



AIG Executive Liability[®]

Insurance provided by the following member of American International Group, Inc.

American International Specialty Lines Insurance Company

A capital stock company

Financial Institutions Risk Protector[®]

GENERAL TERMS AND CONDITIONS

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

1. TERMS AND CONDITIONS

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

2. DEFINITIONS

- (a) **"Affiliate"** means: (i) any person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is in common control with, the **Company**; or (ii) any person or entity that directly, or indirectly through one or more intermediaries, is a successor in interest to the **Company**.
- (b) **"Bodily Injury"** means physical injury, sickness, disease (other than emotional distress or mental anguish), including death resulting therefrom.
- (c) **"Claim"** means **Claim**, as that term is defined within each **Coverage Section**.
- (d) **"Cleanup Costs"** means expenses (including but not limited to legal and professional fees) incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of **Pollutants**.
- (e) **"Company"** means (i) the **Named Entity**, (ii) any **Subsidiary** thereof, and, (iii) in the event a bankruptcy proceeding shall be instituted by or against the foregoing entities, the resulting debtor-in-possession (or equivalent status outside the United States), if any.

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- (f) **"Company Shareholder Derivative Investigation"** means an investigation by the **Company** (including its board of directors (or equivalent management body) or any committee of the board of directors of the **Company**) as to whether or not the **Company** should commence a civil proceeding in a court of law against one or more **Director(s)** or **Officer(s)** of such **Company** in direct response to a written demand by one or more shareholders of a **Company**, other than shareholders who are **Insureds** ("**Complaining Shareholders**"), upon the board of directors (or equivalent management body) of such **Company** to bring, on behalf of the **Company**, a civil proceeding in a court of law against a **Director** or **Officer** of the **Company** for a **Wrongful Act** of such **Director** or **Officer** of the **Company**.
- (g) **"Complaining Shareholder"** means any shareholder or shareholders, other than any **Insured**, that makes a **Derivative Demand**.
- (h) **"Continuity Date"** means the date set forth in Item 3 of the Declarations with respect to each **Coverage Section**.
- (i) **"Coverage Section(s)"** means each **Coverage Section** that is purchased by the **Insured** as indicated in Item 3 of the Declarations.
- (j) **"Defense Costs"** means reasonable and necessary fees, costs and expenses consented to by the **Insurer** (including premiums for any appeal bond, attachment bond, or similar bond arising out of a covered judgment, but without any obligation to apply for or furnish any such bond), resulting solely from the investigation, adjustment, defense and appeal of a **Claim** against the **Insureds**, but excluding any compensation of any **Individual Insured** of the **Company**. **Defense Costs** shall not include any fees, costs or expenses incurred prior to the time that a **Claim** is first made against an **Insured**.
- (k) **"Derivative Demand"** means a written demand by shareholders upon the board of directors (or equivalent management body) of a **Company** asking it to bring, on behalf of the **Company**, a civil proceeding in a court of law against any **Director** or **Officer** of the **Company** for a **Wrongful Act** of such **Director** or **Officer** in order to obtain relief from damages arising out of such **Wrongful Acts**.
- (l) **"Director(s) or Officer(s)"** means any:
- (1) past, present and future duly elected or appointed director or officer of a corporation and member of the management board of a limited liability company (or equivalent positions);
 - (2) with respect to operations of the **Company** in a **Foreign Jurisdiction**, such past, present and future persons in duly elected or appointed positions of the **Company** that are equivalent to an executive position listed in paragraph (1) of this definition; and
 - (3) past, present and future general counsel and risk manager (or equivalent position) of the **Named Entity**.

- (m) **"Discovery Period"** means **Discovery Period**, as that term is defined in Clause 8 of the General Terms and Conditions.
- (n) **"Domestic Partner"** means any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Named Entity** or any **Subsidiary**.
- (o) **"Employee(s)"** means any past, present or future employee, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any part-time, seasonal and temporary employee in his or her capacity as such. An individual who is leased to the **Company**, who is contracted to perform work for the **Company**, or who is an independent contractor for the **Company** shall also be an **Employee**, but only if the **Company** provides indemnification to such individual in the same manner as is provided to the **Company's** employees.
- (p) **"Financial Insolvency"** means the: (i) appointment by any state or federal official, agency or court of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate a **Company**; or (ii) the **Company** becoming a debtor-in-possession pursuant to the United States bankruptcy law; or (iii) a bankruptcy petition is filed by or against the **Company**, and as to (i), (ii) and (iii), the equivalent status outside the United States of America.
- (q) **"Foreign Jurisdiction"** means any jurisdiction, other than the United States or any of its territories or possessions.
- (r) **"Indemnifiable Loss"** means **Loss** for which the **Company** has indemnified or is permitted or required to indemnify an **Individual Insured** pursuant to law or contract or the charter, bylaws, operating agreement or similar documents of a **Company**.
- (s) **"Individual Insured(s)"** means an **Individual Insured**, as that term is defined within each **Coverage Section**.
- (t) **"Insured(s)"** means an **Insured**, as that term is defined within each **Coverage Section**.
- (u) **"Insurer"** means the entity listed in Item 6 of the Declarations.
- (v) **"Investigation"** means the investigation by the **Company** or, on behalf of the **Company** by its board of directors (or the equivalent management body) or any committee of the board of directors (or the equivalent management body), as to whether or not the **Company** should bring the civil proceeding demanded in the **Derivative Demand**.
- (w) **"Investigation Costs"** means reasonable and necessary costs, charges, fees and expenses (including but not limited to attorney's fees and expert's fees but not including any settlement, judgment or damages and not including any regular or overtime wages, salaries or fees of any **Director or Officer or Employee** of the **Company**) incurred by the **Company** or its board of directors (or the equivalent management body) or any committee of the board of

directors (or the equivalent management body), and incurred solely in connection with an **Investigation**.

- (x) **"Loss"** means **Loss**, as that term is defined within each **Coverage Section**.
- (y) **"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 a **Company**, 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.
- (z) **"Named Entity"** means the entity listed in Item 1 of the Declarations.
- (aa) **"Non-Indemnifiable Loss"** means **Loss** for which a **Company** has neither indemnified nor is permitted or required to indemnify an **Individual Insured** pursuant to law or contract or the charter, bylaws, operating agreement or similar documents of a **Company**.
- (bb) **"Outside Entity"** means any: (1) not-for-profit organization; or (2) other entity listed as an **"Outside Entity"** in an endorsement attached to this policy.
- (cc) **"Outside Entity Executive"** means any: (1) **Director(s) or Officer(s)** of the **Company** who is or was acting at the specific written request or direction of the **Company** as a **Director(s) or Officer(s)** of an **Outside Entity**; or (2) any other person listed as an **Outside Entity Executive** in an endorsement attached to this policy.
- (dd) **"Policy Aggregate Limit of Liability"** means the **Policy Aggregate Limit of Liability** stated in Item 5(a) of the Declarations.
- (ee) **"Policy Period"** means the period of time from the inception date shown in Item 2 of the Declarations to the earlier of the expiration date shown in Item 2 of the Declarations or the effective date of cancellation of this policy.
- (ff) **"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.
- (gg) **"Property Damage"** means damage to, or destruction of tangible or intangible property, including the loss of use thereof, or the loss of use of tangible or intangible property which has not been damaged or destroyed.
- (hh) **"Related Wrongful Act"** means a **Wrongful Act**, which is the same, related or continuous, or a **Wrongful Act** which arises from a common nucleus of facts. **Claims** can allege **Related**

Wrongful Acts regardless of whether such **Claims** involve the same or different claimants, **Insureds** or legal causes of action.

- (ii) **"Retaliation"** means a retaliatory act of an **Insured** alleged to be in response to any of the following activities: (1) the disclosure or threat of disclosure by an **Employee** of the **Company** or an **Outside Entity** to a superior or to any governmental agency of any act by an **Insured** which act is alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder; (2) the actual or attempted exercise by an **Employee** of the **Company** or an **Outside Entity** of any right that such **Employee** has under law, including rights under worker's compensation laws, the Family and Medical Leave Act, the Americans with Disabilities Act or any other law relating to employee rights; (3) the filing of any claim under the Federal False Claims Act or any other federal, state, local or foreign "whistle-blower" law; or (4) strikes of an **Employee** of the **Company** or an **Outside Entity**.
- (jj) **"Separate Limit of Liability"** means each **Separate Limit of Liability**, if any, stated in Item 3 of the Declarations.
- (kk) **"Shared Limit of Liability"** means each **Shared Limit of Liability**, if any, stated in Item 3 of the Declarations, which limit of liability shall be shared between all of the **Coverage Sections** which are listed below such **Shared Limit of Liability** in the Declarations.
- (ll) **"Subsidiary"** means:
 - (1) If the equity securities of the **Named Entity** are not publicly traded at the inception date of the policy:
 - (i) any for-profit organization that is not formed as a partnership or joint venture, whose equity securities are not publicly traded, which on or before the inception of the **Policy Period** is more than 50% owned by the **Named Entity**, either directly or indirectly through one or more of its **Subsidiaries**;
 - (ii) automatically any for-profit organization that is not formed as a partnership or joint venture, whose equity securities are not publicly traded and whose assets total less than 25% of the total consolidated assets of the **Company** at the date such organization is acquired and which organization becomes a **Subsidiary** during the **Policy Period**. The **Named Entity** shall provide the **Insurer** with full particulars of the new **Subsidiary** before the end of the **Policy Period**; and
 - (iii) automatically any for-profit organization that is not formed as a partnership or joint venture, whose equity securities are not publicly traded and whose assets total 25% or more of the total consolidated assets of the **Company** at the date such organization is acquired, but such entity shall be a **Subsidiary** only: (i) for a period of ninety (90) days from the date the organization became a **Subsidiary**; or (ii) until the end of the **Policy Period**, whichever ends or occurs first (hereinafter "**Auto-Subsidiary Period**"); provided that the **Named Entity** or any other **Insured**

shall report such **Subsidiary** to the **Insurer**, in writing, prior to the end of the **Policy Period**.

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

- (2) If the equity securities of the **Named Entity** are publicly traded at the inception date of the policy:
- (i) any for-profit organization that is not formed as a partnership, of which the **Named Entity** has **Management Control ("Controlled Entity")** on or before the inception of the **Policy Period** either directly or indirectly through one or more other **Controlled Entities**;
 - (ii) automatically any for-profit organization that is not formed as a partnership of which the **Named Entity** first had **Management Control** during the **Policy Period**, whether directly or indirectly through one or more other **Subsidiaries**, and whose assets total less than 25% of the total consolidated assets of the **Company** as of the inception date of this policy, provided that the **Named Entity** or any other **Insured** shall report such **Subsidiary** to the **Insurer**, in writing, prior to the end of the **Policy Period**;
 - (iii) automatically any for-profit organization that is not formed as a partnership of which the **Named Entity** first had **Management Control** during the **Policy Period**, whether directly or indirectly through one or more other **Subsidiaries**, and, whose assets total 25% or more of the total consolidated assets of the **Company** as of the inception date of this policy, 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 ends or occurs first (hereinafter "**Auto-Subsidiary Period**"); provided that the **Named Entity** or any other **Insured** shall report such **Subsidiary** to the **Insurer**, in writing, prior to the end of the **Policy Period**; and
 - (iv) any not-for-profit entity under section 501(c)(3) of the Internal Revenue Code of 1986 (as amended) sponsored exclusively by a **Company**.

A **Subsidiary** ceases to be a **Subsidiary** when the **Named Entity** no longer maintains **Management Control** of a **Subsidiary** either directly or indirectly through one or more of its **Subsidiaries**.

- (3) Irrespective of whether or not the equity securities of the **Named Entity** are publicly traded at the inception date of the policy, the following provisions apply:
- (i) The **Insurer** shall extend coverage for any **Subsidiary** described in (II)(1)(iii) and (II)(2)(iii) above, and any **Individual Insured** thereof, beyond its respective **Auto-**

Subsidiary Period if during such **Auto-Subsidiary Period**, the **Named Entity** shall have provided the **Insurer** with full particulars of the new **Subsidiary** and agreed to any additional premium and amendment of the provisions of this policy as required by the **Insurer** relating to such **Subsidiary**. Further, coverage as shall be afforded to any **Subsidiary** and any **Individual Insured** thereof is conditioned upon the **Named Entity** paying when due any additional premium required by the **Insurer** relating to such **Subsidiary**.

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

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

3. EXTENSIONS

Subject otherwise to the terms herein, this policy shall cover **Loss** arising from any **Claim** made against: (i) the estates, heirs, or legal representatives of deceased **Individual Insureds**, and the legal representatives of **Individual Insureds** in the event of incompetency, insolvency or bankruptcy, who were **Individual Insureds** at the time the **Wrongful Acts** upon which such **Claims** are based were committed; or (ii) the lawful spouse (whether such status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world) or **Domestic Partner** of an **Individual Insured** for all **Claims** arising solely out of his or her status as the spouse or **Domestic Partner** of an **Individual Insured**, including a **Claim** that seeks damages recoverable from marital community property, property jointly held by the **Individual Insured** and the spouse or **Domestic Partner**, or property transferred from the **Individual Insured** to the spouse or **Domestic Partner**; provided, however, that this extension shall not afford coverage for any **Claim** for any **Wrongful Act** of the spouse or **Domestic Partner**, but shall apply only to **Claims** arising out of any **Wrongful Acts** of an **Individual Insured**, subject to the policy's terms, conditions and exclusions.

4. EXCLUSIONS

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

- (a) arising out of, based upon or attributable to the gaining of any profit or advantage to which any final adjudication establishes the **Insured(s)** were not legally entitled;
- (b) alleging, arising out of, based upon or attributable to the facts alleged, or to the same as or a **Related Wrongful Act** alleged or contained in any **Claim** which has been reported, or in any circumstances of which notice has been given, under any policy of which this policy is a renewal

or replacement or which it may succeed in time;

- (c) alleging, arising out of, based upon or attributable to, directly or indirectly, as of the **Continuity Date**, any pending or prior: (1) litigation; or (2) administrative or regulatory proceeding or investigation of which an **Insured** had notice, or alleging any **Wrongful Act** which is the same as or a **Related Wrongful Act** to that alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation;
- (d) alleging, arising out of, based upon or attributable to, directly or indirectly, any actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants**; or for any direction or request to test, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**; provided, however, this exclusion shall not apply:
 - (i) with respect to the D&O Coverage Section only, to:
 - (1) **Non-Indemnifiable Loss**, other than **Non-Indemnifiable Loss** constituting **Cleanup Costs**; or
 - (2) a **Securities Claim** (as defined in the D&O Coverage Section), other than:
 - (a) **Loss** constituting **Cleanup Costs**; or
 - (b) any **Securities Claim** brought derivatively on behalf of a **Company** by a securities holder of such **Company** alleging, arising out of, based upon, or attributable to, directly or indirectly, **Cleanup Costs**;
 - (ii) with respect to the EPL Coverage Section only, to any **Claim** for **Retaliation**;
 - (iii) with respect to the FLI Coverage Section only, to **Non-Indemnifiable Loss** from a **Claim** alleging damage to a **Plan** (as defined in the FLI Coverage Section);
- (e) alleging, arising out of, based upon or attributable to, directly or indirectly, **Bodily Injury** or **Property Damage**; provided, however, this exclusion shall not apply:
 - (i) with respect to the D&O Coverage Section only, to any **Securities Claim** (as defined in the D&O Coverage Section); and
 - (ii) with respect to the FLI Coverage Section only, to **Defense Costs** incurred in the defense of a **Claim** alleging a **Breach of Fiduciary Duty** (as defined in the FLI Coverage Section);
- (f) for violation(s) of any of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act (except the Equal Pay Act), the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, any rules or regulations of the foregoing promulgated thereunder, and amendments thereto or any similar federal, state, local or foreign statutory law or common law; provided, however, that with respect to the EPL Coverage Section only, this exclusion shall not apply to a **Claim** for **Retaliation**; provided, further that solely with respect to violations of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974 and the Consolidated Omnibus Budget Reconciliation Act, this exclusion shall not apply to the extent coverage is afforded pursuant to the FLI Coverage Section;
- (g) alleging, arising out of, based upon, or attributable to, directly or indirectly, the refusal, failure or inability of any **Insured(s)** to pay wages or overtime pay for services rendered (hereinafter, "**Earned Wages**") (as opposed to tort-based back pay or front pay damages) or for improper

payroll deductions taken by any **Insured(s)** from any **Employee(s)** or purported employee(s), including, but not limited to, (i) any unfair business practice claim alleged because of the failure to pay **Earned Wages**, or (ii) any **Claim** seeking **Earned Wages** because any **Employee(s)** or purported employee(s) was improperly classified or mislabeled as "exempt;" or

(h) alleging, arising out of, based upon or attributable to, directly or indirectly, any obligation pursuant to any workers' compensation, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar benefits; provided, however, this exclusion shall not apply:

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

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

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

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

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

If **Shared Limits of Liability** are stated in Item 3 of the Declarations, then each such **Shared Limit of Liability** shall be the maximum limit of the **Insurer's** liability for all **Loss** arising out of all **Claims** first made against the **Insureds** during the **Policy Period** or the **Discovery Period** (if applicable) with respect

to all **Coverage Sections** for which such **Shared Limit of Liability** is applicable, as indicated on the Declarations; provided, however, with respect to all **Coverage Sections** that have a **Shared Limit of Liability**, the **Shared Limit of Liability** for the **Discovery Period** shall be part of, and not in addition to, the **Shared Limit of Liability** for the **Policy Period**. Any **Shared Limit of Liability** shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** for all **Loss** under this policy as stated in Item 5(a) of the Declarations and shall in no way serve to increase the **Policy Aggregate Limit of Liability** as therein stated.

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

6. RETENTION CLAUSE

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

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

7. NOTICE/CLAIM REPORTING PROVISIONS

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

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

(a) The **Company** or the **Insureds** shall, as a condition precedent to the obligations of the **Insurer**

under this policy, give written notice to the **Insurer** of any **Claim** made against an **Insured** or an **Employment Crisis** (as defined in the EPL Coverage Section) as soon as practicable and either:

- (1) any time during the **Policy Period** or during the **Discovery Period** (if applicable); or
 - (2) within forty-five (45) days after the end of the **Policy Period** or the **Discovery Period** (if applicable), as long as such **Claim** was first made against an **Insured** within the final thirty (30) days of the **Policy Period** or the **Discovery Period** (if applicable).
- (b) If written notice of a **Claim** has been given to the **Insurer** pursuant to Clause 7(a) above, then any **Claim** which is subsequently made against the **Insureds** and reported to the **Insurer** alleging a **Related Wrongful Act** to the **Claim** for which such notice has been given shall be considered made at the time such notice was given.
- (c) If during the **Policy Period** or **Discovery Period** (if applicable), the **Company** or the **Insureds** shall become aware of any circumstances which may reasonably be expected to give rise to a **Claim** being made against the **Insureds** and shall give written notice to the **Insurer** of the circumstances, the **Wrongful Act** allegations anticipated, and the reasons for anticipating such a **Claim**, with full particulars as to dates, persons and entities involved, then any **Claim** which is subsequently made against the **Insureds** and reported to the **Insurer** alleging, arising out of, based upon or attributable to such circumstances or alleging any **Related Wrongful Act** to such circumstances, shall be considered made at the time such notice of such circumstances was given.

8. DISCOVERY CLAUSE

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

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

In the event of a **Transaction** (as defined in Clause 10 below), the **Named Entity** shall have the right, within thirty (30) days before the end of the **Policy Period**, to request an offer from the **Insurer** of a **Discovery Period** (with respect to **Wrongful Acts** occurring prior to the effective time of the **Transaction**) for a period of no less than three (3) years or for such longer or shorter period as the

Named Entity may request. The **Insurer** shall offer such **Discovery Period** pursuant to such terms, conditions and premium as the **Insurer** may reasonably decide. In the event of a **Transaction**, the right to a **Discovery Period** shall not otherwise exist except as indicated in this paragraph.

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

9. CANCELLATION CLAUSE

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

This policy may be canceled by or on the behalf of the **Insurer** only in the event of non-payment of premium by the **Named Entity**. In the event of non-payment of premium by the **Named Entity**, the **Insurer** may cancel this policy by delivering to the **Named Entity** or by mailing to the **Named Entity**, by registered, certified, or other first class mail, at the **Named Entity's** address as shown in Item 1(a) of the Declarations, written notice stating when, not less than the minimum time allowed pursuant to the applicable state law, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice. The **Policy Period** terminates at the date and hour specified in such notice, or at the date and time of surrender. The **Insurer** shall have the right to the premium amount for the portion of the **Policy Period** during which the policy was in effect.

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

10. CHANGE IN CONTROL OF NAMED ENTITY

(1) If the equity securities of the **Named Entity** are not publicly traded at the inception date of the policy and if during the **Policy Period**:

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

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

then this policy shall continue in full force and effect as to **Wrongful Acts** occurring prior to the effective time of the **Transaction**, but there shall be no coverage afforded by any provision of this policy for any **Wrongful Act** occurring after the effective time of the **Transaction**.

(2) If the equity securities of the **Named Entity** are publicly traded at the inception date of the

policy and if during the **Policy Period**:

- (a) the **Named Entity** shall consolidate with or merge into, or sell all or substantially all of its assets to any other person or entity or group of persons or entities acting in concert; or
- (b) any person or entity or group of persons or entities acting in concert shall acquire **Management Control** of the **Named Entity**;

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

then this policy shall continue in full force and effect as to **Wrongful Acts** occurring prior to the effective time of the **Transaction**, but there shall be no coverage afforded by any provision of this policy for any **Wrongful Act** occurring after the effective time of the **Transaction**.

(3) This policy may not be canceled after the effective time of the **Transaction** and the entire premium for this policy shall be deemed earned as of such time. The **Named Entity** shall also have the right to an offer by the **Insurer** of a **Discovery Period** described in Clause 8 above.

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

11. SUBROGATION AND RIGHT OF DIRECT RECOVERY AGAINST INSURED

(a) In the event of any payment under this policy, the **Insurer** shall be subrogated to the extent of such payment to all of each and every **Company's** and **Insureds'** rights of recovery thereof, and each such **Company** and **Insured** shall execute all papers required and shall do everything that may be necessary to secure such rights (including, without limitation, the assertion of indemnification or contribution rights), including the execution of any and all documents necessary to enable the **Insurer** effectively to bring suit in the name of each such **Company** and each such **Insured**. In no event, however, shall the **Insurer** exercise its rights of subrogation against an **Insured** under this policy unless (i) the **Insurer** is seeking recovery from the **Company** pursuant to subparagraph (b)(i) of this Clause, or (ii) such **Insured** has been convicted of a deliberate criminal act, or been determined by any final adjudication to have committed a deliberate fraudulent act, or been determined by any final adjudication to have obtained any profit or advantage to which such **Insured** was not legally entitled.

(b) In the event that the **Insurer** shall for any reason pay **Indemnifiable Loss**, the **Insurer**:

- (i) shall be subrogated to the **Individual Insured's** right of recovery from the **Company**, or in the event of a bankruptcy of the **Company**, from the debtor-in-possession (or equivalent status outside the United States), of the amount of such **Loss** equal to the amount of the Retention not satisfied by the **Company** (hereinafter "**Retention Loss**"); and
- (ii) shall have a direct contractual right under the policy to recover from the **Company**, or in the event of a bankruptcy of the **Company**, from the debtor-in-possession (or equivalent status outside the United States), the **Retention Loss**. Such direct contractual right of recovery against the **Company** shall be in addition to and independent of the **Insurer's** subrogation

rights pursuant to subparagraph (b)(i) above.

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

12. OTHER INSURANCE

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

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

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

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

13. NOTICE AND AUTHORITY

It is agreed that the **Named Entity** shall act on behalf of its **Subsidiaries** and all **Insureds** with respect

to the giving of notice of a **Claim**, the giving and receiving of notice of cancellation and nonrenewal, the payment of premiums and the receiving of any return premiums that may become due under this policy, the receipt and acceptance of any endorsements issued to form a part of this policy, the exercising or declining of the right to tender the defense of a **Claim** to the **Insurer** and the exercising or declining to exercise any right to a **Discovery Period**.

14. ASSIGNMENT

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

15. DISPUTE RESOLUTION PROCESS

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

govern any dispute concerning the issue of whether the policy, for any reason, is void or voidable.

16. ACTION AGAINST INSURER

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

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

17. CHANGE IN THIS POLICY

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

18. TERRITORY

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

19. SERVICE OF SUIT

Subject to Clause 15, it is agreed that in the event of failure of the **Insurer** to pay any amount claimed to be due hereunder, the **Insurer**, at the request of the **Insured**, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this Clause 15 constitutes, or should be understood to constitute, a waiver of the **Insurer's** rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such suit may be made upon General Counsel, Legal Department, American International Specialty Lines Insurance Company, 70 Pine Street New York, NY 10270, or his or her representative, and that in any suit

instituted against the **Insurer** upon this contract, the **Insurer** will abide by the final decision of such court or of any appellate court in the event of any appeal.

Further, pursuant to any statute of any state, territory, or district of the United States which makes provision therefor, the **Insurer** hereby designates the Superintendent, Commissioner, or Director of Insurance, or other officer specified for that purpose in the statute, or his or her successor or successors in office as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the Insured or any beneficiary hereunder arising out of this contract of insurance, and hereby designates the above-named General Counsel as the person to whom the said officer is authorized to mail such process or a true copy thereof.

20. HEADINGS

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

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SPECIMEN