the defense of any **Claim** that involves or appears reasonably likely to involve the **Insurer**, including, but not limited to negotiating a settlement. Provided that the **Insurer** shall be permitted to effectively associate with the **Insureds** in the defense of any **Claim**, the **Insurer's** consent to settlements, stipulated judgments and **Defense Costs** shall not be unreasonably withheld.

C. *Advancement of Defense Costs*

If the **Insureds** against whom a **Claim** is made exercise their right to assume the defense of such **Claim**, the **Insurer** shall advance, excess of any applicable Retention, covered **Defense Costs**, on a current basis, but no later than ninety (90) days after the **Insurer** has received itemized bills for those **Defense Costs**. Such advance payments by the **Insurer** shall be repaid to the **Insurer** by each and every **Insured**, severally according to their respective interests, in the event and to the extent that any such **Insured** shall not be entitled under this **Coverage Section** to payment of such **Loss**.

D. *Claims Participation and Cooperation*

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

The failure of any **Insured** to give the **Insurer** cooperation and information as it may reasonably require shall not impair the rights of any **Insured Person** under this **Coverage Section**.

The **Insureds** shall contest any **Claim** made against them and 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**.

E. *Full Settlement Within Retention/ Consent Waived*

If all **Insured** defendants are able to dispose of all **Claims** which are subject to one Retention (inclusive of **Defense Costs**) for an amount not exceeding the Retention, then the **Insurer's** consent shall not be required for such disposition.

5. EXCLUSIONS

A. Full Severability Of Exclusions

In determining whether any of the exclusions set forth in Clause 5.B below apply, the **Wrongful Acts** of any **Insured** shall not be imputed to any other **Insured**.

B. Exclusions

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

- (1) *Conduct* arising out of, based upon or attributable to any:
 - (a) profit or advantage to which the **Insured** was not legally entitled; or
 - (b) deliberate criminal or deliberate fraudulent act, or any knowing or willful violation of any statute, rule or law, including, but not limited to **Employee Benefit Law**, by the **Insured**;if established by any final, non-appealable adjudication in any action or proceeding other than an action or proceeding initiated by the **Insurer** to determine coverage under the policy;
- (2) *Pending & Prior Litigation* alleging, arising out of, based upon or attributable to, as of the **Continuity Date**, any pending or prior: (a) litigation; or (b) administrative or regulatory proceeding or investigation of which any **Insured** had notice; or alleging or derived from the same or essentially the same facts as alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation;
- (3) *Discrimination* for discrimination in violation of any law, except that this exclusion shall not apply to discrimination in violation of **Employee Benefit Law**;
- (4) *Bodily Injury & Property Damage* for bodily injury, sickness, disease, or death of any person, or damage to or destruction of any tangible property, including the loss of use thereof; provided, however, this exclusion shall not apply to: (a) **Defense Costs** incurred in the defense of a **Claim** for a violation of **ERISA** by an **Insured**; or (b) the coverage afforded under Extension 2.D. *Managed Care Coverage*; or
- (5) *Prior Notice* alleging, arising out of, based upon or attributable to the facts alleged, or to the same or 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 employee benefit plan fiduciary liability insurance policy in force prior to the **Inception Date** of this policy.

6. RETENTION

In addition to the provisions of Clause 2. RETENTION of the **General Terms and Conditions**, in no event shall a Retention be applied to the following: (i) **Non-Indemnifiable Loss**; (ii) **Voluntary Compliance Loss**; (iii) **Section 502(c) Penalties**; (iv) **Pension Protection Act Penalties**; (v) **HIPAA Penalties**; (vi) **Health Care Reform Penalties**; (vii) **Section 4975 Penalties**, or (viii) the first \$25,000 in **Defense Costs** incurred for **E-Discovery Consultant Services**.

7. LIMITS OF LIABILITY

In addition to the provisions of Clause 3. LIMITS OF LIABILITY of the **General Terms and Conditions**, the following sublimits shall apply to the coverage provided by this **Coverage Section**:

<i>(a) Voluntary Compliance Loss:</i>	<i>\$250,000 or 5% of the Separate Limit of Liability or Shared Limit of Liability stated in the Declarations for this Coverage Section, whichever is less</i>
<i>(b) Section 502(c) Penalties:</i>	<i>\$250,000 or 5% of the Separate Limit of Liability or Shared Limit of Liability stated in the Declarations for this Coverage Section, whichever is less</i>
<i>(c) Pension Protection Act Penalties:</i>	<i>\$250,000 or 5% of the Separate Limit of Liability or Shared Limit of Liability stated in the Declarations for this Coverage Section, whichever is less</i>
<i>(d) HIPAA Penalties:</i>	<i>\$1.5 million or the Separate Limit of Liability or Shared Limit of Liability stated in the Declarations for this Coverage Section, whichever is less</i>
<i>(e) Health Care Reform Penalties:</i>	<i>\$250,000 or 5% of the Separate Limit of Liability or Shared Limit of Liability stated in the Declarations for this Coverage Section, whichever is less</i>
<i>(f) Section 4975 Penalties:</i>	<i>\$250,000</i>

As stated in Clause 3 of the **General Terms and Conditions**, each sublimit of liability in this policy is the maximum limit of the **Insurer's** liability for all **Loss** in the aggregate under this policy that is subject to that sublimit of liability. All sublimits of liability shall be part of, and not in addition to, the **Policy Aggregate** and this **Coverage Section's** applicable **Separate Limit of Liability** or **Shared Limit of Liability**.

8. NOTICE AND REPORTING

Notice hereunder shall be given in writing to the **Insurer** at the **Claims Address** indicated in the Declarations. If mailed or transmitted by electronic mail, the date of such mailing or transmission shall constitute the date that such notice was given and proof of mailing or transmission shall be sufficient proof of notice.

A. *Reporting a Claim*

The **Insured(s)** shall, as a condition precedent to the obligations of the **Insurer** under this **Coverage Section**, notify the **Insurer** in writing of a **Claim** made against an **Insured** as soon as practicable after the **Named Sponsor's Risk Manager** or **General Counsel** (or equivalent position) first becomes aware of the **Claim**. In all such events, notification must be provided no later than:

- (i) sixty (60) days after the end of the **Policy Period** or the **Discovery Period** (if applicable) if this **Coverage Section** is not renewed with the **Insurer**; or
- (ii) two hundred and seventy (270) days after the end of the **Policy Period** or **Discovery Period** (if applicable) if the expiring **Coverage Section** is renewed with the **Insurer**.

As exceptions to the foregoing notice provision the **Insureds** shall have no obligation to give notice of:

- (1) a fact-finding investigation before the earliest of the time that: (i) it becomes a **Litigated Matter**; (ii) a **Wrongful Act** is alleged in writing; or (iii) any **Insured** has incurred defense costs for which coverage is being sought; or
- (2) an **Internal Appeal** before the earliest of the time that: (i) it becomes a **Litigated Matter**; (ii) any investment loss within a **Plan** is alleged; or (iii) any **Insured** has incurred defense costs for which coverage is being sought.

B. *Reporting Voluntary Compliance Loss and Covered Penalties*

The **Insured(s)** shall, as a condition precedent to the obligations of the **Insurer** under this **Coverage Section**, notify the **Insurer** in writing of a **Voluntary Compliance Loss** or of **Covered Penalties** as soon as practicable after such **Voluntary Compliance Loss** is first ascertained by or assessed against an **Insured**, or such **Covered Penalties** are first imposed, respectively, but in all such events no later than sixty (60) days after the end of the **Policy Period** or the **Discovery Period** (if applicable).

C. *Relation Back to the First Reported Claim*

Solely for the purpose of establishing whether any subsequent **Related Claim** was first made during the **Policy Period** or **Discovery Period** (if applicable), if during any such period a **Claim** was first made and reported in accordance with Clause 8.A. above, then any **Related Claim** which is subsequently made against an **Insured** and that is reported to the **Insurer** shall be deemed to have been first made at the time that such previously reported **Claim** was first made.

With respect to any subsequent **Related Claim**, this policy shall only cover **Loss** incurred after such subsequent **Related Claim** is actually made against an **Insured**.

D. *Relation Back to Reported Circumstances Which May Give Rise to a Claim*

If during the **Policy Period** or **Discovery Period** (if applicable) an **Insured** becomes aware of and notifies the **Insurer** in writing of circumstances that may give rise to a **Claim** being made against an **Insured** and provides details as required below, then any **Claim** that is subsequently made against an **Insured** that arises from such circumstances and that is reported in accordance with Clause 8.A. above shall be deemed to have been first made at the time of the

notification of circumstances for the purpose of establishing whether such subsequent **Claim** was first made during the **Policy Period** or during the **Discovery Period** (if applicable). Coverage for **Loss** arising from any such subsequent **Claim** shall only apply to **Loss** incurred after that subsequent **Claim** is actually made against an **Insured**. In order to be effective, notification of circumstances must specify the facts, circumstances, nature of the anticipated alleged **Wrongful Act** and reasons for anticipating such **Claim**, with dates, persons and entities potentially involved; however, notification that includes a copy of an agreement to toll a statute of limitations shall be presumed sufficiently specific as to the potential **Claims** described within that agreement.

9. DISCOVERY PREMIUM

In the event the **Named Entity** shall cancel or the **Named Entity** or the **Insurer** shall refuse to renew this **Coverage Section**, the **Additional Premium Amount** for: (a) one year shall be no more than 125% of the **Full Annual Premium**; and (b) two to six years shall be an amount to be determined by the **Insurer**. As used herein, "**Full Annual Premium**" means the premium level in effect for this **Coverage Section** immediately prior to the end of the **Policy Period**.

In the event of a **Transaction**, the **Additional Premium Amount** shall be an amount to be determined by the **Insurer**.

10. PANEL COUNSEL AND E-CONSULTANT FIRMS

A. *Pre-Authorized Defense Attorneys*

The list of approved panel counsel law firms ("**Panel Counsel**") is accessible through the online directory at <http://www.aig.com/us/panelcounseldirectory> under the "Fiduciary Liability (ERISA & Non-ERISA)" link. The list provides **Insureds** with a choice of law firms from which a selection of legal counsel shall be made to conduct the defense of any: (1) **Claim** brought by any government entity, or (2) **Claim** brought in the form of a class or representative action (collectively "**Designated Claim**").

In the event the **Insurer** is operating under a duty to defend pursuant to Clause 4.A. of this **Coverage Section**, then the **Insurer** shall select a **Panel Counsel** to defend the **Insureds** in a **Designated Claim**. Upon the written request of the **Named Entity**, the **Insurer** may consent to a different **Panel Counsel** selected by the **Named Entity** to defend the **Insureds**, which consent shall not be unreasonably withheld.

In the event the **Insureds** have assumed the defense of the **Claim** pursuant to Clause 4.B. of this **Coverage Section**, then the **Insureds** shall select a **Panel Counsel** to defend the **Insured** in a **Designated Claim**. In addition, with the express prior written consent of the **Insurer**, an **Insured** may select a **Panel Counsel** different from that selected by another **Insured** defendant if such selection is required due to an actual conflict of interest or is otherwise reasonably justifiable.

The selection of a **Panel Counsel** to defend a **Designated Claim** shall not be restricted to the jurisdiction in which the **Designated Claim** is brought.

The list of **Panel Counsel** may be amended from time to time by the **Insurer**. However, if a firm is removed from the list during the **Policy Period**, the **Insureds** shall be entitled to select such firm to conduct the defense of any **Designated Claim** made against such **Insureds** during the **Policy Period**.

B. *Pre-Approved E-Consultant Firms*

The list of pre-approved **E-Consultant Firms** is accessible through the online directory at <http://www.aig.com/us/panelcounseldirectory> under the "e-Consultant Panel Members" link.

The list provides the **Insureds** with a choice of firms from which a selection of an **E-Consultant Firm** shall be made. Any **E-Consultant Firm** may be hired by an **Insured** to perform **E-Discovery Consultant Services** without further approval by the **Insurer**.

11. SUBSIDIARY AND PLAN COVERAGE

A. *Former Subsidiaries*

In the event the **Named Sponsor** loses **Management Control** of a **Subsidiary** during or prior to the **Policy Period**, coverage with respect to such **Subsidiary** and its **Insured Persons** shall continue until termination of this policy, but only with respect to **Claims** for **Wrongful Acts** that occurred or are alleged to have occurred during the time that the **Named Sponsor** had **Management Control** of such entity either directly or indirectly through one or more of its **Subsidiaries**.

B. *Scope Of Subsidiary Coverage*

Coverage as is afforded under this policy with respect to a **Claim** made against any **Subsidiary** and/or any **Insured Person** thereof shall only apply for **Wrongful Acts** committed or allegedly committed during the time that such **Subsidiary** and such **Insured Person** meet the respective definitions of **Subsidiary** and **Insured Person** set forth in this **Coverage Section**.

C. *Scope Of Plan Coverage*

Coverage as is afforded under this **Coverage Section** with respect to a **Claim** made against any **Plan** shall only apply for **Wrongful Acts** that occurred or that are alleged to have occurred prior to the date any such **Plan** was sold, spun-off, transferred or terminated or prior to the date that the **Sponsor Organization** or **Insured Person** ceases to be a fiduciary or ceases his, her or its **Administration** of a sold, spun-off or transferred **Plan**, or in the case of a terminated **Plan**, prior to the final date of asset distribution of such **Plan**.

12. APPLICATION AND UNDERWRITING

A. *Application And Reliance*

The **Insurer** has relied upon the accuracy and completeness of the statements, warranties and representations contained in the **Application**. All such statements, warranties and representations are the basis for this **Coverage Section** and are to be considered as incorporated into this **Coverage Section**.

B. *Insured Person Coverage Non-Rescindable*

Under no circumstances shall the coverage provided by this **Coverage Section** for **Loss** under Insuring Agreement A. *Insured Person Coverage* be deemed void, whether by rescission or otherwise, once the premium has been paid.

C. *Severability Of The Application*

The **Application** shall be construed as a separate application for coverage by each **Insured Person**. With respect to the **Application**, no knowledge possessed by any **Organization** or any **Insured Person** shall be imputed to any other **Insured Person**.

If the statements, warranties and representations in the **Application** were not accurate and complete and materially affected either the acceptance of the risk or the hazard assumed by the **Insurer** under this **Coverage Section**, then the **Insurer** shall have the right to void coverage under this **Coverage Section**, *ab initio*, with respect to:

(1) **Loss** under Insuring Agreement B. *Indemnification Of Insured Person Coverage* for the indemnification of any **Insured Person** who knew, as of the inception date of the **Policy Period**,

the facts that were not accurately and completely disclosed; and

(2) **Loss** under Insuring Agreement C. *Organization and Plan Coverage* if:

- (i) the person who executed the **Application**; or
- (ii) any past or present chief executive officer or chief financial officer of the **Named Entity**,

knew, as of the inception date of the **Policy Period**, the facts that were not accurately and completely disclosed.

The foregoing applies even if the **Insured Person** did not know that such incomplete or inaccurate disclosure had been provided to the **Insurer** or included within the **Application**.

13. PAYMENTS AND OBLIGATIONS OF ORGANIZATIONS AND OTHERS

A. *Indemnification By Organizations*

The **Organizations** agree to indemnify the **Insured Persons** and/or advance **Defense Costs** to the fullest extent permitted by law. If the **Insurer** pays under this **Coverage Section** any indemnification or advancement owed to any **Insured Person** by any **Organization** within an applicable Retention, then that **Organization** shall reimburse the **Insurer** for such amounts and such amounts shall become immediately due and payable as a direct obligation of the **Organization** to the **Insurer**. The failure of an **Organization** to perform any of its obligations to indemnify the **Insured Persons** and/or advance **Defense Costs** under this **Coverage Section** shall not impair the rights of any **Insured Person** under this **Coverage Section**.

B. *Other Insurance And Indemnification*

Such insurance as is provided by this **Coverage Section** shall apply only as excess over any other valid and collectible insurance, unless such other insurance is specifically written as excess insurance over the applicable **Separate Limit of Liability** or **Shared Limit of Liability** provided by this **Coverage Section**. This **Coverage Section** shall specifically be excess of any other valid and collectible insurance pursuant to which any other insurer has a duty to defend a **Claim** for which this **Coverage Section** may be obligated to pay **Loss**. Such insurance as is provided by this **Coverage Section** shall apply as primary to any personal "umbrella" excess liability insurance purchased by an **Insured Person**.

C. *Subrogation and Waiver of Recourse*

To the extent of any payment under this **Coverage Section**, the **Insurer** shall be subrogated to all of the **Organizations'** and **Insureds'** rights of recovery. Each **Organization** and each **Insured Person** shall execute all papers reasonably required and provide reasonable assistance and cooperation in securing or enabling the **Insurer** to exercise subrogation rights or any other rights, directly or in the name of the **Organization** or any **Insured Person**.

In no event, however, shall the **Insurer** exercise its rights of subrogation against an **Insured** under this **Coverage Section** unless the Conduct Exclusion applies with regard to such **Insured**.

In the event that this **Coverage Section** has been purchased by an **Insured** other than a **Plan**, it is agreed that the **Insurer** waives its right of recourse against the **Insured** under Section 410(b)(1) of ERISA as amended.

14. DEFINITIONS

The following definitions shall apply only for purposes of coverage provided under this **Coverage Section**. Terms appearing in **bold** in this **Coverage Section** but not defined herein shall have the meaning and/or value ascribed to them in the Declarations or in the *Definitions Clause* of the **General Terms and Conditions**.

Administration means, with respect to a **Plan**, counseling employees, participants, and beneficiaries; providing interpretations; handling of records; determining and calculating benefits; preparing, distributing or filing required notices or documents; or activities affecting enrollment, termination or cancellation of employees, participants, and beneficiaries under the **Plan**.

Application means:

- (1) the written statements and representations made by an **Insured** and provided to the **Insurer** during the negotiation of this policy, or contained in any application or other materials or information provided to the **Insurer** in connection with the underwriting of this policy;
- (2) all warranties executed by or on behalf of an **Insured** and provided to the **Insurer** in connection with the underwriting of this policy or the underwriting of any other employee benefit plan fiduciary liability policy (or equivalent) issued by the **Insurer**, or any of its affiliates, of which this policy is a renewal, replacement or which it succeeds in time; and
- (3) each and every public filing by or on behalf of an **Organization** made with any federal, state, local or foreign regulatory agency (including, but not limited to the U.S. Securities and Exchange Commission and the U.S. Department of Labor ("DOL"), CPA-audited financial statements for all **Plans**, with investment portfolios, Form 5500's and any attachments thereto for all **Plans**, any financial information in such filings, and any certifications relating to the accuracy of the foregoing), provided that such public filing was filed during the twelve (12) month period immediately preceding the inception of the **Policy Period**.

Benefits means any obligation under a **Plan** to a **Plan** participant or beneficiary that is a payment of money or property; or any privilege, right, option or perquisite.

Claim means:

- (1) a written demand for monetary, non-monetary or injunctive relief, other than an initial application for benefits;
- (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 (in the case of a civil proceeding);
 - (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; or
- (3) a formal agency or regulatory adjudicative proceeding to which an

Insured is subject;

- (4) any fact-finding investigation, whether or not a **Wrongful Act** is alleged, by the DOL or the Pension Benefit Guaranty Corporation (“PBGC”) or any similar governmental authority located outside the United States, including, but not limited to the United Kingdom’s Pensions Ombudsman or Pensions Regulator;
- (5) any written request to toll a statute of limitations which may be applicable to any Claim that may be made for any **Wrongful Act** of any **Insured**; or
- (6) any **Internal Appeal**.

“**Claim**” shall include any **Securities Claim**.

Corporate Trustee Company means any corporation formed and operating outside of the United States of America established by the **Organization** and duly appointed to act as a trustee of a **Plan**.

Covered Penalties means solely in connection with a **Plan**:

- (i) *Section 502(i)* the 5% or less civil penalty imposed upon an **Insured** under Section 502(i) of **ERISA**;
- (ii) *Section 502(l)* the 20% or less civil penalty imposed upon an **Insured** under Section 502(l) of **ERISA**, with respect to a covered settlement or judgment;
- (iii) *United Kingdom* the civil fines and penalties assessed against an **Insured** by either the United Kingdom’s Pensions Ombudsman or the Pensions Regulator or any successor body thereto;
- (iv) *Voluntary Compliance Loss* **Voluntary Compliance Loss** subject to the aggregate sublimit of liability set forth in Clause 7 of this **Coverage Section**;
- (v) *Section 502(c)* the civil penalties under Section 502(c) of **ERISA**, other than penalties under the Pension Protection Act, subject to the aggregate sublimit of liability set forth in Clause 7 of this **Coverage Section** (“**Section 502(c) Penalties**”);
- (vi) *Pension Protection Act* the civil penalties under the Pension Protection Act of 2006, subject to the aggregate sublimit of liability set forth in Clause 7 of this **Coverage Section** (“**Pension Protection Act Penalties**”);
- (vii) *HIPAA* the civil penalties for violations of the privacy provisions of the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”), subject to the aggregate sublimit of liability set forth in Clause 7 of this **Coverage Section** (“**HIPAA Penalties**”);

- (viii) *Health Care Reform* the civil penalties imposed under rules and regulations (including interim final rules and regulations) provided by governmental agencies (including the U.S. Department of Health and Human Services, the U.S. Department of the Treasury, the U.S. Internal Revenue Service (“IRS”), and the DOL, the Office of Consumer Information and Insurance Oversight, and the Employee Benefits Security Administration), for inadvertent violations by an **Insured of Health Care Reform Law**, subject to the aggregate sublimit of liability set forth in Clause 7 of this **Coverage Section (“Health Care Reform Penalties”)**; and
- (ix) *Section 4975* the 15% or less tax penalty imposed upon an **Insured** under Section 4975 of the Internal Revenue Code of 1986, with respect to covered judgments, subject to the aggregate sublimit of liability set forth in Clause 7 of this **Coverage Section (“Section 4975 Penalties”)**.

Defense Costs means reasonable and necessary fees, costs, and expenses consented to by the **Insurer** (including the cost of **E-Discovery Consultant Services** and premiums for any appeal bond, attachment bond or similar bond, but without any obligation to apply for or furnish any such bond) resulting solely from the investigation, adjustment, defense and/or appeal of a **Claim** against an **Insured**.

Defense Costs shall not include the compensation of any **Insured Person** or any employee of an **Insured**.

Employee Benefit Law

means:

- (1) **ERISA** and any similar common or statutory law anywhere in the world (including, but not limited to the United Kingdom’s Pensions Act 2004, Pensions Act 1995, and Pension Schemes Act 1993; and the Pension Benefit Standards Act, 1985 of Canada), as amended, and any rules and regulations promulgated thereunder to which a **Plan** is subject; and
- (2) the privacy regulations under HIPAA; and solely with respect to subparagraph (2) of the definition of **Wrongful Act**, unemployment insurance, Social Security, government-mandated disability benefits or similar law.

In no event shall **Employee Benefit Law**, other than as set forth in subparagraph (2) above, include any law other than **ERISA** which concerns workers’ compensation, unemployment insurance, Social Security, government-mandated disability benefits or similar law.

ERISA

means the Employee Retirement Income Security Act of 1974, as amended, including, but not limited to amendments pursuant to:

- (1) COBRA (the Consolidated Omnibus Budget Reconciliation Act of 1985);
- (2) HIPAA;
- (3) the Newborns’ and Mothers’ Health Protection Act of 1996;
- (4) the Mental Health Parity Act of 1996;
- (5) the Women’s Health and Cancer Rights Act of 1998;
- (6) the Pension Protection Act of 2006; and

(7) **Health Care Reform Law;**

and including any amendments thereto and regulations thereunder.

Executive

means any past, present and future duly elected or appointed director, officer, trustee or governor of a corporation, management committee member of a joint venture and member of the management board of a limited liability company (or equivalent position).

Foreign Policy

means the standard employee benefit plan fiduciary liability insurance policy (including all mandatory endorsements, if any) approved by the **Insurer** or any of its affiliates to be sold within a **Foreign Jurisdiction** that provides coverage substantially similar to the coverage afforded under this **Coverage Section**. If more than one such policy exists, then "**Foreign Policy**" means the standard basic policy form most recently offered for sale for comparable risks by the **Insurer** or any of its affiliates in that **Foreign Jurisdiction**. The term "**Foreign Policy**" shall not include any directors and officers, executive or partnership managerial, or professional liability insurance coverage.

Health Care Reform Law

means the Patient Protection and Affordable Care Act ("PPACA") and the Health Care and Education Reconciliation Act of 2010.

Insured

means any:

- (1) **Insured Person;**
- (2) **Plan;**
- (3) **Organization;**
- (4) **Plan Committee** of an **Organization**, in its capacity as a fiduciary, trustee or settlor of a **Plan**, or in its **Administration** of a **Plan**; or
- (5) **Corporate Trustee Company.**

Insured Person

means, solely with respect to a **Plan**, any past, present or future:

- (1) **Executive** or employee of an **Organization** or of a **Plan** in his or her **Administration** of a **Plan** or in his or her capacity as a fiduciary or trustee of a **Plan**;
- (2) member of a pension committee of an **Organization** in his, her, or its capacity as a fiduciary or in his, her, or its **Administration** of a **Plan**;
- (3) natural person in a position equivalent to a position listed in subparagraph (1) or (2) above in the event that the **Organization** is operating in a **Foreign Jurisdiction**; or
- (4) former **Executive** or employee currently serving in a consulting or advisory capacity to a **Plan** if the **Organization** provides indemnification to such individual in the same manner as is provided to other **Insured Persons**.

"**Insured Person**" also means, solely with respect to a **Plan**, any past, present or future **Executive** or employee of an **Organization** in his or her settlor capacity as respects a **Plan**.

"**Insured Person**" shall not include any individual in his or her capacity as an employee of any third party, including a service provider, other than a

Corporate Trustee Company.

- Internal Appeal** means an appeal of an adverse benefits determination by an **Insured** pursuant to the DOL's claim procedure regulation at 29 C.F.R. Section 2560.503-1(h) or similar claim procedures pursuant to applicable law.
- Litigated Matter** means any civil, criminal, or arbitration proceeding for monetary, non-monetary or injunctive relief which is commenced by: (1) service of a complaint or similar pleading (in the case of a civil proceeding); or (2) return of an indictment, information or similar document (in the case of a criminal proceeding).
- Loss** means damages, settlements, judgments (including pre/post-judgment interest on a covered judgment), **Defense Costs**, **Voluntary Compliance Loss** and **Covered Penalties**; however, "**Loss**" shall not include:
- (1) civil or criminal fines or penalties other than **Covered Penalties**;
 - (2) taxes or tax penalties other than **Covered Penalties**;
 - (3) cleanup costs relating to hazardous materials, pollution or product defects;
 - (4) any amounts for which an **Insured** is not financially liable or which are without legal recourse to an **Insured**;
 - (5) wages, tips, and commissions;
 - (6) **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 **Insured Person**; provided, however, that **Loss** shall include a monetary award, or fund for settling, a **Claim** against any **Insured** to the extent it alleges a loss to a **Plan** and/or loss in the actual accounts of participants in a **Plan** by reason of a change in value of the investments held by that **Plan**, including, but not limited to the securities of the **Organization**, regardless of whether the amounts sought in such **Claim** have been characterized by plaintiffs as "benefits" or held by a court to be "benefits"; and
 - (7) 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, exemplary and multiplied damages imposed upon any **Insured** (subject to this policy's other terms, conditions, and limitations, including, but not limited to the Conduct Exclusion). Enforceability of this paragraph shall be governed by the applicable law that most favors coverage for such penalties and punitive, exemplary, and multiplied damages.
- Defense Costs** shall be provided for items specifically excluded from **Loss** pursuant to subparagraphs (1) – (7) above, subject to the other terms, conditions, and exclusions of this policy.
- Managed Care Services** means the administration or management of a health care, pharmaceutical, vision or dental **Plan** utilizing cost control mechanisms, including, but not limited to utilization review, case management, disease management,

pharmacy management, the use of a preferred provider medical, vision or dental network, or a health maintenance organization.

Management Control

means:

- (1) owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of: the Board of Directors of a corporation; the management committee of a joint venture; or the management board of a limited liability company; or
- (2) having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of a **Sponsor Organization**, to elect, appoint or designate a majority of: the Board of Directors of a corporation; the management committee of a joint venture; or the management board of a limited liability company.

Multiemployer Plan

means any multiemployer plan, as defined by **ERISA**, which is operated jointly by the **Organization**, a labor organization, and one or more other employers for the benefit of the employees of the **Organization** among others.

Non-Indemnifiable Loss

means **Loss** that has not been indemnified by either an **Organization** or a **Plan**, and for which an **Organization** is not permitted or required to indemnify an **Insured Person** pursuant to law or contract or the charter, by-laws, operating agreement or similar documents of an **Organization**.

Organization

has the meaning set forth in the **General Terms and Conditions**.

Additionally, solely for purposes of this **Coverage Section**, "**Organization**" also means a **Corporate Trustee Company** in any **Foreign Jurisdiction**.

Plan

means any:

- (1) qualified or non-qualified plan, fund, trust or program, including, but not limited to any pension plan, welfare plan, health savings account plan, IRA-based plan, stock option plan, stock purchase plan, deferred compensation program, supplemental executive retirement program, top-hat plan, excess benefit plan, cafeteria plan, dependent care assistance program, fringe benefit plan or voluntary employees' beneficiary association as defined in the Internal Revenue Code of 1986, as amended ("VEBA") established anywhere in the world, which is sponsored solely by an **Organization**, and with respect to a collectively bargained **Plan**, operated jointly by an **Organization** and a labor organization, in each case solely for the benefit of such **Organization's** current or former employees or **Executives**, and which was in existence on or before the **Inception Date** of this policy.
- (2) plan described in subparagraph (1) above acquired during the **Policy Period**. However, if such plan is a pension plan:
 - (a) acquired as a result of the **Organization's** acquisition of a **Subsidiary** whose assets total more than 25% of the total consolidated assets of the **Organization** as of the **Inception Date** of this policy; or

- (b) with assets that total more than 25% of the total consolidated assets of all covered pension plans as of the **Inception Date** of this policy;

then this policy shall apply to such plan (solely with respect to a **Wrongful Act(s)** occurring after the date of such acquisition), but only upon the condition that within ninety (90) days of its acquisition, the **Named Entity** shall have provided the **Insurer** with information and agreed to any additional premium or amendment of the provisions of the policy required by the **Insurer** relating to such new **Plan**. The ninety (90) day reporting condition shall not apply if such new plan is not one of the five largest pension plans (by asset size) of the **Organization**, if the failure to report such **Plan** within the ninety (90) day reporting period was due to inadvertent omission by the **Named Entity**, and if upon discovery of such omission the **Named Entity** notifies the **Insurer** as soon as practicable and provides any information and pays any premium required by the **Insurer** relating to such **Plan**.

- (3) plan or program described in subparagraph (1) above that was created, considered, developed or proposed during the **Policy Period**.

The definition of **Plan** shall also include the following government-mandated programs: unemployment insurance, Social Security, or disability payments, but solely with respect to a **Wrongful Act** defined in subparagraph (2) of the definition of **Wrongful Act** in this **Coverage Section**.

Coverage under this **Coverage Section** shall not extend to a **Multiemployer Plan** itself, its contributing employer(s) or, except as set forth in subparagraph (4) of the definition of **Wrongful Act**, any fiduciary or administrator of a **Multiemployer Plan**.

Plan Committee means any employee benefit committee, including, but not limited to any plan investment or administration committee, that is established by an **Organization** and that is comprised entirely of **Insured Persons**.

Related Claim means a **Claim** alleging, arising out of, based upon or attributable to any facts or **Wrongful Acts** that are the same as or related to those that were alleged in another **Claim** made against an **Insured**.

Securities Claim means any **Claim** in which a plaintiff alleges a loss or seeks damages of more than the **Securities Retention** amount or \$1,000,000, whichever is less, based upon a change in or challenge to the price or valuation of securities of or issued by: (i) the **Organization**, (ii) the parent of the **Organization**, (iii) any company that is acquired in whole or in part by the **Organization**, or (iv) any former parent of any company that is acquired in whole or in part by the **Organization** (hereinafter (i) through (iv) collectively referred to as "Employer Securities"), even if such **Claim** also contains unrelated allegations.

The definition of **Securities Claim** shall not be triggered by any **Claim** in which plaintiffs allege a loss or seek damages as a result of a **Plan's** allegedly excessive fees or excessive cash holdings within an investment fund designed to hold Employer Securities as long as there is no allegation based upon a drop in the price or decrease in the valuation of the Employer

Securities.

Securities Retention

means the Retention applicable to **Loss** that arises out of a **Securities Claim**.

Subsidiary

means any past, present or future:

- (1) for-profit entity of which the **Named Sponsor** has or had **Management Control** either directly or indirectly through one or more of its other **Subsidiaries**; and
- (2) not-for-profit entity sponsored exclusively by a **Sponsor Organization**.

The term **Subsidiary** shall automatically apply to any new **Subsidiary** acquired or created during the **Policy Period**.

A for-profit entity ceases to be a **Subsidiary** when the **Named Sponsor** no longer maintains **Management Control** of such entity either directly or indirectly through one or more of its **Subsidiaries**. A not-for-profit entity ceases to be a **Subsidiary** when such entity is no longer sponsored exclusively by a **Sponsor Organization**.

Voluntary Compliance Loss

means fines, penalties, sanctions, and reasonable and necessary fees, costs or expenses related to the assessment of or correction of a **Plan's** non-compliance in accordance with any **Voluntary Compliance Program** and which are incurred during the **Policy Period** (or during the policy period of a policy issued by the **Insurer** of which this **Coverage Section** is a continuous renewal).

"Voluntary Compliance Loss" shall not include any compensation of any **Insured Persons** or any employee of an **Insured**.

Voluntary Compliance Program

means any voluntary compliance resolution program or similar voluntary settlement program administered by the DOL, IRS, PBGC or other similar governmental authority or any similar program administered by any governmental authority located outside the United States of America, to correct any inadvertent non-compliance by a **Plan**, including, but not limited to:

- (1) Employee Plans Compliance Resolution System;
- (2) Delinquent Filer Voluntary Compliance Program;
- (3) Voluntary Fiduciary Correction Program;
- (4) Premium Compliance Evaluation Program; and
- (5) Participant Notice Voluntary Correction Program.

Wrongful Act

means:

- (1) any actual or alleged violation by an **Insured** of any of the responsibilities, obligations or duties imposed upon fiduciaries by **Employee Benefit Law** with respect to a **Plan**, including, but not limited to the actual or alleged improper selection of or inadequate monitoring of third-party service providers; or any allegation made against an **Insured** solely by reason of his, her or its actual or alleged status as a fiduciary, but only with respect to a **Plan**;
- (2) any actual or alleged act, error or omission by an **Insured** in the

- Administration** of any **Plan**, including, but not limited to the actual or alleged failure to properly and timely provide COBRA notices or other required notices, the alleged failure to make timely determinations of eligibility for benefits; or any allegation made against an **Insured** solely by reason of his, her or its actual or alleged **Administration** of a **Plan**;
- (3) any negligent act, error or omission by an **Organization**, its **Executives** or employees in facilitating the administration of a **Multiemployer Plan**; and
- (4) if a plan identified as a **Multiemployer Plan** is referenced by specific written endorsement attached to this policy and any required premium is paid, any matter arising out of an **Insured Person's** actual or alleged service as a fiduciary of, or actual or alleged **Administration** of, such **Multiemployer Plan** when such service or **Administration** is at the specific written request or direction of the **Organization**.

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PRIVATE COMPANY DIRECTORS & OFFICERS LIABILITY ("Private 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 **Private D&O Coverage Section**, unless otherwise explicitly stated to the contrary in this **Private D&O Coverage Section**.

In consideration of the payment of the premium, and each of their respective rights and obligations in this policy, the **Insureds** and the **Insurer** agree as follows:

1. INSURING AGREEMENTS

All coverage granted for **Loss** under this **Coverage Section** is provided solely with respect to (i) **Claims** first made against an **Insured**, and (ii) **Pre-Claim Inquiries** first received by an **Insured Person**, in each such event, during the **Policy Period** or any applicable **Discovery Period** and reported to the **Insurer** as required by this **Coverage Section**. Subject to the foregoing and the other terms, conditions and limitations of this policy, this **Coverage Section** affords the following coverage:

A. Insured Person Coverage

This policy shall pay the **Loss** of any **Insured Person** that no **Organization** has indemnified or paid, and that arises from any:

- (1) **Claim** (including any **Insured Person Investigation**) made against such **Insured Person** (including any **Outside Entity Executive**) for any **Wrongful Act** of such **Insured Person**; or
- (2) **Pre-Claim Inquiry**, to the extent that such **Loss** is **Pre-Claim Inquiry Costs**.

B. Indemnification Of Insured Person Coverage

This policy shall pay the **Loss** of an **Organization** that arises from any:

- (1) **Claim** (including any **Insured Person Investigation**) made against any **Insured Person** (including any **Outside Entity Executive**) for any **Wrongful Act** of such **Insured Person**; or
- (2) **Pre-Claim Inquiry**, to the extent that such **Loss** is **Pre-Claim Inquiry Costs**;

but only to the extent that such **Organization** has indemnified such **Loss** of, or paid such **Loss** on behalf of, the **Insured Person**.

C. Organization Coverage

This policy shall pay the **Loss** of any **Organization**:

- (1) arising from any **Claim** made against such **Organization** for any **Wrongful Act** of such **Organization**;
- (2) incurred as **Derivative Investigation Costs**, subject to a \$250,000 aggregate sublimit of liability; or
- (3) incurred by an **Organization** or on its behalf by any **Executives** of the **Organization**

(including through any special committee) as **Defense Costs** in seeking the dismissal of any **Derivative Suit** against an **Insured**.

2. EXTENSIONS

A. *Executive Protection Suite*

Loss shall also mean the following items, provided that they arise out of a **Claim**:

- (1) **SOX 304 Costs**;
- (2) **Extradition Costs**;
- (3) **UK Corporate Manslaughter Act Defense Costs**;
- (4) **Personal Reputation Expenses**, subject to a \$100,000 per **Executive** and a \$500,000 aggregate sublimit of liability; and
- (5) **Asset Protection Costs**, subject to a \$50,000 per **Executive** and a \$250,000 aggregate sublimit of liability.

B. *First Dollar E-Discovery Consultant Services*

For any **Claim**, no Retention shall apply to the first \$25,000 in **Defense Costs** incurred as **E-Discovery Consultant Services**.

C. *Excess Limit of Liability for Executives*

If an **Excess Limit for Executives** is set forth in the Declarations for this **Coverage Section**, then solely with respect to Insuring Agreement A. *Insured Person Coverage*, **Executives** shall also have access to the **Excess Limit for Executives**, as more fully described in Clause 6. LIMITS OF LIABILITY of this **Coverage Section**.

D. *Global Liberalization*

For **Loss** from that portion of any **Claim** maintained in a **Foreign Jurisdiction** or to which the law of a **Foreign Jurisdiction** is applied, the **Insurer** shall apply the terms and conditions of this **Coverage Section** as amended to include those of the **Foreign Policy** in the **Foreign Jurisdiction** that are more favorable to **Insureds** in the **Foreign Jurisdiction**. This *Global Liberalization Clause* shall not apply to any provision of any policy that has worldwide effect, including but not limited to any provision addressing limits of liability (primary, excess or sublimits), retentions, other insurance, non-renewal, duty to defend, defense within or outside limits, taxes, conformance to law or excess liability coverage, any claims made provisions, and any endorsement to this policy that excludes or limits coverage for specific events or litigation or that specifically states that it will have worldwide effect.

3. INDEMNIFICATION PROTECTIONS

A. *Advancement*

If for any reason (including but not limited to insolvency) an **Organization** fails or refuses to advance, pay or indemnify covered **Loss** of an **Insured Person** within the applicable Retention, if any, then the **Insurer** shall advance such amounts on behalf of the **Insured Person** until either (i) an **Organization** has agreed to make such payments, or (ii) the Retention has been satisfied. In no event shall any such advancement by the **Insurer** relieve any **Organization** of any duty it may have to provide advancement, payment or indemnification to any **Insured Person**.

Advancement, payment or indemnification of an **Insured Person** by an **Organization** is deemed "failed" if it has been requested by an **Insured Person** in writing and has not been provided by,

agreed to be provided by or acknowledged as an obligation by an **Organization** within sixty (60) days of such request; and advancement, payment or indemnification by an **Organization** is deemed "refused" if an **Organization** gives a written notice of the refusal to the **Insured Person**. Advancement, payment or indemnification of an **Insured Person** by an **Organization** shall only be deemed "failed" or "refused" to the extent such advancement, payment or indemnification is not provided, or agreed to be provided, or acknowledged by and collectible from an **Organization**. Any payment or advancement by the **Insurer** within an applicable Retention shall apply towards the exhaustion of the **Limits of Liability**.

B. Order Of Payments

In the event of **Loss** arising from a covered **Claim(s)** and/or **Pre-Claim Inquiry(ies)** for which payment is due under the provisions of this **Coverage Section**, the **Insurer** shall in all events:

- (1) First, pay all **Loss** covered under Insuring Agreement A. *Insured Person Coverage*;
- (2) Second, only after payment of **Loss** has been made pursuant to subparagraph (1) above and to the extent that any amount of the applicable **Separate Limit of Liability** or **Shared Limit of Liability** shall remain available, at the written request of the chief executive officer of the **Named Entity**, either pay or withhold payment of **Loss** covered under Insuring Agreement B. *Indemnification Of Insured Person Coverage*; and
- (3) Lastly, only after payment of **Loss** has been made pursuant to subparagraphs (1) and (2) above and to the extent that any amount of the applicable **Separate Limit of Liability** or **Shared Limit of Liability** shall remain available, at the written request of the chief executive officer of the **Named Entity**, either pay or withhold payment of **Loss** covered under Insuring Agreement C. *Organization Coverage*.

In the event the **Insurer** withholds payment pursuant to subparagraphs (2) and/or (3) above, then the **Insurer** shall, at such time and in such manner as shall be set forth in instructions of the chief executive officer of the **Named Entity**, remit such payment to an **Organization** or directly to or on behalf of an **Insured Person**.

4. EXCLUSIONS

A. Full Severability Of Exclusions For Insured Persons

In determining whether any of the following Exclusions apply, the **Wrongful Acts** of any **Insured Person** shall not be imputed to any other **Insured**. For Insuring Agreement C. *Organization Coverage*, only the **Wrongful Acts** of any chief executive officer or chief financial officer (or equivalent position) of an **Organization** shall be imputed to such **Organization**.

B. Exclusions

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

- (1) *Conduct* arising out of, based upon or attributable to any:
 - (a) profit or other advantage to which the **Insured** was not legally entitled;
 - (b) deliberate criminal or deliberate fraudulent act by the **Insured**;
 - (c) purchase or sale by an **Insured** of securities of the **Organization** within the meaning of Section 16(b) of the Securities Exchange Act of 1934 and amendments thereto or similar provisions of any state statutory law; or
 - (d) payment to any **Insured** of any remuneration without the previous approval of the stockholders of the **Organization**;

if established by any final, non-appealable adjudication in any underlying action;

provided, however:

- (i) Conduct Exclusion (a), above, shall not apply in a **Securities Claim** alleging violations of Section 11, 12 or 15 of the Securities Act of 1933, as amended, to the portion of any **Loss** attributable to such violations; and
 - (ii) with respect to Conduct Exclusion (b), for acts or omissions which are treated as a criminal violation in a **Foreign Jurisdiction** that are not treated as a criminal violation in the United States of America, the imposition of a criminal fine or other criminal sanction in such **Foreign Jurisdiction** will not, by itself, be conclusive proof that a deliberate criminal or deliberate fraudulent act occurred;
- (2) *Prior Notice* or with any **Pre-Claim Inquiry** received by an **Insured Person**, alleging, arising out of, based upon or attributable to the facts alleged, or to the same or related **Wrongful Acts** alleged or contained, in any **Claim** or investigated in any **Pre-Claim Inquiry** that has been reported, or in any circumstances of which notice has been given, under any directors and officers liability insurance policy in force prior to the **Inception Date** of this policy;
- (3) *Pending & Prior Litigation* alleging, arising out of, based upon or attributable to, as of the **Continuity Date**, any pending or prior: (a) litigation; or (b) administrative or regulatory proceeding or investigation of which any **Insured** had notice; or alleging or derived from the same or essentially the same facts as alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation;
- (4) *Personal Injury* for emotional distress or mental anguish of any person, or for injury from libel, slander, defamation or disparagement, or a violation of a person's right of privacy; provided, however, this exclusion shall not apply to any **Securities Claim**;
- (5) *Bodily Injury & Property Damage* for bodily injury (other than emotional distress or mental anguish), sickness, disease, or death of any person, or damage to or destruction of any tangible property, including the loss of use thereof; provided, however, this exclusion shall not apply to **UK Corporate Manslaughter Act Defense Costs** or a **Securities Claim**;
- (6) *Entity or Individual v. Insured* that is brought by or on behalf of: (a) any **Insured**; or (b) any **Outside Entity**, or any **Executive** thereof, for the **Wrongful Act(s)** of any **Outside Entity Executive**; provided, however, this exclusion shall not apply:
- (a) to any **Defense Costs** which constitute **Non-Indemnifiable Loss** incurred by an **Insured Person** in defending any **Claim** against that **Insured Person**;
 - (b) to any **Derivative Suit** not brought, controlled or materially assisted by any **Organization**, any **Outside Entity** or any **Executive** of the foregoing;
 - (c) if the **Organization** or **Outside Entity** is the subject of a bankruptcy case (or the equivalent in a **Foreign Jurisdiction**), unless the **Claim**

is brought, controlled or materially assisted by any **Organization** or **Outside Entity**, the resulting debtor-in-possession (or foreign equivalent) of the debtor **Organization** or **Outside Entity** or any **Executive** of the foregoing;

- (d) to any **Claim** brought by or on behalf of any **Executive** who has not served, in the two (2) years prior to such **Claim** being first made, as an **Executive** of, or a consultant for:
 - (i) an **Organization** (but only with respect to a **Claim** brought by or on behalf of such **Executive**); or
 - (ii) **Outside Entity** (but only with respect to a **Claim** brought by any **Outside Entity** or any **Executive** thereof); or
- (e) to any **Claim** brought by or on behalf of an **Executive** of an **Organization** or **Outside Entity Executive** of an **Outside Entity** if such **Claim** is brought and maintained outside the United States, Canada or any other common law country (including any territories thereof);

(7) *ERISA*

for any violation of responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or any similar provisions of any state, local or foreign statutory or common law;

(8) *Compensation & Labor Liability*

- (a) for any violation of responsibilities, obligations or duties imposed by the Fair Labor Standards Act, the National Labor Relations Act, the Worker Adjustment and Retraining Notification (WARN) Act, the Consolidated Omnibus Budget Reconciliation Act (COBRA), the Occupational Safety and Health Act (OSHA), any rules or regulations of the foregoing promulgated thereunder, and amendments thereto or any similar federal, state, local or foreign law or amendment to a law; or
- (b) alleging, arising out of, based upon or attributable to any of the circumstances described in any of the following:
 - (i) the refusal, failure or inability of any **Insured** to pay wages or overtime pay (or amounts representing such wages or overtime pay) for services rendered or time spent in connection with work related activities (as opposed to tort-based back pay or front pay damages for torts other than conversion);
 - (ii) improper deductions from pay taken by any **Insured** from any **Employee** or purported **Employee**; or
 - (iii) failure to provide or enforce legally required meal or rest break periods;

(9) *Public Offering*

alleging, arising out of, based upon or attributable to any public offering of securities by an **Organization**, an **Outside Entity** or an **Affiliate** or alleging a purchase or sale of such securities subsequent to such public offering; provided, however, this exclusion shall not apply to:

- (a) 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; provided, 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;
- (b) any public offering of securities (other than a public offering described in subparagraph (a) 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 **Organization** gives written notice with full particulars and underwriting information pursuant to subparagraph (b)(i) above, then the **Insurer** must offer a quote for coverage under this subparagraph; or
- (c) any **Claim** for **Loss** alleging a **Wrongful Act** which occurred during the **Insured's** preparations to commence an initial public offering ("**IPO**") and which occurred at any time prior to 12:01 a.m. on the date the initial public offering commences ("**IPO Effective Time**"), including any **Claim** for **Loss** alleging a **Wrongful Act** which occurred during the road show; provided, however that the coverage otherwise afforded under this subparagraph (c) shall be deemed to be void *ab initio* effective the **IPO Effective Time**; provided further, however, that coverage shall not be deemed void *ab initio* if (i) the **Claim** is first made and reported pursuant to Clause 7(a) of this **Coverage Section** prior to the **IPO Effective Time**, and (ii) a public company directors' and officers' and management liability policy is not applicable to such **Claim**;

- (10) *Acquisition of Publicly Traded Entity* alleging, arising out of, based upon or attributable to the purchase by an **Organization** of securities of a "**Publicly Traded Entity**" in a transaction which resulted, or would result, in such entity becoming an **Affiliate** or a **Subsidiary** of an **Organization**; provided, however, this exclusion shall not apply in the event that within 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 **Coverage Section** 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. As used herein, "**Publicly Traded Entity**" means any entity the securities of which have previously been subject to a public offering;
- (11) *Pollution* for: (a) any actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants**; or (b) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**; provided, however, this exclusion shall not apply to:
- (i) **Non-Indemnifiable Loss**; or
 - (ii) **Loss** in connection with a **Securities Claim**;
- in all events, other than **Loss** constituting **Clean-up Costs**;
- (12) *Captive Insurance Entity* alleging, arising out of, based upon or attributable to the ownership, management, maintenance or control by the **Organization** of any captive insurance company or entity, including, but not limited, to any **Claim** alleging the insolvency or bankruptcy of the **Named Entity** as a result of such ownership, operation, management or control;
- (13) *Employment Practices & Third-Party Violations* alleging, arising out of, based upon, or attributable to the (a) 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; or (b) the harassment or unlawful discrimination, or the violation of the civil rights of a person relating to such harassment or discrimination; in all cases, whether alleged to be committed against an **Insured Person** or anyone other than an **Insured Person** or applicant for employment with an **Organization** or an **Outside Entity**, including any students, patients, members, customers, vendors and suppliers;

- (14) *Commission, Gratuities, Benefits* alleging, arising out of, based upon, or attributable to:
- (a) payments, commissions, gratuities, benefits or any other favors to or for the benefit of any full or part-time domestic or foreign governmental or armed services officials, agents, representatives, employees or any members of their family or any entity with which they are affiliated;
 - (b) payments, commissions, gratuities, benefits or any other favors to or for the benefit of any full or part-time officials, directors, agents, partners, representatives, members, principal shareholders, owners or employees, or affiliates (as that term is defined in the Securities Exchange Act of 1934, including any of their officers, directors, agents, owners, partners, representatives, principal shareholders or employees) of any customers of the **Organization** or any members of their family or any entity with which they are affiliated; or
 - (c) political contributions, whether domestic or foreign;
- (15) *Professional Liability* 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, or any act(s), error(s) or omission(s) relating thereto; or
- (16) *Entity Only Exclusions* with respect to Coverage C only:
- (a) for any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, service mark, trade secret or any other intellectual property rights;
 - (b) for any actual or alleged violation of any law, whether statutory, regulatory or common law, respecting any of the following activities: anti-trust, business competition, unfair trade practices or tortious interference in another's business or contractual relationships;
 - (c) alleging, arising out of, based upon or attributable to any actual or alleged contractual liability of the **Organization** or any other **Insured** under any express contract or agreement; provided, however, this exclusion shall not apply to liability which would have attached in the absence of such express contract or agreement; or
 - (d) seeking fines or penalties or non-monetary relief against the **Organization**; provided, however, that this exclusion shall not apply to any **Securities Claim**.

5. RETENTION

In addition to the provisions of Clause 2. RETENTION of the **General Terms and Conditions**, in no event shall a Retention be applied to the following: (i) **Non-Indemnifiable Loss**; (ii) **Derivative Investigation Costs**; or (iii) the first \$25,000 in **Defense Costs** incurred as **E-Discovery Consultant Services**.

6. LIMITS OF LIABILITY

In addition to the provisions of Clause 3. LIMITS OF LIABILITY of the **General Terms and Conditions**, each per **Executive** sublimit of liability stated in this **Coverage Section** is the maximum limit of the **Insurer's** liability for all **Loss** of each **Executive** under this **Coverage Section** that is subject to that per **Executive** sublimit of liability. All sublimits of liability shall be part of, and not in addition to, the **Policy Aggregate** and any applicable **Separate Limit of Liability, Shared Limit of Liability** or **Excess Limit for Executives**. Each per **Executive** sublimit of liability shall be part of, and not in addition to, its corresponding aggregate sublimit of liability.

Notwithstanding anything to the contrary stated above or in Clause 3. LIMITS OF LIABILITY of the **General Terms and Conditions**, if an **Excess Limit for Executives** is set forth in the Declarations for this **Coverage Section**, a separate aggregate limit of liability shall be available to **Executives** for all **Non-Indemnifiable Loss** under Insuring Agreement A. *Insured Person Coverage* arising out of all **Claims** first made against any and all **Executives** during the **Policy Period** or the **Discovery Period** (if applicable). The **Excess Limit for Executives** shall not apply to any other **Coverage Section**, even if a **Shared Limit of Liability** applies to this **Coverage Section**. One **Excess Limit for Executives** shall apply for all **Executives**, no matter how many **Executives** or **Claims** are involved. The **Excess Limit for Executives** is excess of, and shall only apply after the payment in full of: (i) any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this **Coverage Section**; and (ii) any other valid and collectible insurance available to the **Executives**, including, without limitation, any insurance which is specifically written as excess over any other limits of liability. The **Excess Limit for Executives** shall continue in force as primary insurance only upon the exhaustion of the limits of liability described in (i) and (ii), above. The term "**Limits of Liability**" shall also refer to the **Excess Limit for Executives**.

7. NOTICE AND REPORTING

Notice hereunder shall be given in writing to the **Insurer** at the **Claims Address** indicated in the Declarations. If mailed or transmitted by electronic mail, the date of such mailing or transmission shall constitute the date that such notice was given and proof of mailing or transmission shall be sufficient proof of notice.

(a) *Reporting a Claim or Pre-Claim Inquiry*

An **Organization** or an **Insured** shall, as a condition precedent to the obligations of the **Insurer** under this **Coverage Section**:

- (1) notify the **Insurer** in writing of a **Claim** made against an **Insured**; or
- (2) if an **Insured** elects to seek coverage for **Pre-Claim Inquiry Costs** in connection with any **Pre-Claim Inquiry**, notify the **Insurer** in writing of that **Pre-Claim Inquiry**;

as soon as practicable after the **Named Entity's** Risk Manager or General Counsel (or equivalent position) first becomes aware of the **Claim** or **Pre-Claim Inquiry**. In all such events, notification must be provided no later than ninety (90) days after the end of the **Policy Period** or the **Discovery Period** (if applicable).

(b) *Relation Back to the First Reported Claim or Pre-Claim Inquiry*

Solely for the purpose of establishing whether any subsequent **Related Claim** was first made or a **Related Pre-Claim Inquiry** was first received during the **Policy Period** or **Discovery Period** (if applicable), if during any such period:

- (1) a **Claim** was first made and reported in accordance with Clause

7(a) above, then any **Related Claim** that is subsequently made against an **Insured** and that is reported in accordance with Clause 7(a) above shall be deemed to have been first made at the time that such previously reported **Claim** was first made; and

(2) a **Pre-Claim Inquiry** was actually first received by an **Insured Person** and reported in accordance with Clause 7(a) above, then:

- (i) any **Related Pre-Claim Inquiry** that is reported in accordance with Clause 7(a) above shall be deemed to be a **Pre-Claim Inquiry** first received at the time that such previously reported **Pre-Claim Inquiry** was first received by an **Insured Person**; and
- (ii) any subsequent **Related Claim** that is reported in accordance with Clause 7(a) above shall be deemed to be a **Claim** first made at the time that such previously reported **Pre-Claim Inquiry** was first received by an **Insured Person**.

With respect to any subsequent **Related Pre-Claim Inquiry**, this policy shall not cover **Loss** incurred before such subsequent **Related Pre-Claim Inquiry** is actually received by an **Insured Person**, and with respect to any subsequent **Related Claim**, this policy shall not cover **Loss** incurred before such subsequent **Related Claim** is actually made against an **Insured**.

(c) *Relation Back to Reported Circumstances Which May Give Rise to a Claim*

If during the **Policy Period** or **Discovery Period** (if applicable) an **Organization** or an **Insured Person** becomes aware of and notifies the **Insurer** in writing of circumstances that may give rise to a **Claim** being made against an **Insured** and provides details as required below, then any **Claim** that is subsequently made against an **Insured** that arises from such circumstances and that is reported in accordance with Clause 7(a) above shall be deemed to have been first made at the time of the notification of circumstances for the purpose of establishing whether such subsequent **Claim** was first made during the **Policy Period** or during the **Discovery Period** (if applicable). Coverage for **Loss** arising from any such subsequent **Claim** shall only apply to **Loss** incurred after that subsequent **Claim** is actually made against an **Insured**. In order to be effective, notification of circumstances must specify the facts, circumstances, nature of the alleged **Wrongful Act** anticipated and reasons for anticipating such **Claim**, with full particulars as to dates, persons and entities involved; however, notification that includes a copy of an agreement to toll a statute of limitations shall be presumed sufficiently specific as to the potential **Claims** described within that agreement.

8. DISCOVERY PREMIUM

In the event the **Named Entity** or the **Insurer** shall cancel or refuse to renew this **Coverage Section**, the **Additional Premium Amount** for: (a) one year shall be no more than 125% of the **Full Annual Premium**; and (b) two to six years shall be an amount to be determined by the **Insurer**. As used herein, "**Full Annual Premium**" means the premium level in effect for this **Coverage Section** immediately prior to the end of the **Policy Period**.

In the event of a **Transaction**, the **Additional Premium Amount** shall be an amount to be determined by the **Insurer**.

9. DEFENSE AND SETTLEMENT

A. *For Claims And Pre-Claim Inquiries*

- (1) *No Duty to Defend or Investigate* The **Insureds** shall defend and contest any **Claim** made against them. The **Insurer** does not assume any duty to defend or investigate.
- (2) *Right to Tender Defense* 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**. This right shall terminate if not exercised within thirty (30) days of the date the **Claim** is first made against an **Insured**. 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 thereof sent 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 the negotiation of any settlement of any **Claim**. However, the **Insurer** shall not be obligated to defend such **Claim** after the **Policy Aggregate** or any applicable **Separate Limit of Liability**, **Shared Limit of Liability** or **Excess Limit for Executives** has been exhausted.

(3) *Advancement*

When the **Insurer** has not assumed the defense of a **Claim** pursuant to subparagraph (2) above of this Clause 9, it shall advance, excess of any applicable Retention, covered **Defense Costs** or **Pre-Claim Inquiry Costs**, respectively, on a current basis, but no later than ninety (90) days after the **Insurer** has received itemized bills for those **Defense Costs** or **Pre-Claim Inquiry Costs**. Such advance payments by the **Insurer** shall be repaid to the **Insurer** by each and every **Insured Person** or **Organization**, severally according to their respective interests, in the event and to the extent that any such **Insured Person** or **Organization** shall not be entitled under this **Coverage Section** to payment of such **Loss**.

(4) *Claims Participation and Cooperation*

The **Insurer** shall have the right, but not the obligation, to fully and effectively associate with each and every **Organization** and **Insured Person** in the defense and prosecution of any **Claim** or **Pre-Claim Inquiry** that involves, or appears reasonably likely to involve the **Insurer**, including, but not limited to, negotiating a settlement. Each and every **Organization** and **Insured Person** shall give the **Insurer** full cooperation and such information as it may reasonably require.

The failure of any **Insured Person** to give the **Insurer** cooperation and information as required in the preceding paragraph shall not impair the rights of any other **Insured Person** under this **Coverage Section**.

The **Insureds** shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment or incur any **Defense Costs** or **Pre-Claim Inquiry Costs**, without the prior written consent of the **Insurer**. Such consent shall not be unreasonably withheld.

(5) *Full Settlement Within Retention/ Consent Waived*

If all **Insured** defendants are able to dispose of all **Claims** and/or **Pre-Claim Inquiries** which are subject to one Retention (inclusive of **Defense Costs**) for an amount not exceeding the Retention, then the **Insurer's** consent shall not be required for such disposition.

(6) *Applicability*

This *Defense and Settlement Clause* is not applicable to **Personal Reputation Expenses**. Nevertheless the **Insurer** does not, under this **Coverage Section**, assume any duty to defend.

B. Pre-Authorized Securities Defense Attorneys

The list of approved panel counsel law firms ("**Panel Counsel**") is accessible through the online directory at <http://www.aig.com/us/panelcounseldirectory> under the "Directors & Officers (Securities Claims)" link. The list provides the **Insureds** with a choice of law firms from which a selection of legal counsel shall be made by the **Insureds** (or, in the event the **Insurer** has assumed the defense pursuant to Clause 9.A.(2) of this **Coverage Section**, the **Insurer**) to conduct the defense of any **Securities Claim** made against such **Insureds**. With the express prior written consent of the **Insurer**, an **Insured** may select a **Panel Counsel** different from that selected by another **Insured** defendant if such selection is required due to an actual conflict of interest or is otherwise reasonably justifiable. The list of **Panel Counsel** may be amended from time to time by the **Insurer**. However, if a firm is removed from the list during the **Policy Period**, the **Insureds** shall be entitled to select such firm to conduct the defense of any

Securities Claim made against such **Insureds** during the **Policy Period**.

The **Insureds** (or, in the event the **Insurer** has assumed the defense pursuant to Clause 9.A(2) of this **Coverage Section**, the **Insurer**) shall select a **Panel Counsel** to defend the **Securities Claim** made against the **Insureds** in the jurisdiction in which the **Securities Claim** is brought. In the event the **Claim** is brought in a jurisdiction not included on the list, **Panel Counsel** shall be selected in the listed jurisdiction which is the nearest geographic jurisdiction to either where the **Securities Claim** is brought or where the corporate headquarters of the **Named Entity** is located. In such instance the **Insureds** also may, with the express prior written consent of the **Insurer**, which consent shall not be unreasonably withheld, select a non-**Panel Counsel** in the jurisdiction in which the **Securities Claim** is brought to function as "local counsel" on the **Claim** to assist the **Panel Counsel** which will function as "lead counsel" in conducting the defense of the **Securities Claim**. This *Pre-Authorized Securities Defense Attorneys Clause* does not apply to **Defense Costs** solely relating to **Extradition** even if the underlying **Wrongful Acts** relate to a **Securities Claim**.

C. *Pre-Approved E-Consultant Firms*

The list of pre-approved **E-Consultant Firms** is accessible through the online directory at <http://www.aig.com/us/panelcounseldirectory> under the "e-Consultant Panel Members" link. The list provides the **Insureds** with a choice of firms from which a selection of an **E-Consultant Firm** shall be made. Any **E-Consultant Firm** may be hired by an **Insured** to perform **E-Discovery Consultant Services** without further approval by the **Insurer**.

D. *Allocation*

If both **Loss** covered by this **Coverage Section** and **Loss** not covered by this **Coverage Section** are incurred, either because a **Claim** is made against both **Insureds** and others or because a **Claim** includes both covered and uncovered matters, the **Insureds** and the **Insurer** shall use their best efforts to agree upon a fair and proper allocation of such amount between covered **Loss** and uncovered **Loss**. In the event that a determination as to the amount of **Defense Costs** to be advanced under this **Coverage Section** 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 proper until a different amount shall be agreed upon or determined pursuant to the provisions of this policy and applicable law.

10. SUBSIDIARY COVERAGE

A. *Subsidiary Additions*

- (1) If "Auto-Acquisition Subsidiary Coverage" is selected on the Declarations for this **Coverage Section**, then in addition to the definition of "**Subsidiary**" set forth in Clause 14. DEFINITIONS of this **Coverage Section**, **Subsidiary** also means any for-profit entity whose securities are not publicly traded of which the **Named Entity** acquires **Management Control** during the **Policy Period**, whether directly or indirectly through one or more other **Subsidiaries**.
- (2) If "Threshold Acquisition Subsidiary Coverage" is selected on the Declarations for this **Coverage Section**, then in addition to the definition of "**Subsidiary**" set forth in Clause 14. DEFINITIONS of this **Coverage Section**, **Subsidiary** also means any for-profit entity whose securities are not publicly traded: (i) of which the **Named Entity** first had **Management Control** during the **Policy Period**, whether directly or indirectly through one or more other **Subsidiaries**, and (ii) whose assets amount to:
 - (a) less than 25% of the total consolidated assets of each and every **Organization** as reported in the **Named Entity's** audited financial statements as of the **Inception Date** of

this policy; or

- (b) 25% or more of those total consolidated assets, but such entity shall be a **"Subsidiary"** only: (i) for a period of sixty (60) days from the date the **Named Entity** first had **Management Control** of such entity; or (ii) until the end of the **Policy Period**, whichever expires or ends first (the **"Auto-Subsidiary Period"**);

provided that, with respect only to entities described in subparagraph (b) above, 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 subparagraph (b) above, and any **Insured Person** 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 required by the **Insurer** relating to such **Subsidiary**. Further, coverage as shall be afforded to any **Subsidiary** and any **Insured Person** thereof is conditioned upon the **Named Entity** paying when due any additional premium required by the **Insurer** relating to such **Subsidiary**.

B. Former Subsidiaries

In the event the **Named Entity** loses **Management Control** of a **Subsidiary** during or prior to the **Policy Period**, coverage with respect to such **Subsidiary** and its **Insured Persons** shall continue until termination of this **Coverage Section** but only with respect to **Claims for Wrongful Acts** that occurred or are alleged to have occurred during the time that the **Named Entity** had **Management Control** of such entity either directly or indirectly through one or more of its **Subsidiaries**.

C. Scope Of Subsidiary Coverage

Coverage as is afforded under this **Coverage Section** with respect to a **Claim** made against any **Subsidiary** and/or any **Insured Person** thereof shall only apply for **Wrongful Acts** committed or allegedly committed during the time that such **Subsidiary** and such **Insured Person** meet the respective definitions of **Subsidiary** and **Insured Person** set forth in this **Coverage Section**.

11. APPLICATION AND UNDERWRITING

A. Application And Reliance

The **Insurer** has relied upon the accuracy and completeness of the statements, warranties and representations contained in the **Application**. All such statements, warranties and representations are the basis for this **Coverage Section** and are to be considered as incorporated into this **Coverage Section**.

B. Insured Person Coverage Non-Rescindable

Under no circumstances shall the coverage provided by this **Coverage Section** for **Loss** under Insuring Agreement A. *Insured Person Coverage* be deemed void, whether by rescission or otherwise, once the premium has been paid.

C. Severability Of The Application

The **Application** shall be construed as a separate application for coverage by each **Insured Person**. With respect to the **Application**, no knowledge possessed by any **Organization** or any **Insured Person** shall be imputed to any other **Insured Person**.

If the statements, warranties and representations in the **Application** were not accurate and complete and materially affected either the acceptance of the risk or the hazard assumed by the **Insurer** under this **Coverage Section**, then the **Insurer** shall have the right to void coverage under this **Coverage Section**, *ab initio*, with respect to:

- (1) **Loss** under Insuring Agreement B. *Indemnification Of Insured Person Coverage* for the indemnification of any **Insured Person** who knew, as of the **Inception Date** of this policy, the facts that were not accurately and completely disclosed; and
- (2) **Loss** under Insuring Agreement C. *Organization Coverage* if any **Insured Person** who is or was a chief executive officer or chief financial officer of the **Named Entity** knew, as of the **Inception Date** of this policy, the facts that were not accurately and completely disclosed.

The foregoing applies even if the **Insured Person** did not know that such incomplete or inaccurate disclosure had been provided to the **Insurer** or included within the **Application**.

12. PAYMENTS AND OBLIGATIONS OF ORGANIZATIONS AND OTHERS

A. Indemnification By Organizations

The **Organizations** agree to indemnify the **Insured Persons** and/or advance **Defense Costs** to the fullest extent permitted by law. If the **Insurer** pays under this **Coverage Section** any indemnification or advancement owed to any **Insured Person** by any **Organization** within an applicable Retention, then that **Organization** shall reimburse the **Insurer** for such amounts and such amounts shall become immediately due and payable as a direct obligation of the **Organization** to the **Insurer**. The failure of an **Organization** to perform any of its obligations to indemnify the **Insured Persons** and/or advance **Defense Costs** under this **Coverage Section** shall not impair the rights of any **Insured Person** under this **Coverage Section**.

B. Other Insurance And Indemnification

Such insurance as is provided by this **Coverage Section** shall apply only as excess over any other valid and collectible directors and officers liability insurance, unless such other insurance is specifically written as excess insurance over the applicable **Separate Limit of Liability**, **Shared Limit of Liability** or **Excess Limit for Executives** provided by this **Coverage Section**. This **Coverage Section** shall specifically be excess of any other valid and collectible insurance pursuant to which any other insurer has a duty to defend a **Claim** for which this **Coverage Section** may be obligated to pay **Loss**. Such insurance as is provided by this **Coverage Section** shall apply as primary to any personal "umbrella" excess liability insurance purchased by an **Insured Person**.

In the event of a **Claim** made against an **Outside Entity Executive**, coverage as is afforded by this **Coverage Section**, whether under the *Insured Person Coverage* or the *Indemnification Of Insured Person Coverage*, shall be specifically excess of: (a) any indemnification provided by an **Outside Entity**; and (b) any insurance coverage afforded to an **Outside Entity** or its **Executives** applicable to such **Claim**. Further, in the event such other **Outside Entity** insurance is provided by the **Insurer** or any other insurance company affiliate thereof ("**Other Policy**") (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 as required), then the **Insurer's** applicable **Separate Limit of Liability**, **Shared Limit of Liability** or **Excess Limit for Executives** for all **Loss** under this

Coverage Section, as respects any such **Claim**, shall be reduced by the amount recoverable under such **Other Policy** for loss incurred in connection with such **Claim**.

C. *Subrogation*

To the extent of any payment under this **Coverage Section**, the **Insurer** shall be subrogated to all of the **Organizations'** and **Insureds'** rights of recovery. Each **Organization** and each **Insured Person** shall execute all papers reasonably required and provide reasonable assistance and cooperation in securing or enabling the **Insurer** to exercise subrogation rights or any other rights, directly or in the name of the **Organization** or any **Insured Person**.

In no event, however, shall the **Insurer** exercise its rights of subrogation against an **Insured** under this **Coverage Section** unless the Conduct Exclusion applies with regard to such **Insured**.

13. ALTERNATIVE DISPUTE RESOLUTION

ADR Options

All disputes or differences which may arise under or in connection with this **Coverage Section**, whether arising before or after termination of this policy, including any determination of the amount of **Loss**, shall be submitted to an alternative dispute resolution (ADR) process as provided in this Clause. The **Named Entity** may elect the type of ADR process discussed below; provided, however, that absent a timely election, the **Insurer** may elect the type of ADR. In that case, the **Named Entity** shall have the right to reject the **Insurer's** choice of the type of ADR process at any time prior to its commencement, after which, the **Insured's** choice of ADR shall control.

Mediation

In the event of mediation, either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until the mediation shall have been terminated and at least ninety (90) days shall have elapsed from the date of the termination of the mediation.

Arbitration

In the event of arbitration, the decision of the arbitrator(s) shall be final, binding and provided to both parties, and the arbitration award shall not include attorney's fees or other costs.

ADR Process

Selection of Arbitrator(s) or Mediator: The **Insurer** and the **Named Entity** shall mutually consent to: (i) in the case of arbitration, an odd number of arbitrators which shall constitute the arbitration panel, or (ii) in the case of mediation, a single mediator. The arbitrator, arbitration panel members or mediator must be disinterested and have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. In the absence of agreement, the **Insurer** and the **Named Entity** each shall select one arbitrator, the two arbitrators shall select a third arbitrator, and the panel shall then determine applicable procedural rules.

ADR Rules: In considering the construction or interpretation of the provisions of this policy, the mediator or arbitrator(s) must give due consideration to the general principles of the law of the **State of Formation** of the **Named Entity**. Each party shall share equally the expenses of the process elected. At the election of the **Named Entity**, either choice of ADR process shall be commenced in New York, New York; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; or in the

state reflected in the **Named Entity Address**. The **Named Entity** shall act on behalf of each and every Insured under this *Alternative Dispute Resolution Clause*. In all other respects, the **Insurer** and the **Named Entity** shall mutually agree to the procedural rules for the mediation or arbitration. In the absence of such an agreement, after reasonable diligence, the arbitrator(s) or mediator shall specify commercially reasonable rules.

14. DEFINITIONS

The following definitions shall apply only for purposes of coverage provided under this **Coverage Section**. Terms appearing in **bold** in this **Coverage Section** but not defined herein shall have the meaning and/or value ascribed to them in the Declarations or in the *Definitions Clause* of the **General Terms and Conditions**.

- Affiliate** means: (1) any person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is in common control with, another person or entity; or (2) any person or entity that directly, or indirectly through one or more intermediaries, is a successor in interest to another person or entity.
- Application** means:
- (1) the written statements and representations made by an **Insured** and provided to the **Insurer** during the negotiation of this policy, or contained in any application or other materials or information provided to the **Insurer** in connection with the underwriting of this policy; and
 - (2) all warranties executed by or on behalf of an **Insured** and provided to the **Insurer** in connection with the underwriting of this policy or the underwriting of any other directors and officers (or equivalent) liability policy issued by the **Insurer**, or any of its affiliates, of which this policy is a renewal, replacement or which it succeeds in time.
- Asset Protection Costs** means reasonable and necessary fees, costs and expenses consented to by the **Insurer** incurred by an **Executive** of an **Organization** to oppose any efforts by an **Enforcement Body** to seize or otherwise enjoin the personal assets or real property of such **Executive** or to obtain the discharge or revocation of a court order entered during the **Policy Period** in any way impairing the use thereof.
- Claim** means:
- (1) a written demand for monetary, non-monetary or injunctive relief, including, but not limited to, any demand for mediation, arbitration or any other alternative dispute resolution process;
 - (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; (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) an **Insured Person Investigation**;
 - (4) a **Derivative Demand**; or
 - (5) an official request for **Extradition** of any **Insured Person**, or the

execution of a warrant for the arrest of an **Insured Person** where such execution is an element of **Extradition**.

“**Claim**” shall include any **Securities Claim**.

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**.

Defense Costs means reasonable and necessary fees, costs and expenses consented to by the **Insurer** (including the cost of **E-Discovery Consultant Services** and 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:

- (1) the investigation, adjustment, defense and/or appeal of a **Claim** against an **Insured**; or
- (2) an **Insured Person** lawfully: (i) opposing, challenging, resisting or defending against any request for or any effort to obtain the **Extradition** of that **Insured Person**; or (ii) appealing any order or other grant of **Extradition** of that **Insured Person**.

Defense Costs shall not include: (a) **Derivative Investigation Costs**, (b) **Pre-Claim Inquiry Costs**, or (c) the compensation of any **Insured Person**.

Derivative Demand means a written demand by any shareholder of an **Organization** upon the board of directors (or equivalent management body) of such **Organization** to commence a civil action on behalf of the **Organization** against any **Executive** of the **Organization** for any actual or alleged wrongdoing on the part of such **Executive**.

Derivative Investigation means, after receipt by any **Insured** of a **Claim** that is either a **Derivative Suit** or a **Derivative Demand**, any investigation conducted by the **Organization**, or on behalf of the **Organization** by its board of directors (or the equivalent management body) or any committee of the board of directors (or equivalent management body), as to how the **Organization** should respond.

Derivative Investigation Costs means reasonable and necessary costs, charges, fees and expenses consented to by the **Insurer** and incurred by the **Organization**, or on behalf of the **Organization** by its board of directors (or the equivalent management body) or any committee of the board of directors (or equivalent management body), in connection with a **Derivative Investigation**. **Derivative Investigation Costs** shall not include the compensation of any **Insured Person**.

Derivative Suit means a lawsuit purportedly brought derivatively on behalf of an **Organization** by a shareholder of such **Organization** against an **Executive** of the **Organization**.

Employee	means any past, present or future employee, other than an Executive of an Organization , whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any full-time, part-time, seasonal and temporary employee. An individual who is leased to the Organization shall also be an Employee , but only if the Organization provides indemnification to such leased individual in the same manner as is provided to the Organization's employees. Any other individual who is contracted to perform work for the Organization , or who is an independent contractor for the Organization shall also be an Employee , but only if the Organization provides indemnification to such individual in the same manner as that provided to the Organization's employees, pursuant to a written contract.
Excess Limit For Executives	means the amount stated as such in the Declarations for this Coverage Section .
Executive	means any: <ol style="list-style-type: none"> (1) past, present and future duly elected or appointed director, officer, trustee or governor of a corporation, management committee member of a joint venture and member of the management board of a limited liability company (or equivalent position); (2) past, present and future person in a duly elected or appointed position in an entity organized and operated in a Foreign Jurisdiction that is equivalent to an executive position listed in subparagraph (1) above, or a member of the senior-most executive body (including, but not limited to, a supervisory board); and (3) past, present and future General Counsel and Risk Manager (or equivalent position) of the Named Entity.
Extradition	means any formal process by which an Insured Person located in any country is surrendered to any other country for trial or otherwise to answer any criminal accusation.
Extradition Costs	means Defense Costs incurred by an Insured in lawfully opposing any effort to obtain the Extradition of an Insured Person .
Foreign Policy	means the standard executive managerial liability policy (including all mandatory endorsements, if any) approved by the Insurer or any of its affiliates to be sold within a Foreign Jurisdiction that provides coverage substantially similar to the coverage afforded under this Coverage Section . If more than one such policy exists, then " Foreign Policy " means the standard basic policy form most recently offered for sale for comparable risks by the Insurer or any of its affiliates in that Foreign Jurisdiction . The term " Foreign Policy " shall not include any partnership managerial, pension trust or professional liability coverage.
Insured	means any: <ol style="list-style-type: none"> (1) Insured Person; or (2) Organization.

Insured Person

means any:

- (1) **Executive** of an **Organization**;
- (2) **Employee** of an **Organization**; or
- (3) **Outside Entity Executive**.

Insured Person Investigation

means any civil, criminal, administrative or regulatory investigation of an **Insured Person**:

- (1) once the **Insured Person** is identified in writing by an **Enforcement Body** as a target of an investigation that may lead to a criminal, civil, administrative, regulatory or other enforcement proceeding;
- (2) in the case of an investigation by the SEC or any state, local or foreign body with similar regulation or enforcement authority, after the service of a subpoena (or in a **Foreign Jurisdiction**, the equivalent legal process) upon the **Insured Person**; or
- (3) commenced by the arrest and detainment or incarceration for more than 24 hours of an **Insured Person** by any law enforcement authority in a **Foreign Jurisdiction**.

Writings which may identify an **Insured Person** as a target can include a target or "Wells" letter, whether or not labeled as such.

Liberty Protection Costs

means:

- (1) reasonable and necessary fees, costs and expenses consented to by the **Insurer** and incurred by an **Insured Person** in order for an **Insured Person** to lawfully seek the release of the **Insured Person** from any pre-**Claim** arrest or confinement to a (i) specified residence or (ii) secure custodial premises operated by or on behalf of any law enforcement authority; or
- (2) reasonable and necessary premiums (but not collateral) consented to by the **Insurer** and incurred by an **Insured Person** for a bond or other financial instrument to guarantee the contingent obligation of the **Insured Person** for a specified amount required by a court that are incurred or required outside the United States of America during the **Policy Period**, if such premiums: (i) arise out of an actual or alleged **Wrongful Act**, or (ii) are incurred solely by reason of such **Insured Person's** status as an **Executive** or **Employee** of an **Organization**.

Loss means damages, settlements, judgments (including pre/post-judgment interest on a covered judgment), **Defense Costs**, **Derivative Investigation Costs**, **Liberty Protection Costs** and **Pre-Claim Inquiry Costs**; however, "**Loss**" (other than **Defense Costs**) shall not include: (1) civil or criminal fines or penalties; (2) taxes; (3) any amounts for which an **Insured** is not financially liable or which are without legal recourse to an **Insured**; and (4) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed. Notwithstanding the foregoing subparagraph (4), the **Insurer** shall not assert that, in a **Securities Claim** alleging violations of Section 11, 12 or 15 of the Securities Act of 1933, as amended, the portion of any amounts incurred by **Insureds** which is attributable to such violations constitutes uninsurable loss, and, unless precluded from doing so in a court order, shall treat that portion of all such settlements, judgments and **Defense Costs** as constituting **Loss** under this **Coverage Section**.

Notwithstanding the foregoing paragraph, **Loss** shall specifically include (subject to this policy's other terms, conditions and limitations, including but not limited to the Conduct Exclusion): (1) civil penalties assessed against any **Insured Person** pursuant to Section 2(g)(2)(B) of the Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-2(g)(2)(B); and (2) punitive, exemplary and multiplied 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.

Management Control

means:

- (1) owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of: the Board of Directors of a corporation; the management committee members of a joint venture; or the members of the management board of a limited liability company; or
- (2) having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of an **Organization**, to elect, appoint or designate a majority of: the Board of Directors of a corporation; the management committee of a joint venture; or the management board of a limited liability company.

Non-Indemnifiable Loss

means **Loss** for which an **Organization** has neither indemnified nor is permitted or required to indemnify an **Insured Person** pursuant to law or contract or the charter, bylaws, operating agreement or similar documents of an **Organization**.

Outside Entity

means any: (1) not-for-profit entity; or (2) other entity listed as an "**Outside Entity**" in an endorsement attached to this policy.

Outside Entity Executive

means any: (1) **Executive** of an **Organization** who is or was acting at the specific request or direction of an **Organization** as an **Executive** of an **Outside Entity**; or (2) any other person listed as an **Outside Entity Executive** in an endorsement attached to this policy.

In the event of a disagreement between the **Organization** and an **Outside Entity Executive** as to whether such **Insured** was acting "at the specific

request or direction of the **Organization**,” this **Coverage Section** shall abide by the determination of the **Organization** on this issue and such determination shall be made by written notice to the **Insurer** within ninety (90) days after the **Claim** against such **Outside Entity Executive** is made. In the event no notice of any such determination is given to the **Insurer** within such period, this **Coverage Section** shall apply as if the **Organization** determined that such **Outside Entity Executive** was not acting at the **Organization’s** specific request or direction.

Personal Reputation Crisis means any negative statement that is included in any press release or published by any print or electronic media outlet regarding an **Executive** of an **Organization** made during the **Policy Period** by any individual authorized to speak on behalf of an **Enforcement Body**.

Personal Reputation Expenses means reasonable and necessary fees, costs and expenses of a **Crisis Firm** (as defined in the CrisisFund® Appendix attached to this policy) retained within 30 days of a **Personal Reputation Crisis** solely and exclusively by an **Executive** to mitigate the adverse effects specifically to such **Executive’s** reputation from a **Personal Reputation Crisis**. “**Personal Reputation Expenses**” shall not include any fees, costs or expenses of any **Crisis Firm** incurred by an **Executive** if such **Crisis Firm** is also retained by or on behalf of an **Organization**.

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.

Pre-Claim Inquiry means any pre-**Claim**:

- (1) verifiable request for an **Insured Person** of any **Organization**: (a) to appear at a meeting or interview; or (b) produce documents that, in either case, concerns the business of that **Organization** or that **Insured Person’s** insured capacities, but only if the request came from any:
 - (i) **Enforcement Body**; or
 - (ii) **Organization**, or, on behalf of an **Organization**, by its board of directors (or the equivalent management body) or any committee of the board of directors (or the equivalent management body):
 - (A) arising out of an inquiry or investigation by an **Enforcement Body** concerning the business of that **Organization** or that **Insured Person’s** insured capacities; or
 - (B) as part of its **Derivative Investigation**; and
- (2) arrest or confinement of an **Executive** of an **Organization** to a: (a) specified residence; or (b) secure custodial premises operated by or on behalf of an **Enforcement Body**, in connection with the business of any **Organization** or an **Insured Person’s** capacity as an **Executive** or **Employee** of an **Organization**.

“**Pre-Claim Inquiry**” shall not include any routine or regularly scheduled regulatory or internal supervision, inspection, compliance, review, examination, production or audit, including any request for mandatory information from a regulated entity, conducted in an **Organization’s** and/or

Enforcement Body's normal review or compliance process.

Pre-Claim Inquiry Costs

means:

- (1) with respect to any **Pre-Claim Inquiry** as defined in subparagraph (1) of the Definition of such term, the reasonable and necessary pre-**Claim** fees, costs and expenses consented to by the **Insurer** and incurred by an **Insured Person** solely in connection with his/her preparation for and response to a **Pre-Claim Inquiry** directed to such **Insured Person**, including attendance at an interview or meeting requested by an **Enforcement Body**, but excluding (i) any compensation of any **Insured Person**; and (ii) the costs of complying with any formal or informal discovery or other request seeking documents, records or electronic information in the possession or control of an **Organization**, the requestor or any other third party; and
- (2) with respect to any **Pre-Claim Inquiry** as defined in subparagraph (2) of the Definition of such term, any **Liberty Protection Costs**.

Related Claim

means a **Claim** alleging, arising out of, based upon or attributable to any facts or **Wrongful Acts** that are the same as or related to those that were either: (i) alleged in another **Claim** made against an **Insured**; or (ii) the subject of a **Pre-Claim Inquiry** received by an **Insured Person**.

Related Pre-Claim Inquiry

means a **Pre-Claim Inquiry** involving, arising out of, based upon or attributable to any facts or **Wrongful Acts** that are the same as or related to those that were either: (i) alleged in a **Claim** made against an **Insured**; or (ii) the subject of another **Pre-Claim Inquiry** received by an **Insured Person**.

Securities Claim

means a **Claim** made against any **Insured**:

- (1) alleging a violation of any law, rule or regulation, whether statutory or common law (including but not limited to the purchase or sale or offer or solicitation of an offer to purchase or sell securities) which is:
 - (i) brought by any person or entity alleging, arising out of, based upon or attributable to the purchase or sale or offer or solicitation of an offer to purchase or sell securities of an **Organization**; or
 - (ii) brought by a security holder of an **Organization** with respect to such security holder's interest in securities of such **Organization**; or
- (2) which is a **Derivative Suit**.

Securities Retention

means the Retention applicable to **Loss** (including **Pre-Claim Inquiry Costs**) that arises out of (i) a **Securities Claim**, or (ii) **Pre-Claim Inquiry Costs** incurred in response to: (a) a **Pre-Claim Inquiry** by an **Enforcement Body** charged with the regulation of securities, or (b) a **Derivative Investigation**.

SOX 304 Costs

means the reasonable and necessary fees, costs and expenses consented to by the **Insurer** (including the premium or origination fee for a loan or bond) and incurred by the chief executive officer or chief financial officer of the **Named Entity** solely to facilitate the return of amounts required to be repaid by such **Executive** pursuant to Section 304(a) of the Sarbanes-Oxley Act of 2002. **SOX 304 Costs** do not include the payment, return, reimbursement, disgorgement or restitution of any such amounts requested or required to be repaid by such **Executive** pursuant to Section 304(a).

Subsidiary

means:

- (1) any for-profit entity, whose securities are not publicly traded, of which the **Named Entity** has or had **Management Control** on or before the **Inception Date** of this policy, either directly or indirectly through one or more of its other **Subsidiaries**; and
- (2) any not-for-profit entity sponsored exclusively by an **Organization**.

A for-profit entity ceases to be a **Subsidiary** when the **Named Entity** no longer maintains **Management Control** of such entity either directly or indirectly through one or more of its **Subsidiaries**. A not-for-profit entity ceases to be a **Subsidiary** when such entity is no longer sponsored exclusively by an **Organization**.

Transaction

means, in addition to the definition set forth in the **General Terms and Conditions**, the appointment by any **Enforcement Body** of, or where any **Enforcement Body** assumes the role of, a trustee, receiver, conservator, rehabilitator, liquidator or similar official to take control of, supervise or oversee the **Named Entity**, or to liquidate or sell all or substantially all of the assets of the **Named Entity**.

**UK Corporate
Manslaughter Act
Defense Costs**

means **Defense Costs** incurred by an **Insured Person** that result solely from the investigation, adjustment, defense and/or appeal of a **Claim** against an **Organization** for violation of the United Kingdom Corporate Manslaughter and Corporate Homicide Act of 2007 or any similar statute in any jurisdiction.

Wrongful Act

means:

- (1) any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act:
 - (i) with respect to any **Executive** or **Employee** of an **Organization**, by such **Executive** or **Employee** in his or her capacity as such or any matter claimed against such **Executive** or **Employee** solely by reason of his or her status as such;
 - (ii) 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
- (2) with respect to an **Organization**, any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act by such **Organization**.

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