

# AMERICAN INTERNATIONAL COMPANIES®

## EMPLOYMENT PRACTICES LIABILITY INSURANCE POLICY

In consideration of the payment of the premium, and in reliance upon the statements made to the Insurer by application forming a part hereof and its attachments and the material incorporated therein, the “Insurer”, agrees as follows:

### 1. INSURING AGREEMENTS

This policy shall pay the Loss of each and every Insured arising from a Claim first made against such 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 actual or alleged Employment Practices Violation.

### DEFENSE PROVISIONS

The Insurer does not assume any duty to defend, provided, however, the Named Entity may at its sole option tender the defense of a Claim for which coverage is provided by this policy to the Insurer in accordance with Clause 8 of the policy. Regardless of whether the defense is so tendered, the Insurer shall advance Defense Costs of such Claim prior to its final disposition. Selection of counsel to defend a “Designated Employment Practices Claim” shall be made in accordance with Clause 9 of the 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) “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, criminal, administrative or arbitration proceeding for monetary or non-monetary relief which is commenced by:
    - (i) service of a complaint or similar pleading; or
    - (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 state, local or foreign 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 an Insured.

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

- (c) "Company" means the Named Entity designated in Item 1 of the Declarations and any Subsidiary thereof, and any entity General Partner.
- (d) "Continuity Date" means the date set forth in:
  - (1) Item 6A of the Declarations with respect to all coverages (other than Outside Entity Coverage);
  - (2) Item 6B of the Declarations with respect to a Claim made against an Individual Insured(s) of the Company arising out of such Insured's service as a director, officer, trustee or governor of an Outside Entity.
- (e) "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, 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 salaries of officers or Employees of the Company.
- (f) "Educational Services" means the providing of services by any organization which is authorized by the United States of America or any state or territory thereof or any foreign jurisdiction to confer any academic degree. "Educational Services" shall also include services provided by any organization to any organized group of pre-school age children, or services provided by any organization which confers professional licenses or credentials.
- (g) "Employee(s)" mean 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 Organization shall also be an Employee, but only if the Organization provides indemnification to such leased individual in the same manner as is provided to the Organization's employees. Any other individual who is contracted to perform work for the 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 that provided to the Company's employees, and such individual is scheduled by written endorsement attached hereto and the Company pays any additional premium required by the Insurer relating to such individual.
- (h) "Employment Practices Violation(s)" means any actual or alleged:
  - (1) wrongful dismissal, discharge or termination (either actual or constructive) of employment, including breach of an implied contract;
  - (2) harassment (including 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 (including lockouts);
- (5) employment-related misrepresentation(s) to an Employee or applicant for employment with the Company or an Outside Entity;
- (6) employment-related libel, slander, humiliation, defamation or invasion of privacy;
- (7) wrongful failure to employ or promote;
- (8) wrongful deprivation of career opportunity, wrongful demotion or negligent Employee evaluation, including the giving of negative or defamatory statements in connection with an employee reference;
- (9) wrongful discipline;
- (10) failure to grant tenure;
- (11) failure to provide or enforce adequate or consistent corporate policies and procedures relating to any Employment Practices Violation;
- (12) violation of an individual's civil rights relating to any of the above,

but only if the Employment Practices Violation 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(s), client(s) or any other individual or group of individuals, other than an Employee or applicant for employment with the Company or an Outside Entity, Employment Practices Violation shall mean only any actual or alleged discrimination, sexual harassment or violation of an individual's civil rights relating to such discrimination or sexual harassment, whether direct, indirect, intentional or unintentional.

- (i) "General Partner(s)" means: (i) the Named Entity; (ii) a Subsidiary; (iii) a director, officer, Employee, management committee member or member of the Board of Managers of the Named Entity or a Subsidiary; or (iv) any other person or entity scheduled by written endorsement hereto, acting in their capacity as a general partner of the Company.
- (j) "Individual Insured(s)" means:
  - (1) any past, present or future duly elected or appointed directors, officers, management committee members, members of the Board of Managers or individual General Partners of the Company, but only in their capacities as such. Coverage will automatically apply to all new directors, officers, management committee members, members of the

Board of Managers or individual General Partners of the Company after the inception date of this policy;

- (2) any past, present or future duly elected or appointed directors, officers, Employees, management committee members or members of the Board of Managers of the Company serving in the capacity as director, officer, trustee or governor of an Outside Entity, but only if such service is at the specific written request or direction of the Company;
  - (3) in the event the Company operates outside the United States, then the terms director, officer, management committee member, member of the Board of Managers or individual General Partner shall also mean those titles, positions or capacities in such foreign Company which are equivalent to such positions in an organization incorporated or formed within the United States; and
  - (4) any Employee(s) of the Company.
- (k) "Insured(s)" means:
- (1) Individual Insureds; and
  - (2) the Company.
- (l) "Loss" means damages (including back pay and front pay), judgments, settlements, pre- and post-judgment interest and Defense Costs; however, Loss shall not include: (1) civil or criminal fines or penalties imposed by law; (2) punitive or exemplary damages; (3) the multiplied portion of multiplied damages; (4) taxes; (5) any amount for which the Insureds are not financially liable or which are without legal recourse to the Insureds; (6) employment-related benefits, stock options, perquisites, deferred compensation or any other type of compensation other than salary, wages or bonus compensation; (7) 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 Employment Practices Violation; or (8) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.
- (m) "Medical Services" means the providing of healthcare, medical care or treatment to any individual, including but not limited to any of the following: medical, surgical, psychiatric, mental health, chiropractic, osteopathic, nursing, or other professional healthcare, including the furnishing or dispensing of medications, drugs, blood, blood products or medical, surgical, dental or psychiatric supplies or equipment or the administration or management of healthcare or any healthcare plan.

- (n) "No Liability" means: (1) a final judgment of no liability obtained prior to trial, in favor of all Insureds, by reason of a motion to dismiss or a motion for summary judgment, after the exhaustion of all appeals; or (2) a final judgment of no liability obtained after trial, in favor of all Insureds, after the exhaustion of all appeals. In no event shall the term "No Liability" apply to a Claim made against an Insured for which a settlement has occurred.
- (o) "Outside Entity" means:
- (1) a not-for-profit organization under section 501(c)(3) of the Internal Revenue Code of 1986 (as amended) other than an organization engaged in Medical Services or Educational Services; or
  - (2) any other corporation, partnership, joint venture or other organization listed by endorsement to this policy.
- (p) "Policy Period" means the period of time from the inception date shown in Item 3 of the Declarations to the earlier of the expiration date shown in Item 3 of the Declarations or the effective date of cancellation of this policy.
- (q) "Retaliation" means a wrongful act of an Insured relating to or 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.
- (r) "Subsidiary" means:
- (1) any for-profit organization 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 whose assets total less than 10% of the total consolidated assets of the Company as of the inception date of this policy and which 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; or
  - (3) an organization which becomes a Subsidiary during the Policy Period (other than a for-profit organization described in paragraph (2) above) but only upon the condition that within 90 days of its becoming a Subsidiary, the Named Entity shall have provided the

Insurer with full particulars of the new Subsidiary and agreed to any additional premium or amendment of the provisions of this policy required by the Insurer relating to such new Subsidiary. Further, coverage as shall be afforded to the new Subsidiary is conditioned upon the Named Entity paying when due any additional premium required by the Insurer relating to such new 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 a 50% ownership 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 a Claim made against any Subsidiary, shall only apply to Employment Practices Violations 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.

### **3. EXTENSIONS**

Subject otherwise to the terms hereof, this policy shall cover Loss arising from any Claims made against 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 Employment Practices Violations upon which such Claims are based were committed.

Subject otherwise to the terms hereof, this policy shall cover Loss arising from all Claims made against the lawful spouse (whether such status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world) of an Individual Insured for all Claims arising solely out of his or her status as the spouse 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 property transferred from the Individual Insured to the spouse; provided, however, that this extension shall not afford coverage for any Claim for any actual or alleged Employment Practices Violation of the spouse, but shall apply only to Claims arising out of any actual or alleged Employment Practices Violation 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 a Claim made against an Insured:

- (a) arising out of, based upon or attributable to the gaining in fact of any profit or advantage to which an Insured was not legally entitled;

- (b) arising out of, based upon or attributable to the committing in fact of any criminal or deliberate fraudulent act;

[The Employment Practices Violation of an Insured shall not be imputed to any other Insured for the purpose of determining the applicability of the foregoing exclusions 4(a) and 4(b)]

- (c) alleging, arising out of, based upon or attributable to the facts alleged, or to the same or related Employment Practices Violations 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;
- (d) alleging, arising out of, based upon or attributable to any pending or prior: (1) litigation; or (2) EEOC (or similar state, local or foreign agency) proceeding or investigation of which an Insured had notice, as of the Continuity Date, or alleging or derived from the same or essentially the same facts as alleged in such pending or prior litigation or EEOC (or similar state, local or foreign agency) proceeding or investigation;
- (e) with respect to serving in a capacity as a director, officer, trustee or governor of an Outside Entity, for any Employment Practices Violation occurring prior to the Continuity Date if the Insured knew or could have reasonably foreseen that such Employment Practices Violation could lead to a Claim under this policy;
- (f) alleging, arising out of, based upon or attributable to any actual or alleged act or omission of an Individual Insured serving in any capacity, other than as a director, officer, management committee member, member of the Board of Managers, General Partner or Employee of the Company, or as a director, officer, trustee or governor of an Outside Entity;
- (g) for any Employment Practices Violation arising out of the Insured serving in a capacity as a director, officer, trustee or governor of an Outside Entity if such Claim is brought by the Outside Entity or a director, officer, trustee or governor thereof;
- (h) for bodily injury (other than emotional distress or mental anguish), sickness, disease, or death of any person, or damage to or destruction of any tangible property, including the loss of use thereof;
- (i) which is brought by any Insured; provided, however, this exclusion shall not apply to a Claim brought by an Employee of the Company other than an Employee who is or was a director, member of the Board of Managers or management committee member or General Partner of the Named Entity;
- (j) 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 provisions of any federal, state, local or foreign statutory law or common law; provided, however, this exclusion shall not apply to a Claim for Retaliation.

- (k) alleging, arising out of, based upon or attributable to any obligation pursuant to any worker's compensation, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law; provided, however, this exclusion shall not apply to a Claim for Retaliation.
- (l) alleging, arising out of, based upon or attributable to any actual or alleged contractual liability of the Company or any other Insured under any express employment 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;
- (m) alleging, arising out of, based upon or attributable to 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.

## 5. LIMIT OF LIABILITY (FOR ALL LOSS - INCLUDING DEFENSE COSTS)

The Limit of Liability stated in Item 4 of the Declarations is the 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); however, the Limit of Liability for the Discovery Period shall be part of, and not in addition to, the Limit of Liability for the Policy Period. Further, any 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 one aggregate Limit of Liability stated in Item 4 of the Declarations.

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

## 6. RETENTION CLAUSE

The Insurer shall only be liable for the amount of Loss arising from a Claim which is in excess of the Retention amount stated in Item 5 of the Declarations, such Retention amount to be borne by the Company or the Insureds and shall remain uninsured, with regard to all Loss: (1) for which the Company has indemnified or is permitted or required to indemnify the Individual Insured(s) ("Indemnifiable Loss"); or (2) of the Company. A single Retention amount shall apply to Loss arising from all Claims alleging the same Employment Practices Violation or related Employment Practices Violation.

The retention amount shall be reduced in the event that an Insured consents to the first "Settlement Opportunity", as defined in Clause 8, by the percentage described in Clause 8 subject to the conditions described in Clause 8.

No Retention shall apply to a Claim which is in the form of a civil action for monetary relief and the Insurer shall thereupon reimburse the Defense Costs paid by the Insured, in the event of:

- (1) a determination of No Liability of all Insureds; or
- (2) a dismissal or a stipulation to dismiss the civil litigation Claim without prejudice and without the payment of any consideration by any Insured;

provided, however, that in the case of (2) above, such reimbursement shall occur ninety (90) days after the date of dismissal or stipulation as long as the Claim is not re-brought (or any other Claim which is subject to the same single retention by virtue of Clause 6 is not brought) within that time, and further 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 Claim (or any other Claim which is subject to the same single retention by virtue of Clause 6) is brought after such 90 day period and before the expiration of the statute of limitations for such Claim.

## 7. NOTICE/CLAIM REPORTING PROVISIONS

**Notice hereunder shall be given in writing to the Insurer named in Item 8 of the Declarations at the address indicated in Item 8 of 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 as soon as practicable and either:
  - (1) anytime during the Policy Period or during the Discovery Period (if applicable);  
or
  - (2) within 30 days after the end of the Policy Period or the Discovery Period (if applicable), as long as such Claim is reported no later than 30 days after the date such Claim was first made against an Insured.
- (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, arising out of, based upon or attributable to the facts alleged in the Claim for which such notice has been given, or alleging any Employment Practices Violation which is the same as or related to any Employment Practices Violation alleged in the Claim of which such notice has been given, shall be considered made at the time such notice was given.

- (c) If during the Policy Period or during the 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 Employment Practices Violation which is the same as or related to any Employment Practices Violation alleged or contained in such circumstances, shall be considered made at the time such notice of such circumstances was given.

#### **8. 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 the 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 this policy. This right shall terminate if not exercised within 30 days of the date the Claim is first made against an Insured, pursuant to Clause 7 of the policy. 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 the negotiation of any settlement of any Claim, subject to the provisions of this Clause 8. However, the Insurer shall not be obligated to defend such Claim after the Limit of Liability has been exhausted, or after an Insured's rejection of a Settlement Opportunity as defined in this Clause 8.

When the Insurer has not assumed the defense of a Claim pursuant to Clause 8, 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 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 8, shall be entitled to effectively**

**associate in the defense and the 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 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.

If the Insurer recommends a settlement within the policy's applicable Limit of Liability which is acceptable to the claimant (a "Settlement Opportunity"), and the Insureds consent to such settlement, then the Insured's applicable retention amount shall be retroactively reduced by ten percent (10%) for such Loss. It shall be a condition to such reduction that the Insureds must consent to the first such Settlement Opportunity within thirty (30) days of the date the Insureds are first made aware of the Settlement Opportunity, or in the case of a Settlement Opportunity which arises from a settlement offer by the claimant, then within the time permitted by the claimant to accept such settlement offer, but in all events no later than thirty (30) days after the settlement offer was made.

However, if a Settlement Opportunity arises and the Insureds do not consent to the settlement within the time prescribed above, the retention amount shall remain the applicable amount set forth in Item 5 of the Declarations even if consent is given to a subsequent settlement.

Furthermore, in the event the Insureds do not consent to the First Settlement Opportunity within the time prescribed, then the Insurer's liability for all Loss on account of such Claim shall not exceed: (1) the amount for which the Insurer could have settled such Claim plus Defense Costs incurred as of the date such settlement was proposed in writing by the Insurer, ("Settlement Opportunity Amount") plus (2) 50% of covered Loss in excess of such Settlement Opportunity Amount, it being a condition of this insurance that the remaining 50% of such Loss excess of the Settlement Opportunity Amount shall be carried by the 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 Retention amount stated in Item 5 of the Declarations.

## **9. PRE-AUTHORIZED DEFENSE ATTORNEYS FOR DESIGNATED EMPLOYMENT PRACTICES CLAIMS**

This clause applies only to a 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 A hereto and made a part of this policy is a list of Panel Counsel law firms ("Panel Counsel Firms") from which a selection of legal counsel shall be made to conduct the defense of any Designated Employment Practices Claim against an Insured pursuant to the terms set forth below.

In the event the Insurer has assumed the defense pursuant to Clause 8 of this policy, then the Insurer shall select a Panel Counsel Firm to defend the Insureds. Upon the written request of the Named Entity, the Insurer may consent to a law firm selected by the Named Entity, whether or not a Panel Counsel Firm, to defend the Insureds, which consent shall not be unreasonably withheld. If, however, at any time thereafter a dispute arises between the Insurer and the Insureds involving the defense of the Claim, the Insurer and the Insured shall select a replacement defense counsel from the Panel Counsel list. In the event the Insureds are defending a Designated Employment Practices 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 jurisdiction in which the Designated Employment Practices Claim is brought. In the event a Designated Employment Practices Claim is brought in a jurisdiction not included on the 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 Claim), or cause the Insurer to select (in the case of the Insurer defending the 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 or is otherwise reasonably justifiable.

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.

## **10. 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 upon payment of the respective "Additional Premium Amount" described below (herein referred to as the "Discovery Period") in which to give to the Insurer written notice of Claims first made against the Insureds during such applicable Discovery Period for any Employment Practices Violation 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 30 days of the effective date of cancellation or nonrenewal. The Additional Premium for the Discovery Period shall be fully earned at the inception of the Discovery Period. The Discovery Period is not cancelable. This clause and

the rights contained herein shall not apply to any cancellation resulting from non-payment of premium.

The Additional Premium Amount for: (1) one year shall be 75% of the "full annual premium"; (2) two years shall be 150% of the "full annual premium"; (3) three years shall be a reasonable premium amount to be mutually agreed upon by the Insured and the Insurer. As used herein, "full annual premium" means the premium level in effect immediately prior to the end of the Policy Period.

In the event of a Transaction, as defined in Clause 12, the Named Entity shall have the right, within 30 days before the end of the Policy Period, to request an offer from the Insurer of a Discovery Period (with respect to Employment Practices Violations occurring prior to the effective time of the Transaction) for a period of no less than six 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.

## **11. 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 nonpayment 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 of the Declarations, written notice stating when, not less than 30 days thereafter, 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.

If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction thereof, such period shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

## **12. 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;

- 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 or General Partners of the Named Entity (in the event the Named Entity is a Partnership), or acquires the voting rights of such an amount of such securities; or
- c. a General Partner of the Named Entity (in the event the Named Entity is a partnership), withdraws, resigns or is terminated;

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

then this policy shall continue in full force and effect as to Employment Practices Violations occurring prior to the effective time of the Transaction, but there shall be no coverage afforded by any provision of this policy for any actual or alleged Employment Practices Violation 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 10 of the policy.

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

### **13. SUBROGATION**

In the event of any payment under this policy, the Insurer shall be subrogated to the extent of such payment to all the Company's and the Insureds' rights of recovery thereof, and the Company 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 Company or the Insureds. In no event, however, shall the Insurer exercise its rights of subrogation against an Insured under this policy unless such Insured has been convicted of a criminal act, or been determined to have committed a deliberate fraudulent act, or obtained any profit or advantage to which such Insured was not legally entitled.

### **14. OTHER INSURANCE AND INDEMNIFICATION**

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

In the event of a Claim against an Individual Insured arising out of his or her service as a director, officer, trustee or governor of an Outside Entity or a Claim against a leased Employee as described in definition (g) of Clause 2, 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 an Outside Entity or a leasing company; or for a Claim brought by a customer, client or other individual or group of individuals, (other than an Employee or applicant for employment with the Company or an Outside Entity); or 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 Losses 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 Limit of Liability of this policy or the limit of liability of such other AIG insurance policy.

## **15. NOTICE AND AUTHORITY**

It is agreed that the Named Entity shall act on behalf of the Subsidiaries and all Insureds with respect to the giving of notice of a Claim, the giving and receiving of notice of cancellation, the payment of premiums and the receiving of any return premiums that may become due under this policy, the receipt and acceptance of any endorsements issued to form a part of this policy, the exercising or declining of the right to tender the defense of a Claim to the Insurer and the exercising or declining of any right to a Discovery Period.

## **16. ASSIGNMENT**

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

## **17. DISPUTE RESOLUTION PROCESS**

All disputes or differences which may arise under or in connection with this policy, whether arising before or after termination of this policy, including any determination of the amount of Loss, shall be subject to the alternative dispute resolution process ("ADR") set forth in this clause.

Either the Insurer or the Insureds may elect the type of ADR discussed below; provided, however, that the Insureds shall have the right to reject the Insurer's choice of ADR at any time prior to its commencement, in which case the Insureds' choice of ADR shall control.

The Insurer and Insureds agree that there shall be two choices of ADR: (1) non-binding mediation administered by the American Arbitration Association, in which the Insurer and Insureds shall try in good faith to settle the dispute by mediation under or in accordance with its then-prevailing Commercial Mediation Rules; or (2) arbitration submitted to the American Arbitration Association under or in accordance with its then-prevailing commercial arbitration rules, in which the arbitration panel shall be composed of three disinterested individuals. In either mediation or arbitration, the mediator(s) or arbitrators shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. The mediator(s) or arbitrators shall also give due consideration to the general principles of the law of the state where the Named Entity is incorporated or formed in the construction or interpretation of the provisions of this policy;

provided, however, that the terms, conditions, provisions and exclusions of this policy are to be construed in an even-handed fashion in the manner most consistent with the relevant terms, conditions, provisions or exclusions of the policy. In the event of arbitration, the decision of the arbitrators shall be final and binding and provided to both parties, and the arbitrators' award shall not include attorneys fees or other costs. In the event of mediation, either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until the mediation shall have been terminated and at least 120 days shall have elapsed from the date of the termination of the mediation. In all events, each party shall share equally the expenses of the ADR.

Either choice of ADR may be commenced in New York, New York; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; or in the state indicated in Item 1 of the Declarations page as the mailing address for the Named Entity. The Named Entity shall act on behalf of all Insureds in deciding to proceed with ADR under this clause.

#### **18. ACTION AGAINST INSURER**

Except as provided in Clause 17 of the policy, 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.

#### **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.