



Member Companies of American International Group, Inc.®

# Financial Institutions Risk Protector<sup>SM</sup>

POLICY NO:		REPLACEMENT OF POLICY NO:	
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- American Home Assurance Company       Illinois National Insurance Co.  
 American International South Insurance Company       National Union Fire Insurance Company of Pittsburgh, Pa.  
 (each of the above being a capital stock company)

## Management and Professional Liability for Private Companies

### NOTICES

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

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

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

### DECLARATIONS

ITEMS										
1	<table border="1"> <tr> <td rowspan="3"><b>NAMED ENTITY:</b></td> <td>(the "Named Entity")</td> <td></td> </tr> <tr> <td>MAILING ADDRESS:</td> <td></td> </tr> <tr> <td>STATE OF INCORPORATION/FORMATION:</td> <td></td> </tr> </table>	<b>NAMED ENTITY:</b>	(the "Named Entity")		MAILING ADDRESS:		STATE OF INCORPORATION/FORMATION:			
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2	<table border="1"> <tr> <td rowspan="2"><b>POLICY PERIOD:</b></td> <td>From:</td> <td></td> <td>To:</td> <td></td> </tr> <tr> <td colspan="4">12:01 A.M. at the mailing address stated in Item 1 above</td> </tr> </table>	<b>POLICY PERIOD:</b>	From:		To:		12:01 A.M. at the mailing address stated in Item 1 above			
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**ITEMS (continued)**

<b>3 COVERAGE SUMMARY</b>							
Liability Coverage Section		Premium	Separate Limit of Liability	Shared Limit of Liability	Retention*	Continuity Date	Retro Date
<b>D&amp;O</b>	D&O and Private Company	\$	\$	\$	Securities Claims: \$ All Other Claims: \$	XX/XX/XX	XX/XX/XX
				With:			
<b>EPL</b>	Employment Practices	\$	\$	\$	All Claims: \$		
				With:			
<b>FLI</b>	Fiduciary	\$	\$	\$	All Claims: \$		
				With:			
<b>BPL</b>	Bankers Professional	\$	\$	\$	All Claims: \$		
				With:			
<b>ICL</b>	Insurance Company	\$	\$	\$	All Claims: \$		
				With:			
<b>NAS</b>	AIG netAdvantage® Security & Privacy	\$	\$	\$	All Claims: \$		
				With:			
<b>CCP</b>	Employed Lawyers	\$	\$	\$	All Claims: \$		
				With:			

<b>4</b>	<b>TOTAL PREMIUM</b>	\$	*With respect to the D&O, EPL, FLI and CCP Coverage Sections only, no Retention amount is applicable to Non-Indemnifiable Loss.				
			*No Retention amount is applicable to Costs of Investigation for Derivative Claims, Employment Crisis Management Fund, Voluntary Compliance Loss and HIPAA Penalties.				
			*With respect to the NAS Coverage Section only, a separate Retention amount is applicable to Class Action Claims as set forth in Clause 6 of the NAS Coverage Section.				

<b>5</b>	<b>OTHER LIMITS OF LIABILITY</b>	<b>(a) POLICY AGGREGATE LIMIT OF LIABILITY:</b>		\$
		<b>(b) Derivative Investigation Sublimit of Liability for D&amp;O, if purchased:</b>		\$ 250,000
		<b>(c) Employment Crisis Management Fund for EPL, if purchased:</b>		\$
		<b>(d) Voluntary Compliance Loss Sublimit of Liability for FLI, if purchased:</b>		\$
		<b>(e) HIPAA Penalties Sublimit of Liability for FLI, if purchased:</b>		\$ 25,000
		<b>(f) Regulatory Action Sublimit of Liability for NAS, if purchased:</b>		\$

**6 NAME AND ADDRESS OF INSURER**

This policy is issued only by the insurance company indicated in this Item 6.

PRODUCER:  
PRODUCER LICENSE NO.:  
ADDRESS:

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

\_\_\_\_\_  
PRESIDENT

\_\_\_\_\_  
SECRETARY

\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

\_\_\_\_\_  
COUNTERSIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
COUNTERSIGNED AT

# **AIG** Financial Institutions Risk Protector<sup>SM</sup>

## **GENERAL TERMS AND CONDITIONS**

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

### **1. TERMS AND CONDITIONS**

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

### **2. DEFINITIONS**

- (a) **"Affiliate"** means: (i) any person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is in common control with, the **Company**; or (ii) any person or entity that directly, or indirectly through one or more intermediaries, is a successor in interest to the **Company**.
- (b) **"Bodily Injury"** means physical injury, sickness, disease (other than emotional distress or mental anguish), including death resulting therefrom.
- (c) **"Claim"** means **Claim**, as that term is defined within each **Coverage Section**.
- (d) **"Cleanup Costs"** means expenses (including but not limited to legal and professional fees) incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of **Pollutants**.
- (e) **"Company"** means (i) the **Named Entity**, (ii) any **Subsidiary** thereof, and, (iii) in the event a bankruptcy proceeding shall be instituted by or against the foregoing entities, the resulting debtor-in-possession (or equivalent status outside the United States), if any.
- (f) **"Continuity Date"** means the date set forth in Item 3 of the Declarations with respect to each **Coverage Section**.
- (g) **"Coverage Section(s)"** means each **Coverage Section** that is purchased by the **Insured** as indicated in Item 3 of the Declarations.
- (h) **"Defense Costs"** means reasonable and necessary fees, costs and expenses consented to by the **Insurer** (including premiums for any appeal bond, attachment bond, or similar bond arising out of a covered judgment, but without any obligation to apply for or furnish any such bond), resulting solely from the investigation, adjustment, defense and appeal of a **Claim** against the **Insureds**, but excluding any compensation of any **Individual Insured** of the **Company**. **Defense**

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

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

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

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

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

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

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

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

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

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

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

### 3. EXTENSIONS

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

### 4. EXCLUSIONS

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

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

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

(d) alleging, arising out of, based upon or attributable to, directly or indirectly, any actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants**; or for any direction or request to test, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**; provided, however, this exclusion shall not apply:

(i) with respect to the D&O Coverage Section only, to:

(1) **Non-Indemnifiable Loss**, other than **Non-Indemnifiable Loss** constituting **Cleanup Costs**; or

(2) a **Securities Claim**, other than:

(a) **Loss** constituting **Cleanup Costs**; or

(b) any **Securities Claim** brought derivatively on behalf of a **Company** by a securities holder of such **Company** alleging, arising out of, based upon, or attributable to, directly or indirectly, **Cleanup Costs**;

(ii) with respect to the EPL Coverage Section only, to any **Claim** for **Retaliation**;

(iii) with respect to the FLI Coverage Section only, to **Non-Indemnifiable Loss** from a **Claim** alleging damage to a **Plan** (as defined in the FLI Coverage Section);

(e) alleging, arising out of, based upon or attributable to, directly or indirectly, **Bodily Injury** or **Property Damage**; provided, however, this exclusion shall not apply:

(i) with respect to the D&O Coverage Section only, to any **Securities Claim**; and

(ii) with respect to the FLI Coverage Section only, to **Defense Costs** incurred in the defense of a **Claim** alleging a **Breach of Fiduciary Duty** (as defined in the FLI Coverage Section);

(f) for violation(s) of any of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act (except the Equal Pay Act), the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, any rules or regulations of the foregoing promulgated thereunder, and amendments thereto or any similar federal, state, local or foreign statutory law or common law; provided, however, that with respect to the EPL Coverage Section only, this exclusion shall not apply to a **Claim** for **Retaliation**; provided, further that solely with respect to violations of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974 and the Consolidated Omnibus Budget Reconciliation Act, this exclusion shall not apply to the extent coverage is afforded pursuant to the FLI Coverage Section;

(g) alleging, arising out of, based upon, or attributable to, directly or indirectly, the refusal, failure or inability of any **Insured(s)** to pay wages or overtime pay for services rendered (hereinafter, "**Earned Wages**") (as opposed to tort-based back pay or front pay damages) or for improper payroll deductions taken by any **Insured(s)** from any **Employee(s)** or purported employee(s), including, but not limited to, (i) any unfair business practice claim alleged because of the failure to pay **Earned Wages**, or (ii) any **Claim** seeking **Earned Wages** because any **Employee(s)** or purported employee(s) was improperly classified or mislabeled as "exempt;" or

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

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

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

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

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

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

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

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

## 6. RETENTION CLAUSE

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

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

## 7. NOTICE/CLAIM REPORTING PROVISIONS

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

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

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

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

## 8. DISCOVERY CLAUSE

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

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

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

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

## 9. CANCELLATION CLAUSE

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

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

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

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

## 10. CHANGE IN CONTROL OF NAMED ENTITY

If during the **Policy Period**:

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

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

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

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

## 11. SUBROGATION AND RIGHT OF DIRECT RECOVERY AGAINST INSURED

(a) In the event of any payment under this policy, the **Insurer** shall be subrogated to the extent of such payment to all the **Insureds'** rights of recovery thereof, and the **Insureds** shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the **Insurer** to effectively bring suit in the name of the **Insureds**. In no event, however, shall the **Insurer** exercise its rights of subrogation against an **Insured** under this policy unless the **Insurer** is seeking recovery from the **Company** pursuant to subparagraph (b)(i) of this Clause.

(b) In the event that the **Insurer** shall for any reason pay **Indemnifiable Loss** on behalf of an **Insured Person**, the **Insurer**:

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

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

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

## 12. OTHER INSURANCE

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

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

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

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

## 13. NOTICE AND AUTHORITY

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

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

#### 14.ASSIGNMENT

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

#### 15.DISPUTE RESOLUTION PROCESS

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

#### 16.ACTION AGAINST INSURER

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

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

**17.CHANGE IN THIS POLICY**

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

**18.TERRITORY**

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

**19.HEADINGS**

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

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# **AIG** Financial Institutions Risk Protector<sup>SM</sup>

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

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

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

### **1. INSURING AGREEMENTS**

#### **COVERAGE A: INDIVIDUAL INSURED INSURANCE**

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

#### **COVERAGE B: PRIVATE COMPANY INSURANCE**

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

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

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

#### **COVERAGE C: COSTS OF INVESTIGATION FOR DERIVATIVE CLAIMS**

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

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

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

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

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

No Retention amount is applicable to Coverage C.

## 2. DEFINITIONS

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

- (1) a written demand for monetary, non-monetary or injunctive relief (including any request to toll or waive any statute of limitations); or
- (2) a civil, criminal, administrative, regulatory or arbitration proceeding for monetary, non-monetary or injunctive relief which is commenced by:
  - (i) service of a complaint or similar pleading; or
  - (ii) return of an indictment, information or similar document (in the case of a criminal proceeding); or
  - (iii) receipt or filing of a notice of charges.
- (3) a civil, criminal, administrative or regulatory investigation of an **Individual Insured**:
  - (i) once such **Individual Insured** is identified in writing by such investigating authority as a person against whom a proceeding described in paragraph (2) of this definition, may be commenced; or
  - (ii) in the case of an investigation by the SEC or a similar state or foreign government authority, after the service of a subpoena upon such **Individual Insured**.

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

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

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

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

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

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

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

### 3. EXCLUSIONS

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

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

- (d) with respect to serving in a capacity as an **Outside Entity Executive**, for any **Wrongful Act** occurring prior to the **Continuity Date** if the **Insured** knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim** under this policy;
- (e) alleging, arising out of, based upon or attributable to, directly or indirectly, any actual or alleged act or omission of an **Individual Insured** serving in his or her capacity as a **Director or Officer** or **Employee** of any entity that is not the **Company** or an **Outside Entity**, or by reason of his or her status as a **Director or Officer** or **Employee** of such other entity;
- (f) for any **Wrongful Act** arising out of an **Individual Insured** serving in a capacity as an **Outside Entity Executive**, if such **Claim** is brought by the **Outside Entity** or a director, officer, trustee or governor thereof;
- (g) alleging, arising out of, based upon or attributable to, directly or indirectly, the purchase by the **Company** of securities of a "publicly traded entity" in a transaction which resulted, or would result, in such entity becoming an **Affiliate** or **Subsidiary** of the **Company**; provided, however, this exclusion shall not apply in the event that within thirty (30) days prior to it becoming an **Affiliate** or **Subsidiary**, the **Named Entity** gives written notice of the transaction to the **Insurer** together with full particulars and underwriting information required and agrees to any additional premium or amendment of the provisions of this policy required by the **Insurer** relating to the transaction. Further, coverage as shall be afforded to the transaction is conditioned upon the **Named Entity** paying when due any additional premium required by the **Insurer** relating to the transaction. An entity is a "publicly traded entity" if any securities of such entity have previously been subject to a public offering;
- (h) with respect to Coverage B(i) only:
  - (1) for any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, trade secret or any other intellectual property rights;
  - (2) alleging, arising out of, based upon or attributable to, directly or indirectly, any actual or alleged contractual liability of any **Insured** under any contract or agreement (either oral or written);
  - (3) seeking fines or penalties or non-monetary relief against the **Company**; provided, however, that this subsection (3) shall not apply to any **Securities Claim**;
- (i) which is brought by, on behalf of or in the right of, the **Company** or any **Individual Insured** other than an **Employee** who is not a **Director or Officer**; or which is brought by any security holder or member of the **Company**, whether directly or derivatively, unless such security holder's or member's **Claim** is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, any **Individual Insured** of the **Company** or the **Company**; provided, however, this exclusion shall not apply to:
  - (1) any **Claim** brought by an **Individual Insured** in the form of a cross-claim or third-party claim for contribution or indemnity which is part of, and results directly from a **Claim** that is covered by this policy;
  - (2) any bankruptcy proceeding by or against a **Company**, any **Claim** brought by the examiner, trustee, receiver, liquidator or rehabilitator (or any assignee thereof) of such **Company**, if any;

- (3) any **Claim** brought by any past **Director or Officer** of a **Company** who has not served as a duly elected or appointed director, officer, trustee, governor, management committee member, member of the management board, general counsel or risk manager (or equivalent position) of or consultant for a **Company** for at least four (4) years prior to such **Claim** being first made against any person;
- (4) any **Claim** brought by a **Director or Officer** of a **Company** formed and operating in a **Foreign Jurisdiction** against such **Company** or any **Director or Officer** thereof, provided that such **Claim** is brought and maintained outside the United States, Canada or any other common law country (including any territories thereof); or
- (5) any **Securities Claim**, provided that such **Securities Claim** is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, any **Company** or any **Director or Officer** of the **Company**; provided, however, solely with respect to this subsection (5):
  - (a) a **Director or Officer** of the **Company** engaging in any protected activity specified in 18 U.S.C. 1514A(a) ("whistleblower" protection pursuant to the Sarbanes-Oxley Act of 2002) or any protected activity specified in any other "whistleblower" protection pursuant to any similar state, local or foreign securities laws; shall not be deemed to trigger this exclusion.

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

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

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

- (1) any purchase or sale of securities exempted pursuant to Section 3(b) of the Securities Act of 1933. Coverage for such purchase or sale transaction shall not be conditioned upon payment of any additional premium; however, the **Named Entity** shall give the **Insurer** written notice of any public offering exempted pursuant to Section 3(b), together with full

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

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

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

#### 4. LIMIT OF LIABILITY

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

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

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

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

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

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

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

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

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

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

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

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

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

## 6. PRE-AUTHORIZED DEFENSE ATTORNEYS

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

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

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

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

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

## 7. REPRESENTATIONS AND SEVERABILITY

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

The **Insureds** agree that in the event that such statements, warranties and representations are not accurate and complete and materially affect either the acceptance of the risk or the hazard assumed by the **Insurer** under the policy, then this **Coverage Section** shall be void *ab initio* solely with respect to any of the following **Insureds**:

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

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

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

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

## 8. ORDER OF PAYMENTS

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

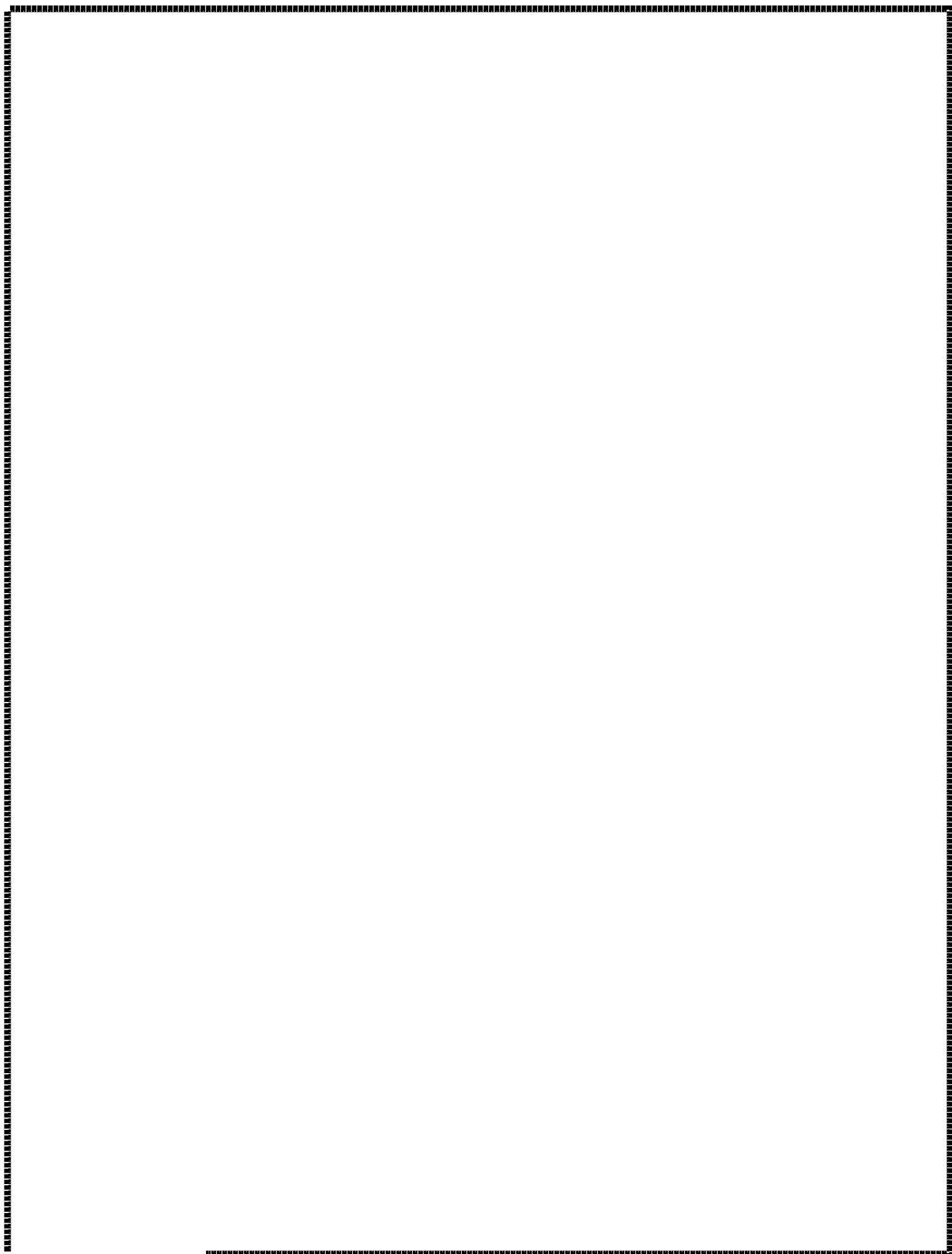
- (a) first, pay **Loss** for which coverage is provided under Coverage A of this **Coverage Section**; then
- (b) only after payment of **Loss** has been made pursuant to Clause 8(a) above, with respect to whatever remaining amount of the **Policy Aggregate Limit of Liability** or **Separate Limit of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

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

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

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## 2. DEFINITIONS

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

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

The term **Claim** shall include an Equal Employment Opportunity Commission ("EEOC") (or similar federal, state or local agency) proceeding or investigation commenced by the filing of a notice of charges, service of a complaint or similar document of which notice has been given to the **Insured**.

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

(b) **"Employment Crisis"** has the meaning as defined in Appendix EP-1 attached to this policy.

(c) **"Employment Crisis Management Fund"** has the meaning as defined in Appendix EP-1 attached to this policy.

(d) **"Employment Crisis Management Loss"** has the meaning as defined in Appendix EP-1 attached to this policy.

(e) **"Individual Insured(s)"** means any **Director or Officer, Outside Entity Executive or Employee** of the **Company**.

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

- (1) any **Individual Insured**; and
- (2) the **Company**.

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

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

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

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

- (11) with respect to any of the foregoing items (1) through (10) of this definition: negligent hiring, retention, training or supervision, infliction of emotional distress, mental anguish, failure to provide or enforce adequate or consistent corporate policies and procedures, or violation of an individual's civil rights;

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

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

### 3. EXCLUSIONS

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

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

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

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

#### 4. LIMIT OF LIABILITY

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

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

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

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

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

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

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

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

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

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

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

## 6. PRE-AUTHORIZED DEFENSE ATTORNEYS

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

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

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

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

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

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

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