



AIG Specialty Insurance Company

A capital stock company

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

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

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

1. INSURING AGREEMENTS

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

of each and every Insured, collectively not to exceed the amount of the Sublimit of Liability for Voluntary Compliance Loss set forth in Item 7(c) of the Declarations; provided that the Insured shall select a Panel Counsel Firm as provided in Clause 6 of this Coverage Section.

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

- (c) Solely with respect to HIPAA Penalties assessed against an Insured during the Policy Period or the Discovery Period (if applicable) and reported to the Insurer pursuant to the terms of this policy, and subject to the other terms, conditions and limitations of this policy, this policy shall pay the HIPAA Penalties of each and every Insured, collectively not to exceed the amount of the Sublimit of Liability for HIPAA Penalties set forth in Item 7(d) of the Declarations.

2. DEFENSE AGREEMENT

- (a) INSURER'S DUTY TO DEFEND

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

The **Insured** shall have the right to effectively associate with the **Insurer** in the defense of any **Claim**, including, but not limited to, negotiating a settlement, subject to the provisions of this Clause 2. However, the **Insurer** shall not be obligated to defend any **Claim** after the **Policy Aggregate Limit of Liability** or any **Separate Limit of Liability** or **Shared Limit of Liability** (if any) has been exhausted, or pursuant to subparagraph (c) below, after the rejection of a settlement offer.

(b) **INSURED'S OPTION TO ASSUME DEFENSE**

Notwithstanding the above, the **Insureds** shall have the right to assume the defense of any **Claim** made against them. This right shall be exercised in writing by the **Organization** on the behalf of all **Insureds** within sixty (60) days of the reporting of the **Claim** to the **Insurer** pursuant to Clause 7 of the General Terms and Conditions of the policy. Upon receipt of such written request, the **Insurer** shall tender the defense of the **Claim** to the **Insureds**. Once the defense has been so tendered, the **Insurer** cannot re-assume the defense of the **Claim**. The **Insurer** shall have the right to effectively associate with the **Insureds** in the defense of any **Claim**, including but not limited to negotiating a settlement. Provided that the **Insurer** shall be permitted to effectively associate with the **Insureds** in the defense of any **Claim**, including but not limited to negotiating a settlement of any **Claim**, the **Insurer's** consent to settlements, stipulated judgments and **Defense Costs** shall not be unreasonably withheld.

(c) **GENERAL PROVISIONS (applicable to 2(a) and 2(b) above)**

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

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

The **Insured(s)** shall give the **Insurer** full cooperation and such information as the **Insurer** may reasonably require. In the event the **Insureds** do not consent to a **Settlement Opportunity**, then, subject to the **Policy Aggregate Limit of Liability** and **Separate Limit of Liability** or **Shared Limit of Liability**, if any, the **Insurer's** liability for all **Loss** on account of such **Claim** shall not exceed: (1) the amount for which the **Insurer** could have settled such **Claim** plus **Defense Costs** incurred as of the date such settlement was proposed in writing by the **Insurer** ("**Settlement Opportunity Amount**"), plus (2) 50% of covered **Loss** in excess of such **Settlement Opportunity Amount**, it being a condition of this insurance that the remaining 50% 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 until the **Settlement Opportunity Amount** exceeds the applicable Retention amount stated in Item 3 of the Declarations.

Selection of counsel to defend the **Claim** made against the **Insureds** shall be governed by Clause 6 of this Coverage Section (if applicable).

3. **DEFINITIONS**

- (a) **“Administrator”** means an **Insured** with respect to any **Wrongful Act** described in subparagraph 3(dd)(2) of the Definition of **“Wrongful Act”** in this Coverage Section.
- (b) **“Benefits”** means any obligation under a **Plan** to a participant or beneficiary under a **Plan** which is a payment of money or property, or the grant of a privilege, right, option or perquisite.
- (c) **“Breach of Fiduciary Duty”** means a violation of the responsibilities, obligations or duties imposed upon **Insureds** by ERISA.
- (d) **“Cafeteria Plan”** means a plan as defined in Section 125 of the Internal Revenue Code of 1986, as amended or a plan from which the participants may choose among two or more benefits consisting of cash and qualified benefits.
- (e) **“CAP Penalties”** means fines, penalties, sanctions, voluntary correction fees, compliance fees or user fees assessed against or collected from an **Insured** by the Internal Revenue Service (IRS) pursuant to a written agreement to correct an inadvertent **Plan** defect under an Employee Plans Compliance Resolution System established by the Internal Revenue Service, provided that such agreement to correct such **Plan** defect was entered into in writing by the **Insured** with the IRS during the **Policy Period** (or during the policy period of a policy issued by the **Insurer** of which this policy is a continuous renewal).
- (f) **“Claim”** means:
 - (1) a written demand for monetary, non-monetary or injunctive relief;
 - (2) a civil, criminal or arbitration proceeding for monetary, non-monetary or injunctive relief which is commenced by:
 - (i) service of a complaint or similar pleading;
 - (ii) return of an indictment (in the case of a criminal proceeding); or
 - (iii) receipt or filing of a notice of charges;
 - (3) a formal agency adjudicative proceeding anywhere in the world to which an **Insured** is subject; or
 - (4) any fact-finding investigation by the U.S. Department of Labor, the Pension Benefit Guaranty Corporation or similar governmental agency which is located outside of the United States.
- (g) **“Consulting Fees”** means fees charged by a third party actuary, benefits consultant or accountant resulting solely from the correction of an actual or potential **Breach of Fiduciary Duty**, but excluding any fees, costs or expenses associated with: (i) a **Plan** audit; or (ii) identifying, finding or assessing such **Breach of Fiduciary Duty**.
- (h) **“Defense Expenses”** means reasonable and necessary attorney’s fees, costs or expenses consented to in writing by the **Insurer** resulting solely from the correction of an actual or potential **Breach of Fiduciary Duty**, but excluding any fees, costs and expenses associated with finding or assessing such **Breach of Fiduciary Duty** and any compensation of **Individual Insureds** or employees of an **Insured**.
- (i) **“Delinquent Filer Penalties”** means penalties assessed by the U.S. Department of Labor or the IRS under a Delinquent Filer Voluntary Compliance Program for inadvertent failure to file Form 5500, provided that the failure to file such Form 5500 occurred during the **Policy Period** (or during the policy period of a policy issued by the **Insurer** of which this policy is a continuous renewal).
- (j) **“Dependent Care Assistance Program”** means a dependent care assistance program as defined in Section 129 of the Internal Revenue Code of 1986, as amended.

- (k) “**Employee Benefit Law**” means **ERISA** or any similar common or statutory law of the United States of America, Canada or any state or other jurisdiction anywhere in the world to which a **Plan** is subject. Solely with respect to subparagraph 3(dd)(2) of the definition of **Wrongful Act** in this FLI Coverage Section, **Employee Benefit Law** shall also include **HIPAA Privacy Regulations** and any laws concerning unemployment insurance, Social Security, government-mandated disability benefits or similar law. Except as provided in the previous sentence, **Employee Benefit Law** shall not include any law concerning workers’ compensation, unemployment insurance, Social Security, government-mandated disability benefits or similar law.
- (l) “**ERISA**” means the Employee Retirement Income Security Act of 1974 (including, but not limited to, amendments relating to the Consolidated Omnibus Budget Reconciliation Act of 1985, the Health Insurance Portability and Accountability Act of 1996, the Newborns’ and Mothers’ Health Protection Act of 1996, the Mental Health Parity Act of 1996, the Women’s Health and Cancer Rights Act of 1998, and the Pension Protection Act of 2006), and including any amendment or revision thereto.
- (m) “**ESOP**” means any employee stock ownership plan as defined in **ERISA**, or any other **Plan** under which investments are made primarily in securities of (i) the **Organization**, (ii) any acquired **Subsidiary**, or (iii) any parent of any acquired **Subsidiary**, or whose assets at any time within twelve (12) months prior to the inception date of this policy were comprised of ten percent (10%) or more of securities of (i) the **Organization**, (ii) any acquired **Subsidiary**, or (iii) any parent of any acquired **Subsidiary**.
- (n) “**Fiduciary**” means a fiduciary as defined in any applicable **Employee Benefit Law** with respect to a **Plan**, or a person or entity who exercises discretionary control respecting the management of a **Plan** or the disposition of its assets.
- (o) “**Fringe Benefit**” means any plan or benefit described in Section 132 of the Internal Revenue Code of 1986, as amended.
- (p) “**HIPAA Penalties**” means civil money penalties imposed upon an **Insured** for violation of **HIPAA Privacy Regulations** the privacy provisions of the Health Insurance Portability and Accountability Act of 1996 and any rules or regulations promulgated thereunder.
- (q) “**HIPAA Privacy Regulations**” means the privacy provisions of the Health Insurance Portability and Accountability Act of 1996 and any rules or regulations promulgated thereunder.
- (r) “**Individual Insured**” means any past, present or future natural person director, officer or employee of the **Organization** or, if applicable, of a **Plan**, and as to all of the above, in his or her capacity as a **Fiduciary, Administrator** or trustee of a **Plan**.
- (s) “**Insured(s)**” means:
- (1) any **Individual Insured**;
 - (2) any **Plan(s)**;
 - (3) the **Organization**;
 - (4) any other person or entity in his, her or its capacity as a **Fiduciary, Administrator** or trustee of a **Plan** who is included in the Definition of “**Insured**” by specific written endorsement attached to this policy.
- (t) “**IRA-based Plan**” means any payroll deduction IRA (Individual Retirement Account), SEP (Simplified Employee Pension Plan), SARSEP (Salary Reduction Simplified Employee Pension Plan) or SIMPLE IRA (Savings Incentive Match Plan for Employees), established or administered by the **Organization**, solely for the benefit of the employees and/or the directors or officers of the **Organization**;

(u) “**Loss**” means damages, judgments (including pre and post-judgment interest on that part of any covered judgment under this **Coverage Section**), settlements and **Defense Costs**; however, **Loss** shall not include: (1) civil or criminal fines or penalties imposed by law, except (i) to the extent set forth in Item 7(c) of the Declarations for **Voluntary Compliance Loss**, (ii) **UK Fines and Penalties**, (iii) the five percent (5%) or less civil penalty imposed upon an **Insured** under Section 502(i) of ERISA, (iv) the twenty percent (20%) or less penalty imposed upon an **Insured** under Section 502(l) of ERISA, with respect to covered settlements or judgments under this **Coverage Section**, and (v) to the extent set forth in Item 7(d) of the Declarations for **HIPAA Penalties**; (2) the multiplied portion of multiplied damages; (3) taxes or tax penalties; (4) any amount for which an **Insured** is not financially liable or which is without legal recourse to the **Insured**; (5) **Benefits**, or that portion of any settlement or award in an amount equal to such **Benefits**, unless and to the extent that recovery of such **Benefits** is based upon a covered **Wrongful Act** and is payable as a personal obligation of an **Individual Insured**; or (6) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.

Where permitted by law, **Loss** shall include punitive or exemplary damages imposed upon any **Insured** (subject to the policy’s other terms, conditions and exclusions, including but not limited to exclusions relating to profit, deliberate fraud or criminal acts and knowing or willful violation of any statute, rule or law, including but not limited to **Employee Benefit Law**).

Defense Costs shall be provided for items specifically excluded from **Loss** pursuant to subparagraphs (1)-(6) above of this Definition, subject to the other terms, conditions and exclusions of this policy.

Loss shall include **Voluntary Compliance Loss**.

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

(w) “**Pension Plan**” means a pension plan as defined in any **Employee Benefit Law**, including but not limited to any plan formed pursuant to Section 403(b) or Section 457 of the Internal Revenue Code.

(x) “**Plan**” means automatically, any plan, fund, trust or program (including, but not limited to, any **IRA-based Plan**, **Welfare Plan**, **Cafeteria Plan**, **Dependent Care Assistance Program**, **Fringe Benefit**, **Non-qualified Plan**, or **qualified Pension Plan**), established anywhere in the world, which was, is or shall be sponsored solely by the **Organization**, or sponsored jointly by the **Organization** and a labor organization, solely for the benefit of the employees and/or the directors and officers of the, subject to the following provisions:

(1) if such **Plan** is a **Pension Plan(s)**, other than an **ESOP** or **Pension Plan** described in subparagraphs (5)(a), (5)(b), 6(a) or 6(b) below, then the **Named Organization** shall provide written notice of such **Plan** to the **Insurer** prior to the inception date of this policy, unless such **Plan** was already covered under a policy issued by the **Insurer** of which this policy is a continuous renewal;

(2) if such **Plan** was sold, spun-off or terminated prior to the inception date of this policy the **Named Organization** shall provide written notice of such sale, spin-off or termination to the **Insurer** prior to the inception date of this policy and pay any required premium relating to such **Plan**, unless such sale, spin-off or termination had already been reported to the **Insurer** under a policy issued by the **Insurer** of which this policy is a continuous renewal;

- (3) if such **Plan** is sold, spun-off or terminated during the **Policy Period**, the **Named Organization** shall provide written notice of such sale, spin-off or termination to the **Insurer** prior to the end of the **Policy Period**;
- (4) if such **Plan** is an **ESOP** or stock option plan, the **Named Organization** shall provide written notice of such **Plan** to the **Insurer** unless such **Plan** was already covered under a policy issued by the **Insurer** of which this policy is a continuous renewal and such **Plan** is added to the Definition of **Plan** by specific written endorsement attached to this policy;
- (5) if such **Plan** is a **Pension Plan** (other than an **ESOP**) and:
 - (a) is acquired during the **Policy Period** as a result of the **Named Organization's** acquisition of a **Subsidiary** whose assets total less than 25% of the total consolidated assets of the **Named Organization** as of the inception date of this policy; or
 - (b) is acquired during the **Policy Period** and such **Plan's** assets total less than 25% of the total consolidated assets of all covered **Pension Plans** as of the inception date of this policy;

then this policy shall apply to such **Plan** (but solely with respect to a **Wrongful Act(s)** occurring after the date of such acquisition). The **Named Organization** shall provide the **Insurer** with full particulars of such new **Plan** before the end of the **Policy Period**; or

- (6) if such **Plan** is a **Pension Plan** (other than an **ESOP**) and:
 - (a) is acquired during the **Policy Period** as a result of the **Named Organization's** acquisition of a **Subsidiary** whose assets total more than 25% of the total consolidated assets of the **Named Organization** as of the inception date of this policy; or
 - (b) is acquired during the **Policy Period** and such **Plan's** assets total more than 25% of the total consolidated assets of all covered **Pension Plans** as of the inception date of this policy,

then, this policy shall apply to such **Plan** (but solely with respect to a **Wrongful Act(s)** occurring after the date of such acquisition), but only upon the condition that within 90 days of its acquisition, the **Named Organization** shall have provided the **Insurer** with a completed application for such new **Plan** and agreed to any additional premium or amendment of the provisions of the policy required by the **Insurer** relating to such new **Plan**. The 90 day reporting condition shall not apply if such new **Plan** does not constitute one of the five largest **Pension Plans** of the **Named Organization** and the failure to report such **Plan** within the 90 day reporting period was due to inadvertent omission by the **Named Organization** and upon discovery of such **Plan**, the **Named Organization** shall notify the **Insurer** as soon as practicable, provide any information required by the **Insurer** relating to such **Plan** and pay any premium required by the **Insurer** relating to such **Plan**.

The Definition of **Plan** shall also include: (i) the following government-mandated programs: unemployment insurance, Social Security, or disability benefits, but solely with respect to a **Wrongful Act** defined in subparagraph (2) of the Definition of **Wrongful Act** in this policy; (ii) any **Pension Plan** (other than an **ESOP**) considered or created by the **Named Organization** during the **Policy Period**; and (iii) any other plan, fund or program, which is included in the Definition of **Plan** by specific written endorsement attached to this policy.

In no event, however, shall the definition of **Plan** include any multiemployer plan as defined in **Employee Benefit Law**.

- (y) **"Settlement Opportunity"** means an Insurer-recommended settlement that is within the **Policy Aggregate Limit of Liability, Separate Limit of Liability or Shared Limit of Liability**, if any, and that is acceptable to the claimant.
- (z) **"UK Fines and Penalties"** means civil fines and penalties assessed against an Insured by either the Pensions Ombudsman appointed by the Secretary of State for Social Services in the United Kingdom, by the Occupational Pensions Regulatory Authority in the United Kingdom, by the Pensions Regulator in the United Kingdom, or any successor body thereto, subject to the other terms, conditions and exclusions of the policy.
- (aa) **"Voluntary Compliance Loss"** means **CAP Penalties, Delinquent Filer Penalties and Voluntary Fiduciary Correction Loss**.
- (bb) **"Voluntary Fiduciary Correction Loss"** means damages, **Defense Expenses and Consulting Fees** incurred in connection with the U.S. Department of Labor's ("DOL") Voluntary Fiduciary Correction Program as set forth in the Federal Register, resulting from an inadvertent **Breach of Fiduciary Duty** occurring during the **Policy Period** (or during the policy period of a policy issued by the Insurer of which this policy is a continuous renewal), provided that such compliance with the DOL's Voluntary Fiduciary Correction Program results in the Insured obtaining a "No Action" letter from the DOL; however, **Voluntary Fiduciary Correction Loss** shall not include: (1) civil or criminal fines or penalties imposed by law; (2) punitive or exemplary damages; (3) the multiplied portion of multiplied damages; (4) taxes or tax penalties; (5) any amount for which an Insured is not financially liable or which is without legal recourse to the Insured; (6) **Benefits**, or that portion of damages equal to such **Benefits**; (7) matters of which the Insured had knowledge prior to the inception date of this policy or the first policy issued by the Insurer to the **Named Organization** of which this policy is a continuous renewal; or (8) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.
- (cc) **"Welfare Plan"** means a welfare plan as defined in **Employee Benefit Law**.
- (dd) **"Wrongful Act"** means:
- (1) as respects an **Insured**: a violation of any of the responsibilities, obligations or duties imposed upon **Fiduciaries** by **Employee Benefit Law**; or any matter claimed against an **Insured** solely by reason of his, her or its status as a **Fiduciary**, but only with respect to a **Plan**; and
 - (2) as respects an **Administrator**, any act, error or omission solely in the performance of one or more of the following administrative duties or activities, but only with respect to a **Plan**:
 - (i) counseling employees, participants and beneficiaries;
 - (ii) providing interpretations;
 - (iii) handling of records; or
 - (iv) activities effecting enrollment, termination or cancellation of employees, participants and beneficiaries under the **Plan**,or any matter claimed against an **Insured** solely by reason of his, her or its status as an **Administrator**, but only with respect to a covered **Plan**.
 - (3) as respects an **Individual Insured**, any matter claimed against him or her arising out of his or her service as a **Fiduciary** or **Administrator** of any multiemployer plan as defined by **ERISA**, but only if such service is at the specific written request or direction of the **Named Organization** and such multiemployer plan is added by specific written endorsement attached to this policy, identified as a multiemployer plan and any required premium is paid. In no

event shall coverage under this policy extend to a **Claim** against a multiemployer plan itself, its contributing employer(s) or any other fiduciaries or administrators of such plan, other than an **Individual Insured**.

4. EXCLUSIONS

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

(a) arising out of, based upon or attributable to the committing of any criminal or deliberate fraudulent act, or any knowing or willful violation of any statute, rule or law, including, but not limited to, **Employee Benefit Law**, if any final adjudication establishes that such criminal or deliberate fraudulent act or knowing or willful violation was committed;

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

(b) for discrimination in violation of any law, except that this exclusion shall not apply to discrimination in violation of **Employee Benefit Law**;

(c) for failure to fund a **Plan** in accordance with **Employee Benefit Law** or the **Plan** instrument or the failure to collect contributions owed to the **Plan**; except that this exclusion shall not apply to **Defense Costs**;

(d) for emotional distress or mental anguish; provided, however, that this exclusion shall not apply to **Defense Costs** incurred in the defense of a **Claim** alleging a **Breach of Fiduciary Duty**;

(e) alleging, arising out of, based upon or attributable to any act or omission of an **Insured** in his, her or its capacity as a **Fiduciary** or **Administrator** of any plan, fund or program, other than a **Plan** as defined in this policy, or by reason of his, her or its status as a **Fiduciary** or **Administrator** of such other plan, fund or program; or

(f) alleging, arising out of, based upon or attributable to any **Wrongful Act** as respects the **Plan** taking place at any time when the **Organization** did not sponsor such **Plan** or when the **Individual Insured** was not a **Fiduciary**, **Administrator**, trustee, director(s), officer(s) or employee of the **Organization** or if applicable, a **Plan**.

5. LIMIT OF LIABILITY

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

The maximum limit of the **Insurer's** liability for all **Voluntary Compliance Loss** occurring during the **Policy Period** or the **Discovery Period** (if applicable), in the aggregate, shall be the amount set forth in Item 7(c) of the Declarations ("**Voluntary Compliance Loss Sublimit of Liability**"). The **Voluntary Compliance Loss Sublimit of Liability** shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability** stated in Item 7(a) of the Declarations of this policy or any **Separate Limit of Liability** or **Shared Limit of Liability** applicable to this **Coverage Section** as stated in Item 3 of the Declarations, and shall in no way serve to increase the **Insurer's Policy Aggregate Limit of Liability** or any **Separate Limit of Liability** or **Shared Limit of Liability** as stated therein.

The maximum limit of the **Insurer's** liability for all **HIPAA Penalties** occurring during the **Policy Period** or the **Discovery Period** (if applicable), in the aggregate, shall be the amount set forth in Item 7(d) of the

Declarations ("HIPAA Penalties Sublimit of Liability"). The HIPAA Penalties Sublimit of Liability shall be part of, and not in addition to, the Policy Aggregate Limit of Liability stated in Item 7(a) of the Declarations of this policy and any Separate Limit of Liability or Shared Limit of Liability applicable to this Coverage Section as stated in Item 3 of the Declarations, and shall in no way serve to increase the Insurer's Policy Aggregate Limit of Liability or any Separate Limit of Liability or Shared Limit of Liability as stated therein.

6. PRE-AUTHORIZED DEFENSE ATTORNEYS

This Clause 6 applies only to: (1) a Claim brought by any government entity; (2) a request for coverage for a Voluntary Compliance Loss; or (3) a Claim brought in the form of a class or representative action.

Affixed as Appendix D hereto and made a part of this policy is a list of Panel Counsel law firms ("Panel Counsel Firm(s)") from which a selection of legal counsel shall be made to conduct the defense of any Claim against an Insured to which this Clause 6 applies and pursuant to the terms set forth below:

In the event the Insurer is operating under a duty to defend pursuant to Clause 2(a) of this Coverage Section, then the Insurer shall select a Panel Counsel Firm to defend the Insureds. Upon the written request of the Named Organization, the Insurer may consent to a different Panel Counsel Firm selected by the Named Organization to defend the Insureds, which consent shall not be unreasonably withheld.

In the event the Insureds have assumed the defense of the Claim pursuant to Clause 2(b) of this Coverage Section, then the Insureds shall select a Panel Counsel Firm to defend the Insured. In addition, with the express prior written consent of the Insurer, which consent shall not be unreasonably withheld, the Insured may select a Panel Counsel Firm different from that selected by other Insureds if such selection is required due to an actual conflict of interest or is otherwise reasonably justifiable.

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

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

7. DISCOVERY CLAUSE

Except as indicated below, if the Named Organization shall cancel or the Insurer or the Named Organization shall refuse to renew this Coverage Section, then solely with respect to this Coverage Section, the Named Organization, upon payment of the respective "Additional Premium Amount" described below, shall have the right to a period of one, two, three or six years after the effective date of such cancellation or nonrenewal (herein referred to as the "Discovery Period") in which to give to the Insurer written notice of Claims first made against the Insureds during the selected 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 the Discovery

Period shall be fully earned at the inception of the **Discovery Period**. The **Discovery Period** is not cancelable. This clause and the rights contained herein shall not apply to any cancellation resulting from non-payment of premium.

The **Additional Premium Amount** for: (1) one year shall be 125% of the "full annual premium"; (2) two years shall be 175% of the "full annual premium"; (3) three years shall be 200% of the "full annual premium"; and (4) six years shall be an amount to be determined in the absolute and sole discretion of 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**, as defined in Clause 9 of the General Terms and Conditions, the **Named Organization** 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 six (6) years or for such longer or shorter period as the **Named Organization** 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.

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