



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**.