



# Bermuda Employment Practices Statement

## BERMUDA EMPLOYMENT PRACTICES LIABILITY INSURANCE POLICY

### Guide

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In consideration of the payment of the premium, and each of their respective rights and obligations in this policy, the **Insureds** and the **Insurer** agree as follows:

## 1. INSURING AGREEMENTS

All coverage granted for **Loss** under this policy is provided solely with respect to **Claims** first reported to the **Insurer** during the **Policy Period** or any applicable **Discovery Period** as required by this policy. Subject to the foregoing and the other terms, conditions and limitations of this policy, this policy affords the following coverage:

### A. *Employment Practices Liability Coverage*

The **Insurer** shall pay the **Loss** of an **Insured** arising from a **Claim** against such **Insured** for any **Employment Practices Violation**.

### B. *Third Party Violation Coverage*

The **Insurer** shall pay the **Loss** of an **Insured** arising from a **Claim** against such **Insured** for any **Third Party Violation**.

### C. *Wrongful Internet Activity Coverage*

The **Insurer** shall pay the **Loss** of an **Organization** arising from any **Claim** against such **Organization** for any **Wrongful Internet Activity**.

## 2. PROTECTIONS IN FINANCIAL INSOLVENCY

### A. *Advancement*

If due to **Financial Insolvency**, an **Organization** fails or refuses to advance, pay or indemnify any covered **Loss** of an **Insured Person** within the applicable Retention, then the **Insurer** shall advance such amounts on behalf of the **Insured Person** until the Retention has been satisfied. In no event shall any such advancement by the **Insurer** relieve any **Organization** of any duty it may have to provide advancement, payment or indemnification to any **Insured Person**.

### B. *Bankruptcy And Insolvency*

Bankruptcy or insolvency of any **Organization** or any **Insured Person** shall not relieve the **Insurer** of any of its obligations under this policy.

In such event, the **Insurer** and each **Organization** and **Insured Person** agree to cooperate in any efforts by the **Insurer** or any **Organization** or **Insured Person** to obtain relief for the benefit of the **Insured Persons** from any stay or injunction applicable to the distribution of the policy proceeds.

In the event that any **Insured** seeks any order, ruling or other determination from any court or other authority directing that amounts may be paid under this policy notwithstanding the **Financial Insolvency** of any **Organization**, then all reasonable fees, costs and expenses incurred by an **Insured** with respect to such request shall be considered **Defense Costs** within the meaning of this policy.

## 3. EXTENSIONS

### A. *Worldwide and Cross-Border*

- (1) *Worldwide Territory*                      The coverage afforded by this policy shall apply anywhere in the world.



(2) *Global Liberalization*

For **Loss** from that portion of any **Claim** maintained in a **Foreign Jurisdiction** or to which the law of a **Foreign Jurisdiction** is applied, the **Insurer** shall apply the terms and conditions of this policy as amended to include those of the **Foreign Policy** in the **Foreign Jurisdiction** that are more favorable to **Insureds** in the **Foreign Jurisdiction**. This *Global Liberalization Clause* shall not apply to any provision of any policy addressing limits of liability (primary, excess or sublimits), retentions, other insurance, nonrenewal, duty to defend, defense within or without limits, taxes, conformance to law or excess liability coverage, any claims made provisions, and any endorsement to this policy that excludes or limits coverage for specific events or litigation or that specifically states that it will have worldwide effect.

(3) *Passport Master Policy Program*

If the Passport option box has been checked on the Declarations, then this policy shall act as a master policy and the coverage afforded by this policy shall be provided in conjunction with the Passport foreign underlyer policy issued in each jurisdiction selected by the **Named Entity**. The specific structure of the coverage provided by this master policy in conjunction with each Passport foreign underlyer policy is set forth in the Passport Structure Appendix attached to this policy.

B. *Spousal, Domestic Partner And Legal Representative*

If a **Claim** against an **Insured Person** includes a **Claim** against: (1) the spouse or domestic partner (as recognized under applicable law or the provisions of any formal program or policy established by an **Organization**) of such **Insured Person**; or (2) a property interest of such spouse or domestic partner, and such **Claim** arises from any actual or alleged **Wrongful Act** of such **Insured Person** which occurred during the time when such **Insured Person** met the definition of **Insured Person**, this policy shall pay **Loss** arising from the **Claim** made against such spouse or domestic partner or the property of such spouse or domestic partner to the extent that such **Loss** does not arise from a **Claim** for any actual or alleged act, error or omission of such spouse or domestic partner. This policy shall pay **Loss** arising from a **Claim** made against: (a) the estates, heirs or legal representatives of any deceased **Insured Person**; (b) any trust or estate planning vehicle of an **Insured Person**; or (c) the legal representatives of any **Insured Person** in the event of incompetence, insolvency or bankruptcy; but only with respect to **Wrongful Acts** which are alleged to have been committed by such **Insured Person** during the time that such **Insured Person** met the definition of **Insured Person**.

#### 4. EXCLUSIONS

The **Insurer** shall not be liable to make any payment for **Loss**:

- A. *Conduct* in connection with any **Claim** arising out of, based upon or attributable to any deliberate criminal or deliberate fraudulent act by the **Insured** if established by any final, non-appealable adjudication in any action or proceeding other than an action or proceeding initiated to determine coverage under the policy; provided, however, the **Wrongful Act** of an **Insured** shall not be imputed to any other **Insured** for the purpose of determining the applicability of this exclusion;
- B. *Underwriting Disclosure* in connection with any **Claim** if such **Claim** was, or the circumstances which gave rise to such **Claim** were, disclosed or required to be disclosed to the **Insurer** during the underwriting of this policy or the first policy issued by the **Insurer** of which this policy is a renewal, replacement or which it succeeds in time;
- C. *Bodily Injury & Property Damage* for any actual or alleged: (a) bodily injury (other than mental anguish or emotional distress, including humiliation); (b) sickness, disease or death of any



person; or (c) damage to, destruction of or the loss of use of, any tangible property;

D. *ERISA*

for any actual or alleged violation of responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or any similar provisions of any state, local or foreign statutory or common law; provided, however, this exclusion shall not apply to the extent that a **Claim** is for **Retaliation**;

E. *Compensation & Labor Liability*

(a) for any violation of responsibilities, obligations or duties imposed by the Fair Labor Standards Act (except the Equal Pay Act) (FLSA), the National Labor Relations Act (NLRA), the Consolidated Omnibus Budget Reconciliation Act (COBRA), the Occupational Safety and Health Act (OSHA), any rules or regulations of the foregoing promulgated thereunder, and amendments thereto or any similar federal, state, local or foreign law or amendment to a law;

(b) for any actual or alleged violation of responsibilities, obligations or duties imposed by the Worker Adjustment and Retraining Notification (WARN) Act or any rules or regulations of the foregoing promulgated thereunder, and amendments thereto or any similar federal, state, local or foreign law or amendment to a law, provided however that this exclusion E(b) shall not apply to **Defense Costs**; or

(c) alleging, arising out of, based upon or attributable to any of the circumstances described in any of the following:

(i) the refusal, failure or inability of any **Insured** to pay wages or overtime pay (or amounts representing such wages or overtime pay) for services rendered or time spent in connection with work related activities (as opposed to tort-based back pay or front pay damages for torts other than conversion);

(ii) improper deductions from pay taken by any **Insured** from any **Affected Individual**; or

(iii) failure to provide or enforce legally required meal or rest break periods; provided, however, the foregoing exclusions E(a), E(b) and E(c) shall not apply to the extent that a **Claim** is for (1) discrimination, sexual or other harassment, wrongful termination or hostile work environment; or (2) **Retaliation**;

F. *Benefits*

for any actual or alleged obligation pursuant to any worker's compensation, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law; provided, however, this exclusion shall not apply to the extent that a **Claim** is for **Retaliation**;

G. *Contract*

in connection with any **Claim** alleging, arising out of, based upon or attributable to any actual or alleged contractual liability of an **Insured** under any express contract or agreement; provided, however, that this exclusion shall not apply to:

(a) liability which would have attached in the absence of such express contract or agreement; or

(b) **Defense Costs**; or



H. *Business Liability* for any actual or alleged **Third Party Violation** arising out of an **Insured's** pricing, distribution, underwriting, design, marketing, manufacture or other policies or decisions relating to any of its products or services (including, but not limited to, illegal "redlining").

## 5. RETENTION

For each **Claim** the **Insurer** shall only be liable for the amount of covered **Loss** arising from such **Claim** which is in excess of any applicable Retention set forth on the Declarations or in any endorsement to this policy.

A single Retention shall apply to **Loss** arising from any single **Claim**.

In the event a **Claim** triggers more than one Retention, then, as to such **Claim**, only the highest of such Retentions shall be deemed the Retention applicable to **Loss** arising from such **Claim** unless this policy expressly provides otherwise.

## 6. POLICY LIMITS

The **Limit of Liability** stated in the Declarations is the aggregate limit of the **Insurer's** liability for all **Loss** under this policy. The **Limit of Liability** and all sublimits of liability are collectively referred to in this policy as the "**Policy Limits**".

Each aggregate sublimit of liability in this policy is the maximum limit of the **Insurer's** liability for all **Loss** under this policy that is subject to that aggregate sublimit of liability. All sublimits of liability shall be part of, and not in addition to, the **Limit of Liability**.

The **Policy Limits** for the **Discovery Period** shall be part of, and not in addition to, the **Policy Limits** for the **Policy Period**. Further, all **Claims** that are deemed reported pursuant to Clause 7.B. *Notice And Reporting* shall also be subject to the **Policy Limits** set forth in this policy.

**Defense Costs** are not payable by the **Insurer** in addition to the **Policy Limits**. **Defense Costs** are part of **Loss** and as such are subject to the **Policy Limits**.

## 7. NOTICE AND REPORTING

Notice hereunder shall be given in writing to the **Insurer** at the **Claims Address** indicated in the Declarations. If mailed or transmitted by electronic mail, the date of such mailing or transmission shall constitute the date that such notice was given and proof of mailing or transmission shall be sufficient proof of notice.

A. *Reporting a Claim* (1) An **Insured** shall, as a condition precedent to the obligations of the **Insurer** under this policy, notify the **Insurer** in writing of any **Claim** made against an **Insured** in accordance with the provisions of this Clause.

(2) *Bordereau Claims Reporting*

All **Bordereau Claims** shall be reported on a **Bordereau Report** every six (6) months, with the first **Bordereau Report** due six (6) months after the effective date of the policy. Notwithstanding the foregoing, notification of **Bordereau Claims** must be provided no later than the end of the **Policy Period**. Additionally, any **Claim** which initially was reported on a **Bordereau Report**, but which subsequently becomes a **Specified Claim**, shall be individually noticed as required under the provisions of "Specified Claims Reporting" below.

Subject to the other provisions of this Clause 7.A, the **Insurer's** timely receipt of such **Bordereau Report** shall constitute notice under this policy of any **Claim** reported on such **Bordereau Report**.



The following provisions apply to any **Bordereau Report** and any **Bordereau Claim** reported on a **Bordereau Report**:

- (i) the **Insurer** and **Insured** are mutually deemed to have reserved any and all of their respective rights and defenses with respect to any **Bordereau Claim**;
- (ii) the **Insurer** and/or its representatives may defer the issuance of any determination of coverage as respects any **Bordereau Claim** (including, but not limited to, a reservation of rights letter describing the scope of coverage), and any investigation into such **Bordereau Claim** or evaluation of any defenses in connection with such **Bordereau Claim** (individually and collectively, a “**Deferral**”);
- (iii) a **Deferral** shall not constitute a waiver or estoppel of, or otherwise affect, any rights, claims or defenses the **Insurer** may have, or any right to information or to investigate that the **Insurer** may have, under this policy;
- (iv) the **Insureds** shall not introduce or refer to any **Deferral** in any subsequent litigation, arbitration, mediation or other dispute resolution proceeding concerning any **Bordereau Claim**; and
- (v) a circumstance, as described in subparagraph 7.B. of this clause, may not be reported on a **Bordereau Report**. Any reporting of a circumstance on a **Bordereau Report** is insufficient and ineffective notification of such circumstance under this policy, whether or not the **Insurer** issues or defers any determination of coverage as respects such circumstance.

(3) *Specified Claims Reporting*

An **Insured** shall provide separate, individual written notice to the **Insurer** of any **Specified Claim** made against an **Insured** as soon as practicable after both of the following conditions are satisfied: (a) the **Claim** qualifies as a **Specified Claim** as defined herein; and (b) a **Noticed Position** first becomes aware of such **Claim**. This paragraph also applies to any **Bordereau Claim** initially reported on a **Bordereau Report** which subsequently becomes a **Specified Claim**. Notwithstanding the foregoing, notification of a **Specified Claim** must be provided no later than:

- (i) prior to the date this policy is canceled, if this policy is canceled;
- (ii) sixty (60) days after the end of the **Policy Period** or **Discovery Period** (if applicable), if the policy is not canceled but also is not renewed with the **Insurer**; or
- (iii) ninety (90) days after the end of the **Policy Period** or **Discovery Period** (if applicable), if the expiring policy is renewed with the **Insurer**;

provided, however, subparagraphs (i), (ii) and (iii), above, shall not apply to any **Bordereau Claim** which initially was reported on a **Bordereau Report**, but which subsequently became a **Specified Claim** after the time periods described in such subparagraphs.



*B. Reporting of Potential Claims*

If during the **Policy Period** or **Discovery Period** (if applicable) an **Organization** or an **Insured Person** first becomes aware of and notifies the **Insurer** in writing of circumstances that may give rise to a **Claim** being made against an **Insured** and provides details as required below, then any **Claim** that is subsequently made against an **Insured** that arises from such circumstances shall be deemed to have been first reported at the time of the notification, provided that such subsequent **Claim** is reported to the **Insurer** in writing as soon as practicable after a **Noticed Position** first becomes aware of such **Claim**. In order to be effective, notification of circumstances must specify the reasons for anticipating such **Claim**, and the underlying facts, circumstances, acts and omissions of such anticipated **Claim**, including full particulars as to dates, persons and entities involved. Coverage for **Loss** arising from any such subsequent **Claim** shall only apply to **Loss** incurred after that subsequent **Claim** is actually made against an **Insured** and reported by an **Insured** to the **Insurer**.

## 8. DISCOVERY

*A. Bilateral Discovery Options*

If the policy is canceled or is not renewed, the **Insureds** shall have the right to a **Discovery Period** of one (1) to six (6) years following the effective date of such cancellation or nonrenewal, upon payment of the respective “**Additional Premium Amount**” described below, in which to give to the **Insurer** written notice pursuant to Clause 7.A and Clause 7.B of the policy of: (1) **Claims** made against an **Insured**; and (2) circumstances of which an **Organization** or an **Insured** shall become aware, but in either case, solely with respect to **Wrongful Acts** occurring prior to the end of the **Policy Period**.

The **Additional Premium Amount** for: (a) one (1) year shall be no more than one hundred and twenty five percent (125%) of the **Full Annual Premium**; (b) two (2) to six (6) years shall be an amount to be determined by the **Insurer**. As used herein, “**Full Annual Premium**” means the premium level in effect immediately prior to the end of the **Policy Period**.

*B. Change in Control Option*

In the event of a **Change in Control**, the **Named Entity** shall have the right to request an offer from the **Insurer** of a **Discovery Period** (with respect to **Wrongful Acts** occurring prior to the effective time of the **Change in Control**). The **Insurer** shall offer such **Discovery Period** pursuant to such terms, conditions, exclusions, and additional premium as the **Insurer** may reasonably decide. In the event of a **Change in Control**, the right to a **Discovery Period** shall not otherwise exist except as indicated in this paragraph.

*C. General Provisions*

The **Discovery Period** is not cancelable and the additional premium charged is non-refundable in whole or in part. This Discovery Clause shall not apply to any cancellation resulting from non-payment of premium. The rights contained in this Discovery Clause shall terminate unless written notice by any **Insured** of election of a **Discovery Period**, together with the additional premium due, is received by the **Insurer** no later than thirty (30) days subsequent to the effective date of the cancellation, nonrenewal or **Change in Control**.





## 9. DEFENSE AND SETTLEMENT

- A. *No Duty to Defend or Investigate* The **Insureds** shall defend any **Claim** made against them. The **Insurer** does not assume any duty to defend or investigate.
- B. *Selection of Counsel* The **Insureds** shall have the right to select their counsel for any **Claim** made against them and the **Insurer's** consent to such selection shall be automatically granted, provided that the **Insurer** has the right to revoke such consent at any time if: (a) the **Insurer** has reasonable cause; and (b) if the **Insurer** provides sixty (60) days advance notification of the withdrawal of such consent to the **Named Entity** and the **Insureds**.
- Notwithstanding the foregoing, the **Insureds** may select an approved AIG Panel Counsel to defend any **Claim** made against them. The **Insureds** shall receive the benefit of the rates negotiated between the **Insurer** and the AIG Panel Counsel. The list of approved AIG Panel Counsel law firms is accessible through the online directory at [AIG Panel Counsel Directory](#) under the "Public and Private Companies (Employment Practices Liability)" link. The list of AIG Panel Counsel law firms may be amended from time to time by the **Insurer**. However, if a firm is removed from the list during the **Policy Period**, the **Insureds** shall be entitled to select such firm to conduct the defense of any **Claim** made against such **Insureds** during the **Policy Period**.
- The **Insureds** shall ensure that any attorney(s) designated as counsel to represent any **Insured** pursuant to this policy shall cooperate with the **Insurer** and **Insurer's** monitoring counsel throughout the defense of the **Claim**.
- C. *Advancement* Once the **Insurer** has received written notice of a **Claim** under this policy, it shall advance, excess of any applicable Retention, covered **Defense Costs** on a current basis, but no later than ninety (90) days after the **Insurer** has received itemized bills detailing such **Defense Costs** and all other information reasonably requested by the **Insurer** with respect to such bills. Such advance payments by the **Insurer** shall be repaid to the **Insurer** by each and every **Insured Person** or **Organization**, severally according to their respective interests, in the event and to the extent that any such **Insured Person** or **Organization** shall not be entitled under this policy to payment of such **Loss**.
- D. *Claims Participation and Cooperation* The **Insurer** shall have the right, but not the obligation, to fully and effectively associate with each and every **Organization** and **Insured Person** in the defense and prosecution of any **Claim** that involves, or appears reasonably likely to involve the **Insurer**, including, but not limited to, negotiating a settlement. Each and every **Organization** and **Insured Person** shall give the **Insurer** full cooperation and such information as it may reasonably require.
- The rights of any **Insured Person** under this policy shall not be impaired by the failure of any other **Insured** to give the **Insurer** cooperation and information as required in the preceding paragraph.
- 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**.





- E. *Full Settlement Within Retention/Consent Waived* If all **Insured** defendants are able to dispose of all **Claims** which are subject to one Retention (inclusive of **Defense Costs**) for an amount not exceeding such Retention, then the **Insurer's** consent shall not be required for such disposition.

## 10. CHANGES TO INSUREDS

### A. *Change of Control*

In the event of a **Change of Control** during the **Policy Period**, this policy shall continue in full force and effect as to **Wrongful Acts** occurring prior to the effective time of the **Change of Control**, but there shall be no coverage afforded by any provision of this policy for any **Wrongful Act** alleged to have occurred after the effective time of the **Change of Control**. This policy may not be canceled after the effective time of the **Change of Control** and no portion of the premium paid for this policy shall be refundable. The **Named Entity** shall also have the right to an offer by the **Insurer** of a **Discovery Period** described in the *Change of Control Option* paragraph of Clause 8. *Discovery*.

### B. *Subsidiary Additions*

Notwithstanding the definition of **Subsidiary**, any entity with **Employees** exceeding the lesser of (i) five thousand (5,000); or (ii) twenty percent (20%) of the total **Employees** of each and every **Organization** as of the inception date of this policy, which first becomes a **Subsidiary** during the **Policy Period** shall only be a **Subsidiary**: (1) for a period of ninety (90) days from the date the **Named Entity** first had **Management Control** of such entity; or (2) until the end of the **Policy Period**, whichever expires or ends first (the "**Auto-Subsidiary Period**").

The **Insurer** shall extend coverage for any such **Subsidiary**, and any **Insured Person** thereof, beyond its respective **Auto-Subsidiary Period** if during such **Auto-Subsidiary Period**, the **Named Entity** provides the **Insurer** with full particulars of the new **Subsidiary** and agrees to any additional premium and amendment of the provisions of this policy required by the **Insurer** relating to such **Subsidiary**. Further, coverage as shall be afforded to any **Subsidiary** and any **Insured Person** thereof is conditioned upon the **Named Entity** paying when due any additional premium required by the **Insurer** relating to such **Subsidiary**.

### C. *Scope Of Subsidiary Coverage*

Coverage as is afforded under this policy with respect to a **Claim** made against any **Subsidiary** and/or any **Insured Person** thereof shall only apply for **Wrongful Acts** committed or allegedly committed during the time when such **Subsidiary** is a **Subsidiary**.

## 11. APPLICATION AND UNDERWRITING

### A. *Application And Reliance*

The **Insurer** has relied upon the statements, warranties and representations contained in the **Application** and all such statements, warranties and representations are to be considered as incorporated into this policy.

### B. *Severability Of The Application*

The **Application** shall be construed as a separate application for coverage by each **Insured Person**. With respect to the **Application** no knowledge possessed by any **Insured** shall be imputed to any other **Insured Person**.

If the statements, warranties and representations in the **Application** were not accurate and complete and materially affected either the acceptance of the risk or the hazard assumed by the **Insurer** under the policy, then the **Insurer** shall have the right to void coverage under this policy, *ab initio*, with respect to:

- (1) **Loss** of any **Insured Person** who knew, as of the inception date of the **Policy Period**, the facts that were not accurately and completely disclosed; and



(2) **Loss** of an **Organization**, if any **Insured Person** who is or was a chief executive officer, general counsel, director of human resources or risk manager (or equivalent position) of the **Named Entity** knew, as of the inception date of the **Policy Period**, the facts that were not accurately and completely disclosed.

The foregoing applies even if the **Insured Person** did not know that such incomplete or inaccurate disclosure had been provided to the **Insurer** or included within the **Application**.

## 12. GENERAL TERMS AND CONDITIONS

### A. *Payments and Obligations of Organizations and Others*

#### 1. *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 a **Claim** is made against an **Outside Entity Executive**, or a **Claim** is made against an **Insured** for the **Insured's** liability with respect to a leased **Employee** or independent contractor **Employee** as described in the definition of "**Employee**", coverage as is afforded by this policy shall be specifically excess of any: (a) indemnification provided by such **Outside Entity** or leasing company; and (b) any other valid and collectible insurance provided to such **Outside Entity**, leasing company or independent contractor.

#### 2. *SUBROGATION*

To the extent of any payment under this policy, the **Insurer** shall be subrogated to all of any **Organization's** and **Insureds'** rights of recovery. Each **Organization** and each **Insured Person** shall execute all papers reasonably required and provide reasonable assistance and cooperation in securing or enabling the **Insurer** to exercise subrogation rights or any other rights, directly or in the name of the **Organization** or any **Insured Person**.

In the event that the **Insurer** shall for any reason pay **Loss** on behalf of an **Insured Person**, the **Insurer's** subrogation rights shall include, but not be limited to, the assertion of indemnification or contribution rights with respect to any such payments it makes or advances. Additionally, upon the **Insurer** making any payment of **Loss** within the Retention on behalf of any **Insured**, the **Insurer** shall have a direct contractual right under this policy to recover from the **Organization**, or in the event of the bankruptcy of the **Organization**, from the debtor-in-possession (or equivalent status outside the United States) such **Loss** which was paid within the Retention. Such direct contractual right of recovery against the **Organization** shall be in addition to and independent of the **Insurer's** subrogation right pursuant to this Clause 12.A.2 and any other rights the **Insurer** may have under applicable law.

In no event, however, shall the **Insurer** exercise its rights of subrogation against an **Insured** under this policy unless the *Conduct* exclusion applies with regard to such **Insured**; provided, however, this sentence shall not apply to subrogation against the **Organization** as described in the second paragraph of this Clause 12.A.2.

#### 3. *RECOVERY OF LIMITS*

In the event the **Insurer** recovers amounts it paid under this policy, the **Insurer** will reinstate the **Policy Limits** of this policy to the extent of such recovery, less its costs incurred in administering and obtaining such recovery. The **Insurer** assumes no duty to seek a recovery of any amounts paid under this policy.

### B. *Relationship of Claims*

All **Claims** involving, in whole or part, the same **Wrongful Act** or any **Related Wrongful Acts**, or the same or related facts, circumstances, situations, events, transactions or causes, whether involving the same or different claimants or **Insureds**, shall be deemed to be a single **Claim** first reported on the earliest of the following dates, regardless of whether such date is prior to or during the **Policy Period**:

- (1) the earliest date that any such **Claim** was first reported;
- (2) the date any such **Claim** was deemed reported pursuant to Clause 7.B; or



(3) the earliest date that such **Wrongful Act**, any **Related Wrongful Acts**, fact, circumstance, situation, event, transaction or cause was reported under any other policy providing the same or similar coverage.

No coverage is provided by this policy for any **Claim** first reported, or deemed first reported, prior to the **Policy Period**.

*C. Cancellation*

The **Named Entity** may cancel this policy at any time by mailing prior written notice to the **Insurer** or by surrender of this policy to the **Insurer** or its authorized agent. This policy may only be canceled by or on behalf of the **Insurer** 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 Address**, written notice stating when, not less than fifteen (15) 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 of the policy. 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 the **Named Entity** shall cancel this policy, the **Insurer** shall retain the *pro rata* proportion of the premium herein.

*D. Consent*

Wherever in this policy or any endorsement thereto a provision requires the consent of the **Insurer** or any **Insured**, such consent shall not be unreasonably withheld.

*E. Notice And Authority*

The **Named Entity** shall act on behalf of its **Subsidiaries** and each and every **Insured** with respect to the giving of notice of a **Claim** or circumstance, 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, and the receipt and acceptance of any endorsements issued to form a part of this policy and the exercising or declining of any right to a **Discovery Period**; provided, however, that the foregoing shall not limit the ability of an **Organization** or **Insured** to provide notice of a **Claim** or circumstance in accordance with Clause 7. *Notice And Reporting*, or to elect discovery and pay the **Additional Premium Amount** (as defined in Clause 8. *Discovery*).

*F. Currency*

All premiums, limits, retentions, **Loss** and other amounts under this policy are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or other elements of **Loss** are stated or incurred in a currency other than United States of America dollars, payment of covered **Loss** due under this policy (subject to the terms, conditions and limitations of this policy) will be made either in such other currency (at the option of the **Insurer** and if agreeable to the **Named Entity**) or, in United States of America dollars, at the rate of exchange published in The Wall Street Journal on the date the **Insurer's** obligation to pay such **Loss** is established (or if not published on such date the next publication date of The Wall Street Journal).

*G. Assignment*

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

*H. Disputes*

*1. MEDIATION 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 first be submitted to mediation. Mediation will be commenced by either the **Insurer** or **Insured** providing written notice to the



other requesting mediation (the “**Mediation Request**”). Within thirty (30) days of such **Mediation Request** the **Insurer** and **Insureds** shall mutually consent to a single mediator. In the absence of agreement, the **Insurer** and **Insured** each shall propose a list of five mediator choices ranked by preference. The **Insurer** and **Insured** shall then select the mediator based upon further discussion, however, any mediator proposed on both lists shall be preferred. The mediator must be disinterested and have knowledge of the legal, corporate management or insurance issues relevant to the matters in dispute. The **Insurer** and **Insured** shall mutually agree to the location of the mediation. The mediation may be held in person, or virtually by video or audio conference. The mediation shall be held no later than sixty (60) days after the **Mediation Request** or forty-five (45) days after the agreement of the selection of the mediator, whichever is later, unless otherwise mutually agreed by the **Insurer** and **Insured**. Any settlement agreement reached at mediation which is fully executed by all parties shall be final and binding on all parties.

## 2. **ARBITRATION**

### A. *Commencement and Selection*

If mediation as described in Clause 12.H.1 **MEDIATION** has not resolved a dispute or difference within sixty (60) days of the first mediation session, or if the mediator has provided written notice to the parties of the mediation’s termination, the dispute or difference shall be finally and fully determined by arbitration under the provisions of the Arbitration Act of 1996 of England and Wales, as amended (the “**Act**”), by an arbitration panel composed of three arbitrators. Arbitrators must be disinterested and have knowledge of the legal, corporate management or insurance issues relevant to the matters in dispute. Arbitration will be commenced by either the **Insurer** or **Insured** providing written notice to the other requesting arbitration (the “**Arbitration Request**”).

All arbitration proceedings shall take place in Hamilton, Bermuda, London, England, Toronto, Canada, or Vancouver, Canada, with the choice of venue to be made by the **Insureds**. However, in the event that the **Insurer** has made the **Arbitration Request** and the **Insureds** do not respond to such **Arbitration Request** in writing within thirty (30) days with their choice of venue, any proposed choice of venue made by the **Insurer** from the aforementioned locations in its **Arbitration Request** shall be deemed to be the choice of the **Insureds**.

The **Arbitration Request** shall include the requesting party’s selection for one arbitrator of the arbitration panel. Within thirty (30) days of such **Arbitration Request** the receiving party shall notify the requesting party in writing of its selection for the second arbitrator of the arbitration panel. If the receiving party fails to notify the requesting party of its selection for the second arbitrator, the requesting party within the thirty (30) days after the thirty (30) days after the **Arbitration Request** shall apply to a judge of a court of competent jurisdiction located in the country of the venue chosen (or deemed chosen) by the **Insureds** pursuant to the paragraph above (“**Competent Court Judge**”) for the appointment of the second arbitrator and such arbitrator shall be deemed to have been selected by the party which failed to select an arbitrator. Within thirty (30) days after the appointment of the second arbitrator the two arbitrators shall choose a third arbitrator. If the arbitrators fail to agree on a third arbitrator, either the **Insurer** or **Insured**, after notice to the other and within thirty (30) days after the thirty (30) days after the appointment of the second arbitrator, shall apply to a **Competent Court Judge** for the appointment of the third arbitrator,



and such arbitrator shall be deemed to have been selected by the other arbitrators. Upon appointment of the third arbitrator, the arbitration panel shall be deemed fixed.

*B. Time and Procedure*

The arbitration panel shall fix, by written notice to the parties involved, reasonable time and place for its hearing of the dispute or difference and shall prescribe reasonable rules and regulations governing the course and conduct of the arbitration proceeding, including, but not limited to, discovery by the parties. Within ninety (90) days after the conclusion of its hearing, the arbitration panel shall render its decision on the dispute or difference in writing and shall cause a copy thereof to be served on all the parties. The decision of the majority of the arbitration panel shall be deemed to be the decision of the arbitration panel and shall be final and binding on all parties. In no event, however, shall any arbitration award include any attorney's fees. The decision of the arbitration panel shall be a complete defense to any attempted appeal or litigation of such decision in the absence of fraud or collusion. Without limiting the foregoing, the parties waive any right to appeal to, and/or seek collateral review of the decision of the arbitration panel by, any court or other body to the fullest extent permitted by applicable law, including, but not limited to, application or appeal under Sections 45 and 69 of the **Act**.

*C. Costs*

Any order as to the costs of the arbitration shall be in the sole discretion of the arbitration panel (except with respect to any attorney's fees, which shall not be included in the arbitration award). The arbitration panel may direct to whom and by whom and in what manner such costs shall be paid.

*D. Other Requests for Indemnity or Contribution*

The **Insurer** and the **Insured** agree that in the event that any demand or request for indemnity or contribution is asserted or otherwise made in any action or proceeding against the **Insurer** by any of the **Insured's** other insurers in any jurisdiction or forum other than that set forth in this Clause 12.H (included but not limited to any alleged causes of action brought before a court or tribunal), the **Insured** will in good faith take all reasonable steps requested by the **Insurer** to assist the **Insurer** in obtaining a dismissal or withdrawal of these demands or requests (other than on the merits). The **Insured** shall, without limitation, undertake to the court or other tribunal to reduce any judgment or award against such other insurers to the extent that the court or tribunal determines that the **Insurer** would have been liable to such insurers for indemnity or contribution pursuant to this policy. The **Insured** shall be entitled to seek coverage under this policy, including, but not limited to, for amounts by which the **Insured** reduced its judgment against such other insurers in respect of such demand or request for indemnity or contribution, in an arbitration between the **Insurer** and the **Insured** pursuant to this Clause 12.H., which arbitration may take place before, concurrently with and/or after the action or proceeding involving such other insurers; provided, however, that the **Insurer** in such arbitration in respect of such reduction of any judgment shall be entitled to raise any defenses under this policy and any other defenses (other than jurisdictional defenses) as it would have been entitled to raise in the action or proceeding with such insurers (and no determination in any such action or proceeding involving such other insurers shall have collateral estoppel, res judicata or other issue preclusion or estoppel effect against the **Insurer** in such arbitration, irrespective of whether or not the **Insurer**



remained a party to such action or proceeding).

### 3. ACTION AGAINST INSURER

Except as provided in Clauses 12.H.1. and 2. *Disputes*, 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, or until the amount of the **Insured's** obligation to pay shall have been finally determined either by judgment against such **Insured** after actual trial or by written agreement of the **Insured**, the claimant and the **Insurer**.

Any **Insured** 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 entity shall have any right under this policy to join or implead the **Insurer** as a party to any action against any **Insured** to determine such **Insured's** liability.

#### I. *Conformance To Law*

In the event that there is an inconsistency between: (1) any period of limitation in this policy relating to the giving of notice of cancellation or discovery/extended reporting election, and (2) the minimum or maximum period required by applicable law, where such law allows, the **Insurer** will resolve the inconsistency by applying the notice period that is more favorable to the **Insureds**. Otherwise, the notice period is hereby amended to the extent necessary to conform to applicable law.

Coverage under this policy shall not be provided to the extent prohibited by any law, rule or regulation, including, but not limited to, any law, rule or regulation regarding non-admitted insurance.

#### J. *Governing Law*

This policy shall be governed by, and construed and enforced in accordance with, the internal laws of the state of New York, other than as such laws:

- (1) prohibit the insurance of punitive, exemplary and multiplied damages;
- (2) prohibit the insurance of intentional acts;
- (3) pertain to regulation under the New York Insurance Law, or regulations issued by the Insurance Department of the State of New York; which are applicable to insurers doing insurance business, or issuance, delivery or procurement of policies of insurance, within the State of New York or as respects risks or insureds situated in the State of New York; or
- (4) are inconsistent with any term, condition or limitation of this policy;

provided, however, that the terms, conditions and limitations of this policy are to be construed in an evenhanded fashion as between the **Insurer** and **Insured**. Without limitation, where the language of this policy is deemed to be ambiguous or otherwise unclear, the issue shall be resolved in the manner most consistent with the relevant terms, conditions and limitations of the policy (without regard to authorship of the language, without any presumption or arbitrary interpretation or construction in favor of either the **Insurer** or **Insured** or reference to the "reasonable expectations" of either thereof or to *contra proferentum* and without reference to parol or other extrinsic evidence). To the extent that New York law is inapplicable by virtue of any exception or proviso enumerated above or otherwise, and as respects the arbitration procedure pursuant to Clauses 12.H.2. *Disputes*, the internal laws of England and Wales shall apply.

#### K. *Headings*

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





### 13. DEFINITIONS

Terms with “**Bold**” typeface are used in this policy with the meanings and values ascribed to them below, in the Declarations, or elsewhere in this policy:

**Affected Individual** means any:

- (1) **Employee** of an **Organization** or **Outside Entity**;
- (2) applicant for employment with an **Organization** or **Outside Entity**;
- (3) joint employee of both (a) an **Organization** or **Outside Entity**; and (b) another entity or natural person; or
- (4) natural person claiming to be any of the foregoing.

**Application** means:

- (1) the written statements and representations made by an **Insured** and provided to the **Insurer** during the underwriting of this policy, or contained in any application or other materials or information provided to the **Insurer** in connection with the underwriting of this policy; and
- (2) all warranties executed by or on behalf of an **Insured** and provided to the **Insurer** in connection with the underwriting of this policy or the underwriting of any other employment practices (or equivalent) liability policy issued by the **Insurer**, or any of its affiliates, of which this policy is a renewal, replacement or which it succeeds in time.

**Bordereau Claim** means any **Claim** other than a **Specified Claim**.

**Bordereau Report** means a report in the same or substantially the same format as the Bordereau Report Form attached to this policy, which shall include:

- (1) policy name;
- (2) name of the parties;
- (3) forum of **Claim**;
- (4) date of **Claim**;
- (5) type of **Claim**;
- (6) date of event;
- (7) brief description of the allegations contained in **Claim**;
- (8) name and contact information of the counsel selected to defend **Claim**;
- (9) amount of **Defense Costs** incurred to defend **Claim**;
- (10) current status of **Claim**;
- (11) details of any offer or demand of settlement;
- (12) estimated exposure; and
- (13) date the **Claim** is resolved and claim file is closed.

**Change of Control** means:

- (1) the **Named Entity** consolidating with or merging into another entity such that the **Named Entity** is not the surviving entity, or selling all or substantially all of its assets to any other person or entity or group of persons or entities acting in concert; or
- (2) any person or entity or group of persons or entities acting in concert acquiring **Management Control** of the **Named Entity**.



**Claim**

means any:

- (1) written demand (other than any matter described in (2) through (7) below) for civil monetary damages or other civil relief (including injunctive or other equitable relief) received by an **Insured**;
- (2) civil proceeding (other than an investigation or any administrative or regulatory proceeding) for monetary, non-monetary or injunctive relief, including a mediation, arbitration or other alternative dispute resolution proceeding, which is commenced by the service of a complaint, demand or similar pleading, or the equivalent in a **Foreign Jurisdiction**, received by an **Insured**;
- (3) criminal proceeding (other than an investigation or any administrative or regulatory proceeding), which is commenced by the arrest or indictment of an **Insured**, or service of an accusation, information, complaint, summons or similar charging document commencing such proceeding, or the equivalent in a **Foreign Jurisdiction**, received by an **Insured**;
- (4) an administrative or regulatory proceeding (other than an investigation), which is commenced by the filing of a notice of charges, the service of a complaint or similar document, or the equivalent in a **Foreign Jurisdiction**, received by an **Insured**;
- (5) an administrative or regulatory investigation by the **EEOC**, which is commenced by the filing of a notice of charges, the service of a complaint or similar document, or the equivalent in a **Foreign Jurisdiction**, received by an **Insured**;
- (6) an administrative or regulatory investigation of violations of the Uniformed Services Employment and Reemployment Rights Act when such investigation is conducted by the United States Department of Labor, Veterans Employment and Training Service, Justice Department or Office of Special Counsel, which is commenced by the filing of a notice of charges, the service of a complaint or similar document, or the equivalent in the British Overseas Territory of the Bermuda Islands or a **Foreign Jurisdiction**, received by an **Insured**; or
- (7) request to toll or waive a period or statute of limitations which is applicable to a **Claim** (as described in (1) and (6) above) that could be made for a **Wrongful Act** of an **Insured**.

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

All allegations, causes of action and **Wrongful Acts** alleged in, and all demands for monetary or other relief sought in, the same proceeding, shall be deemed one and the same **Claim**.

**Class Action Claim**

means any **Claim**: (1) brought by or on behalf of an actual or alleged class (whether or not certified as such); (2) brought by more than one claimant or sought to be consolidated with another claim brought by another claimant; or (3) brought by the **EEOC** on behalf of any group of three or more complainants, plaintiffs or potentially aggrieved parties.

**Class Action Retention**

means the Retention applicable to **Loss** arising out of a **Class Action Claim**.

**Defense Costs**

means reasonable fees, costs and expenses consented to by the Insurer (including the 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) incurred in the investigation, adjustment, defense and/or appeal of a **Claim** against an **Insured**. “**Defense Costs**” shall not include the compensation of any **Insured Person**.

**Discovery Period**

means a period of extended coverage described in Clause 8. *Discovery*.

**EEOC**

means the Equal Employment Opportunity Commission, or any similar Bermuda Islands, state, local or foreign agency.

**Employee**

means any past, present or future employee, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any full-time, part-time, seasonal and temporary employee, volunteer, or intern, in such person’s capacity as an employee. A natural person who is leased to the **Organization** or is contracted to perform work for the **Organization**, or who is an independent contractor for the **Organization**, shall also be an **Employee**.

Notwithstanding the forgoing, “**Employee**” shall not include any natural person who is or claims to be a joint employee of both (1) an **Organization** or **Outside Entity** and (2) another entity or natural person.

**Employment**

**Practices Violation**

means any actual or alleged:

- (1) wrongful dismissal, discharge or termination (either actual or constructive) of employment, including breach of an implied contract or a promissory estoppel relating to the **Affected Individual’s** employment;
- (2) harassment (including workplace bullying, sexual harassment whether “quid pro quo”, hostile work environment or otherwise, including “same-sex” sexual harassment);
- (3) discrimination (including, but not limited to, discrimination based upon age, gender, gender identity or expression, race, color, national origin, religion, sexual orientation or preference, genetic information, pregnancy, military status or disability);
- (4) **Retaliation**;
- (5) employment-related misrepresentation(s) to an **Affected Individual**;
- (6) employment-related libel, slander, humiliation, or defamation;
- (7) invasion of privacy, including unlawful disclosure of an **Affected Individual’s** information in violation of the Health Insurance Portability and Accountability Act, or the Fair Credit Reporting Act, or unauthorized disclosure or use of other **Affected Individual’s** personal information obtained in connection with employment-related screening;
- (8) malicious prosecution and false arrest or false imprisonment;
- (9) wrongful failure to employ or promote;
- (10) negligent employment evaluation, wrongful deprivation of career opportunity or wrongful demotion, including the giving of negative or defamatory statements in connection with an employee reference;
- (11) wrongful discipline;
- (12) failure to grant tenure; or
- (13) with respect to any of the foregoing items (1) through (12) of this definition: negligent hiring, retention, training or supervision, infliction of emotional distress



or mental anguish, or violation of a natural person's civil rights (including any violation of due process);

but only if the **Employment Practices Violation** relates to an **Affected Individual** in such person's capacity as an **Affected Individual**, whether such **Employment Practices Violation** is committed directly, indirectly, intentionally or unintentionally.

**Executive**

means any:

- (1) past, present and future duly elected or appointed director, officer, trustee or governor of a corporation, management committee member of a joint venture or member of the management board of a limited liability company (or equivalent position), in such person's capacity as such; or
- (2) past, present and future person in a duly elected or appointed position in an entity organized and operated in a **Foreign Jurisdiction** that is equivalent to an executive position listed in subparagraph (1) above, or a member of the senior-most executive body (including, but not limited to, a supervisory board), in such person's capacity as such.

**Financial Insolvency**

means: (1) the appointment by any government official, agency, commission, court or other governmental authority of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate an insolvent **Organization**; (2) the filing of a petition under the bankruptcy laws of the United States of America; or (3), as to both (1) or (2), any equivalent events outside the United States of America.

**Foreign Jurisdiction**

means any jurisdiction, other than: (1) the British Overseas Territory of the Bermuda Islands; or (2) the United States of America or any of its territories or possessions.

**Foreign Policy**

means the standard employment practices liability policy (including all mandatory endorsements, if any) approved by the **Insurer** or any of its affiliates to be sold within a **Foreign Jurisdiction** that provides coverage substantially similar to the coverage afforded under this policy. If more than one such policy exists, then "**Foreign Policy**" means the standard basic policy form most recently offered for sale for comparable risks by the **Insurer** or any of its affiliates in that **Foreign Jurisdiction**.

**Insured**

means any:

- (1) **Insured Person**; or
- (2) **Organization**.

**Insured Person**

means any:

- (1) **Executive** of an **Organization**;
- (2) **Employee** of an **Organization**; provided, however, a natural person who is leased to the **Organization** or is contracted to perform work for the **Organization**, or who is an independent contractor for the **Organization**, shall be an **Insured Person** only if the **Organization** provides indemnification to such person in the same manner as is provided to the **Organization's** employees; or
- (3) **Outside Entity Executive**.



## Loss

means:

- (1) damages, settlements and judgments, including:
  - (i) back pay and front pay of any **Affected Individual**;
  - (ii) punitive, exemplary and multiplied damages (including the multiplied or liquidated damages awarded under the Age Discrimination in Employment Act, the Family and Medical Leave Act, the Uniformed Services Employment and Reemployment Act and the Equal Pay Act);
  - (iii) amounts of a retroactive increase in prior compensation of an **Affected Individual**;
  - (iv) compensation paid to a terminated **Affected Individual** in lieu of reinstatement awarded pursuant to a settlement, judgment or arbitrated determination; provided, however, that this subparagraph (iv) shall not include any compensation of any reinstated or continuing **Affected Individual**;
  - (v) costs for any educational, sensitivity or diversity training required pursuant to a covered settlement, judgment or arbitrated determination and incurred within three years of such settlement or judgment; and
  - (vi) pre- and post judgement interest on a covered judgment;
- (2) civil fines and penalties;
- (3) statutory or regulatory fines and penalties, other than criminal fines and penalties;
- (4) **Defense Costs**; and
- (5) plaintiffs' attorneys' fees and claimants' legal costs and expenses awarded pursuant to a covered settlement or judgment.

Notwithstanding the foregoing, "**Loss**" (other than **Defense Costs**) shall not include:

- (a) criminal fines or penalties;
- (b) taxes;
- (c) amounts for which an **Insured** is not financially liable or which are without legal recourse to an **Insured**;
- (d) employment-related benefits, stock options, perquisites, deferred compensation or any other type of compensation other than salary, wages or bonus compensation;
- (e) liability or costs to modify any building or property in order to make said building or property more accessible or accommodating to any disabled person; and
- (f) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.

## Management Control

means:

- (1) owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of: the Board of Directors of a corporation; the management committee members of a joint venture; or the members of the management board of a limited liability company; or the duly elected or appointed positions of an entity organized and operated in a **Foreign Jurisdiction** that are equivalent to the executive positions listed above; or
- (2) having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of an **Organization**, to elect, appoint or designate a



majority of: the Board of Directors of a corporation; the management committee of a joint venture; or the management board of a limited liability company; or the duly elected or appointed positions of an entity organized and operated in a **Foreign Jurisdiction** that are equivalent to the executive positions listed above.

<b>Noticed Position</b>	means the <b>Named Entity's</b> Law Department, Human Resources Department or Risk Management Department.
<b>Organization</b>	means: <ol style="list-style-type: none"><li>(1) the <b>Named Entity</b>;</li><li>(2) each <b>Subsidiary</b>; and</li><li>(3) in the event a bankruptcy proceeding shall be instituted by or against any of the foregoing entities, the resulting debtor-in-possession (or equivalent status outside the United States of America), if any.</li></ol>
<b>Outside Entity</b>	means any: (1) not-for-profit entity other than an <b>Organization</b> ; or (2) other entity made an " <b>Outside Entity</b> " by an endorsement attached to this policy.
<b>Outside Entity Executive</b>	means any: (1) <b>Executive</b> or <b>Employee</b> of an <b>Organization</b> who is or was acting at the specific request or direction of an <b>Organization</b> as an <b>Executive</b> of an <b>Outside Entity</b> , in such person's capacity as such; or (2) any other person made an <b>Outside Entity Executive</b> by an endorsement attached to this policy, in such person's capacity as such.  In the event of a disagreement between the <b>Organization</b> and a person as to whether such person was acting "at the specific request or direction of an <b>Organization</b> ," this policy shall abide by the determination of the <b>Organization</b> on this issue and such determination shall be made by written notice to the <b>Insurer</b> within ninety (90) days after the <b>Claim</b> against such person is made. In the event no notice of any such determination is given to the <b>Insurer</b> within such period, this policy shall apply as if the <b>Organization</b> determined that such person was not acting at the <b>Organization's</b> specific request or direction.
<b>Policy Period</b>	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 such Item 2 or the effective date of cancellation of this policy.
<b>Related Wrongful Acts</b>	means <b>Wrongful Acts</b> arising out of a common nexus with any fact, circumstance, situation, event, transaction, cause, or series of related facts, circumstances, situations, events, transactions or causes.
<b>Retaliation</b>	means a retaliatory act of an <b>Insured</b> alleged to be in response to any of the following activities: (1) the disclosure or threat of disclosure by an <b>Affected Individual</b> to a superior or to any governmental agency of any act by an <b>Insured</b> 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 <b>Affected Individual</b> of any right that such <b>Affected Individual</b> has under law, including, but not limited to, rights under worker's compensation laws, the Employee Retirement Income Security Act of 1974 (ERISA), the Family and Medical Leave Act, the Americans with Disabilities Act, the Uniform Services Employment and Reemployment Rights Act or any other law relating to employee rights; (3) any relator request or demand under the Federal False Claims Act or any other federal, state, local or foreign "whistle-blower" law; or (4) strikes of an <b>Affected Individual</b> .





<b>Specified Claim</b>	means any <b>Claim</b> : (1) which is a <b>Class Action Claim</b> ; (2) for which total expected <b>Loss</b> (including <b>Defense Costs</b> ) of such <b>Claim</b> is reasonably estimated by the <b>Named Entity's</b> Human Resources Department (or equivalent), Office of General Counsel (or equivalent), or external counsel to exceed sixty (60) % of the applicable Retention; (3) which arose from circumstances previously noticed to the <b>Insurer</b> ; or (4) which otherwise is not a <b>Specified Claim</b> , but for which the <b>Insured</b> provides separate, individual written notice to the <b>Insurer</b> instead of reporting on a <b>Bordereau Report</b> .
<b>Subsidiary</b>	means, subject to Clause 10.B. <i>Subsidiary Additions</i> : (1) any for-profit entity (other than an entity formed as a partnership) during the time when the <b>Named Entity</b> has or had <b>Management Control</b> of such entity, either directly or indirectly through one or more of its other <b>Subsidiaries</b> ; and (2) any not-for-profit entity sponsored exclusively by an <b>Organization</b> during the time when such entity was exclusively sponsored by such <b>Organization</b> .
<b>Third-Party Violation</b>	means any actual or alleged harassment or unlawful discrimination, as described in subparagraphs (2) and (3) of the definition of <b>Employment Practices Violation</b> , or the violation of the civil rights of a natural person relating to such harassment or discrimination, when such acts are alleged to be committed against any natural person (other than an <b>Affected Individual</b> in such person's capacity as an <b>Affected Individual</b> ), including, but not limited to, students, patients, members, customers, vendors and suppliers.
<b>Third Party Retention</b>	means the Retention applicable to <b>Loss</b> arising out of any <b>Claim</b> alleging a <b>Third-Party Violation</b> .
<b>Wrongful Act</b>	means any <b>Employment Practices Violation</b> , <b>Third-Party Violation</b> or <b>Wrongful Internet Activity</b> .
<b>Wrongful Internet Activity</b>	means any: (1) <b>Employment Practices Violation</b> ; or (2) <b>Third-Party Violation</b> , when committed by an <b>Employee</b> by means of the internet, including, but not limited to, social networking activities, regardless of whether such internet activity is during or after work hours or on or off the work premises. For purposes of the application of this definition, a natural person shall be deemed to be an <b>Employee</b> regardless of whether such person was acting in such person's capacity as an <b>Employee</b> .