

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

MATTHEW CHEATHAM,)
on behalf of himself and all others)
similarly situated,)

Plaintiff,)

v.)

VIRGINIA COLLEGE, LLC and)
EDUCATION CORPORATION)
OF AMERICA,)

Defendants.)

CIVIL ACTION NO.

_____)
JURY TRIAL DEMANDED

NOTICE OF REMOVAL

Pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. §1332(d), and 28 U.S.C. §1332(a), 28 U.S.C. §1331, 28 U.S.C. §1367, 28 U.S.C. §§1441 and 1446, Defendants Virginia College, LLC (“Virginia College) and Education Corporation of America (“ECA”) (collectively, “Defendants”) hereby give notice of the removal in the above-styled action from the State Court of Gwinnett County, State of Georgia, where it is now pending as Civil Action No. 19-C-06260-S6, to the United States District Court for the Northern District of Georgia, Atlanta Division. As grounds for removal, Defendants state the following:

ALLEGATIONS OF THE COMPLAINT

1. On August 26, 2019, Plaintiff Matthew Cheatham (“Plaintiff” or “Cheatham”) filed a “Class Action Complaint and Demand for Jury Trial” in the State Court of Gwinnett County, State of Georgia, in the Civil Action styled as *Matthew Cheatham v. Virginia College, LLC et al.*, No. 19-C-06260-S6. (See generally Class Action Complaint and Demand for Jury Trial, attached hereto as “Exhibit 1”) (“Complaint”).

2. The Complaint contains claims seeking relief on behalf of two putative classes (a “Former Student Class” and a “Current Online Student Class”), alleging the following claims: (1) negligence; (2) breach of contract; and (3) unjust enrichment. (Exh. 1, ¶¶ 35, 48-80). The Complaint also expressly asserts that “ANY ARBITRATION AGREEMENTS ARE UNENFORCEABLE” based on a federal Department of Education rule, and asks this Court to interpret numerous federal regulations in making that bold claim. *See* 34 C.F.R. §685.300(b), (d), (e), (f), as added by 81 Fed. Reg. 75,926, 76,087-76,088 (Nov. 1, 2016); 34 C.F.R. §685.206(c) and 34 C.F.R. §685.222 as added by 81 Fed. Reg. 75,926, 76,083 (Nov. 1, 2016). (*Id.*, ¶¶ 81-86).

3. The Complaint alleges two different purported classes. The “Former Student Class is defined as:

All Georgia residents who paid tuition to and completed courses at Virginia College and who were not enrolled there as of December 4, 2018

(*Id.*, ¶ 35(a)). The “Current Online Student Class” is defined as:

All Georgia residents who paid tuition to and who were enrolled at Virginia College as of the date of the closure of the online program but who had not yet obtained the degree for which they paid tuition.

(*Id.*, ¶ 35(b)).

REMOVAL PROCEDURES

4. This Notice of Removal is being filed within 30 days of service of the initial pleading setting forth the claim for relief, and is therefore timely pursuant to 28 U.S.C. §1446(b). Defendant Virginia College, LLC was served with the Complaint on September 6, 2019. (See Declaration of Kellie Kennedy, ¶ 4, attached hereto as Exhibit 2) (“Kennedy Decl.”). As of the time of this removal, Defendant ECA had not been served.

5. The United States District Court for the Northern District of Georgia, Atlanta Division, is the federal judicial district embracing the State Court of Gwinnett County, Georgia, where this suit was originally filed. Venue is therefore proper under 28 U.S.C. §§ 90(a)(2) and 1441(a).

6. This action is removable pursuant to 28 U.S.C. §1441, which authorizes removal of any civil action brought in a state court in which the United States District Court has original jurisdiction. This Court has original jurisdiction

based upon 28 U.S.C. §1332(d) because this is a class action with at least 100 putative class members, there is diversity of citizenship between at least one class member and a defendant, and the aggregate amount in controversy exceeds \$5,000,000.

7. This action is also removable pursuant to 28 U.S.C. §1332(a), as there is complete diversity between the parties and the amount in controversy exceeds \$75,000.

8. This action is also removable pursuant to 28 U.S.C. §1331, as it is a “civil action[] arising under the Constitution, laws, or treaties of the United States.”

9. In accordance with 28 U.S.C. §1446(a), a copy of all “process, pleadings and orders” received by Defendants are attached hereto as “Exhibit 3.”

10. Pursuant to 28 U.S.C. §1446(d), a copy of this Notice of Removal is being served on Plaintiff on this date, and a copy of this Notice of Removal is being filed with the Clerk of Court for the State Court of Gwinnett County, Georgia.

11. Defendants have sought no similar relief with respect to this matter.

REMOVAL BASED ON SECTION 1332(d) CAFA JURISDICTION

12. This Court has subject matter jurisdiction pursuant to CAFA because this is a class action with at least 100 putative class members, there is diversity of

citizenship between at least one class member and a defendant, and the aggregate amount in controversy exceeds \$5,000,000.

Plaintiff's Action is a Class Action for Purposes of CAFA

13. The Complaint is titled: "Class Action Complaint and Demand for Jury Trial." (Exh. 1 at ¶ 1). It includes "Class Allegations." (*Id.*, ¶¶ 34-47). It states: "This action is brought by the Plaintiff individually and on behalf of others similarly situated as a class action under the provisions of OCGA §9-11-23 for damages." (*Id.*, ¶ 34). It defines two purported classes. (*Id.*, ¶ 35). It alleges that the "membership of each class is numerous and joinder of individual plaintiffs is impractical," that there "are questions of law and fact common to all members of the Plaintiff classes, and these common questions of law and fact predominate over any individual issues." (*Id.*, ¶¶ 38-39). It alleges that the "claims of the named Plaintiffs are typical of the claims of the members of the Plaintiff classes . . . and Plaintiffs' claims will thus adequately represent those of the Class Members," that the named "Plaintiff will fairly and adequately protect the interest of Class Members," that a "class action is superior," and that there are "no difficulties that will be encountered in the management." (*Id.*, ¶¶ 40-44).

14. As such, this matter is a class action as that term is defined pursuant to 28 U.S.C. §1332(d)(1)(B) and 28 U.S.C. §1453.¹

The Number of Alleged Class Members Exceeds 100

15. Plaintiff pleads a “Former Student Class,” and a “Current Online Student Class.” (*Id.*, ¶ 35). Plaintiff’s proposed Former Student Class alone has more than 100 members. (See Exh. 2, Kennedy Decl., ¶ 6). Thus, CAFA’s requirement of at least 100 members “of all proposed plaintiff classes in the aggregate” is satisfied. 28 U.S.C. §1332(d)(5)(B).

Diversity of Citizenship is Met

16. CAFA requires only minimal diversity for class actions in which “any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A). With minimal diversity under CAFA, “only one member of the plaintiff class – named or unnamed – must be diverse from any one defendant.” *Lowery v. Ala. Power Co.*, 483 F. 3d 1184, 1194 n.24 (11th Cir. 2007).

17. Plaintiff’s Complaint alleges that Plaintiff is a “resident of Cherokee County, Georgia.” (Exh. 1, ¶ 8). It appears that Plaintiff has lived in Georgia at least since 2017. (See Exh. 2, Kennedy Decl., ¶ 9 and Exh. A (listing address as

¹ Although this action was filed by Plaintiff as a putative class action and is therefore removable under the relevant statutes, Defendants do not admit that this action can properly proceed as a class action. Defendants expressly reserve the right to challenge whether the action brought by Plaintiff meets the requirements of Fed. R. Civ. P. 23 or any other applicable rule.

Woodstock, GA as of September 12, 2017)). “For diversity purposes, citizenship means domicile.” *Mas v. Perry*, 489 F. 2d 1396, 1399 (5th Cir. 1974). “Citizenship is equivalent to domicile for purposes of diversity jurisdiction. [] A person’s domicile is the place of his true, fixed and permanent home and principal establishment, and to which he has the intention of returning whenever he is absent therefrom” *McCormick v. Aderholt*, 293 F. 3d 1254, 1257-58 (11th Cir. 2002) (internal quotation marks omitted). While residency does not equal citizenship, “the place of residence is prima facie [evidence of] the domicile.” *Stine v. Moore*, 213 F. 2d 446, 448 (5th Cir. 1954). In addition, Plaintiff is registered to vote in Cherokee County, Georgia, and has been since August 12, 2016. (See Exhibit 4).² Voter registration is proof of domicile. See e.g., *Ragali v. Circle K. Stores, Inc.*, No. 10-80455, 2010 WL 11602740, at * 1 (S.D. Fla. June 23, 2010) (citing *Combs v. T.J. Samson Cmty. Hosp.*, Case No. 1:05cv-190-M, 2006 WL 1895460, at *3

² Exh. 4 is accessed on the Georgia Secretary of State website, “My Voter Page.” See <https://www.mvp.sos.ga.gov/MVP/voterDetails.do>. This Court may take judicial notice of information on a government website. See e.g., *R.S.B. Ventures, Inc. v. F.D.I.C.*, 514 Fed. App’x. 853, 856 n. 2 (11th Cir. 2013) (Eleventh Circuit taking judicial notice of information found on government website); *Accord Boyd v. Georgia*, 512 Fed. App’x. 915, 917 (11th Cir. 2013) (holding that district court did not abuse its discretion in taking judicial notice of facts obtained from an online state government website). The Eleventh Circuit also has held that “judicial notice ‘is a valid substitute for proof in connection with jurisdictional questions.’” *Barr v. Ewing*, 774 F. App’x. 547, 550 (11th Cir. May 21, 2019) (citation omitted). In so holding, it cited a Fifth Circuit Court of Appeals case holding that it would take judicial notice of public documents located on state Secretary of State websites that established a corporation’s citizenship to resolve a jurisdictional question on appeal. See *id.* (citing *Swindol v. Aurora Flight Scis. Corp.*, 805 F. 3d 516, 517-19 (5th Cir. 2015)).

(W.D. Ky. July 7, 2006) (recognizing that objective evidence such as voter registration is proof of domicile)). Thus, Plaintiff is a Georgia citizen.

18. In determining diversity for CAFA purposes, an unincorporated association is “deemed to be a citizen of the State where it has its principal place of business and the State under whose law it is organized.” 28 U.S.C. §1332(d)(10). The Complaint alleges that defendant Virginia College is an Alabama limited liability company with its principal place of business in Alabama. (Exh. 1, ¶ 9). It also alleges that defendant ECA is a Delaware corporation with its principal place of business in Alabama. (*Id.*, ¶ 11). Thus, CAFA’s minimal diversity is met.

The Amount in Controversy Requirement is Satisfied

19. Under CAFA, “the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of \$5,000,000 exclusive of interests and costs.” 28 U.S.C. § 1332(d)(6).

20. A removing defendant is not required to provide evidence to support the amount in controversy in its Notice of Removal. All that is required is a “short and plain statement of the grounds for removal,” including a “plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co. v. Owens*, 135 S. Ct. 547, 553, 554 (2014)). Thus, “when a defendant seeks federal-court adjudication, the defendant's amount-in-

controversy allegation should be accepted when not contested by the plaintiff or questioned by the court.” *Id.* at 553.

21. Here, Plaintiff seeks compensatory damages, including “but not limited to loss of value of coursework, loss of tuition, loss of educational opportunity, and loss of opportunity to complete unfinished degree programs.” (Exh. 1, ¶ 75) (emphasis added). Plaintiff also claims “loss of money, “loss of time spent on classes without value,” and “emotion[al] distress” damages. (Exh. 1, ¶ 80). Although the amount of compensatory damages are not expressly stated in the Complaint, at a minimum, Plaintiff is claiming compensatory damages for the cost of tuition for the class members. Defendant Virginia College has received over \$5,000,000 in tuition money from the proposed Former Student Class Members alone. (Exh. 2, Kennedy Decl., ¶ 7). Thus, Plaintiff’s request for compensatory damages in the form of repayment of tuition paid alone well exceeds the \$5,000,000 amount in controversy under CAFA. In total, the damages and relief that Plaintiff seeks on behalf of the purported class easily exceeds CAFA’s \$5,000,000 threshold.

REMOVAL BASED ON SECTION 1332(a) COMPLETE DIVERSITY

22. There is complete diversity between Plaintiff and the Defendants. *See* ¶¶ 16-18, *supra*.

23. The amount in controversy between Plaintiff and Defendants exceeds \$75,000. Although Plaintiff does not specify the precise amount of the compensatory damages that he seeks for himself, Plaintiff's breach of contract claim alone seeks compensatory damages, including "but not limited to loss of value of coursework, loss of tuition, loss of educational opportunity, and loss of opportunity to complete unfinished degree programs." (Exh. 1, ¶ 75) (emphasis added). Plaintiff also claims "loss of money, "loss of time spent on classes without value," and "emotion[al] distress" damages. (Exh. 1, ¶ 80). He alleges that "[f]ormer students who graduated with degrees now possess degrees without value." (*Id.*, ¶ 6). He alleges that Defendants cannot provide him job "placement services," and that any coursework he completed is now "significantly devalued." (*Id.*, ¶¶ 32-33).

24. Plaintiff signed Enrollment and Tuition Agreements to attend a Virginia College campus three different times: (1) April 18, 2011 for an Associate of Applied Science degree in Network Engineering; (2) December 14, 2016 for a Bachelor of Science degree in Management Information Systems; and (3) September 12, 2017 for a Bachelor of Science degree in Network Management. (Exh. 2, Kennedy Decl., ¶¶ 8, 9 and Exh. A thereto). These enrollment agreements are the source of Plaintiff's breach of contract claim. (Exh. 1, ¶¶ 66-75). The total estimated tuition for these programs, as stated by those Enrollment Agreements,

was \$184,460.00. (Kennedy Decl., ¶ 8, 9 Exh. A thereto). In making a breach of contract claim based on these enrollment agreements, and in claiming “loss of value of coursework, loss of tuition, loss of educational opportunity, and loss of opportunity to complete unfinished degree programs,” (Exh. 1, ¶ 75), Plaintiff is claiming his own personal losses are at least this amount of \$184,460.00. Plaintiff is also seeking “loss of money, “loss of time spent on classes without value,” and “emotion[al] distress” damages. (Exh. 1, ¶ 80). The amount in controversy thus easily exceeds \$75,000.

REMOVAL BASED ON §1331 FEDERAL QUESTION

25. Under 28 U.S.C. §1331, the “district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States.” There are two separate and independent bases for federal question jurisdiction in the Complaint. First, Plaintiff’s claims, although ostensibly brought as state law claims, are subject to federal “arising under” jurisdiction because Plaintiff’s own pleading demonstrates that they present embedded federal issues that are “(1) necessarily raised; (2) actually disputed; (3) substantial; and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress.” *Gunn v. Minton*, 133 S. Ct. 1059, 1065 (2013) (“*Gunn*”); *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manuf.*, 125 S. Ct. 2363, 2366-69 (2005) (“*Grable*”).

26. The first and second *Gunn/Grable* factors are easily met by examining the Complaint and Answer. Plaintiff himself has “necessarily raised” the federal issue of the Department of Education regulations, claiming that they apply and allow his claims to proceed in court. Indeed, Plaintiff has asked this Court to interpret those federal regulations to allow his state law claims to proceed in court. (Complaint, Exh. 1, ¶¶ 81-86). Defendants “actually dispute[.]” Plaintiff’s position and dispute the constitutionality of the federal regulations. (*see* Exhibit 5, Answer, p. 10 & Affirmative Defenses 41-42). Thus, the first two *Gunn/Grable* factors are met. *See Edwards v. Deloitte & Touche, LLP*, No. 16-21221, 2017 WL 1291994, at * 3-4 (S.D. Fla. Jan. 18, 2017) (holding the first two *Gunn* factors were met because plaintiff, although asserting only state law claims against a nonfederal defendant, “ask the Court to resolve the federal question in this case,” and the defendant disputed plaintiff’s position). It is a “dispute or controversy respecting the validity, construction, or effect of [federal] law,” as *Gunn/Grable* require for federal question jurisdiction. *Grable*, 125 S. Ct. at 2367 (citation omitted).

27. This case likewise easily meets the *Gunn/Grable* “substantiality” third factor. The “substantial” factor looks “to the importance of the issue to the federal system as a whole.” *Gunn*, 133 S. Ct. at 1066. An issue is “substantial” if the Government “has a strong interest in” it. *Grable*, 125 S. Ct. at 2368. Plaintiff has raised the federal regulations at issue as a basis for allowing his state law claims to

proceed in court, and Defendants have challenged the validity, enforceability, interpretation, and constitutionality of those regulations. There is no doubt that the Department of Education has a strong interest in a uniform interpretation of its regulations by *federal* courts, and in their validity, enforceability, and constitutionality. Furthermore, several federal courts have held that private plaintiffs have no private cause of action under the Higher Education Act and its promulgated regulations, of which the subject regulations ostensibly were issued, and that *only* the Department of Education may enforce them. See *Prof'l Massage Training Ctr., Inc. v. Accreditation All. of Career Sch. & Colleges*, 781 F.3d 161, 169 (4th Cir. 2015); *Sanon v. Dep't of Higher Educ.*, 453 Fed. App'x. 28, 30 (2d Cir. 2011). Plaintiff simply has no standing to enforce the subject regulations; *only* the Department of Education may enforce them. *Kourembanas v. Intercoast Colleges*, 373 F. Supp.3d 303, 307 n.2 (D. Me. 2019). That only the Department of Education may enforce the regulations demonstrates the Department of Education's strong interest in the regulations and any case asking for a court's interpretation.

28. For all of those same reasons, the fourth *Gunn/Grable* factor is met: this federal court may entertain the federal issues raised here “without disturbing any congressionally approved balance of federal and state judicial responsibilities.” *Gunn*, 133 S. Ct. at 1065. Indeed, allowing state courts to resolve these important

federal issues would undermine “the development of a uniform body of [federal] law” interpreting these federal regulations. *Gunn*, 133 S. Ct. at 1067. In *Grable*, the plaintiff brought only a state law quiet title action, but it invoked the meaning of a federal tax law, and the United States Supreme Court, in holding that federal question jurisdiction existed, stated: “The meaning of the federal [statute] is an important issue of federal-law that sensibly belongs in a *federal court*.” *Grable*, 125 S. Ct. at 2368 (emphasis added). So it goes here. The meaning of a federal rule/regulation similarly is an important issue of federal law, requiring uniformity of federal court decisions that sensibly belongs in federal court.

29. In *Grable*, the United States Supreme Court held its longstanding federal question jurisdiction test, for cases that allege only state law claims but that nonetheless “implicate significant federal issues,” “captures the commonsense notice that a federal court ought to be able to hear claims recognized under state law that nonetheless turn on substantial questions of federal law, and thus justify resort to the experience, solicitude, and hope of uniformity that a federal forum offers on federal issues.” *Grable*, 125 S. Ct. at 2367. This case perfectly fits that test, particularly given that *Plaintiff* has raised these federal regulations as a basis for his claims to proceed in court.

30. The second independent basis for federal question jurisdiction is that “the vindication of a right under state law necessarily turn[s] on some construction

of federal law.” *Franchise Tax Bd. of the State of Calif. v. Constr. Laborers Vacation Trust for So. Calif.*, 103 S. Ct. 2841, 2846 (1983) (citations omitted). If a right “created by” the “laws of the United States” is an “element” of a state law cause of action, then federal subject matter jurisdiction exists. *Id.* at 2847 (citation omitted).

31. Here, Cheatham alleges a state law negligence claim. (Exh. 1, ¶¶ 48-65). Under Georgia law, the elements of a negligence claim are: (1) the existence of a legal duty, (2) breach of that duty, (3) a causal connection between the defendant’s conduct and the plaintiff’s injury, and (4) damages. *Boller v. Robert W. Woodruff Arts Center, Inc.*, 311 Ga. App. 693, 695 (2011). Cheatham pleads that Defendants had a legal duty to comply with the standards represented by the United States Department of Education to borrowers. (Exh. 1, ¶ 62). Thus, the “duty” element arises from federal law, making the negligence claim to “necessarily turn[] on some construction of federal law.” *Franchise Tax Bd.*, 103 S. Ct. at 2846 (citation omitted). Federal question jurisdiction thus exists. *See e.g., Deloitte*, 2017 WL 1291994 at *4-5 (holding that federal question jurisdiction existed where the state law breach of fiduciary duty claim hung on an alleged duty created by federal law). For all of the reasons set forth above, the *Gunn/Grable* requirements are met.

* * *

If any question arises as to the propriety of the removal of this action, Defendants respectfully request the opportunity to submit a brief and further evidence, as well as oral argument, in support of its position that this case was properly removed.

CONCLUSION

For the reasons set forth above, Defendants respectfully request that this action be, and is hereby, removed to this Court; that this Court assume jurisdiction of this action; and that this Court enter such other and further orders as may be necessary to accomplish the requested removal.

Dated: October 4, 2019.

Respectfully submitted,

/s/ Alexander B. Feinberg

Alexander B. Feinberg (Georgia Bar No. 956505)

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CERTIFICATE OF SERVICE

I hereby certify that on October 4, 2019, a copy of the above and foregoing was filed with the United States District Court for the Northern District of Georgia using the CM/ECF system which sent notification to all counsel of record, including:

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/s/ Alexander B. Feinberg

Of Counsel

EXHIBIT 1

Complaint

John J. Alumbaugh
CLERK OF STATE COURT

**IN THE STATE COURT OF GWINNETT COUNTY
STATE OF GEORGIA**

MATTHEW CHEATHAM,)
on behalf of himself and all others)
similarly situated,)
)
 Plaintiff,)
)
 v.)
)
 VIRGINIA COLLEGE, LLC and)
 EDUCATION CORPORATION OF)
 AMERICA,)
)
 Defendants.)
_____)

CIVIL ACTION FILE NO.
19-C-06260-S6

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW, PLAINTIFF MATTHEW CHEATHAM, on behalf of himself and all others similarly situated and alleges against Defendants Virginia College, LLC ("VC") and Education Corporation of America ("ECA") as follows:

INTRODUCTION

- 1) VC and ECA operated and ran one of the largest for-profit colleges in the United States.
- 2) On December 4, 2018, the Accrediting Council for Independent Colleges and Schools (ACICS) notified the ECA, which operates VC, of its decision to withdraw, by suspension, the current grants of accreditation of all the institutions owned by VC.
- 3) As a result of the lack of accreditation, VC and ECA could no longer rely on their students receiving federally backed student loans, thus effectively shutting down their businesses.
- 4) As a result of the lack of accreditation, course work performed by Plaintiff Cheatham and the Class will not qualify for transfer credit at accredited universities and colleges.

- 5) ECA operated more than 75 campuses throughout the United States including VC campuses in Huntsville, Alabama and Macon, Georgia.
- 6) Former students who graduated with degrees now possess degrees without value.
- 7) Current students who have paid tuition to VC and ECA have no chance of obtaining any degrees from VC or ECA and thus their tuition payments paid to date provided them no benefit.

PARTIES, JURISDICTION, AND VENUE

- 8) Plaintiff Matthew Cheatham is a resident of Cherokee County, Georgia.
- 9) Defendant Virginia College, LLC is an Alabama limited liability company with its principal place of business in Montgomery, Alabama.
- 10) VC may be served through its registered agent at National Registered Agents Inc., 289 S. Culver Street, Lawrenceville, Georgia 30046-4805.
- 11) Defendant Education Corporation of America is a Delaware corporation with its principal place of business located at 3660 Grandview Parkway Suite 300, Birmingham, Alabama 35243.
- 12) Education Corporation of America may be served with process by serving its Chief Executive Officer at Education Corporation of America's corporate headquarters at 3660 Grandview Parkway, Birmingham, Alabama 35243.
- 13) Defendant Education Corporation of America is subject to the jurisdiction of this Court pursuant to the Georgia Long Arm Statute, OCGA § 9-10-91, as ECA transacts business within the state, has committed a tortious act or omission within this state, and/or has committed a tortious injury in this state caused by an act or omission outside this state.
- 14) ECA regularly does and solicits business, and engages in other persistent courses of conduct, and derives substantial revenue from services rendered in this state.

15) On November 14, 2018, Defendants ECA and VC were placed into a limited receivership in case no. 5:18-cv-00388-TES in the United States District Court for the Middle District of Georgia, Macon Division.

16) On January 16, 2019, that U.S. District Court entered an order stating that claims made against Defendants VC and ECA which were covered by AIG Specialty Insurance Company ("AIG") to pay for any Losses (as defined in the Policy), including the advancement of legal fees and expenses, stemming from any Claim (as defined in the Policy) were NOT part of the receivership estate in that Court. A true and correct copy of this order is attached hereto as Exhibit A.

17) The AIG Policy expressly covers claims "breach of duty, neglect, error, statement, misstatement, misleading statement, or omission" by the schools or their employees, "educational malpractice or failure to educate; negligent instruction; failure to supervise; inadequate or negligent academic guidance or counseling; improper or inappropriate academic placement or discipline; failure to grant due process; invasion of privacy or humiliation, [] violation of the Buckley Amendment, the "Uniform Student Freedom of Expression Act," and claims related to defamation or a contract for educational services.

18) The policy does not provide coverage for claims regarding fraudulent acts.

19) For a claim related to the return of tuition fees, the insurance policy only covers 80% of the tuition.

20) In order to be covered under the policy, any claim must be made before September 3, 2019.

21) A true and correct copy of the AIG Policy is attached to the January 16, 2019 order attached hereto as Plaintiff's Exhibit A.

22) Venue is proper in this county as Defendant Virginia College, LLC has its registered agent located here.

PLAINTIFF MATTHEW CHEATHAM

23) Plaintiff Matthew Cheatham ("Plaintiff Cheatham") is a resident of Cherokee County, Georgia.

24) Plaintiff enrolled in VC's online program and pursued an undergraduate degree.

25) Plaintiff financed his education with student loans provided by the federally backed Direct Loans program.

26) VC informed Plaintiff Cheatham that the Fall 2017 quarter would be the last quarter which VC online would offer classes.

27) No online classes were offered after December of 2017.

28) Plaintiff was unable to complete his degree due to the school's closure.

29) Plaintiff did not enroll in any other school after VC closed.

30) Plaintiff was promised by VC and ECA that after he graduated, his degree would provide him the necessary credentials to obtain meaningful and gainful employee.

31) Plaintiff was also promised by VC and ECA that their career services office would be available free of charge to assist him with "placement services after he graduated."

32) Plaintiff completed coursework did not provide him the necessary credentials to obtain meaningful and gainful employment and now that VC and ECA are closed, they can no longer provide him the promised "placement services."

33) Plaintiff completed coursework is now significantly devalued because VC is no longer accredited, VC cannot and does not provide career placement services, and persons reviewing his

resume who see VC immediately correlate him with a failed and dysfunctional school which seriously decreases his chances of obtaining meaningful employment.

CLASS ALLEGATIONS

34) This action is brought by the Plaintiff individually and on behalf of others similarly situated as a class action under the provisions of OCGA § 9-11-23 for damages.

35) The two classes of Plaintiffs for whose benefit the named Plaintiff brings this action are defined as follows:

- a. All Georgia residents who paid tuition to and completed courses at Virginia College and who were not enrolled there as of December 4, 2018 (“Former Student Class”);
and
- b. All Georgia residents who paid tuition to and who were enrolled at Virginia College as of the date of the closure of the online program but who had not yet obtained the degree for which they paid tuition. (“Current Online Student Class”).

36) Excluded from each proposed class is any member of the judiciary, any person currently in bankruptcy, any person whose obligations have been discharged in bankruptcy, any person who is a current employee of VC or ECA, and any government agency or entity.

37) Plaintiff maintains the right to create additional subclasses or classes, as necessary, and to revise these definitions to maintain a cohesive class that does not require individual inquiry to determine liability.

38) The membership of each class is numerous and joinder of individual plaintiffs is impractical.

39) There are questions of law and fact common to all members of the Plaintiff classes, and these common questions of law and fact predominate over any individual issues. The principal questions pertinent to the classes as a whole include:

- a. Whether VC and ECA acted negligently in operating and managing their businesses;
- b. Whether VC and ECA were wanton in operating and managing their businesses;
- c. Whether VC and ECA deceptively advertised and sold their education services to Plaintiff and the Class;
- d. Whether Plaintiff and the Class's degrees were devalued as a result of VC and ECA's closing;
- e. Whether members of the Current Online Student Class and Former Student Subclass's tuition payments and course work provided no benefit to them;
- f. Whether VC and ECA provided warranties to Plaintiff and the Class, and subsequently breached said warranties;
- g. Whether VC and ECA entered into contracts with Plaintiff and the Class, and subsequently breached said contract;
- h. Whether VC and ECA were unjustly enriched to Plaintiff and the Class's detriment;
- i. Whether Plaintiff and the Class suffered injury as a result of VC and ECA's wrongdoing; and
- j. Defenses raised by Defendant.

40) The claims of the named Plaintiffs are typical of the claims of the members of the Plaintiff classes, which all arise from the same operative facts and are based on the same legal theory, and Plaintiffs' claims will thus adequately represent those of the Class Members.

41) The named Plaintiff will fairly and adequately protect the interest of the Class Members. Plaintiff has retained counsel with experience in class action litigation, and they are not aware of any interest that might cause them not to vigorously pursue this case.

42) A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder is impracticable. The expense and burden of individual litigation make it virtually impossible for the members of the classes to proceed individually, and it is therefore most efficient to resolve all claims based on Defendants' conduct against Georgia residents in one forum.

43) The Plaintiff is aware of no difficulties that will be encountered in the management of this litigation that would render the action unmanageable.

44) Prosecution of separate actions by individual members of the Plaintiff classes would create adjudications that would be dispositive of the interests of the other members not parties to the adjudications.

45) Without a class action mechanism, members of the Plaintiff classes would be substantially impaired or impeded in their ability to protect their interests. The value of claims of the individual class members would be in an amount that makes prosecution outside of the class action uneconomical.

46) The claims of the Plaintiff and Plaintiff Class Members are meritorious. The named Plaintiff believes he will prevail on the merits based upon the clear, unambiguous failure of Defendants to provide the education bargained for by Plaintiff and Plaintiff Class Members.

47) A final judgment on the merits of the named Plaintiff's claims would be fully dispositive of the claims and interests of those similarly situated who are not specifically named as a plaintiff in this action.

COUNT I – NEGLIGENCE

48) Plaintiff Cheatham re-alleges all preceding paragraphs on this Complaint as if fully restated herein and further states the following on behalf of himself and the Former Student Class:

49) Defendants have committed acts of omission contrary to their legal duties as an institute of higher education.

50) Defendants failed to maintain accreditation of their institution.

51) Defendants' failure to maintain accreditation rendered all classes taken at their institution by Plaintiff and Plaintiff Class Members worthless.

52) Defendants' failure to maintain accreditation made all tuition payments made by Plaintiff and Plaintiff Class Members a waste of money.

53) Defendants' failure to maintain accreditation made all degrees completed by prior students worthless.

54) Defendants' failure to maintain accreditation made all time invested by Plaintiff and Plaintiff Class Members taking classes at these institutions wasted.

55) Defendants negligently operated, managed, and marketed their degree programs.

56) Defendants have a duty to reasonably operate, manage, and market their degree programs.

57) Defendants breached their duty of care in operating, managing, and marketing their degree programs.

58) Defendants owed a duty to Plaintiff Cheatham and the Plaintiff Class Members to maintain accreditation of the institutions so that students would receive the benefits of the education for which they bargained.

59) Defendants have a common law duty to prevent the foreseeable risk of harm to others, including Plaintiffs and the Class.

60) Defendants assumed a duty to use reasonable measures in providing an education to Plaintiff Cheatham and the Plaintiff Class Members.

61) Only Defendants were in a position to ensure that their policies and procedures were sufficient to protect against the harm to Plaintiff and the class members from Defendants' failure to maintain accreditation.

62) Defendants' duty to use reasonable care in providing educational services arose not only as a result of the common law and the statutes, but also because it was bound by, and had committed to comply with, industry standards, as represented by the Department of Education to borrowers.

63) Defendants breached their common law, statutory, and other duties and thus were negligent by failing to use reasonable measures to maintain an accredited institution as bargained for by Plaintiff and the Plaintiff Class Members.

64) In connection with the conduct described above, Defendants acted wantonly, recklessly, and with complete disregard for the consequences.

65) As a direct and proximate result of Defendants' negligent conduct, Plaintiffs and the Class have suffered damages.

COUNT II – BREACH OF CONTRACT

66) Plaintiff Cheatham re-alleges all preceding paragraphs on this Complaint as if fully restated herein and further state the following on behalf of himself and the Former Student Class and the Current Online Student Class.

67) Plaintiff Cheatham and members of the Former Student Class and Current Online Student Class entered into contracts with Defendants.

68) The contracts between Defendants and Plaintiff and the prospective class members required both parties to fulfil certain obligations.

69) In exchange for tuition payments received by Plaintiff and the class members, Defendants agreed to provide Plaintiff Cheatham and the Class with courses of studies designed to allow students to complete a degree from an accredited institution of higher education.

70) Defendants breached their agreement by failing to maintain accreditation of their institution.

71) Defendants breached their agreement by closing their online classes before students could complete their degree.

72) Defendants breached their agreement by closing all operations of their schools.

73) Defendants breached their agreement by leaving Plaintiff Cheatham and Class members with course credits from an unaccredited institution.

74) Defendants breached their agreement by failing to provide any meaningful career placement services.

75) As a direct and proximate cause of Defendants' breach of contract, Plaintiff Cheatham and Class members have suffered damages and injuries including, but not limited to loss of value of coursework, loss of tuition, loss of educational opportunity, and loss of opportunity to complete unfinished degree programs.

COUNT III – UNJUST ENRICHMENT

76) Plaintiff Cheatham re-alleges all preceding paragraphs on this Complaint as if fully restated herein and further state the following on behalf of himself and the Former Student Class and the Current Online Student Class.

77) Plaintiff Cheatham and Class members conferred a benefit on Defendants when they enrolled in their institutions and paid tuition money.

78) Defendants have been unjustly enriched in retaining the revenues provided by Plaintiff Cheatham and the Class.

79) Defendants have been unjustly enriched by using the enrollment of Plaintiff Cheatham and Class members to continue to market their schools to other students and investors.

80) Plaintiff Cheatham and the Class have been injured with loss of money, loss of educational opportunity, loss of time spent on classes without value, and emotion distress as a result of Defendants' actions.

ANY ARBITRATION AGREEMENTS ARE UNENFORCEABLE

81) The Department of Education entered a rule in 2016 which was in effect as of October 16, 2018 prohibiting schools participating in the federal student loan program from entering into certain pre-dispute arbitration agreements with students or agreements that purport to waive students' rights to bring class actions.

82) These limitations apply to agreements with students who have obtained federal Direct Loans or benefited from Direct Parent PLUS Loans and apply to claims regarding the making of the federal Direct Loan or the provision of educational services for which the loan was obtained.

83) Defendants cannot enter pre-dispute agreements with students that waive students' right to go to court or to pursue a class action over any claims that could also give rise to an administrative "borrower defense" claim. See 34 C.F.R. § 685.300(b), (d), (e), (f), as added by 81 Fed. Reg. 75,926, 76,087-76,088 (Nov. 1, 2016).

84) Claims that could give rise to a borrower defense include a school's substantial misrepresentation, breach of contract, or a non-default judgment against the school, or violation of

a student's rights under state law—all as relate to the making of a Direct Loan or provision of educational services for which the loan was obtained. See 34 C.F.R. § 685.206(c) and 34 C.F.R. § 685.222 as added by 81 Fed. Reg. 75,926, 76,083 (Nov. 1, 2016).

85) Nor can the school rely on an existing arbitration agreement to force an individual or class action out of court, even if the agreement was entered into prior to the rule's effective date.

86) The school must either amend the agreement or notify the students that they will not enforce the agreement. See 34 C.F.R. § 685.300(e)(3), (f)(3), as added by 81 Fed. Reg. 75,926, 76,088 (Nov. 1, 2016).

WHEREFORE, Plaintiff being entitled to a trial by jury and judgment against the Defendants, prays for the following:

- a) An order certifying that the action may be maintained as a class action;
- b) The Plaintiff Cheatham be designated as class representative;
- c) That Plaintiff's counsel of record herein be designated as class counsel for the Plaintiff Class Members class as defined in this Complaint or by this Court;
- d) That Defendants be held liable for the actions described herein;
- e) That Plaintiff and the members of the proposed classes receive compensatory damages in an amount to be proven at trial;
- f) An order granting Plaintiff their expenses incurred in bringing and prosecuting this action, including attorneys' fees, expert fees and costs;
- g) That the Defendants be required to pay all monies referred to herein which relate to the Plaintiff Class Members into a common fund for the benefit of the Plaintiff Class Members, less an incentive award, litigation expenses, and attorneys' fees;

- h) That the Court conduct a “fairness hearing,” after due and proper notice to all Plaintiff Class Members, and make such award of attorneys’ fees, litigation expenses and an incentive award for the named Plaintiff as the Court deems appropriate from the common fund (as reference above) and/or from the Defendants;
- i) That Plaintiff have a trial by jury; and
- j) Such other and further relief as the Court may deem just, necessary or appropriate.

This 23rd Day of August, 2019.

ARMOR LAW, LLC

/s/ Chris Armor

Christopher N. Armor
Georgia Bar No. 614061
Attorney for Defendant
160 Clairemont Avenue, Suite 200
Decatur, Georgia 30030
Phone:(678) 954-5674
E-mail: chris.armor@armorlaw.com

HURT STOLZ, P.C.

/s/ James W. Hurt, Jr.
By: James W. Hurt, Jr.
Georgia Bar No.: 380104
1551 Jennings Mill Road
Suite 3100-B
Watkinsville, Georgia 30677
(706) 395-2750
Facsimile: (866) 766-9245
jhurt@hurtstolz.com

EXHIBIT 2

Declaration of Kellie Kennedy

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MATTHEW CHEATHAM,)
on behalf of himself and all others)
similarly situated,)
)
Plaintiff,)
)
v.)
)
VIRGINIA COLLEGE, LLC and)
EDUCATION CORPORATION)
OF AMERICA,)
)
Defendants.)

CIVIL ACTION NO.

_____)
JURY TRIAL DEMANDED

DECLARATION KELLIE KENNEDY

1. My name is Kellie Kennedy. I am a former Student Finance Supervisor at Education Corporation of America, the parent company of Virginia College, LLC, where I was employed in various roles from 2001 through 2019.

2. I am over the age of twenty-one and I have personal knowledge of the facts and statements made herein.

3. I have reviewed the Complaint styled *Matthew Cheatham v. Virginia College, LLC and Education Corporation of America*, Civil Action Number 19-C-06260-S6, filed in Gwinnett County, Georgia.

4. Virginia College, LLC was served with the Complaint on September 6, 2019.

5. I have reviewed Plaintiff’s proposed class definitions contained in paragraph 35 of the Complaint styled *Matthew Cheatham v. Virginia College, LLC and Education Corporation of America*, Civil Action Number 19-C-06260-S6.

6. The proposed “Former Student Class” contains more than 100 students.

7. Defendant Virginia College received more than \$5,000,000 over the years in tuition payments from the proposed Former Student Class members.

8. I have reviewed Plaintiff Matthew Cheatham's Enrollment and Tuition Agreements entered into during the course of his three enrollments at Virginia College. The total estimated tuition associated with his three enrollments were as follows: \$37,440.00 for the Associate of Applied Science in Network Engineering, \$73,510.00 for the Bachelor of Science in Management Information Systems, and \$73,510.00 for the Bachelor of Science in Network Management.

9. True and correct copies of each of Matthew Cheatham's Enrollment Agreements are attached as Exhibit A.

I was provided an opportunity to review this Declaration and given the opportunity to make any and all necessary changes. I make the above statement on penalty of perjury in accordance with 28 U.S.C. § 1746.

Dated this 2 day of October, 2019.

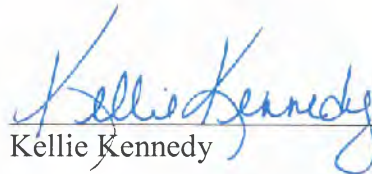

Kellie Kennedy

EXHIBIT A



2021 Drake Ave. SW, Huntsville, AL 35801 256-533-7387
Enrollment and Tuition Agreement

PROGRAM: Network Engineering - Associate of Applied Science Total Program Hours: 96

TERM START DATE: 06/29/2011

Name: Matthew Cheatham Maiden (if different) _____ SS No: [REDACTED]

Address: [REDACTED] City/State/Zip: Brownsboro AL 35741-8003

Phone Number: (256) 520-1998 Alternate Number: _____ Email Address: matthew.c.cheatham@gmail.com

Birth Date: [REDACTED] High School Graduate: No: Yes: Year: 2001 or Equivalent: GED Year: _____

HS/GED NAME: Huntsville Christian Academy City/State/Zip: Huntsville AL

Motlow State Community College, Middle

Other Colleges: Tennessee State University Degree(s): N/A

Class: Day: Night: Weekend: (See section 3 for details regarding course and/or program changes/revisions)

Previously Attended/Enrolled at Virginia College: Yes No Date(s): _____ Location: _____

1. TUITION AND FEES

All tuition and fees must be paid in full prior to the commencement of each quarter unless other arrangements satisfactory to Virginia College (the "College") in its sole and absolute discretion, have been made with the student and his/her legal designee (the "Student"). The Student's account will be billed in accordance with the Tuition and Fee Addendum (the "Addendum") to the College's Catalog (the "Catalog"), within each quarter, until and unless such Addendum is amended and/or superseded by a new addendum or otherwise. The College expressly reserves the right to increase the rate of tuition and related fees as the College deems necessary and/or appropriate, in its sole and absolute discretion, prior to the commencement of any quarter during the Student's enrollment with the College, in all cases in accordance with and subject to any applicable laws and/or state regulations. The College will notify the Student of any such increases in the tuition rate and/or related fees and expenses. By signing this Contract below, the Student (and, if applicable, his/her parent or legal guardian) acknowledges and agrees that the tuition rate, fees and other costs associated with the Student's participation in the courses and education offerings made available by the College to the Student (including without limitation those set forth in the "Tuition Schedule" below in this Paragraph 1) are subject to change and increase as the College deems reasonably necessary from time to time.

TOTAL TUITION, FEES, AND OTHER CHARGES AS SPECIFIED IN THE CURRENT TUITION SCHEDULE:

Total credits required will be increased for students who must complete preparatory classes (see the Addendum for further information). A service fee of \$25.00 is charged per Online course. Books are included in the tuition charge; provided, however, that other expenses and fees may be charged by the College for certain courses for items other than books, including without limitation optional examinations, materials and other instructional aids or resources.

Application Fee	<u>\$100.00</u>
Tuition Per Quarter	<u>Not Applicable</u>
Tuition Per Credit Hour	<u>\$390.00</u>
Total Estimated Tuition	<u>\$37,440.00</u>

2. NOTICES TO THE STUDENT AND THE STUDENT'S RIGHT TO CANCEL

- This Enrollment and Tuition Agreement (this "Contract") should be completed by the Student only after he/she (as an applicant for admission to the College) has successfully completed all prerequisites for admission to the College and he/she has been accepted for admission by the College. **DO NOT SIGN THIS CONTRACT BEFORE YOU HAVE READ IT COMPLETELY AND THOROUGHLY. DO NOT SIGN THIS CONTRACT IF IT CONTAINS ANY BLANK SPACES.**
- The Student is entitled to an exact duplicate copy of the Contract the Student signed.
- THIS CONTRACT BECOMES A LEGALLY BINDING INSTRUMENT UPON THE COLLEGE'S WRITTEN ACCEPTANCE DELIVERED TO THE STUDENT, UNLESS IT IS CANCELLED PURSUANT TO THE STUDENT'S RIGHT TO CANCEL. The Student has the right to cancel the initial Contract until 11:59 p.m. local time in Huntsville, Alabama on the third business day following the day that the College accepts the Student's enrollment. Should the Student submit the cancellation in writing within the aforementioned three business days, the Student will be entitled to receive a refund of the application fee and all advance monies paid.
- Any holder of this consumer contract is subject to all claims and defenses that the debtor could assert against the seller of goods or services obtained pursuant hereto or with the proceeds thereof. Recovery hereunder by the debtor shall not exceed amounts paid by the debtor hereunder.
- The terms and conditions of the Contract are not subject to amendment or modification by oral agreement. To the contrary, any changes, amendments or modifications to the Contract will not be binding on either the Student or the College unless and until such changes have been approved in a writing signed by an authorized official of the College and the Student (or his/her parent or legal guardian if the Student has not reached the age of majority under the laws of the State of Alabama with respect to this Contract); provided, however, that the College may amend or increase the rate of tuition, fees or other charges set forth in Paragraph 1 of this Contract as the College, in its sole and absolute discretion, deems necessary and/or appropriate without first obtaining the consent, written, oral or otherwise, of the Student (and, if applicable, his/her parent or legal guardian).



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- f. Dissatisfaction with, or non receipt of, the educational services being offered by the College does not excuse the Student, as a borrower, from repayment of any loan made to the Student, as a borrower, for enrollment at the College, including federally guaranteed and career loans provided by or through the College.
- 3. PROGRAM REVISION:** Programs and individual courses are subject to change at the sole discretion of the College for any reason, including, without limitation, curriculum revisions, changes in course and/or program enrollment, instructor availability, facility and/or space availability, or such other actions or matters as the College may deem appropriate or necessary. In the event of a program and/or course change, the Student will not be entitled to a refund of any tuition for courses taken by the Student at the College prior to such change.
- 4. COLLEGE CATALOG AND STUDENT HANDBOOK:** The Student agrees to be bound by all of the terms, conditions, rules and regulations set forth in the Catalog and Student Handbook. The Student acknowledges he/she has received a copy of the Catalog and has had ample opportunity to review it prior to execution of this Contract by Student and/or his/her parent or legal guardian, if applicable. The Catalog and Student Handbook are available for the Student to access online at www.vc.edu.
- 5. ACCURACY OF INFORMATION:** The Student acknowledges that the College relies upon the accuracy and completeness of all information and/or documentation provided to the College by the Student (and, if applicable, his/her parent or legal guardian) and he/she (and, if applicable, his or her parent or legal guardian) certifies that all such information and/or documentation is accurate, correct and complete. In the event that any such information and/or documentation provided by, or on behalf of, the Student is false, inaccurate, incomplete or misleading, the College may suspend, dismiss or expel, either temporarily or permanently, the Student from the College. In such cases, the Student may not be entitled to any credit for work that he/she may have completed at the College.
- 6. DISMISSAL:** The Student agrees to attend all classes regularly and promptly unless he/she has sufficient reason(s) not to do so, such as illness, and to perform all lessons and assignments to the best of his or her ability. The College may terminate the Student's enrollment at the College for non-payment of fees or tuition, unsatisfactory progress, excessive absences, or behavior detrimental to the College or its faculty or students. Additionally, the Student's enrollment may be terminated without cause if the College deems such action to be in the best interests of the College and/or its students and faculty.
- 7. WITHHOLDING RECORDS:** The College reserves the right to withhold records, including without limitation grade reports, transcripts and diplomas until all financial obligations are satisfied, consistent with applicable state and Federal law.
- 8. TRANSFERABILITY OF CREDITS:** The College does not imply, promise or guarantee transferability of credits earned to any other educational or vocational institution. **BY SIGNING THIS CONTRACT, YOU ACKNOWLEDGE THAT CREDITS EARNED AT THE COLLEGE MAY NOT TRANSFER TO OR BE TRANSFERABLE TO ANY OTHER EDUCATIONAL, VOCATIONAL OR OTHER INSTITUTION. TRANSFERABILITY OF CREDITS IS SOLELY DEPENDENT ON THE POLICIES OF THE INSTITUTION TO WHICH THE STUDENT SEEKS TO TRANSFER.**
- 9. PLACEMENT ASSISTANCE DISCLAIMER:** Although the College provides placement assistance upon graduation, the Student acknowledges and understands that he/she is responsible for obtaining employment and must seek job openings, prepare and send resumes, prepare for interviews and conduct himself/herself in a professional manner during the employment process. The Student further acknowledges and understands that the Student's college record and the efforts he/she puts into a job search have a significant effect and impact on his or her ability to find suitable employment. **THE COLLEGE HAS NOT AND DOES NOT GUARANTEE OR MAKE ANY REPRESENTATION OR WARRANTY OF ANY KIND OR NATURE (EXPRESS, IMPLIED OR OTHERWISE) REGARDING OR WITH RESPECT TO THE AVAILABILITY OR SUITABILITY OF EMPLOYMENT, ANY LEVEL OF COMPENSATION UPON EMPLOYMENT, OR ANY OTHER MATTERS RELATING TO EMPLOYMENT AND EMPLOYMENT OPPORTUNITIES AFTER GRADUATION OR COMPLETION OF ANY COURSE WORK AT THE COLLEGE.**
- 10. ARBITRATION:** Any claim, controversy or dispute arising out of or relating to this Contract or any alleged breach, violation or default of this Contract, together with all other claims, controversies or disputes of any nature whatsoever arising out of or in relation to the Student's enrollment and participation in courses at the College (provided such dispute is not resolved by negotiation between the parties within thirty days after notice of such alleged or threatened breach, violation or default by either party), shall, upon notice by either party to the other party, be resolved and settled by binding arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. Such arbitration shall take place in Birmingham, Alabama. The arbitrator is authorized to fashion remedies, which make the prevailing party whole for the demonstrated losses incurred, including determining that the Student should be enjoined from certain actions or be compelled to undertake certain actions; provided, however, that the arbitrator shall have no authority to award punitive or other damages (including without limitation consequential or incidental damages or damages for lost profits or lost opportunities) not measured by the prevailing party's actual compensatory damages. The arbitrator's decision and award shall be final, binding on the parties, and non-appealable, and may be entered in any court of competent jurisdiction to enforce it. The parties shall, respectively, pay any expenses incurred as American Arbitration Association fees, administrative fees, arbitrator's fees, mediation fees, hearing fees, and postponement/cancellation fees in accordance with the rules and procedures adopted by the American Arbitration Association. Notwithstanding the provisions of this Paragraph, in the event a breach, violation or default of this Contract (or any of its terms) is alleged, the College shall have the option to seek injunctive relief in any court of competent jurisdiction barring further breach or violation of this Contract pending arbitration. **BY SIGNING THIS CONTRACT, THE STUDENT (AND, IF APPLICABLE, HIS/HER PARENT OR LEGAL GUARDIAN) GIVE UP THE RIGHT TO GO TO COURT AND THE RIGHT TO TRIAL BY JURY AND EXPRESSLY ACKNOWLEDGE AND UNDERSTAND THAT HIS, HER OR THEIR RIGHTS AND REMEDIES WILL BE DETERMINED BY AN ARBITRATOR AND NOT BY A JUDGE OR JURY. THE PARTIES UNDERSTAND THAT A DETERMINATION BY AN ARBITRATOR IS AS ENFORCEABLE AS ANY COURT ORDER AND IS SUBJECT TO VERY LIMITED REVIEW BY A COURT.**
- 11. REFUND POLICY:** The College will bill the Student's account according to the term registration charges on the Addendum (which may be revised and amended from time to time as determined by the College in its sole and absolute discretion).



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Enrollment and Tuition Agreement

CANCELLATION PRIOR TO COMMENCEMENT OF CLASSES BY THE STUDENT: If the Student does not begin classes, the application fee will be retained. Appropriate refunds are made within 30 days of receipt by the College of written notice from the Student, sent to the appropriate college address indicated on the front of this Contract, indicating that the Student will not enter or enroll in classes at the College. All money paid by (or on behalf of) the Student will be refunded if a refund is requested by the Student (or his/her parent or legal guardian, if applicable) in writing within 3 business days after the date of execution of this Contract (assuming payment has, in fact, been made to the College at such time).

12. WITHDRAWAL AFTER COMMENCEMENT OF CLASSES BY THE STUDENT: In computing refunds, the Student will be considered to have been in attendance from the actual beginning of the term until the College's date of determination of withdrawal. Students who withdraw during the first 60 percent of the quarter will receive a tuition refund as calculated below. The student is not entitled to a refund if the last date of attendance occurs after 60 percent of the quarter has elapsed.

WITHDRAWAL DATE	TUITION REFUNDED	TUITION RETAINED
Prior to Attending Classes	100%	0%
Within the 1st Week	100%	0%
After the first week, but within the first 10%	90%	10%
After 10% but within 20%	80%	20%
After 20% but within 30%	70%	30%
After 30% but within 40%	60%	40%
After 40% but within 50%	50%	50%
After 50% but within 60%	40%	60%
After 60%	0%	100%

13. RE-ENTRY FEES: The College charges an entry fee to re-admit students who have previously withdrawn.

14. LIQUIDATED DAMAGES; EXCLUSIVE REMEDY: The parties agree that if the College is found to have breached a material provision of this Contract to the substantial detriment of the Student, then the College must pay as liquidated damages (and not as a penalty) a sum up to an amount equal to any non-refunded tuition payments to the Student or the Student's lender in the case of a loan, or appropriate government agency in the case of a grant, it being acknowledged and agreed to by the parties to this Contract that the determination of the damages actually incurred by the Student as a result of such a breach by the College would be impractical or inherently difficult to ascertain or calculate and that said amount as liquidated damages, and not as a penalty, would represent a reasonable estimate of just and fair compensation to the Student for any such breach by the College. The parties further agree that payment by the College of such liquidated damages pursuant to this Paragraph 15 would constitute the sole and exclusive remedy of the Student for such a breach by the College (including without limitation any right to seek or recover incidental, consequential, exemplary or punitive damages).

15. ATTORNEYS' AND COLLECTION FEES: In any legal action permitted by this Contract or arbitration between the parties arising out of this Contract and the subject matter contained herein, the College, if it prevails, shall be entitled to recover its reasonable attorneys' fees in addition to any other relief to which it may be entitled or awarded. Further, the College shall be entitled to recover any attorneys' fees or collection agency fees and interest associated with the collection of a delinquent account of the Student.

16. INTEGRATION: This Contract (along with the Catalog and the Addendum, each as in effect from time to time) is and shall constitute the entire agreement between the Student (and, if applicable, his/her parent or legal guardian) and the College concerning the rights granted and the obligations assumed by the respective parties in this Contract and the subject matter contained herein. This Contract supersedes any prior or contemporaneous agreements, representations and understandings, whether oral, written or otherwise (other than those set forth in the Catalog and the Addendum, each as in effect from time to time). This Contract may only be modified in writing signed by both parties.

17. GOVERNING LAW: This Contract and the rights and obligations of the parties pursuant to this Contract shall in all cases be governed by and interpreted, construed and enforced in accordance with the internal laws of the State of Alabama without giving effect to any conflict-of-laws rule or principle that might refer the governance, the interpretation, construction or enforcement of this Contract to the laws of another jurisdiction.

18. SEVERABILITY; NO PRESUMPTION; NO WAIVER: In the event any provision of this Contract is held to be invalid, illegal or unenforceable for any reason and in any respect, such invalidity, illegality, or unenforceability shall in no event affect, prejudice or disturb the validity of the remainder of this Contract, which shall be and remain in full force and effect, enforceable in accordance with its terms. In the event an ambiguity or question of intent or interpretation arises with respect to this Contract, this Contract shall be construed as if drafted jointly by the parties, and the parties expressly agree that no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Contract (or any portion thereof). No waiver by any of the parties to this Contract of any condition, term or provision of this Contract shall be deemed to be a waiver of any preceding or subsequent breach, violation or default of the same or any other condition, term or provision hereof.



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Enrollment and Tuition Agreement

19. NO THIRD PARTY BENEFICIARIES: The terms and provisions of this Contract are intended solely for the benefit of each party hereto and their respective successors or permitted assigns, and it is not the intention of the parties hereto to confer any third-party beneficiary rights upon any other person or entity.

20. USE OF LIKENESS, VOICE, AND NAME: I/we do hereby grant to the College and its owners, agents, successors, and assigns the exclusive right in perpetuity to use my likeness, name, picture and voice recorded during the time the Student is a student of the College. Such recordings may be in the form of video, film, sound recordings, photographs, or otherwise and may be incorporated in the production, use, and distribution of television, radio, video, dvd, stock footage, internet, print or any other form of distribution known or discovered later. All use of the Student's likeness, name, picture and voice shall be for instructional, publicity, or promotional purposes only and shall be the exclusive and sole property of the College to use, modify, or not use as it may desire. I/we, my/our heirs, successors, and assigns hereby discharge, release and forever waive any and all actions, claims, damages, liabilities, costs and expenses (including without limitation attorneys' fees) and other losses of any kind or nature that I/we may incur or have against the College and/or its owners, officers, directors, agents, employees and other representatives arising out of, or in any manner relating to, privacy, defamation, or any other claim of any kind or nature, whether based in contract, tort or otherwise, at law or in equity, under the laws of any state or the laws of the United States in connection with such use and further waive any claim, right or interest whatsoever in such use or in any recordings, originals, copies, derivatives or other reproductions.

21. NOTICES: For purposes of this Contract, notices and all other communications provided for in this Contract shall be in writing and shall be deemed to have been duly given (a) on the date of delivery when delivered by hand, (b) one day after dispatch when sent by reputable overnight courier maintaining records of receipt, or (c) three business days after dispatch when sent by registered or certified mail, postage prepaid, return receipt requested, all addressed as follows:

If to the College:

Virginia College
2021 Drake Ave. SW
Huntsville, AL 35801
Attn: President
Telephone: 256-533-7387

If to the Student (or his/her parent or legal guardian, if applicable), at the address of record listed on first page of this Contract or as otherwise maintained by the College's admissions and enrollment office, or to such other address as any party may have furnished to the other party in writing in accordance herewith, except that notices of change of address shall be effective only upon receipt.

By signing this Contract, I/we acknowledge and certify that I/we have read and reviewed this Contract in full and I/we understand all of my/our rights and responsibilities and duties. Further, I/we agree to all of the terms and conditions of this Contract and the rules, regulations and policies of the Catalog, a copy of which I/we have received, reviewed and read prior to my/our execution of this Contract below.

Matthew Cheatham
STUDENT'S SIGNATURE

4/18/2011
DATE

PARENT OR GUARDIAN'S SIGNATURE AS A CONTRACTING PARTY

DATE

Jeff Brown
AUTHORIZED COLLEGE OFFICIAL'S SIGNATURE

4/18/2011
DATE

ACKNOWLEDGMENTS OF STUDENT (AND PARENT OR LEGAL GUARDIAN, IF APPLICABLE):

By initialing below, I/we acknowledge and represent that I/we have received the following:

- MC A true and fully-executed copy of this Contract.
MC A copy of, and information concerning access to, (1) the Virginia College Catalog and (2) the Tuition and Fee Addendum to the Catalog.



488 Palisades Blvd, Birmingham, AL 35209 205-397-6600
Enrollment and Tuition Agreement

PROGRAM: Management Information Systems - Bachelor of Science Total Program Hours: 180
 TERM START DATE: 01/17/2017
 Name: Matthew Cheatham Maiden (if different) _____ Id No: 18251337
 Address: [REDACTED] City/State/Zip: Woodstock GA 30189
 Phone Number: (256) 651-1382 Alternate Number: _____ Email Address: matthew.c.cheatham@gmail.com
 Birth Date: [REDACTED] High School Graduate: No: Yes: Year: 2001 or Equivalent: GED Year: _____
 HS/GED NAME: Huntsville Christian Academy City/State/Zip: Huntsville AL
Motlow State Community College, Middle Tennessee State
 Other Colleges: University, Virginia College - Huntsville Degree(s): N/A, AAS Network Engineering
 Previously Attended/Enrolled at Virginia College: Yes No Date(s): 1/1/2011-12/1/2013 Location: Huntsville

1. TUITION AND FEES

All tuition and fees must be paid in full prior to the commencement of each quarter unless other arrangements satisfactory to Virginia College (the "College") in its sole and absolute discretion, have been made with the student and his/her legal designee (the "Student"). The Student's account will be billed in accordance with the tuition schedule in the College's Catalog (the "Catalog"), within each quarter/payment period, until and unless such schedule is amended and/or superseded by a new catalog or otherwise. **The College expressly reserves the right to increase the rate of tuition and related fees as the College deems necessary and/or appropriate, in its sole and absolute discretion, prior to the commencement of any quarter during the Student's enrollment with the College, in all cases in accordance with and subject to any applicable laws and/or state regulations. The College will notify the Student of any such increases in the tuition rate and/or related fees and expenses. By signing this Contract below, the Student (and, if applicable, his/her parent or legal guardian) acknowledges and agrees that the tuition rate, fees and other costs associated with the Student's participation in the courses and education offerings made available by the College to the Student (including without limitation those set forth in the "Tuition Schedule" below in this Paragraph 1) are subject to change and increase as the College deems reasonably necessary from time to time.**

TOTAL TUITION, FEES, AND OTHER CHARGES AS SPECIFIED IN THE CURRENT TUITION SCHEDULE:

Total credits required will be increased for students who must complete preparatory classes. A service fee of \$25.00 is charged per Online course. Books are provided at no charge; however, other expenses and fees may be charged by the College for certain courses for items other than books including, but not limited to, optional examinations, materials, and other instructional aids and resources.

Administration Fee (Not Applied to Tuition)	<u>\$250.00</u>
Re-Entry Fee (Not Applied to Tuition)	<u>\$150.00</u>
Tuition Per Credit Hour	<u>\$407.00</u>
Total Estimated Tuition	<u>\$73,510.00</u>

2. NOTICES TO THE STUDENT AND THE STUDENT'S RIGHT TO CANCEL

- This Enrollment and Tuition Agreement (this "Contract") should be completed by the Student only after he/she (as an applicant for admission to the College) has successfully completed all prerequisites for admission to the College and he/she has been accepted for admission by the College. **DO NOT SIGN THIS CONTRACT BEFORE YOU HAVE READ IT COMPLETELY AND THOROUGHLY. DO NOT SIGN THIS CONTRACT IF IT CONTAINS ANY BLANK SPACES.**
- The Student is entitled to an exact duplicate copy of the Contract the Student signed.
- THIS CONTRACT BECOMES A LEGALLY BINDING INSTRUMENT UPON THE COLLEGE'S WRITTEN ACCEPTANCE DELIVERED TO THE STUDENT, UNLESS IT IS CANCELLED PURSUANT TO THE STUDENT'S RIGHT TO CANCEL. The Student has the right to cancel the initial Contract until 11:59 p.m. local time in Birmingham, Alabama on the third business day following the day that the College accepts the Student's enrollment. Should the Student submit the cancellation in writing within the aforementioned three business days, the Student will be entitled to receive a refund of the application fee and all advance monies paid.
- Any holder of this consumer contract is subject to all claims and defenses that the debtor could assert against the seller of goods or services obtained pursuant hereto or with the proceeds thereof. Recovery hereunder by the debtor shall not exceed amounts paid by the debtor hereunder.
- The terms and conditions of the Contract are not subject to amendment or modification by oral agreement. To the contrary, any changes, amendments or modifications to the Contract will not be binding on either the Student or the College unless and until such changes have been approved in a writing signed by an authorized official of the College and the Student (or his/her parent or legal guardian if the Student has not reached the age of majority under the laws of the State of Alabama with respect to this Contract); provided, however, that the College may amend or increase the rate of tuition, fees or other charges set forth in Paragraph 1 of this Contract as the College, in its sole and absolute discretion, deems necessary and/or appropriate without first obtaining the consent, written, oral or otherwise, of the Student (and, if applicable, his/her parent or legal guardian).
- Dissatisfaction with, or non receipt of, the educational services being offered by the College does not excuse the Student, as a borrower, from repayment of any loan made to the Student, as a borrower, for enrollment at the College, including federally guaranteed and career loans provided by or through the College.



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3. **PROGRAM REVISION:** Programs and individual courses are subject to change at the sole discretion of the College for any reason, including, without limitation, curriculum revisions, changes in course and/or program enrollment, instructor availability, facility and/or space availability, or such other actions or matters as the College may deem appropriate or necessary. In the event of a program and/or course change, the Student will not be entitled to a refund of any tuition for courses taken by the Student at the College prior to such change.
4. **COLLEGE CATALOG AND STUDENT HANDBOOK:** The Student agrees to be bound by all of the terms, conditions, rules and regulations set forth in the Catalog and Student Handbook. The Student acknowledges he/she has had ample opportunity to review the Catalog prior to execution of this Contract by Student and/or his/her parent or legal guardian, if applicable. The Catalog and Student Handbook are available for the Student to access online at <https://docs.vc.edu/>.
5. **ACCURACY OF INFORMATION:** The Student acknowledges that the College relies upon the accuracy and completeness of all information and/or documentation provided to the College by the Student (and, if applicable, his/her parent or legal guardian) and he/she (and, if applicable, his or her parent or legal guardian) certifies that all such information and/or documentation is accurate, correct and complete. In the event that any such information and/or documentation provided by, or on behalf of, the Student is false, inaccurate, incomplete or misleading, the College may suspend, dismiss or expel, either temporarily or permanently, the Student from the College. In such cases, the Student may not be entitled to any credit for work that he/she may have completed at the College.
6. **DISMISSAL:** The Student agrees to attend all classes regularly and promptly unless he/she has sufficient reason(s) not to do so, such as illness, and to perform all lessons and assignments to the best of his or her ability. The College may terminate the Student's enrollment at the College for non-payment of fees or tuition, unsatisfactory progress, excessive absences, or behavior detrimental to the College or its faculty or students. Additionally, the Student's enrollment may be terminated without cause if the College deems such action to be in the best interests of the College and/or its students and faculty.
7. **WITHHOLDING RECORDS:** The College reserves the right to withhold records, including without limitation grade reports, transcripts and diplomas until all financial obligations are satisfied, consistent with applicable state and Federal law.
8. **TRANSFERABILITY OF CREDITS:** The College does not imply, promise or guarantee transferability of credits earned to any other educational or vocational institution. BY SIGNING THIS CONTRACT, YOU ACKNOWLEDGE THAT CREDITS EARNED AT THE COLLEGE MAY NOT TRANSFER TO OR BE TRANSFERABLE TO ANY OTHER EDUCATIONAL, VOCATIONAL OR OTHER INSTITUTION. TRANSFERABILITY OF CREDITS IS SOLELY DEPENDENT ON THE POLICIES OF THE INSTITUTION TO WHICH THE STUDENT SEEKS TO TRANSFER.
9. **PLACEMENT ASSISTANCE DISCLAIMER:** Although the College provides placement assistance upon graduation, the Student acknowledges and understands that he/she is responsible for obtaining employment and must seek job openings, prepare and send resumes, prepare for interviews and conduct himself/herself in a professional manner during the employment process. The Student further acknowledges and understands that the Student's college record and the efforts he/she puts into a job search have a significant effect and impact on his or her ability to find suitable employment. **THE COLLEGE HAS NOT AND DOES NOT GUARANTEE OR MAKE ANY REPRESENTATION OR WARRANTY OF ANY KIND OR NATURE (EXPRESS, IMPLIED OR OTHERWISE) REGARDING OR WITH RESPECT TO THE AVAILABILITY OR SUITABILITY OF EMPLOYMENT, ANY LEVEL OF COMPENSATION UPON EMPLOYMENT, OR ANY OTHER MATTERS RELATING TO EMPLOYMENT AND EMPLOYMENT OPPORTUNITIES AFTER GRADUATION OR COMPLETION OF ANY COURSE WORK AT THE COLLEGE.**
10. **ARBITRATION:** Any claim, controversy or dispute arising out of or relating to this Contract or any alleged breach, violation or default of this Contract, together with all other claims, controversies or disputes of any nature whatsoever, including but not limited to all claims based in tort, fraud, contract, equity, state law, and/or federal law, arising out of or in relation to the Student's enrollment and participation in courses at the college, shall, upon notice by either party to the other party, be resolved and settled by binding arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. The parties agree that any dispute subject to arbitration shall not be adjudicated as a class action or a consolidated class arbitration proceeding either in court or under the rules of the American Arbitration Association. The right of any party to pursue a class action for any dispute subject to arbitration shall be waived to the fullest extent permitted by law. The arbitrator's decision and award shall be final, binding on the parties, and non-appealable, and may be entered in any court of competent jurisdiction to enforce it. The parties shall, respectively, pay any expenses incurred as American Arbitration Association fees, administrative fees, arbitrator fees, mediation fees, hearing fees, and postponement/cancellation fees in accordance with the rules and procedures adopted by the American Arbitration Association. Notwithstanding the provisions of this Arbitration Provision, in the event a breach, violation or default of this Contract (or any of its terms) is alleged, the College shall have the option to seek injunctive relief in any court of competent jurisdiction barring further breach or violation of this Contract pending arbitration. In the event any provision of this binding Arbitration Provision is held to be invalid, illegal or unenforceable for any reason and in any respect, such invalidity, illegality, or unenforceability shall in no event affect, prejudice or disturb the validity of the remainder of this Arbitration Provision, which shall be and remain in full force and effect, enforceable in accordance with its terms. **BY SIGNING THIS CONTRACT, THE STUDENT (AND, IF APPLICABLE, HIS/HER PARENT OR LEGAL GUARDIAN) GIVE UP THE RIGHT TO GO TO COURT AND THE RIGHT TO TRIAL BY JURY AND EXPRESSLY ACKNOWLEDGE AND UNDERSTAND THAT HIS, HER OR THEIR RIGHTS AND REMEDIES WILL BE DETERMINED BY AN ARBITRATOR AND NOT BY A JUDGE OR JURY. THE PARTIES UNDERSTAND THAT A DETERMINATION BY AN ARBITRATOR IS AS ENFORCEABLE AS ANY ORDER AND IS SUBJECT TO VERY LIMITED REVIEW BY A COURT.**
11. **REFUND POLICY:** The College will bill the Student's account according to the term registration charges in the Catalog (which may be revised and amended from time to time as determined by the College in its sole and absolute discretion).



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CANCELLATION PRIOR TO COMMENCEMENT OF CLASSES BY THE STUDENT: If the Student does not begin classes, the application fee will be retained. Appropriate refunds are made within 30 days of receipt by the College of written notice from the Student, sent to the appropriate college address indicated on the front of this Contract, indicating that the Student will not enter or enroll in classes at the College. All money paid by (or on behalf of) the Student will be refunded if a refund is requested by the Student (or his/her parent or legal guardian, if applicable) in writing within 3 business days after the date of execution of this Contract (assuming payment has, in fact, been made to the College at such time).

12. WITHDRAWAL AFTER COMMENCEMENT OF CLASSES BY THE STUDENT: In computing refunds, the Student will be considered to have been in attendance from the actual beginning of the term until the College's date of determination of withdrawal. Students who withdraw during the first 60 percent of the quarter will receive a tuition refund as calculated below. The student is not entitled to a refund if the last date of attendance occurs after 60 percent of the quarter has elapsed.

WITHDRAWAL DATE	TUITION REFUNDED	TUITION RETAINED
Prior to Attending Classes	100%	0%
Within the 1st Week	100%	0%
After the first week, but within the first 10%	90%	10%
After 10% but within 20%	80%	20%
After 20% but within 30%	70%	30%
After 30% but within 40%	60%	40%
After 40% but within 50%	50%	50%
After 50% but within 60%	40%	60%
After 60%	0%	100%

13. RE-ENTRY FEES: The College charges an entry fee to re-admit students who have previously withdrawn.

14. LIQUIDATED DAMAGES; EXCLUSIVE REMEDY: The parties agree that if the College is found to have breached a material provision of this Contract to the substantial detriment of the Student, then the College must pay as liquidated damages (and not as a penalty) a sum up to an amount equal to any non-refunded tuition payments to the Student or the Student's lender in the case of a loan, or appropriate government agency in the case of a grant, it being acknowledged and agreed to by the parties to this Contract that the determination of the damages actually incurred by the Student as a result of such a breach by the College would be impractical or inherently difficult to ascertain or calculate and that said amount as liquidated damages, and not as a penalty, would represent a reasonable estimate of just and fair compensation to the Student for any such breach by the College. The parties further agree that payment by the College of such liquidated damages pursuant to this Paragraph 15 would constitute the sole and exclusive remedy of the Student for such a breach by the College (including without limitation any right to seek or recover incidental, consequential, exemplary or punitive damages).

15. ATTORNEYS' AND COLLECTION FEES: In any legal action permitted by this Contract or arbitration between the parties arising out of this Contract and the subject matter contained herein, the College, if it prevails, shall be entitled to recover its reasonable attorneys' fees in addition to any other relief to which it may be entitled or awarded. Further, the College shall be entitled to recover any attorneys' fees or collection agency fees and interest associated with the collection of a delinquent account of the Student.

16. INTEGRATION: This Contract (along with the Catalog, as in effect from time to time) is and shall constitute the entire agreement between the Student (and, if applicable, his/her parent or legal guardian) and the College concerning the rights granted and the obligations assumed by the respective parties in this Contract and the subject matter contained herein. This Contract supersedes any prior or contemporaneous agreements, representations and understandings, whether oral, written or otherwise (other than those set forth in the Catalog, as in effect from time to time). This Contract may only be modified in writing signed by both parties.

17. GOVERNING LAW: This Contract and the rights and obligations of the parties pursuant to this Contract shall in all cases be governed by and interpreted, construed and enforced in accordance with the internal laws of the State of Alabama without giving effect to any conflict-of-laws rule or principle that might refer the governance, the interpretation, construction or enforcement of this Contract to the laws of another jurisdiction.

18. SEVERABILITY; NO PRESUMPTION; NO WAIVER: In the event any provision of this Contract is held to be invalid, illegal or unenforceable for any reason and in any respect, such invalidity, illegality, or unenforceability shall in no event affect, prejudice or disturb the validity of the remainder of this Contract, which shall be and remain in full force and effect, enforceable in accordance with its terms. In the event an ambiguity or question of intent or interpretation arises with respect to this Contract, this Contract shall be construed as if drafted jointly by the parties, and the parties expressly agree that no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Contract (or any portion thereof). No waiver by any of the parties to this Contract of any condition, term or provision of this Contract shall be deemed to be a waiver of any preceding or subsequent breach, violation or default of the same or any other condition, term or provision hereof.



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19. NO THIRD PARTY BENEFICIARIES: The terms and provisions of this Contract are intended solely for the benefit of each party hereto and their respective successors or permitted assigns, and it is not the intention of the parties hereto to confer any third-party beneficiary rights upon any other person or entity.

20. USE OF LIKENESS, VOICE, AND NAME: I/we do hereby grant to the College and its owners, agents, successors, and assigns the exclusive right in perpetuity to use my likeness, name, picture and voice recorded during the time the Student is a student of the College. Such recordings may be in the form of video, film, sound recordings, photographs, or otherwise and may be incorporated in the production, use, and distribution of television, radio, video, dvd, stock footage, internet, print or any other form of distribution known or discovered later. All use of the Student's likeness, name, picture and voice shall be for instructional, publicity, or promotional purposes only and shall be the exclusive and sole property of the College to use, modify, or not use as it may desire.

21. NOTICES: For purposes of this Contract, notices and all other communications provided for in this Contract shall be in writing and shall be deemed to have been duly given (a) on the date of delivery when delivered by hand, (b) one day after dispatch when sent by reputable overnight courier maintaining records of receipt, or (c) three business days after dispatch when sent by registered or certified mail, postage prepaid, return receipt requested, all addressed as follows:

If to the College:

Virginia College
400 Chase Park South, Suite 300
Birmingham, AL 35244
Telephone: 205-397-6600

If to the Student (or his/her parent or legal guardian, if applicable), at the address of record listed on first page of this Contract or as otherwise maintained by the College's admissions and enrollment office, or to such other address as any party may have furnished to the other party in writing in accordance herewith, except that notices of change of address shall be effective only upon receipt.

By signing this Contract, I/we acknowledge and certify that I/we have read and reviewed this Contract in full and I/we understand all of my/our rights and responsibilities and duties. Further, I/we agree to all of the terms and conditions of this Contract and the rules, regulations and policies of the Catalog, a copy of which I/we have received, reviewed and read prior to my/our execution of this Contract below.

Matthew Cheatham
STUDENT'S SIGNATURE

12/14/2016
DATE

PARENT OR GUARDIAN'S SIGNATURE AS A CONTRACTING PARTY

DATE

Carrie Salamone
AUTHORIZED COLLEGE OFFICIAL'S SIGNATURE

12/14/2016
DATE

ACKNOWLEDGMENTS OF STUDENT (AND PARENT OR LEGAL GUARDIAN, IF APPLICABLE):

By initialing below, I/we acknowledge and represent that:

MC I have received a true and fully-executed copy of this Contract.

MC I have been provided with a guided orientation of the contents of the school catalog, as well as the opportunity to obtain a printed copy of the school catalog at no cost.



Virginia College

VC - Online

488 Palisades Boulevard, Birmingham, Alabama 35209
(205)397-6600

PROGRAM: Network Management - Bachelor of Science

Credit Hours: _____ **Program Hours:** _____ **Program Weeks:** 165

TERM/PAYMENT PERIOD START DATE: 09/27/2017

ANTICIPATED GRADUATION DATE: 11/25/2020

Name: Matthew Cheatham Maiden (if different) _____ Id No: 18251337

SSN: [REDACTED]

Address: _____ City/State/Zip: Woodstock GA 30189

Phone Number: (256) 651-1382 Alternate Number: _____ Email Address: matthew.c.cheatham@gmail.com

Birth Date: [REDACTED] High School Graduate: No: Yes: Year: 2001 or Equivalent: GED Year: _____

HS/GED NAME: Huntsville Christian Academy City/State/Zip: Huntsville AL
Motlow State Community College, Middle Tennessee State

Other Schools: University, Virginia College - Huntsville Degree(s): N/A, , AAS Network Engineering

Class: Day: Night: Weekend: (See section 3 for details regarding course and/or program changes/revisions)

Course days of the week: Monday-Friday

Program includes ground-based and digital activities(Blended Learning): Yes No

1. TUITION AND FEES All tuition and fees must be paid in full prior to the commencement of each quarter/payment period unless other arrangements satisfactory to Virginia College (the "College") in its sole and absolute discretion, have been made with the student and his/her legal designee (the "Student"). The Student's account will be billed in accordance with the tuition and fee schedule in the College's Catalog (the "Catalog"), within each quarter/payment period. Payment periods are defined in terms of quarter, semester, clock hours or FA credits in the Catalog. The College will not increase tuition rates for continuously enrolled student for a period of one year; however, the Institution reserves the right to increase tuition at its discretion, with required notification, after one year of enrollment.

TOTAL TUITION, FEES, AND OTHER CHARGES AS SPECIFIED IN THE CURRENT TUITION SCHEDULE:

See catalog for detailed information. A service fee of \$25.00 is charged per online course.

Tuition	\$73,260.00
Re-Entry Fee	\$0.00
Supply/Equipment Fee	\$0.00
Technology Fee	\$250.00
Textbook Charge	\$0.00
Less Cash Deposit	\$0.00
Less Other	\$0.00
Total Estimated Tuition	\$73,510.00

The above program will be charged at a total cost per credit rate of \$407.00

Method of Payment Available: Debit Card Credit Card Check Money Order U.S. Currency Financial Aid

2. NOTICES TO THE STUDENT AND THE STUDENT'S RIGHT TO CANCEL

- a. This Enrollment Agreement (this "contract") should be completed by the Student only after he/she (as an applicant for admission to the College) has successfully completed all prerequisites for admission to the College and he/she has been accepted for admission by the College. **DO NOT SIGN THIS CONTRACT BEFORE YOU HAVE READ IT COMPLETELY AND THOROUGHLY. DO NOT SIGN THIS CONTRACT IF IT CONTAINS ANY BLANK SPACES.**
- b. The Student is entitled to an exact duplicate copy of the Contract the Student signed.
- c. THIS CONTRACT BECOMES A LEGALLY BINDING INSTRUMENT UPON THE COLLEGE'S WRITTEN ACCEPTANCE DELIVERED TO THE STUDENT, UNLESS IT IS CANCELLED PURSUANT TO THE STUDENT'S RIGHT TO CANCEL. The Institution will refund all payments made if the student requests cancellation to the Institution within seven consecutive calendar days after signing the Enrollment Agreement and prior to starting school. Students will have until close of business on the last day of the provisional enrollment period to withdraw in order to obtain a refund of all tuition and fees.
- d. Any holder of this consumer contract is subject to all claims and defenses that the debtor could assert against the seller of goods or services obtained pursuant hereto or with the proceeds thereof. Recovery hereunder by the debtor shall not exceed amounts paid by the debtor hereunder.

e. **The terms and conditions of the Contract are not subject to amendment or modification by oral agreement.** To the contrary, any changes, amendments or modifications to the Contract will not be binding on either the Student or the College unless and until such changes have been approved in a writing signed by an authorized official of the College and the Student (or his/her parent or legal guardian if the Student has not reached the age of majority under the laws of the State of Alabama with respect to this Contract); provided, however, that the College may amend or increase the rate of tuition fees or other charges set forth in Paragraph 1 of this Contract as the College, in its sole and absolute discretion, deems necessary and/or appropriate without first obtaining the consent, written, oral or otherwise, of the Student (and, if applicable, his/her parent or legal guardian),.

f. Dissatisfaction with, or non receipt of, the educational services being offered by the College does not excuse the Student, as a borrower, from repayment of any loan made to the Student, as a borrower, for enrollment at the College, including federally guaranteed and career loans provided by or through the College.

3. PROGRAM REVISION: The College has the right to make reasonable changes in program content, materials, schedules, sequences of courses in programs, or relocation of the College in the interest of improving the student's education or where deemed necessary due to industry changes, academic scheduling, or professional requirements. Such changes will not result in additional tuition for the student. If the change results in a new program, students will be given the option of changing to the new program or completing the program in which they originally enrolled.

4. COLLEGE CATALOG AND STUDENT HANDBOOK: The Student agrees to be bound by all of the terms, conditions, rules and regulations set forth in the Catalog. The Student acknowledges he/she has had ample opportunity to review the catalog prior to execution of this Contract by Student and/or his/her parent or legal guardian, if applicable. The Catalog is available for the Student to access online at <http://docs.vc.edu/>.

5. ACCURACY OF INFORMATION: The Student acknowledges that the College relies upon the accuracy and completeness of all information and/or documentation provided to the College by the Student (and, if applicable, his/her parent or legal guardian) and he/she (and, if applicable, his or her parent or legal guardian) certifies that all such information and/or documentation is accurate, correct and complete. In the event that any such information and/or documentation provided by, or on behalf of, the Student is false, inaccurate, incomplete or misleading, the College may suspend, dismiss or expel, either temporarily or permanently, the Student from the College. In such cases, the Student may not be entitled to any credit for work that he/she may have completed at the College.

6. DISMISSAL: The Student agrees to attend all classes regularly and promptly unless he/she has sufficient reason(s) not to do so, such as illness, and to perform all lessons and assignments to the best of his or her ability. The College may terminate the Student's enrollment at the College for non-payment of fees or tuition, unsatisfactory progress, excessive absences, or behavior detrimental to the College or its faculty or students. Additionally, the Student's enrollment may be terminated without cause if the College deems such action to be in the best interests of the College and/or its students and faculty.

7. WITHHOLDING RECORDS: The College reserves the right to withhold records, including without limitation grade reports, transcripts and diplomas until all financial obligations are satisfied, consistent with applicable state and Federal law.

8. TRANSFERABILITY OF CREDITS: The College does not imply, promise or guarantee transferability of credits earned to any other educational or vocational institution. **BY SIGNING THIS CONTRACT, YOU ACKNOWLEDGE THAT CREDITS EARNED AT THE COLLEGE MAY NOT TRANSFER TO OR BE TRANSFERABLE TO ANY OTHER EDUCATIONAL, VOCATIONAL OR OTHER INSTITUTION. TRANSFERABILITY OF CREDITS IS SOLELY DEPENDENT ON THE POLICIES OF THE INSTITUTION TO WHICH THE STUDENT SEEKS TO TRANSFER..**

9. PLACEMENT ASSISTANCE DISCLAIMER: Although the College provides placement assistance upon graduation, the Student acknowledges and understands that he/she is responsible for obtaining employment and must seek job openings, prepare and send resumes, prepare for interviews and conduct himself/herself in a professional manner during the employment process. The Student further acknowledges and understands that the Student's college record and the efforts he/she puts into a job search have a significant effect and impact on his or her ability to find suitable employment. **THE COLLEGE HAS NOT AND DOES NOT GUARANTEE OR MAKE ANY REPRESENTATION OR WARRANTY OF ANY KIND OR NATURE (EXPRESS, IMPLIED OR OTHERWISE) REGARDING OR WITH RESPECT TO THE AVAILABILITY OR SUITABILITY OF EMPLOYMENT, ANY LEVEL OF COMPENSATION UPON EMPLOYMENT, OR ANY OTHER MATTERS RELATING TO EMPLOYMENT AND EMPLOYMENT OPPORTUNITIES AFTER GRADUATION OR COMPLETION OF ANY COURSE WORK AT THE COLLEGE.**

10. ARBITRATION: Any claim, controversy or dispute arising out of or relating to this Contract or any alleged breach, violation or default of this Contract, together with all other claims, controversies or disputes of any nature whatsoever, including but not limited to all claims based in tort, fraud, contract, equity, state law, and/or federal law, arising out of or in relation to the Student's enrollment and participation in courses at the college, shall, upon notice by either party to the other party, be resolved and settled by binding arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. Such arbitration shall take place in Birmingham, Alabama. The parties agree that any dispute subject to arbitration shall not be adjudicated as a class action or a consolidated class arbitration proceeding either in court or under the rules of the American Arbitration Association. The right of any party to pursue a class action for any dispute subject to arbitration shall be waived to the fullest extent permitted by law. The arbitrator's decision and award shall be final, binding on the parties, and non-appealable, and may be entered in any court of competent jurisdiction to enforce it. The parties shall, respectively, pay any expenses incurred as American Arbitration Association fees, administrative fees, arbitrator fees, mediation fees, hearing fees, and postponement/cancellation fees in accordance with the rules and procedures adopted by the American Arbitration Association. Notwithstanding the provisions of this Arbitration Provision, in the event a breach, violation or default of this Contract (or any of its terms) is alleged, the College shall have the option to seek injunctive relief in any court of competent jurisdiction barring further breach or violation of this Contract pending arbitration. In the event any provision of this binding Arbitration Provision is held to be invalid, illegal or unenforceable for any reason and in any respect, such invalidity, illegality, or unenforceability shall in no event affect, prejudice or disturb the validity of the remainder of this Arbitration Provision, which shall be and remain in full force and effect, enforceable in accordance with its terms. **BY SIGNING THIS CONTRACT, THE STUDENT (AND, IF APPLICABLE, HIS/HER PARENT OR LEGAL GUARDIAN) GIVE UP THE RIGHT TO GO TO COURT AND THE RIGHT TO TRIAL BY JURY AND EXPRESSLY ACKNOWLEDGE AND UNDERSTAND THAT HIS, HER OR THEIR RIGHTS AND REMEDIES WILL BE DETERMINED BY AN ARBITRATOR AND NOT BY A JUDGE OR JURY. THE PARTIES UNDERSTAND THAT A DETERMINATION BY AN ARBITRATOR IS AS ENFORCEABLE AS ANY ORDER AND IS SUBJECT TO VERY LIMITED REVIEW BY A COURT.**

11. REFUND POLICY

Withdrawal from the Institution

The Institution expects that most students who begin classes at the Institution will successfully complete their education. However, sometimes conditions or circumstances beyond the control of students and the Institution require that students withdraw or cancel from the Institution.

Cancellation Policy

1. Applicants not accepted by the Institution shall be entitled to a refund of all monies paid.

2. Program Cancellation: If an institution cancels a program subsequent to a student's enrollment, the institution must refund all monies paid by the student.

3. The Institution will refund all monies paid if the student requests cancellation to the Institution within 7 consecutive calendar days after signing the Enrollment Agreement and prior to starting school.
4. Students enrolled on a provisional basis (as defined in the "Provisional Enrollment" policy in the Admission Information section of this Catalog), will have until close of business on the last day of the provisional enrollment period to withdraw in order to obtain a full refund of all monies paid.
5. Cancellation Prior to the Start of Class or No Show: If an applicant accepted by the institution cancels prior to the start of scheduled classes or never attends class, the institution will refund all monies paid.
6. Cancellation during the Provisional Enrollment period:
 1. Students **should** notify an Academic Dean of their intent to withdraw either in person, via telephone, email, or in writing by the end of the provisional enrollment period. The provisional enrollment period expires on the close of business on the last day of the first term.
 2. Students who fail to post attendance in accordance with the College's attendance policy, after the last day of the first term will be considered to have cancelled while in provisional period. Students who withdraw or are cancelled during the provisional enrollment period will not incur any tuition or fee obligations to the College, and the institution will refund all monies paid.

Withdrawal After the Provisional Enrollment Period

Students who determine the need to withdraw from the Institution prior to completion of their program should follow the steps below for an official withdrawal:

1. Students **should** notify an Academic Dean of their intent to withdraw either in person, via telephone, email, or in writing. The Institution will make a reasonable effort to assist students in continuing their education.
2. If students have notified an Academic Dean of their intent to withdraw, the Institution will process the student withdrawal, which is calculated based on the last date of attendance and will be signed by the student (for in-person withdrawals only). The student should meet with representatives of the Student Finance Office.

The Student Finance Office may answer questions regarding financial obligations to the Institution and any federal student loan repayment responsibilities.

3. The student will receive notification of the refund of any loan which will include the date that the refund was made.

Withdrawal Date

When any of the following occur, the effective withdrawal date, also known as the date of determination, for the student shall be:

1. The date the student notifies the Institution of withdrawal or the date of withdrawal, whichever is earlier.
2. The date following any 14 consecutive calendar days of absences in all course work.
3. The date when the Institution terminates the student's enrollment.

Notice to Students

Return of Title IV Refund Policy

The Student Finance Office is required by federal statute to recalculate aid eligibility for students who withdraw, drop out, or are dismissed having completed 60% or less of a payment period or term. Recalculations are based on the following Federal Return of Title IV funds formula:

1. The Student Finance Office will calculate the percentage of the payment period that the student has completed at the time of withdrawal. The percentage of the payment period completed equals the number of calendar days completed in the payment period divided by the total number of calendar days in the payment period (any scheduled break of five consecutive days or more is excluded from this calculation). The percentage of the payment period completed represents the percentage of aid earned by the student.
2. If the student completed more than 60% of the payment period, the student will have earned 100% of the federal financial aid for the payment period.
3. If the student completed 60% or less of the payment period, the Student Finance Office will calculate the amount of aid earned by the student. That amount is determined by multiplying the total federal financial aid for the payment period times the percentage of aid earned by the student.
4. The amount of aid earned by the student is then compared to the total federal financial aid for the payment period.
5. If the amount of aid earned by the student is less than the amount of aid that was disbursed, the Institution is required to return the unearned portion of the funds. In some instances, the student may be required to return a portion of the funds as well. Keep in mind that when funds are returned it may result in a tuition balance owed by the student.
6. If the amount of aid earned by the student is more than the amount of aid that was disbursed, the Institution may owe the student a post withdrawal disbursement.

This calculation concerning federal financial aid is separate and distinct from the Institution Refund Policy, and may result in the student owing additional funds to the Institution to cover tuition charges previously paid by federal financial aid prior to the student withdrawal.

If a student plans to withdraw, the student should notify the Institution. The student should meet with the Student Finance Office to determine the amount of funds that must be returned on the student's behalf (if applicable). Refunds are then allocated in the following order:

1. Unsubsidized Direct Stafford Loans
2. Subsidized Direct Stafford Loans
3. Direct PLUS loans
4. Federal Pell Grant
5. Federal Supplemental Educational Opportunity Grant

Institutional Refund Policy

Students who withdraw, drop out, or are dismissed during the first 60% of the payment period charge will receive a tuition refund as calculated below. The student is not entitled to a refund if the last date of attendance occurs after 60 percent of the payment period has elapsed.

When a student withdraws, the Institution prorates tuition charges up to 60% of the payment period based on the formula outlined below. For students who withdraw after attempting 60% of the payment period, the Institution will retain 100% of the tuition charges for that payment period. This means that the student will be responsible for 100% of the tuition charges for the payment period. Payment periods are defined in terms of quarter, semester, clock hours or FA credits in the Catalog. No payment periods exceed one year.

The percentage of the payment period completed is the total number of calendar weeks (for credit hour programs) or clock hour (for clock hour programs) in the payment period for which the assistance is awarded divided into the number of calendar weeks or clock hours completed in that period as of the day the student withdrew.

Number of Weeks or Clock Hours Scheduled to
Last Day of Attendance in Payment Period

Number of Weeks or Clock Hours in Payment Period
= Percentage Completed

(rounding the third decimal place up if the fourth decimal place is 5 or above)

Tuition X Percentage of payment period attempted = Tuition Retained by Institution.

When a student withdraws, tuition adjustments are based on the total charges incurred, not the amount paid. The date from which refunds will be determined is the last date of recorded attendance. Refunds will be made within 30 days of the date that the institution determines that the student has withdrawn.

12. RE-ENTRY FEES: The College charges an entry fee to re-admit students who have previously withdrawn.

13. LIQUIDATED DAMAGES; EXCLUSIVE REMEDY: The parties agree that if the College is found to have breached a material provision of this Contract to the substantial detriment of the Student, then the College must pay as liquidated damages (and not as a penalty) a sum up to an amount equal to any non-refunded tuition payments to the Student or the Student's lender in the case of a loan, or appropriate government agency in the case of a grant, it being acknowledged and agreed to by the parties to this Contract that the determination of the damages actually incurred by the Student as a result of such a breach by the College would be impractical or inherently difficult to ascertain or calculate and that said amount as liquidated damages, and not as a penalty, would represent a reasonable estimate of just and fair compensation to the Student for any such breach by the College. The parties further agree that payment by the College of such liquidated damages pursuant to this Paragraph 13 would constitute the sole and exclusive remedy of the Student for such a breach by the College (including without limitation any right to seek or recover incidental, consequential, exemplary or punitive damages).

14. ATTORNEYS' AND COLLECTION FEES: In any legal action permitted by this Contract or arbitration between the parties arising out of this Contract and the subject matter contained herein, the College, if it prevails, shall be entitled to recover its reasonable attorneys' fees in addition to any other relief to which it may be entitled or awarded. Further, the College shall be entitled to recover any attorneys' fees or collection agency fees and interest associated with the collection of a delinquent account of the Student.

15. INTEGRATION: This Contract (along with the Catalog, each as in effect from time to time) is and shall constitute the entire agreement between the Student (and, if applicable, his/her parent or legal guardian) and the College concerning the rights granted and the obligations assumed by the respective parties in this Contract and the subject matter contained herein. This Contract supersedes any prior or contemporaneous agreements, representations and understandings, whether oral, written or otherwise (other than those set forth in the Catalog and the Addendum, each as in effect from time to time). This Contract may only be modified in writing signed by both parties.

16. GOVERNING LAW: This Contract and the rights and obligations of the parties pursuant to this Contract shall in all cases be governed by and interpreted, construed and enforced in accordance with the internal laws of the State of Alabama without giving effect to any conflict-of-laws rule or principle that might refer the governance, the interpretation, construction or enforcement of this Contract to the laws of another jurisdiction.

17. SEVERABILITY; NO PRESUMPTION; NO WAIVER: In the event any provision of this Contract is held to be invalid, illegal or unenforceable for any reason and in any respect, such invalidity, illegality, or unenforceability shall in no event affect, prejudice or disturb the validity of the remainder of this Contract, which shall be and remain in full force and effect, enforceable in accordance with its terms. In the event an ambiguity or question of intent or interpretation arises with respect to this Contract, this Contract shall be construed as if drafted jointly by the parties, and the parties expressly agree that no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Contract (or any portion thereof). No waiver by any of the parties to this Contract of any condition, term or provision of this Contract shall be deemed to be a waiver of any preceding or subsequent breach, violation or default of the same or any other condition, term or provision hereof.

18. NO THIRD PARTY BENEFICIARIES: The terms and provisions of this Contract are intended solely for the benefit of each party hereto and their respective successors or permitted assigns, and it is not the intention of the parties hereto to confer any third-party beneficiary rights upon any other person or entity.

19. **NOTICES:** For purposes of any legal claims made under this Contract, notices and all other communications provided for in this Contract shall be in writing and shall be deemed to have been duly given (a) on the date of delivery when delivered by hand, (b) one day after dispatch when sent by reputable overnight courier maintaining records of receipt, or (c) three business days after dispatch when sent by registered or certified mail, postage prepaid, return receipt requested, all addressed as follows:

If to the College:
Virginia College
488 Palisades Boulevard
Birmingham, Alabama 35209
Attn: President
Telephone: (205)397-6600

If to the Student (or his/her parent or legal guardian, if applicable), at the address of record listed on first page of this Contract or as otherwise maintained by the College's admissions and enrollment office, or to such other address as any party may have furnished to the other party in writing in accordance herewith, except that notices of change of address shall be effective only upon receipt.

By signing this Contract, I/we acknowledge and certify that I/we have read and reviewed this Contract in full and I/we understand all of my/our rights and responsibilities and duties. Further, I/we agree to all of the terms and conditions of this Contract and the rules, regulations and policies of the Catalog, a copy of which I/we have received, reviewed and read prior to my/our execution of this Contract below.

Matthew Cheatham
STUDENT'S SIGNATURE

9/12/2017
DATE Digitally Signed by
matthew.c.cheatham@gmail.com
Tuesday, September 12, 2017 1:37:01
PM

PARENT OR GUARDIAN'S SIGNATURE AS A CONTRACTING
PARTY

DATE

Carrie Salamone
AUTHORIZED COLLEGE OFFICIAL'S SIGNATURE

9/12/2017
DATE Digitally Signed by
Carrie Salamone, Admissions Associate
Tuesday, September 12, 2017 1:37:01
PM

ACKNOWLEDGMENTS OF STUDENT (AND PARENT OR LEGAL GUARDIAN, IF APPLICABLE):

By initialing below, I/we acknowledge and represent that I/we have received the following:

MC A true and fully-executed copy of this Contract.

MC A copy of, and information concerning access to the Virginia College Catalog.

Revised: August 9, 2017

Page 5 of 5

EXHIBIT 3

All process, pleadings and orders



UPS Tracking # : 1ZX212780108157570

Created By : Jyoti NLN

Created On : 09/07/2019 04:35 AM

Recipient :

JOHN F. KENNEDY, ESQ.

Title : --

Customer : JAMES BATES BRANNAN GROOVER LLP

Address : 231 RIVERSIDE DRIVE

Email : jkennedy@jamesbatesllp.com

Phone : -4787424280 Fax : -

Package Type : Envelope

Items shipped : 1

Log #	Case #	Entity Name
536201521	19C06260S6	VIRGINIA COLLEGE, LLC



**Service of Process
Transmittal**

09/06/2019

CT Log Number 536201521

TO: JOHN F. KENNEDY, ESQ.
JAMES BATES BRANNAN GROOVER LLP
231 RIVERSIDE DRIVE
MACON, GA 31201

RE: Process Served in Georgia

FOR: VIRGINIA COLLEGE, LLC (Domestic State: AL)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Matthew Cheatham, on behalf of himself and all others similarly situated, Pltf. vs. VIRGINIA COLLEGE, LLC and EDUCATION CORPORATION OF AMERICA, DFTS.

DOCUMENT(S) SERVED: Summons, Complaint, Attachment(s)

COURT/AGENCY: Gwinnett County State Court, GA
Case # 19C0626056

NATURE OF ACTION: Complaint for Breach of Contract

ON WHOM PROCESS WAS SERVED: National Registered Agents, Inc, Lawrenceville, GA

DATE AND HOUR OF SERVICE: By Process Server on 09/06/2019 at 15:12

JURISDICTION SERVED : Georgia

APPEARANCE OR ANSWER DUE: Within 30 days after service of this summons upon you, exclusive of the day of service

ATTORNEY(S) / SENDER(S): Chris Armor
ARMOR LAW, LLC
160 Clairemont Avenue
Suite 200
Decatur, GA 30030
678-954-5674

REMARKS: the documents received have been modified to reflect the name of the entity being served.

ACTION ITEMS: SOP Papers with Transmittal, via UPS Next Day Air , 1ZX212780108157570

SIGNED: National Registered Agents, Inc
ADDRESS: 289 S Culver St.
Lawrenceville, GA 30046-4805

For Questions: 214-932-3601

IN THE STATE COURT OF GWINNETT COUNTY

STATE OF GEORGIA

Richard T. Alexander, Jr.
CLERK OF STATE COURT

MATTHEW CHEATHAM

CIVIL ACTION
NUMBER: 19-C-06260-S6

PLAINTIFF

VS.



VIRGINIA COLLEGE, LLC c/o

National Registered Agents Inc.,

289 S Culver Street, Lawrenceville, Georgia 30046-4805

DEFENDANT

SUMMONS

TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned and required to file with the Clerk of said court and serve upon the Plaintiff's attorney, whose name and address is:

CHRISTOPHER ARMOR
ARMOR LAW, LLC
P.O. BOX 451328
ATLANTA, GA 31145

an answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This 26TH day of AUGUST, 2019.

Richard T. Alexander, Jr.,
Clerk of State Court

By *Nichole Norton*
Deputy Clerk

INSTRUCTIONS: Attach addendum sheet for additional parties if needed, make notation on this sheet if addendum sheet is used.

**IN THE STATE COURT OF GWINNETT COUNTY
STATE OF GEORGIA**

John J. Alumbaugh
CLERK OF STATE COURT

MATTHEW CHEATHAM,)
on behalf of himself and all others)
similarly situated,)
)
 Plaintiff,)
)
v.)
)
VIRGINIA COLLEGE, LLC and)
EDUCATION CORPORATION OF)
AMERICA,)
)
 Defendants.)
_____)

CIVIL ACTION FILE NO.
19-C-06260-S6

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW, PLAINTIFF MATTHEW CHEATHAM, on behalf of himself and all others similarly situated and alleges against Defendants Virginia College, LLC ("VC") and Education Corporation of America ("ECA") as follows:

INTRODUCTION

- 1) VC and ECA operated and ran one of the largest for-profit colleges in the United States.
- 2) On December 4, 2018, the Accrediting Council for Independent Colleges and Schools (ACICS) notified the ECA, which operates VC, of its decision to withdraw, by suspension, the current grants of accreditation of all the institutions owned by VC.
- 3) As a result of the lack of accreditation, VC and ECA could no longer rely on their students receiving federally backed student loans, thus effectively shutting down their businesses.
- 4) As a result of the lack of accreditation, course work performed by Plaintiff Cheatham and the Class will not qualify for transfer credit at accredited universities and colleges.

- 5) ECA operated more than 75 campuses throughout the United States including VC campuses in Huntsville, Alabama and Macon, Georgia.
- 6) Former students who graduated with degrees now possess degrees without value.
- 7) Current students who have paid tuition to VC and ECA have no chance of obtaining any degrees from VC or ECA and thus their tuition payments paid to date provided them no benefit.

PARTIES, JURISDICTION, AND VENUE

- 8) Plaintiff Matthew Cheatham is a resident of Cherokee County, Georgia.
- 9) Defendant Virginia College, LLC is an Alabama limited liability company with its principal place of business in Montgomery, Alabama.
- 10) VC may be served through its registered agent at National Registered Agents Inc., 289 S. Culver Street, Lawrenceville, Georgia 30046-4805.
- 11) Defendant Education Corporation of America is a Delaware corporation with its principal place of business located at 3660 Grandview Parkway Suite 300, Birmingham, Alabama 35243.
- 12) Education Corporation of America may be served with process by serving its Chief Executive Officer at Education Corporation of America's corporate headquarters at 3660 Grandview Parkway, Birmingham, Alabama 35243.
- 13) Defendant Education Corporation of America is subject to the jurisdiction of this Court pursuant to the Georgia Long Arm Statute, OCGA § 9-10-91, as ECA transacts business within the state, has committed a tortious act or omission within this state, and/or has committed a tortious injury in this state caused by an act or omission outside this state.
- 14) ECA regularly does and solicits business, and engages in other persistent courses of conduct, and derives substantial revenue from services rendered in this state.

15) On November 14, 2018, Defendants ECA and VC were placed into a limited receivership in case no. 5:18-cv-00388-TES in the United States District Court for the Middle District of Georgia, Macon Division.

16) On January 16, 2019, that U.S. District Court entered an order stating that claims made against Defendants VC and ECA which were covered by AIG Specialty Insurance Company ("AIG") to pay for any Losses (as defined in the Policy), including the advancement of legal fees and expenses, stemming from any Claim (as defined in the Policy) were NOT part of the receivership estate in that Court. A true and correct copy of this order is attached hereto as Exhibit A.

17) The AIG Policy expressly covers claims "breach of duty, neglect, error, statement, misstatement, misleading statement, or omission" by the schools or their employees, "educational malpractice or failure to educate; negligent instruction; failure to supervise; inadequate or negligent academic guidance or counseling; improper or inappropriate academic placement or discipline; failure to grant due process; invasion of privacy or humiliation, [] violation of the Buckley Amendment, the "Uniform Student Freedom of Expression Act," and claims related to defamation or a contract for educational services.

18) The policy does not provide coverage for claims regarding fraudulent acts.

19) For a claim related to the return of tuition fees, the insurance policy only covers 80% of the tuition.

20) In order to be covered under the policy, any claim must be made before September 3, 2019.

21) A true and correct copy of the AIG Policy is attached to the January 16, 2019 order attached hereto as Plaintiff's Exhibit A.

22) Venue is proper in this county as Defendant Virginia College, LLC has its registered agent located here.

PLAINTIFF MATTHEW CHEATHAM

23) Plaintiff Matthew Cheatham ("Plaintiff Cheatham") is a resident of Cherokee County, Georgia.

24) Plaintiff enrolled in VC's online program and pursued an undergraduate degree.

25) Plaintiff financed his education with student loans provided by the federally backed Direct Loans program.

26) VC informed Plaintiff Cheatham that the Fall 2017 quarter would be the last quarter which VC online would offer classes.

27) No online classes were offered after December of 2017.

28) Plaintiff was unable to complete his degree due to the school's closure.

29) Plaintiff did not enroll in any other school after VC closed.

30) Plaintiff was promised by VC and ECA that after he graduated, his degree would provide him the necessary credentials to obtain meaningful and gainful employee.

31) Plaintiff was also promised by VC and ECA that their career services office would be available free of charge to assist him with "placement services after he graduated."

32) Plaintiff completed coursework did not provide him the necessary credentials to obtain meaningful and gainful employment and now that VC and ECA are closed, they can no longer provide him the promised "placement services."

33) Plaintiff completed coursework is now significantly devalued because VC is no longer accredited, VC cannot and does not provide career placement services, and persons reviewing his

resume who see VC immediately correlate him with a failed and dysfunctional school which seriously decreases his chances of obtaining meaningful employment.

CLASS ALLEGATIONS

34) This action is brought by the Plaintiff individually and on behalf of others similarly situated as a class action under the provisions of OCGA § 9-11-23 for damages.

35) The two classes of Plaintiffs for whose benefit the named Plaintiff brings this action are defined as follows:

- a. All Georgia residents who paid tuition to and completed courses at Virginia College and who were not enrolled there as of December 4, 2018 (“Former Student Class”);
and
- b. All Georgia residents who paid tuition to and who were enrolled at Virginia College as of the date of the closure of the online program but who had not yet obtained the degree for which they paid tuition. (“Current Online Student Class”).

36) Excluded from each proposed class is any member of the judiciary, any person currently in bankruptcy, any person whose obligations have been discharged in bankruptcy, any person who is a current employee of VC or ECA, and any government agency or entity.

37) Plaintiff maintains the right to create additional subclasses or classes, as necessary, and to revise these definitions to maintain a cohesive class that does not require individual inquiry to determine liability.

38) The membership of each class is numerous and joinder of individual plaintiffs is impractical.

39) There are questions of law and fact common to all members of the Plaintiff classes, and these common questions of law and fact predominate over any individual issues. The principal questions pertinent to the classes as a whole include:

- a. Whether VC and ECA acted negligently in operating and managing their businesses;
- b. Whether VC and ECA were wanton in operating and managing their businesses;
- c. Whether VC and ECA deceptively advertised and sold their education services to Plaintiff and the Class;
- d. Whether Plaintiff and the Class's degrees were devalued as a result of VC and ECA's closing;
- e. Whether members of the Current Online Student Class and Former Student Subclass's tuition payments and course work provided no benefit to them;
- f. Whether VC and ECA provided warranties to Plaintiff and the Class, and subsequently breached said warranties;
- g. Whether VC and ECA entered into contracts with Plaintiff and the Class, and subsequently breached said contract;
- h. Whether VC and ECA were unjustly enriched to Plaintiff and the Class's detriment;
- i. Whether Plaintiff and the Class suffered injury as a result of VC and ECA's wrongdoing; and
- j. Defenses raised by Defendant.

40) The claims of the named Plaintiffs are typical of the claims of the members of the Plaintiff classes, which all arise from the same operative facts and are based on the same legal theory, and Plaintiffs' claims will thus adequately represent those of the Class Members.

41) The named Plaintiff will fairly and adequately protect the interest of the Class Members. Plaintiff has retained counsel with experience in class action litigation, and they are not aware of any interest that might cause them not to vigorously pursue this case.

42) A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder is impracticable. The expense and burden of individual litigation make it virtually impossible for the members of the classes to proceed individually, and it is therefore most efficient to resolve all claims based on Defendants' conduct against Georgia residents in one forum.

43) The Plaintiff is aware of no difficulties that will be encountered in the management of this litigation that would render the action unmanageable.

44) Prosecution of separate actions by individual members of the Plaintiff classes would create adjudications that would be dispositive of the interests of the other members not parties to the adjudications.

45) Without a class action mechanism, members of the Plaintiff classes would be substantially impaired or impeded in their ability to protect their interests. The value of claims of the individual class members would be in an amount that makes prosecution outside of the class action uneconomical.

46) The claims of the Plaintiff and Plaintiff Class Members are meritorious. The named Plaintiff believes he will prevail on the merits based upon the clear, unambiguous failure of Defendants to provide the education bargained for by Plaintiff and Plaintiff Class Members.

47) A final judgment on the merits of the named Plaintiff's claims would be fully dispositive of the claims and interests of those similarly situated who are not specifically named as a plaintiff in this action.

COUNT I – NEGLIGENCE

48) Plaintiff Cheatham re-alleges all preceding paragraphs on this Complaint as if fully restated herein and further states the following on behalf of himself and the Former Student Class:

49) Defendants have committed acts of omission contrary to their legal duties as an institute of higher education.

50) Defendants failed to maintain accreditation of their institution.

51) Defendants' failure to maintain accreditation rendered all classes taken at their institution by Plaintiff and Plaintiff Class Members worthless.

52) Defendants' failure to maintain accreditation made all tuition payments made by Plaintiff and Plaintiff Class Members a waste of money.

53) Defendants' failure to maintain accreditation made all degrees completed by prior students worthless.

54) Defendants' failure to maintain accreditation made all time invested by Plaintiff and Plaintiff Class Members taking classes at these institutions wasted.

55) Defendants negligently operated, managed, and marketed their degree programs.

56) Defendants have a duty to reasonably operate, manage, and market their degree programs.

57) Defendants breached their duty of care in operating, managing, and marketing their degree programs.

58) Defendants owed a duty to Plaintiff Cheatham and the Plaintiff Class Members to maintain accreditation of the institutions so that students would receive the benefits of the education for which they bargained.

59) Defendants have a common law duty to prevent the foreseeable risk of harm to others, including Plaintiffs and the Class.

60) Defendants assumed a duty to use reasonable measures in providing an education to Plaintiff Cheatham and the Plaintiff Class Members.

61) Only Defendants were in a position to ensure that their policies and procedures were sufficient to protect against the harm to Plaintiff and the class members from Defendants' failure to maintain accreditation.

62) Defendants' duty to use reasonable care in providing educational services arose not only as a result of the common law and the statutes, but also because it was bound by, and had committed to comply with, industry standards, as represented by the Department of Education to borrowers.

63) Defendants breached their common law, statutory, and other duties and thus were negligent by failing to use reasonable measures to maintain an accredited institution as bargained for by Plaintiff and the Plaintiff Class Members.

64) In connection with the conduct described above, Defendants acted wantonly, recklessly, and with complete disregard for the consequences.

65) As a direct and proximate result of Defendants' negligent conduct, Plaintiffs and the Class have suffered damages.

COUNT II – BREACH OF CONTRACT

66) Plaintiff Cheatham re-alleges all preceding paragraphs on this Complaint as if fully restated herein and further state the following on behalf of himself and the Former Student Class and the Current Online Student Class.

67) Plaintiff Cheatham and members of the Former Student Class and Current Online Student Class entered into contracts with Defendants.

68) The contracts between Defendants and Plaintiff and the prospective class members required both parties to fulfil certain obligations.

69) In exchange for tuition payments received by Plaintiff and the class members, Defendants agreed to provide Plaintiff Cheatham and the Class with courses of studies designed to allow students to complete a degree from an accredited institution of higher education.

70) Defendants breached their agreement by failing to maintain accreditation of their institution.

71) Defendants breached their agreement by closing their online classes before students could complete their degree.

72) Defendants breached their agreement by closing all operations of their schools.

73) Defendants breached their agreement by leaving Plaintiff Cheatham and Class members with course credits from an unaccredited institution.

74) Defendants breached their agreement by failing to provide any meaningful career placement services.

75) As a direct and proximate cause of Defendants' breach of contract, Plaintiff Cheatham and Class members have suffered damages and injuries including, but not limited to loss of value of coursework, loss of tuition, loss of educational opportunity, and loss of opportunity to complete unfinished degree programs.

COUNT III – UNJUST ENRICHMENT

76) Plaintiff Cheatham re-alleges all preceding paragraphs on this Complaint as if fully restated herein and further state the following on behalf of himself and the Former Student Class and the Current Online Student Class.

77) Plaintiff Cheatham and Class members conferred a benefit on Defendants when they enrolled in their institutions and paid tuition money.

78) Defendants have been unjustly enriched in retaining the revenues provided by Plaintiff Cheatham and the Class.

79) Defendants have been unjustly enriched by using the enrollment of Plaintiff Cheatham and Class members to continue to market their schools to other students and investors.

80) Plaintiff Cheatham and the Class have been injured with loss of money, loss of educational opportunity, loss of time spent on classes without value, and emotion distress as a result of Defendants' actions.

ANY ARBITRATION AGREEMENTS ARE UNENFORCEABLE

81) The Department of Education entered a rule in 2016 which was in effect as of October 16, 2018 prohibiting schools participating in the federal student loan program from entering into certain pre-dispute arbitration agreements with students or agreements that purport to waive students' rights to bring class actions.

82) These limitations apply to agreements with students who have obtained federal Direct Loans or benefited from Direct Parent PLUS Loans and apply to claims regarding the making of the federal Direct Loan or the provision of educational services for which the loan was obtained.

83) Defendants cannot enter pre-dispute agreements with students that waive students' right to go to court or to pursue a class action over any claims that could also give rise to an administrative "borrower defense" claim. See 34 C.F.R. § 685.300(b), (d), (e), (f), as added by 81 Fed. Reg. 75,926, 76,087-76,088 (Nov. 1, 2016).

84) Claims that could give rise to a borrower defense include a school's substantial misrepresentation, breach of contract, or a non-default judgment against the school, or violation of

a student's rights under state law—all as relate to the making of a Direct Loan or provision of educational services for which the loan was obtained. See 34 C.F.R. § 685.206(c) and 34 C.F.R. § 685.222 as added by 81 Fed. Reg. 75,926, 76,083 (Nov. 1, 2016).

85) Nor can the school rely on an existing arbitration agreement to force an individual or class action out of court, even if the agreement was entered into prior to the rule's effective date.

86) The school must either amend the agreement or notify the students that they will not enforce the agreement. See 34 C.F.R. § 685.300(e)(3), (f)(3), as added by 81 Fed. Reg. 75,926, 76,088 (Nov. 1, 2016).

WHEREFORE, Plaintiff being entitled to a trial by jury and judgment against the Defendants, prays for the following:

- a) An order certifying that the action may be maintained as a class action;
- b) The Plaintiff Cheatham be designated as class representative;
- c) That Plaintiff's counsel of record herein be designated as class counsel for the Plaintiff Class Members class as defined in this Complaint or by this Court;
- d) That Defendants be held liable for the actions described herein;
- e) That Plaintiff and the members of the proposed classes receive compensatory damages in an amount to be proven at trial;
- f) An order granting Plaintiff their expenses incurred in bringing and prosecuting this action, including attorneys' fees, expert fees and costs;
- g) That the Defendants be required to pay all monies referred to herein which relate to the Plaintiff Class Members into a common fund for the benefit of the Plaintiff Class Members, less an incentive award, litigation expenses, and attorneys' fees;

- h) That the Court conduct a “fairness hearing,” after due and proper notice to all Plaintiff Class Members, and make such award of attorneys’ fees, litigation expenses and an incentive award for the named Plaintiff as the Court deems appropriate from the common fund (as reference above) and/or from the Defendants;
- i) That Plaintiff have a trial by jury; and
- j) Such other and further relief as the Court may deem just, necessary or appropriate.

This 23rd Day of August, 2019.

ARMOR LAW, LLC

/s/ Chris Armor

Christopher N. Armor
Georgia Bar No. 614061
Attorney for Defendant
160 Clairemont Avenue, Suite 200
Decatur, Georgia 30030
Phone:(678) 954-5674
E-mail: chris.armor@armorlaw.com

HURT STOLZ, P.C.

/s/ James W. Hurt, Jr.
By: James W. Hurt, Jr.
Georgia Bar No.: 380104
1551 Jennings Mill Road
Suite 3100-B
Watkinsville, Georgia 30677
(706) 395-2750
Facsimile: (866) 766-9245
jhurt@hurtstolz.com

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

VC MACON GA, LLC

Plaintiff,

v.

Civil Action No. 5:18-cv-00388-TES

**VIRGINIA COLLEGE, LLC; and
EDUCATION CORPORATION OF
AMERICA,**

Defendants.

**RECEIVER'S EXPEDITED MOTION FOR ORDER CLARIFYING THAT
COURT'S INJUNCTION DOES NOT APPLY TO INSURANCE POLICY**

COMES NOW John F. Kennedy, solely in his capacity as receiver (the "Receiver") for the receivership estate (the "Receivership Estate") of Education Corporation of America ("ECA"), Virginia College, LLC ("VCLLC") and New England School of Business and Finance, LLC d/b/a New England College of Business ("NECB", collectively with "ECA" and VCLLC, the "Receivership Entities"), and hereby moves the Court to enter an order clarifying that, the injunction imposed by the Court in the *Order Appointing Receiver and Preliminary Injunction* (the "Receivership Order") (Doc. 26), as modified in the *Supplemental Order* (the "Supplemental Order") (Doc. 104), does not apply to the Policy (as defined below) and authorizing AIG Specialty Insurance Company ("AIG") to pay for any Losses (as defined in the Policy), including the advancement of legal fees and expenses, stemming from any Claim (as defined in the Policy) and respectfully states as follows:

1. On September 3, 2018, AIG issued a Directors & Officers Liability Insurance, Employment Practices Liability Insurance, and Fiduciary Liability Insurance Policy No. 01-825-

10-59, (the “Policy”) to ECA. A copy of the Policy is attached hereto as Exhibit A. The Policy covers Claims¹ made (or deemed to have been made) between September 3, 2018 and September 3, 2019 (the “Policy Period”).

2. On November 14, 2018, the Court entered the Receivership Order, under which the Court appointed the Receiver with respect to all the business, business interests and property of the Receivership Entities, wherever located, by whomsoever held, without limitation. (*Receivership Order* at p. 4).

3. In the Receivership Order, the Court also issued an injunction enjoining, *inter alia*, any act to obtain possession of property of the Receivership Estate from the Receiver or to interfere with or exercise control, over, property of the Receivership Estate. (*Receivership Order* at pp. 9-10). The Receivership Order also provided that any current or former student of ECA may proceed with asserting any claim or cause of action against ECA. (*Id.* at p. 10).

4. On December 13, 2018, the Court issued the Supplemental Order modifying the injunctive relief granted in the Receivership Order by, *inter alia*, allowing landlords under certain leases or other occupancy agreements to exercise their rights and remedies under the agreements. (*See Supplemental Order* at pp. 2-3).

5. The aggregate limit of liability of the Policy is \$35 million. The Policy covers, *inter alia*, any Loss of the Company, which includes the Receivership Entities, and Individual Insureds arising from a Claim made against the Company or Individual Insureds for any actual or alleged act, breach of duty, neglect, error, statement, misstatement, misleading statement, or omissions by the Company or the Individual Insureds, respectively. The Policy also provides that AIG shall advance Defense Costs directly to counsel retained by the Company and Individual

¹ Capitalized terms not otherwise defined herein shall have the meanings set forth in the Policy.

Insureds arising from such Claims. Further the Policy provides that in the event the Company is unable to pay an applicable Retention amount due to Financial Insolvency, then the Insure shall commence advancing Loss within the Retention.

6. Several Claims have been made against the Receivership Entities.² Moreover, the Receivership Entities and Receiver anticipate additional claims being made in the future. It is necessary for the Receivership Entities and Individual Insureds to be adequately defended against such Claims in order to maintain, preserve, and protect the property of the Receivership Estate. However, AIG has indicated that it will not pay the Losses under the Policy, including the advancement of Defense Costs, without a comfort order from the Court providing that AIG's actions are not in violation of the Receivership Order.

7. The Receivership Entities do not consider the Policy or the proceeds therefrom property of the Receivership Estate. Nevertheless, out of an abundance of caution, to the extent the Court considers the Policy and the proceeds from the Policy to be property of the Receivership Estate, and to the extent the Court's injunction remains in place following the Supplemental Order, the language of the injunction imposed by the Court in the Receivership Order does not apply to AIG's ability to disburse the Policy proceeds in accordance with the language of the Policy.³ See *Liberte Capital Grp., LLC v. Capwill*, 462 F.3d 543, 553-54 (6th Cir. 2006) (evaluating the scope of the receivership court's injunction by analyzing the language

² For example, several lawsuits have been filed against the Receivership Entities by current and former students and employees since the Receiver was appointed.

³ Indeed, in the analogous bankruptcy context, the terms of a policy govern the disbursement of policy proceeds. See *Landry v. Exxon Pipeline Co.*, 260 B.R. 769, 787. n. 62 (Bankr. M.D. La. 2001) (explaining that proceeds from an insurance policy that belongs to a debtor's bankruptcy estate must be distributed in accordance with state insurance law or the language of the policy itself); *In re Mitchell*, Case No. 06-13250-NVA, 2012 WL 5988841, at *6 (Bankr. D. Md. Nov. 29, 2012) (explaining that a bankruptcy court cannot re-write the terms of insurance policies).

of the Court's injunction order). Moreover, it is the best interest of the Receivership Estate and the Receivership Entities' creditors that AIG is able to disburse the Policy proceeds so that the property of the Receivership Estate is protected, which was the purpose of the Court's appointment of the Receiver and issuance of the injunction. *See Liberte Capital Grp., LLC*, 462 F.3d at 551 (citing another source) ("The receiver's role, and the district court's purpose in the appointment, is to safeguard the disputed assets, administer the property as suitable, and to assist the district court in achieving a final, equitable distribution of the assets if necessary.").

8. Consequently, Receiver files this Motion and respectfully requests that the Court enter an order, substantively in the form of the order attached hereto as Exhibit B, clarifying that the injunction imposed by the Court in the Receivership Order, as modified in the Supplemental Order, does not apply to the Policy; authorizing AIG to pay for any Losses, including the advancement of legal fees and expenses, stemming from any Claim under the Policy; and granting such other relief the Court deems just and equitable.

9. The Receiver requests expedited approval of this Motion based on exigent circumstances of this case.

Respectfully submitted this the 16th day of January, 2019.

/s/ James F. Banter
James F. Banter
Counsel for the Receiver

OF COUNSEL:
JAMES, BATES, BRANNAN, GROOVER LLP
231 Riverside Drive
Macon, Georgia 31201
Phone 478/742-4280
Fax 478/742-8720

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing upon the following, by filing the same electronically through the Court's CM/ECF filing system with notice going to all parties requesting to receive notice this the 16th day of January, 2019.

/s/ James F. Banter
James F. Banter
Counsel for the Receiver

EXHIBIT A

Policy

This contract is registered and delivered as a surplus line
coverage under Alabama Surplus Lines Insurance Law

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Kenneth Hicks

200 Liberty Street New York, NY 10281

License #295080

POLICYHOLDER NOTICE

Thank you for purchasing insurance from a member company of American International Group, Inc. (AIG). The AIG member companies generally pay compensation to brokers and independent agents, and may have paid compensation in connection with your policy. You can review and obtain information about the nature and range of compensation paid by AIG member companies to brokers and independent agents in the United States by visiting our website at www.aig.com/producer-compensation or by calling 1-800-706-3102.



AIG Specialty Insurance Company

A capital stock company

POLICY NUMBER: 01-825-10-59

REPLACEMENT OF POLICY NUMBER: 01-826-00-17

THIS INSURER IS NOT LICENSED IN THE STATE OF NEW YORK AND IS NOT SUBJECT TO ITS SUPERVISION.

**Directors & Officers Liability Insurance, Employment Practices Liability Insurance, Fiduciary Liability Insurance
 DECLARATIONS**

NOTICES

“THESE NOTICES ARE APPLICABLE TO ALL COVERAGE SECTIONS OTHER THAN THE CRIME COVERAGE SECTION AND KIDNAP AND RANSOM/EXTORTION COVERAGE SECTION”

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

THE INSURER DOES NOT ASSUME ANY DUTY TO DEFEND UNLESS SUCH COVERAGE IS EXPRESSLY PROVIDED WITHIN A COVERAGE SECTION. WHERE THE INSURER HAS NO DUTY TO DEFEND, IT WILL ADVANCE DEFENSE COSTS, EXCESS OF THE APPLICABLE RETENTION, PURSUANT TO THE TERMS OF THIS POLICY NO LATER THAN SIXTY (60) DAYS AFTER RECEIPT OF INVOICES OF SUCH DEFENSE COSTS. PLEASE REFER TO THE COVERAGE SECTIONS PURCHASED FOR DEFENSE RELATED DETAILS.

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

ITEMS			
1	NAMED ENTITY:	(the "Named Entity")	See Program Participants Endorsement
2	POLICY PERIOD:	Inception Date: September 3, 2018	Expiration Date: September 3, 2019
12:01 A.M. at the address stated in Item 1			

ITEMS (continued)			
3	COVERAGE SUMMARY		
	Liability, Retention, Continuity Date, and Premium Coverage Section		
	D&O	D&O Coverage Section	See Program Participants Endorsement
	EPL	Employment Practices Coverage Section	See Program Participants Endorsement
	FLI	Fiduciary Liability Coverage Section	See Program Participants Endorsement
<p>*With respect to the D&O, EPL, and FLI Coverage Sections only, no Retention amount is applicable to Non-Indemnifiable Loss.</p> <p>*No Retention amount is applicable to Costs of Investigation for Company Shareholder Derivative Investigations, Crisis Management Events, Voluntary Compliance Loss and HIPAA Penalties.</p>			
4	TOTAL PROGRAM PREMIUM	\$	See Program Participants Endorsement
	<p>Premium for Certified Acts of Terrorism Coverage under Terrorism Risk Insurance Act, as amended (TRIA): \$3,085 included in policy premium. Any coverage provided for losses caused by an act of terrorism as defined by TRIA (TRIA Losses) may be partially reimbursed by the United States under a formula established by TRIA as follows: 82% of TRIA Losses in excess of the insurer deductible mandated by TRIA, the deductible to be based on a percentage of the insurer's direct earned premiums for the year preceding the act of terrorism.</p> <p>A copy of the TRIA disclosure sent with the original quote is attached hereto.</p>		
5	OTHER LIMITS OF LIABILITY	See Program Participants Endorsement	
6	DISCOVERY PROVISIONS	(a) Percentage of Full Annual Premium for; 1 YEAR:	100%
	(Inapplicable to Crime and KRE Coverage Sections)	(b) 2 YEARS:	110%
		(c) 3 YEARS:	120%
		(d) 4 YEARS:	130%
		(e) 5 YEARS:	140%
		(f) 6 YEARS:	150%
		(g) Percentage of Full Annual Premium for unlimited duration:	TBD

7	NAME AND ADDRESS OF INSUREDS' REPRESENTATIVE
	EDUCATION CORPORATION OF AMERICA 3660 GRANDVIEW PARKWAY BIRMINGHAM, AL 35243-3330
8(a)	NAME AND ADDRESS OF INSURER
	AIG Specialty Insurance Company 175 Water Street New York, NY 10038 This Policy is issued only by the insurance company indicated in this Item 8(a).
8(b)	NOTICE OF CLAIMS AND CIRCUMSTANCES SEND TO:
	AIG Domestic Claims, Inc. 175 Water Street New York, New York 10038 Attention: "C-Claims, D&O Claims" Reference: 01-825-10-59 Reference: Appropriate Coverage Section

IN WITNESS WHEREOF, the Insurer has caused this Policy to be signed by its President, Secretary and Authorized Representative. This Policy shall not be valid unless signed below at the time of issuance by an authorized representative of the insurer.



PRESIDENT

**AIG Specialty Insurance
Company**



SECRETARY

**AIG Specialty Insurance
Company**



AUTHORIZED REPRESENTATIVE

COUNTERSIGNED AT

DATE

COUNTERSIGNATURE

**WILLIS OF NEW YORK, INC
200 LIBERTY STREET
7TH FL
NEW YORK, NY 10281-1003**

1388253

**POLICYHOLDER DISCLOSURE
NOTICE OF TERRORISM INSURANCE COVERAGE
(RIGHT TO PURCHASE COVERAGE)**

You are hereby notified that under the Terrorism Risk Insurance Act, as amended, that you have a right to purchase insurance coverage for losses resulting from acts of terrorism. As defined in Section 102(1) of the Act: The term "act of terrorism" means any act or acts that are certified by the Secretary of the Treasury-in consultation with the Secretary of Homeland Security, and the Attorney General of the United States-to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

YOU SHOULD KNOW THAT WHERE COVERAGE IS PROVIDED BY THIS POLICY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM, SUCH LOSSES MAY BE PARTIALLY REIMBURSED BY THE UNITED STATES GOVERNMENT UNDER A FORMULA ESTABLISHED BY FEDERAL LAW. HOWEVER, YOUR POLICY MAY CONTAIN OTHER EXCLUSIONS WHICH MIGHT AFFECT YOUR COVERAGE, SUCH AS AN EXCLUSION FOR NUCLEAR EVENTS. UNDER THE FORMULA, THE UNITED STATES GOVERNMENT GENERALLY REIMBURSES 85% THROUGH 2015; 84% BEGINNING ON JANUARY 1, 2016; 83% BEGINNING ON JANUARY 1, 2017; 82% BEGINNING JANUARY 1, 2018; 81% BEGINNING JANUARY 1, 2019 and 80% BEGINNING ON JANUARY 1, 2020, OF COVERED TERRORISM LOSSES EXCEEDING THE STATUTORILY ESTABLISHED DEDUCTIBLE PAID BY THE INSURANCE COMPANY PROVIDING THE COVERAGE. THE PREMIUM CHARGED FOR THIS COVERAGE IS PROVIDED BELOW AND DOES NOT INCLUDE ANY CHARGES FOR THE PORTION OF LOSS THAT MAY BE COVERED BY THE FEDERAL GOVERNMENT UNDER THE ACT.

YOU SHOULD ALSO KNOW THAT THE TERRORISM RISK INSURANCE ACT, AS AMENDED, CONTAINS A \$100 BILLION CAP THAT LIMITS U.S. GOVERNMENT REIMBURSEMENT AS WELL AS INSURERS' LIABILITY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM WHEN THE AMOUNT OF SUCH LOSSES IN ANY ONE CALENDAR YEAR EXCEEDS \$100 BILLION. IF THE AGGREGATE INSURED LOSSES FOR ALL INSURERS EXCEED \$100 BILLION, YOUR COVERAGE MAY BE REDUCED.

COPY OF DISCLOSURE SENT WITH ORIGINAL QUOTE

Insured Name: *EDUCATION CORPORATION OF AMERICA*

Policy Number: *01-825-10-59*

Policy Period Effective Date From: *September 3, 2018* To: *September 3, 2019*

General Terms and Conditions

In consideration of the payment of the premium, and in reliance upon the statements made to the Insurer by Application, which forms a part of this Policy, the Insurer agrees as follows:

1. TERMS AND CONDITIONS

These **General Terms and Conditions** shall be applicable to all **Coverage Sections**. Terms appearing in these **General Terms and Conditions** which are defined in a **Coverage Section** shall have the meaning provided for such terms in such **Coverage Section** for purposes of coverage provided under such **Coverage Section**. The terms and conditions set forth in each **Coverage Section** shall only apply to that particular **Coverage Section** and shall in no way be construed to apply to any other **Coverage Section** of this Policy.

2. DEFINITIONS

(a) "**Administrative Claim**" means an administrative or regulatory investigation:

- (i) "by the Equal Employment Opportunity Commission ("EEOC") or similar federal, state or local agency; or
- (ii) of a violation 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, in either case, is commenced by the filing of a notice of charges or similar document of which notice has been given to an **Insured**.

The term "**Administrative Claim**" shall not mean or include any **Litigated Matter**.

(b) "**Affiliated Entities**" means:

- (i) a pooled investment vehicle formed and controlled by the **Insureds' Representative** for purposes of making a direct or indirect investment in the **Named Entity**;
- (ii) an entity which is a general partner, managing general partner, managing member, administrative member, sole member, manager, managing shareholder or other sponsor of a pooled investment vehicle described in paragraph (i) above;
- (iii) an entity (including, but not limited to, any holding company, special purpose vehicle or other acquisition vehicle) formed for the sole purpose of holding a direct or indirect interest in the **Named Entity**, but only if such entity is under **Management Control** directly or indirectly by the **Insureds' Representative**.

(c) "**Application**" means:

- (i) the application attached to and forming part of this Policy, any attachments to such applications; and
- (ii) any materials submitted therewith, which shall be retained on file by the **Insurer** and shall be deemed to be physically attached to this Policy or incorporated therein.

(d) **"Claim"** means:

- (i) any written demand for monetary or non-monetary or injunctive relief (including, but not limited to, any request to toll or waive any statute of limitations);
- (ii) any civil, criminal, administrative or regulatory proceeding or arbitration, mediation or other dispute resolution proceeding for monetary or non-monetary or injunctive relief which is commenced by:
 - (1) service of a complaint, motion, writ or similar pleading or service of an order;
 - (2) return of an indictment, criminal complaint, information or similar document (in the case of a criminal proceeding);
 - (3) receipt of a notice of deposition;
 - (4) filing or service of a subpoena;
 - (5) receipt or filing of a notice of charges; or
 - (6) receipt of a request or demand to arbitrate or mediate;
- (iii) any civil, criminal, administrative or regulatory investigation or inquiry by a federal, state, local, foreign or offshore government authority or agency (including without limitation an investigation by the Equal Employment Opportunity Commission, the Securities and Exchange Commission, the Department of Labor, the Department of Justice, the Department of Treasury, any state attorney general's office or securities regulator, the Financial Services Authority, the Pension Benefit Guarantee Corporation or a Grand Jury) or any self-regulatory organization (including, but not limited to, the Financial Industry Regulatory Authority) but only after service of a subpoena, receipt of a Wells Notice, receipt of a "target" letter (within the meaning of Title 9, 11.151 of the United States Attorney's Manual) or receipt of a notice of investigation, notice of charges, SEC Form 1662, a civil investigative demand, a search warrant, service of a complaint or other similar document of which notice has been given to an **Insured** (herein, **"Investigation Claim"**);

It is understood and agreed that, notwithstanding anything to the contrary in any Insuring Agreement under this policy, the requirement under any Insuring Agreement that a **Claim** must allege a **Wrongful Act** shall not apply to any **Investigation Claim** as defined in this subparagraph (iii); provided, however, **"Investigation Claim"** shall not mean any routine regulatory supervision, examination, inspection or compliance review.
- (iv) any official written request for **Extradition** of any **Individual Insured** or the execution of a warrant for the arrest of an **Individual Insured** where such execution is an element of **Extradition**;
- (v) the equivalent document in a **Foreign Jurisdiction** for (i)-(iv) above.

The term **"Claim"** shall also include any **Securities Claim**, **Contract Claim** or any **Derivative Demand**, and any equivalent thereof in any **Foreign Jurisdiction**.

The term **"Claim"** shall also include any appeal(s) of any of the foregoing.

Solely with respect to coverage provided under D&O COVERAGE SECTION F: PRE-CLAIM INQUIRY COSTS FOR PRE-CLAIM INQUIRY, "Claim" also means a **Pre-Claim Inquiry**; provided, however, that a **Pre-Claim Inquiry** only shall constitute a **Claim** under this Policy only if the **Individual Insured** or **Company** elects to give to the **Insurer** written notice thereof pursuant to Clause 6. "NOTICE/CLAIM REPORTING PROVISIONS" of the policy, at which point such **Pre-Claim Inquiry** shall be deemed first made.

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

(e) "**Cleanup Costs**" means expenses, including, but not limited to, legal and professional fees incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of **Pollutants**.

(f) "**Company**" means the **Named Entity** and any **Subsidiary** thereof.

In the event a bankruptcy proceeding shall be instituted by or against a **Company**, the term "**Company**" shall also mean the resulting debtor-in-possession (or equivalent status outside the United States of America), if any.

(g) "**Continuity Date**" means the date set forth in Item 4 of each **Program Participants Endorsement** with respect to the corresponding **Named Entity** thereon and the **Insureds** thereof with respect to each **Coverage Section**.

(h) "**Coverage Section**" means each **Coverage Section** that is purchased by the **Insured** as indicated in each **Program Participants Endorsement** with respect to the corresponding **Named Entity** thereon and the **Insureds** thereof.

(i) "**Defense Costs**" means any:

- (i) legal fees and expenses including, without limitation, all reasonable out of pocket charges and expenses;
- (ii) expert, forensic auditor, consultant or witness fees and expenses;
- (iii) mediator or arbitrator fees and expenses;
- (iv) cost of attachment or similar bonds incurred by the **Insureds**, in the investigation of or defense of or appeal of any **Claim** or in connection with any written request or other written statement seeking extradition or rendition of an **Insured**;
- (v) costs of **E-Discovery Consultant Services**;
- (vi) fees and expenses of vendor or service provider retained by an **Insured** or by the **Insured's** defense counsel, including, without limitation, any document vendor, electronic discovery vendor, database vendor, document review vendor, data recovery vendor, court reporter or investigative service; or
- (vii) other reasonable costs, charges, fees and expenses incurred in the investigation, defense, settlement or appeal of any **Claim**;

in each case, incurred by the **Insureds** in the investigation of, adjustment of, defense of and/or appeal of any **Claim** against an **Insured**, but excluding compensation of any **Individual Insured**. **Defense Costs** shall also include **Extradition Costs**.

Defense Costs shall also include all reasonable fees and expenses incurred by defense counsel selected by the **Insured(s)** in providing reports, updates or other information to the Insurer.

Solely with regard to any **Pre-Claim Inquiry**, "**Defense Costs**" means only **Pre-Claim Inquiry Costs**.

It is understood and agreed that **Individual Insureds** shall be entitled to separate counsel in the event of any potential conflict of interest among the **Insureds** (including, without limitation, any defenses being available to one **Insured** that are not available to other **Insureds**) with the consent of the Insurer (such consent shall not be unreasonably withheld or denied).

- (j) "**Designated Policy Aggregate Limit of Liability**" means the **Designated Policy Aggregate Limit of Liability** stated in Item 2 of each **Program Participants Endorsement** with respect to the corresponding **Named Entity** thereon and the **Insureds** thereof.
- (k) "**Designated Separate Limit of Liability**" means the applicable **Separate Limit of Liability**, if any, stated in Item 2 of each **Program Participants Endorsement** with respect to the corresponding **Named Entity** thereon and the **Insureds** thereof.
- (l) "**Designated Shared Limit of Liability**" means the applicable **Shared Limit of Liability**, if any, stated in Item 2 of each **Program Participants Endorsement** with respect to the corresponding **Named Entity** thereon and the **Insureds** thereof, which limit of liability shall be shared between all of the **Coverage Sections** which are listed below such **Designated Shared Limit of Liability** in each **Program Participants Endorsement** with respect to the corresponding **Named Entity** thereon.
- (m) "**Discovery Period**" means **Discovery Period**, as that term is defined in Clause 8 of these **General Terms and Conditions**.
- (n) "**Domestic Partner**" means any natural person legally recognized as a domestic or civil union partner under the provisions of any:
 - (i) applicable federal, state or local law; or
 - (ii) program established by the **Company**.
- (o) "**E-Discovery**" means the development, collection, storage, organization, cataloging, preservation and/or production of electronically stored information.
- (p) "**E-Discovery Consultant Services**" means solely the following services performed by an E-Consultant Firm:
 - (i) assisting the **Insured** with managing and minimizing the internal and external costs associated with E-Discovery;
 - (ii) assisting the **Insured** in developing or formulating an E-Discovery strategy which shall include interviewing qualified and cost effective E-Discovery vendors;
 - (iii) serving as project manager, advisor and/or consultant to the **Insured**, defense counsel and the Insurer in executing and monitoring the E-Discovery strategy; and
 - (iv) such other services provided by the E-Consultant Firm that the **Insured**, Insurer and E-Consultant Firm agree are reasonable and necessary given the circumstances of the Claim.

- (q) **"Employee"** means any past, present or future:
- (i) employee, other than an **Executive** of a **Company**, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any part-time, volunteer, seasonal and temporary employee. An individual who is leased to the **Company**, contracted to perform work for the **Company**, or who is an independent contractor for the **Company**, shall also be an **Employee**, but only to the extent the **Company** provides indemnification to such leased or contracted individual;
 - (ii) **Employed Lawyer**.
- (r) **"Executive"** means:
- (i) any past, present or future duly elected or appointed director, officer, board observer, trustee or governor, management committee member, member of the management board, supervisory board, advisory board or any other executive committee of a corporation, limited liability company, or joint venture, natural person general partner of a partnership, natural person limited partner, or equivalent position or any person found to have acted in such position under applicable law; or
 - (ii) any past, present or future person in a duly elected or appointed position in an entity which is organized and operated in a **Foreign Jurisdiction** that is equivalent to an executive position listed in Definition (r)(i);
- (s) **"Financial Insolvency"** means:
- (i) the appointment by any government official, agency, commission, court or other governmental authority of a receiver, conservator, liquidator, trustee, rehabilitator, administrator or similar official to take control of, supervise, manage or liquidate an insolvent **Company**;
 - (ii) a **Company** becoming a debtor-in-possession pursuant to the United States bankruptcy law;
 - (iii) the filing by or against a **Company** of a petition under the bankruptcy laws of the United States of America; or
 - (iv) as to (i), (ii) (iii) in this Definition (s), any equivalent status in a **Foreign Jurisdiction**.
- (t) **"Foreign Jurisdiction"** means any jurisdiction, other than the United States or any of its territories or possessions.
- (u) **"Foreign Policy"** means the **Insurer's** or any other company of American International Group, Inc.'s ("AIG") standard executive managerial liability policy (including any directors and officers, partnership, managerial, employment practices liability fiduciary or pension trust liability policy and all mandatory endorsements to such policies, if any) approved by AIG 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 typically offered for sale in that **Foreign Jurisdiction** for comparable risks by the Insurer or any other company of AIG. The term **"Foreign Policy"** shall not include any professional liability coverage, also known as errors and omissions coverage.

- (v) **"Indemnifiable Loss"** means **Loss** for which a **Company** has indemnified or is permitted or required to indemnify an **Individual Insured** pursuant to the fullest extent permitted by the certificate of incorporation, charter, by-laws, articles of association, limited liability company agreement, partnership agreement, operating agreement or other organizational documents of a **Company**.
- (w) **"Insurer"** means the insurance company indicated in the Declarations.
- (x) **"Insureds' Representative"** means the organization stated in Item 7 of the Declarations.
- (y) **"Litigated Matter"** means any civil, criminal, administrative, regulatory or arbitration proceeding for monetary, non-monetary or injunctive relief which is commenced by:
 - (i) service of a complaint or similar pleading; or
 - (ii) return of an indictment, information or similar document (in the case of a criminal proceeding).
- (z) **"Management Control"** means:
 - (i) owning interests representing more than fifty percent (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 partnership, or the manager or members of the management board of a limited liability company;
 - (ii) having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of a company, to elect, appoint or designate a majority of: the board of directors of a corporation, the management committee of a joint venture or partnership, or the manager(s) or the management board of a limited liability company;
 - (iii) possessing greater than 50% ownership interest in a corporation, joint venture or limited liability company;
 - (iv) possessing greater than 50% of the voting power of a partnership;
 - (v) having management and/or operational control of a company; or
 - (vi) being the sole general partner of a limited partnership or the sole manager of a limited liability company.
- (aa) **"Named Entity"** means each **Named Entity** set forth in Item 1 of any **Program Participants Endorsement**, whether a corporation, association, limited liability company or any other type of business organization.
- (bb) **"Non-Indemnifiable Loss"** means **Loss** that is not **Indemnifiable Loss**.
- (cc) **"Outside Entity"** means:
 - (i) any not-for-profit organization; or
 - (ii) any for-profit organization, other than the **Company**.
- (dd) **"Outside Entity Executive"** means any:
 - (i) **Individual Insured** serving in the capacity as director, officer, board observer, trustee, advisor or governor of an **Outside Entity**, but only if such service is at the specific request, direction or consent of the **Company**; or

- (ii) any other person listed as an **Outside Entity Executive** in an endorsement to this Policy.

It is understood and agreed that, in the event of a disagreement between the **Company** and an individual as to whether such individual was acting "at the specific request, direction, or consent of the **Company**," this Policy shall abide by the determination of the **Company** on this issue and such determination shall be made by written notice to the **Insurer** within ninety (90) days after the **Claim** is first reported to the **Insurer** pursuant to the terms of the Policy. In the event no determination is made within such period, this Policy shall apply as if the **Company** determined that such **Individual Insured** was not acting at the **Company's** specific request, direction, or consent.

- (ee) "**Policy Period**" means the period of time from the inception date stated in Item 2 of the Declarations to the earlier of the expiration date stated in Item 2 of the Declarations or the effective date of cancellation of this Policy with respect to any particular **Named Entity** as set forth in Clause 7.
- (ff) "**Pollutants**" means, but is not limited to, any solid, liquid, gaseous, biological, radiological or thermal irritant or contaminant, including smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals and **Waste**. "**Waste**" includes, but is not limited to, materials to be recycled, reconditioned or reclaimed and nuclear materials.
- (gg) "**Prior Acts Date**" means the date set forth in Item 5 of each **Program Participants Endorsement** with respect to the corresponding **Named Entity** thereon and the **Insureds** thereof.
- (hh) "**Prior AIG Policy**" means a valid and collectible policy providing substantially the same or similar coverage as is provided by this policy, issued to a particular **Named Entity** by the **Insurer** (or any other insurance company affiliate thereof), of which this policy is a continuous renewal.
- (ii) "**Program Participants Endorsement**" means each endorsement attached to this Policy entitled "**Program Participants Endorsement**" outlining the respective **Named Entity** insured hereunder and certain items and conditions specific to the coverage afforded under this Policy to such **Named Entity** and any **Insured** thereof, including the applicable Limits of Liability, Retention Amounts, **Continuity Dates**, **Prior Acts Date** and Premium Amount.
- (jj) "**Related Claim**" means a **Claim** alleging, arising out of, based upon or attributable to any facts or **Wrongful Acts** that are the same as or related to those that were alleged in another **Claim** made against an **Insured**.
- (kk) "**Related Pre-Claim Inquiry**" means **Pre-Claim Inquiry(ies)** which are the same, related or continuous, or **Pre-Claim Inquiry(ies)** which arise from a common nucleus of facts. **Claims** can allege **Related Pre-Claim Inquiry(ies)** regardless of whether such **Claims** involve the same or different claimants, **Insureds** or legal causes of action.
- (ll) "**Related Wrongful Act(s)**" means **Wrongful Act(s)** which are the same, related or continuous, or **Wrongful Act(s)** which arise from a common nucleus of facts.
- (mm) "**Subsidiary**" means:
 - (i) any for-profit entity, whose securities are not publicly traded, of which the particular **Named Entity** has or had **Management Control** ("**Controlled Entity**") on or before the inception date of the **Policy Period**, either directly or indirectly through one or more other **Controlled Entities**;

- (ii) any for-profit entity, whose securities are not publicly traded, of which the particular **Named Entity** acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other **Controlled Entities**; or
- (iii) any not-for-profit entity sponsored exclusively by a **Company**.

Notwithstanding the foregoing, coverage as is afforded under this Policy with respect to a **Claim** made against any **Subsidiary** or any **Individual Insureds** thereof (in their capacity as such) shall only apply for **Wrongful Acts** committed or allegedly committed after the effective time (the "**Acquisition Date**") that the particular **Named Entity** obtained **Management Control** of such **Subsidiary**. Upon the **Acquisition Date**, the **Insurer** agrees to provide coverage for **Wrongful Acts** taking place prior to the **Acquisition Date** at no additional premium, but solely as respects to coverage provided under the **EPL Coverage Section** and the **FLI Coverage Section**, if applicable. However, in no event shall this Policy provide coverage for any **Claim** arising from a **Wrongful Act** that occurred prior to the **Acquisition Date** if any **Individual Insured** of the particular **Named Entity** could reasonably expect that such **Wrongful Act** could give rise to a **Claim** against an **Insured** under the Policy. Furthermore, to the extent any such **Subsidiary** has any valid and collectible Employment Practices or Fiduciary Liability insurance ("**Other Insurance Policy(cies)**") covering any overlapping time period as the prior acts afforded by this paragraph, such other insurance shall be primary and this policy shall remain excess any coverage provided under such **Other Insurance Policy(cies)**.

There shall be no coverage afforded under this Policy with respect to a **Claim** made against any **Subsidiary** or any **Individual Insureds** thereof (in their capacity as such) for **Wrongful Acts** committed or allegedly committed after the time that such respective **Named Entity** ceased to have **Management Control** of such **Subsidiary**.

3. EXTENSIONS

Subject otherwise to the terms hereof, this Policy shall cover **Loss** arising from any **Claim** made against:

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

4. **LIMITS OF LIABILITY (FOR ALL LOSS IN THE AGGREGATE UNDER THIS POLICY AND UNDER EACH INDIVIDUAL COVERAGE SECTION - INCLUDING DEFENSE COSTS)**

The **Designated Policy Aggregate Limit of Liability** stated in Item 2 of each **Program Participants Endorsement** is the maximum limit of the **Insurer's** liability for all **Loss** (other than **Non-Indemnifiable Loss** covered under the **Side A Excess Limit of Liability**), including **Defense Costs**, under all **Coverage Sections** combined arising out of all **Claims** first made against the **Insureds** afforded coverage under such **Program Participant Endorsement** (in their capacity as such) during the **Policy Period** or the **Discovery Period** (if applicable); *provided, however*, the **Designated Policy Aggregate Limit of Liability** for the **Discovery Period** shall be part of, and not in addition to, the **Designated Policy Aggregate Limit of Liability** for the **Policy Period**.

If the **Designated Separate Limits of Liability** are stated in Item 2 of each **Program Participants Endorsement**, then each such **Designated Separate Limit of Liability** shall be the maximum limit of the **Insurer's** liability for all **Loss** (other than **Non-Indemnifiable Loss** covered under the **Side A Excess Limit of Liability**), including **Defense Costs**, arising out of all **Claims** first made against the **Insureds** afforded coverage under such **Program Participant Endorsement** (in their capacity as such) during the **Policy Period** or the **Discovery Period** (if applicable) with respect to the applicable **Coverage Section** as stated on each **Program Participants Endorsement**; *provided, however*, the **Designated Separate Limit of Liability** for the **Discovery Period** shall be part of, and not in addition to, the **Designated Separate Limit of Liability** for the **Policy Period**. Each **Designated Separate Limit of Liability** shall be part of and not in addition to the **Designated Policy Aggregate Limit of Liability** for all **Loss** under this Policy and shall in no way serve to increase the **Insurer's Designated Policy Aggregate Limit of Liability** as therein stated.

If the **Designated Shared Limits of Liability** are stated in Item 2 of each **Program Participants Endorsement**, then each such **Designated Shared Limit of Liability** shall be the maximum limit of the **Insurer's** liability for all **Loss** (other than **Non-Indemnifiable Loss** covered under the **Side A Excess Limit of Liability**) arising out of all **Claims** first made against the **Insureds** afforded coverage under such **Program Participant Endorsement** during the **Policy Period** or the **Discovery Period** (if applicable) with respect to all **Coverage Sections** for which such **Designated Shared Limit of Liability** is applicable, as indicated on each **Program Participants Endorsement**; *provided, however*, with respect to all **Coverage Sections** that have a **Designated Shared Limit of Liability**, the **Designated Shared Limit of Liability** for the **Discovery Period** shall be part of, and not in addition to, the **Designated Shared Limit of Liability** for the **Policy Period**. Each **Designated Shared Limit of Liability** shall be part of, and not in addition to, the **Designated Policy Aggregate Limit of Liability** for all **Loss** under this Policy and shall in no way serve to increase the **Designated Policy Aggregate Limit of Liability** as therein stated.

Notwithstanding the above, it is expressly understood and agreed that each **Named Entity** shall have its own **Designated Policy Aggregate Limit of Liability** which shall be in addition to, and not part of the **Designated Policy Aggregate Limit of Liability** for any of the other **Named Entity(ies)**.

Further, a **Claim** which is made subsequent to the **Policy Period** or **Discovery Period** (if applicable) which pursuant to Clause 6(b) or 6(c) of these **General Terms and Conditions** is considered made during the **Policy Period** or **Discovery Period**, shall also be subject to the **Designated Policy Aggregate Limit of Liability** and subject to any applicable **Designated Separate Limit of Liability**, **Designated Shared Limit of Liability** or **Side A Excess Limit of Liability**.

Defense Costs are not payable by the **Insurer** in addition to the **Designated Policy Aggregate Limit of Liability** or any applicable **Designated Separate Limit of Liability**, **Designated Shared Limit of Liability** or **Side A Excess Limit of Liability**. **Defense Costs** are part of **Loss** and as such are subject to the **Designated Policy Aggregate Limit of Liability for Loss** and any applicable **Designated Separate Limit of Liability**, **Designated Shared Limit of Liability** or **Side A Excess Limit of Liability**. Amounts incurred for **Defense Costs** shall be applied against the **Retention** and will reduce and may exhaust the **Designated Separate Limit of Liability**, **Designated Shared Limit of Liability** or **Side A Excess Limit of Liability**.

5. RETENTION CLAUSE

The **Retentions** stated in Item 6 of the respective **Program Participants Endorsement** are separate **Retentions** pertaining only to the **Coverage Section** for which they are stated in the respective **Program Participants Endorsement**. The application of a **Retention** to **Loss** under one **Coverage Section** shall not reduce the **Retention** applicable under any other **Coverage Section**.

In the event a **Claim** triggers a **Retention** in multiple **Coverage Sections**, then the following shall apply:

- (a) with regard to **Loss** which is payable under any **Coverage Section** which is subject to a **Designated Separate Limit of Liability**, the **Retention** applicable to such **Loss** pursuant to the **Retention Clause** of such **Coverage Section** (or pursuant to any applicable endorsement) shall apply separately to such **Loss**, and the applicable **Retention** for such **Coverage Section** shall not be reduced by payments of **Loss** made towards the **Retention** required under any other **Coverage Section**; and
- (b) with regard to **Loss** which is payable under any **Coverage Sections** which are subject to a **Designated Shared Limit of Liability**, the highest applicable **Retention** shall be deemed the **Retention** applicable to **Loss** arising from such **Claim**.

Notwithstanding the foregoing, no **Retention** is applicable to the first \$25,000 in **Defense Costs** incurred for **E-Discovery Consultant Services**.

6. NOTICE/CLAIM REPORTING PROVISIONS

Notice hereunder shall be given by electronic mail, facsimile transmission or certified mail to the addressee and at the address identified in Item 8(b) of the **Declarations**; Attention: **Claim Department**. Notice shall include and reference this policy number as indicated in the **Declarations**, as well as the **Coverage Section** under which the **Claim** is being noticed. If sent certified mailed or by electronic mail, the date of mailing shall constitute the date that such notice was given and proof of mailing shall be sufficient proof of notice.

The following shall apply:

- (a) The Insureds shall give written notice to the Insurer of any Claim made against an Insured or a Crisis Management Event as soon as practicable after: (i) the Company's General Counsel (or equivalent position) first becomes aware in writing that total Loss (including Defense Costs) of a Claim is reasonably estimated to exceed FIFTY PERCENT (50%) of the applicable Retention (unless he or she is prohibited by court order to disclose the details or existence of such Claim); or (ii) the Crisis Management Event commences.

Failure to give notice of any Claim within the time prescribed herein shall not invalidate such Claim if it is demonstrated that it was not reasonably possible to give such notice within the prescribed time and that notice was given as soon as was reasonably possible thereafter. Further, if the Insured fails to provide notice of a Claim to the Insurer as specified above, the Insurer shall not be entitled to deny coverage for such Claim based solely upon late notice unless the Insurer can demonstrate that its interests were materially prejudiced by reason of such late notice.

In all events a Claim must be reported no later than either:

- (i) anytime during the Policy Period or during the Discovery Period (if applicable); or
- (ii) within ninety (90) days after the end of the Policy Period or the Discovery Period (if applicable).
- (b) If written notice of a Claim has been given to the Insurer pursuant to Clause 6(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 Wrongful Act which is the same as or is a Related Wrongful Act to that 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 Insureds shall become aware of any circumstances which may reasonably be expected to give rise to a Claim being made against the Insureds and shall give written notice to the Insurer of the circumstances, the Wrongful Act allegations anticipated and the reasons for anticipating such a Claim, 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 Wrongful Act which is the same as or is a Related Wrongful Act to that alleged or contained in such circumstances, shall be considered made at the time such notice of such circumstances was given.

Notwithstanding the foregoing, the provisions of this Clause 6. shall not apply to any Pre-Claim Inquiry that the Insured elects not to treat as a Claim as provided in the definition of Claim.

Additionally, to the extent that an Insured gives notice to the Insurer in accordance with this CLAUSE 6. NOTICE/CLAIM REPORTING PROVISIONS (c) and a Claim subsequently arises from such specific circumstances, Defense Costs shall also mean all legal fees incurred in the investigation and/or defense of any such specific circumstances that are incurred:

- (i) on or after the date of such notice is received by the Insurer; and

- (ii) prior to the time such specific circumstances rise to the level of a **Claim**.
- (d) Any matter which could involve the payment of **Voluntary Compliance Loss** or of **Covered Penalties** under the **FLI Coverage Section** shall be reported to the **Insurer** in the same manner as a **Claim** under Clause 6(a)(i) and 6(a)(ii) above.

Note: With respect to this **CLAUSE 6. NOTICE/CLAIM REPORTING PROVISIONS** (a), the coverage provided by this Policy shall apply to the broadest extent permitted by law and the availability of such coverage, and the adequacy and timeliness of notice pursuant to **CLAUSE 6. NOTICE/CLAIM REPORTING PROVISIONS** (a) shall be determined by the law of the jurisdiction most favorable to such coverage.

The following shall apply solely with respect to the **EPL Coverage Section**:

(e) **Claims Savings Clause for Employment Practices Claims**

- (i) Notwithstanding the foregoing, with respect to any **Claim** which (i) first becomes a **Litigated Matter** during the **Policy Period** or **Discovery Period** (if applicable); and (ii) is a **Related Claim** with respect to an **Administrative Claim** which was first made against an **Insured** prior to the **Policy Period**, the **Insurer** shall not deny coverage for such **Claim** based upon late notice of such **Claim** or based upon such **Claim** first being made prior to the **Policy Period**, provided that:
 - (1) the **Claim** was first made against the **Insured** at a time during which the particular **Named Entity** was insured under a **Prior AIG Policy**;
 - (2) upon the **Claim** first becoming a **Litigated Matter**, the **Claim** was reported in accordance with Clause 6(a) above; and
 - (3) no **Insured** has made a monetary settlement offer to a claimant or responded to a monetary demand from or on behalf of a claimant with respect to such **Claim**.
- (ii) Coverage under this policy for any **Claim** afforded coverage pursuant to this Clause 6(e) shall be the lesser of:
 - (1) the coverage which would have been provided under this policy for such **Claim** had the **Claim** been made during the **Policy Period** and reported to the **Insurer** as required by this policy; or
 - (2) the coverage, if any, which would have been provided under the **Prior AIG Policy** for such **Claim** if the **Insured** had properly provided notice of such **Claim** in accordance with the provisions of the **Prior AIG Policy**, taking into account all provisions of each policy, including, without limitation, applicable limits of liability (as reduced by payments made under such policy), retentions, exclusions and other restrictions contained in each policy;

Notwithstanding the foregoing, nothing in this Clause 6(e) shall be construed to increase the **Limit of Liability** of this policy or to provide coverage under the **Prior AIG Policy**, nor shall this Clause 6(e) ever result in providing coverage under this policy for **Loss** for which coverage is in fact provided (or would be provided but for the exhaustion of the limit of liability) under the **Prior AIG Policy**.

- (iii) This Clause 6(e) shall not apply to any **Claim** which:
- (1) prior to the **Policy Period** was a **Litigated Matter**; or
 - (2) is a **Related Claim** with respect to a **Claim** which, prior to the **Policy Period** was a **Litigated Matter**.

The following shall apply solely with respect to the **FLI Coverage Section**:

(f) **Reporting a Fiduciary Claim or Pension Crisis**

The **Insured(s)** shall, as a condition precedent to the obligations of the Insurer under this policy, notify the Insurer in writing of a **Claim** made against an **Insured** or of a **Pension Crisis** as soon as practicable after: (1) the **Named Entity's** General Counsel first receives written notice of the **Claim**; or (2) the **Pension Crisis** commences. In all such events, notification must be provided no later than:

- (i) ninety (90) days after the end of the **Policy Period** or **Discovery Period** (if applicable) if this policy is not renewed with the **Insurer**; or
- (ii) two hundred and seventy (270) days after the end of the **Policy Period** or **Discovery Period** (if applicable) if the expiring policy is renewed with the **Insurer**.

As exceptions to the foregoing notice provision the **Insureds** shall have no obligation to give notice of:

- (1) a fact-finding investigation before the earliest of the time that: (i) it becomes a **Litigated Matter**; (ii) a **Wrongful Act** is alleged in writing; or (iii) any **Insured** has incurred defense costs for which coverage is being sought; or
- (2) an **Internal Appeal** before the earliest of the time that: (i) it becomes a **Litigated Matter**; (ii) any investment loss within a **Plan** is alleged; or (iii) any **Insured** has incurred **Defense Costs** for which coverage is being sought.

7. CANCELLATION CLAUSE

This Policy or any individual **Coverage Section** may be canceled by the **Insureds' Representative** at any time by e-mailing or mailing by certified mail prior written notice to the **Insurer** stating which **Coverage Sections** are to be canceled or that the entire Policy is to be canceled and when thereafter such cancellation shall be effective, or by surrender thereof to the **Insurer** or its authorized agent. The e-mailing or mailing of such notice shall be sufficient notice and the effective date of cancellation shall be the date the **Insurer** received such notice or any later date specified in the notice, and such effective date shall become the end of the Policy or applicable **Coverage Sections**.

This Policy may only be canceled by or on the behalf of the **Insurer** with respect to any particular **Named Entity** only in the event of non-payment of premium of the **Named Entity's** respective annual premium amount as set forth in Item 7 of the **Program Participants Endorsement**. In the event of non-payment of premium by any particular **Named Entity**, the **Insurer** may cancel this Policy solely by delivering to such respective **Named Entity** and its authorized agent or by mailing to the particular **Named Entity** and its authorized agent, by registered, certified or other first class mail, at the **Insureds' Representative** address as stated in Item 7 of the Declarations and the agent of record's New York address, Attention: Willis M&A Group, written notice stating when, not less than fifteen (15) days thereafter, the cancellation shall be effective; *provided, however*, that if the unpaid premium is paid in full before 12:01 am on the 16th day following receipt by the particular **Named Entity** and its authorized agent of the notice of cancellation, then, in that event, the **Insurer** may not cancel this Policy. The mailing of such notice as aforesaid shall be sufficient proof of notice. The **Policy Period** for the particular **Named Entity** 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. This Policy shall remain in full force and effect for all remaining **Named Entities**, including **Insureds** thereof that comply with this Clause 7, subject to all other terms, conditions, and exclusions of this Policy.

If the period of limitation relating to the giving of notice as set forth above is also set forth in any applicable law controlling the construction thereof, the period set forth above shall be deemed to be amended so as to be equal to the minimum period of limitation set forth in the controlling law.

It is further understood and agreed that the premium amount set forth in Item 7 of the applicable **Program Participants Endorsement** for the respective **Named Entity** shall be fully earned as of the inception date of this Policy; *provided, however*, should a particular **Named Entity** make a public offering of equity securities and incepts a new management liability policy or policies with similar coverage afforded herein with the **Insurer** or any member company of **AIG, Inc. ("AIG")**, then the particular **Named Entity** will be entitled to a pro-rata return payment of its unearned premium.

8. DISCOVERY CLAUSE

If the **Insureds' Representative** shall cancel, either in total or on behalf of a particular **Named Entity** or the **Insureds' Representative** or the **Insurer** shall refuse to renew this Policy, either in total or on behalf of a particular **Named Entity**, or the **Insureds' Representative** or the **Insurer** shall refuse to renew any **Coverage Section**, either in total or on behalf of a particular **Named Entity**, then, solely with regard to the Policy or **Coverage Section** which was canceled or non-renewed, the **Insureds' Representative** or the respective **Named Entity** shall have the right, upon payment of the applicable "**Additional Premium Amount**" described below, to a period of up to six (6) years or of unlimited duration following the effective date of such cancellation or nonrenewal (herein referred to as the "**Discovery Period**"), in which to give the **Insurer** written notice of **Claims** first made against any **Insured** during said **Discovery Period** for any **Wrongful Act** occurring prior to the end of the **Policy Period** and otherwise covered by the canceled or non-renewed Policy or **Coverage Section**, as applicable. The rights contained in this Clause 8 shall terminate, however, unless written notice of such election together with the **Additional Premium Amount** due is received by the **Insurer** within thirty (30) days of the effective date of cancellation or nonrenewal.

The **Additional Premium Amount** for the elected **Discovery Period** shall be the "**Full Annual Premium**" (as defined below) multiplied by the applicable percentage amount indicated in Item 6 of the Declarations for the length of time elected for the **Discovery Period**.

As used herein, "**Full Annual Premium**" means:

- (a) with regard to a canceled or non-renewed Policy, the premium level in effect immediately prior to the end of the Policy Period for each respective **Named Entity** based off the premium amount set forth in Item 7 of the applicable **Program Participants Endorsement** for the respective **Named Entity**; or
- (b) with regard to a canceled or non-renewed **Coverage Section**, the total annual premium charged for the respective **Named Entity** for such **Coverage Section**.

In the event of a **Transaction**, as defined in Clause 9 of these **General Terms and Conditions**, as of the effective time of the **Transaction**:

- (a) This Policy shall continue in full force and effect as to **Wrongful Acts** occurring on or prior to the effective time of the **Transaction**, but there shall be no coverage afforded by any provision of this Policy for any **Wrongful Act** occurring after the effective time of the **Transaction**.
- (b) The particular **Named Entity** shall have the right to a period of up to six (6) years following the effective time of the **Transaction** (hereinafter "**Run-Off Period**") in which to give written notice to the **Insurer of Claims** first made against the **Insureds** during said **Run-Off Period** for any **Wrongful Act** occurring on or prior to the effective time of the **Transaction** and otherwise covered by this Policy, provided that in all events the coverage as is afforded by the **Run-Off Period** shall be conditioned upon the particular **Named Entity** paying when due any additional premium owed to the **Insurer**. If the particular **Named Entity** shall not exercise this right, then the **Insureds' Representative**, or any subsidiary thereof that is not an **Insured**, shall have the right to exercise such right with respect to such particular **Named Entity** upon payment of the requisite additional premium on the same terms and subject to the same limitations and conditions as would have applied to the particular **Named Entity** if it had exercised such right. In the event the **Insureds' Representative** or any such subsidiary exercise such right, then the resulting coverage afforded by the Policy shall be no less or greater than would have resulted had the particular **Named Entity** exercised such right, and in no way shall the **Insureds' Representative** or any other person or entity that is not an **Insured** under the Policy be afforded coverage as a result of the exercise of such right.
- (c) The additional premium for the election of the **Run-Off Period** shall be no more than 150% of the **Full Annual Premium** less any **Remaining Pro-Rata Premium** of this Policy (as used herein, "**Remaining Pro-Rata Premium**" shall be determined by multiplying the **Daily Premium** by the **Remaining Policy Period**. The **Daily Premium** means the total **Policy Period** premium for the respective **Named Entity** based off the premium amount set forth in Item 7 of the applicable **Program Participants Endorsement** for the respective **Named Entity** divided by total number of days in the **Policy Period**. The **Remaining Policy Period** means the number of days between the effective time of the **Transaction** and the expiration date of the **Policy Period**. The **Insurer** hereby agrees that if the amount of the **Remaining Pro-Rata Premium** exceeds the **Run-Off Premium** then the **Insurer** shall return to the particular **Named Entity** that amount of the **Remaining Pro-Rata Premium** which exceeds the **Run-Off Premium**.

The **Run-Off Period** shall be subject to all the terms, conditions and limitations of this Policy. The **Run-Off Period** shall not provide coverage for any **Wrongful Act(s)** occurring after the effective time of the **Transaction**.

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

The **Designated Limit of Liability** for the **Run-Off Period** shall be part of and not in addition to the remaining **Designated Limit of Liability** for each respective **Named Entity** in the **Program Participants Endorsement** as of the **Transaction**. In no way shall the language of this endorsement be construed to reinstate, renew or increase the **Designated Limit of Liability** or the **Run-Off Period**.

9. CHANGE IN CONTROL OF NAMED ENTITY

If during the **Policy Period**:

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

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

then, with respect to such **Named Entity** which is subject to a **Transaction** (hereinafter referred to as "**Transaction Named Entity**"), this Policy shall continue in full force and effect as to **Wrongful Acts** occurring prior to the effective time of the **Transaction**, but there shall be no coverage afforded by any provision of this Policy for any actual or alleged **Wrongful Act** occurring after the effective time of the **Transaction**.

This Policy and any purchased **Coverage Section** may not be canceled after the effective time of the **Transaction**. The particular **Named Entity** shall also have the right to an offer by the **Insurer** of a **Run-Off Period** described in Clause 8 of these **General Terms and Conditions**.

10. SUBROGATION

In the event of any payment under this Policy, the **Insurer** shall be subrogated to the extent of such payment to each **Insured's** rights of recovery thereof, and each **Insured** shall execute all papers required and shall do everything that may be reasonably necessary to secure such rights, including the execution of such documents necessary to enable the **Insurer** to bring suit in the name of the **Insured**. In no event, however, shall the **Insurer** exercise or pursue, directly or indirectly, any right(s) of recovery, right(s) of subrogation or other rights against any **Insured** under this Policy or the **Insureds' Representative**, unless such **Insured** or **Insureds' Representative** has been convicted of a criminal act, or been determined by a final, non-appealable adjudication in the underlying proceeding to have committed a fraudulent act or willful violation of any statute, rule or law, or determined by a final non-appealable adjudication to have obtained any profit or advantage to which such **Insured** was not legally entitled. For purposes of this Clause, in order for a criminal act to permit the **Insurer** to exercise or pursue any rights of subrogation against any **Insured** under this Policy, the act must be a criminal violation in the United States of America.

In the event that the **Insurer** shall for any reason pay **Indemnifiable Loss** on behalf of an **Individual Insured**, 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; *provided, however*, the **Insurer's** subrogation rights shall not include the assertion of indemnification or contribution rights against the **Insureds' Representative** or any affiliate or subsidiary thereof that is not a **Company**. Additionally, upon the **Insurer** making any payment of **Loss** within the Retention, the **Insurer** shall have a direct contractual right under this Policy to recover from the **Company**, or in the event of the bankruptcy of the **Company**, from the debtor-in-possession (or equivalent status outside the United States) such **Loss** which was paid by the **Insurer** within the Retention. Such direct contractual right of recovery against the **Company** shall be in addition to and independent of the **Insurer's** subrogation right pursuant to this Clause 10 and any other rights the **Insurer** may have under applicable law.

11. OTHER INSURANCE

With respect to all **Coverage Sections**, other than the **EPL Coverage Section** and except in the case of (a) personal liability insurance maintained by an **Individual Insured** or (b) insurance available to an **Individual Insured** through the **Insureds' Representative** or any investment fund established by the **Insureds' Representative**, such insurance as is provided by this Policy shall apply only as excess over any other valid and collectible insurance which actually pays **Loss** otherwise covered by this Policy, unless such other valid and collectible insurance is expressly written to be excess over the **Designated Policy Aggregate Limit of Liability** or any applicable **Designated Separate Limit of Liability** or **Designated Shared Limit of Liability** provided by this Policy. Except as provided herein, this Policy specifically shall be excess of any other valid and collectible insurance pursuant to which any other insurer has a duty to defend, and does actually defend a **Claim** for which this Policy may be obligated to pay **Loss**.

Notwithstanding the foregoing, such insurance as is provided by this policy shall apply as primary insurance with respect to:

- (a) any private equity or venture capital liability, general partner liability, or other similar management or professional liability insurance maintained by any direct or indirect shareholder of the **Named Entity** including any liability policy maintained by the **Insureds' Representative** or any affiliate or subsidiary thereof that is not a **Company**;
- (b) any indemnification which may be owed to an **Individual Insured** by a direct or indirect shareholder of the **Named Entity** or the **Insureds' Representative**;
- or
- (c) any personal liability insurance that may be available to an **Individual Insured**.

Such insurance as is provided by the **EPL Coverage Section** shall be primary unless expressly written to be excess over other applicable insurance.

With respect to all **Coverage Sections**, in the event of a **Claim** against an **Outside Entity Executive**, or a **Claim** 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**" in the applicable **Coverage Section**, 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) other valid and collectible insurance provided to such **Outside Entity** or its **Executives**, leasing company or independent contractor;

provided, however, that any otherwise covered **Loss** of an **Outside Entity Executive** which is paid by an **Outside Entity** or by valid and collectible insurance coverage afforded to such **Outside Entity Executive** shall be applied to and erode any retention under this policy which is applicable to such **Outside Entity Executive**.

12. NOTICE AND AUTHORITY

Except for the giving of a notice of **Claim**, which shall be governed by the provisions of Clause 6 of these **General Terms and Conditions**, all notices required under this Policy to be given by the **Insured** to the **Insurer** shall be given by e-mail or by certified mail to the **Insurer** at the address stated in Item 8(a) of the **Declarations**. It is agreed that the **Insureds' Representative** shall act on behalf of all **Named Entities** and all **Insureds** with respect to the giving and receiving of notice of cancellation and nonrenewal, the payment of premiums and the receiving of any return premiums that may become due under this Policy, the receipt and acceptance of any endorsements issued to form a part of this Policy, the exercising or declining of the right to tender the defense of a **Claim** to the **Insurer** and the exercising or declining to exercise any right to a **Discovery Period**.

13. ASSIGNMENT

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

14. DISPUTE RESOLUTION PROCESS

It is hereby understood and agreed that all disputes or differences which may arise under or in connection with this Policy, whether arising before or after termination of this Policy, including any determination of the amount of **Loss**, must first be submitted to the non-binding mediation process as set forth in this Clause.

The non-binding mediation will be administered by any mediation facility to which the **Insurer** and the particular **Named Entity** mutually agree, in which all implicated **Insureds** and the **Insurer** shall try in good faith to settle the dispute by mediation in accordance with the American Arbitration Association's ("**AAA**") then-prevailing Commercial Mediation Rules. The parties shall mutually agree on the selection of a mediator. The mediator shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. The mediator shall also give due consideration to the general principles of the law of the state where the particular **Named Entity** is incorporated in the construction or interpretation of the provisions of this Policy. In the event that such non-binding mediation does not result in a settlement of the subject dispute or difference:

- (a) either party shall have the right to commence a judicial proceeding; or
- (b) either party shall have the right, with all other parties consent, to commence an arbitration proceeding with the **AAA** that will be submitted to an arbitration panel of three (3) arbitrators as follows:
 - (i) the **Insured** shall select one (1) arbitrator;
 - (ii) the **Insurer** shall select one (1) arbitrator; and
 - (iii) said arbitrators shall mutually agree upon the selection of the third arbitrator. The arbitration shall be conducted in accordance with the **AAA's** then prevailing Commercial Arbitration Rules.

Notwithstanding the foregoing, no such judicial or arbitration proceeding shall be commenced until at least thirty (30) days after the date the non-binding mediation shall be deemed concluded or terminated. Each party shall share equally the expenses of the non-binding mediation. All applicable statutes of limitation shall be tolled during the pendency of the mediation and during such thirty (30) day period following the conclusion and termination of the mediation.

The non-binding mediation and arbitration proceeding may be commenced in either New York or in the state indicated in Item 1 of the **Program Participants Endorsement** as the mailing address for the respective **Named Entity**. The respective **Named Entity** shall act on behalf of each and every **Insured** in connection with any non-binding mediation under this Clause, the selection of arbitration or judicial proceeding or the selection of mediators or arbitrators.

15. ACTION AGAINST INSURER

Except as provided in Clause 14 above, no action shall lie against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy by the **Insured**, nor until the amount of the **Insured's** obligation to pay shall have been finally determined either by judgment against the **Insured** after actual trial or by written agreement of the **Insured**, 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 **Insured** or the **Company** to determine the **Insured's** liability, nor shall the **Insurer** be impleaded by the **Insured** or the **Company** or their legal representatives. Bankruptcy or insolvency of the **Company** or any **Insured** or of their estates shall not relieve the **Insurer** of any of its obligations hereunder.

16. WORLDWIDE TERRITORY

Where legally permissible, this Policy shall apply to any **Claim** made against any **Insured** anywhere in the world.

17. SERVICE OF SUIT

Subject to Section 14 of this Policy, it is agreed that in the event of failure of the **Insurer** to pay any amount claimed to be due hereunder, the **Insurer**, at the request of the **Insured**, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this Clause 17 constitutes, or should be understood to constitute, a waiver of the **Insurer's** rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such suit may be made upon General Counsel, Legal Department, AIG Specialty Insurance Company, 70 Pine Street New York, NY 10270, or his or her representative, and that in any suit instituted against the **Insurer** upon this contract, the **Insurer** will abide by the final decision of such court or of any appellate court in the event of any appeal.

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

18. REPRESENTATIONS AND SEVERABILITY

In granting coverage under this Policy, it is agreed that the **Insurer** has relied upon the statements and representations contained in the **Application** for this Policy as being accurate and complete in all material respects. All such statements and representations are the basis of this Policy and are to be considered as incorporated into this Policy.

The **Insureds** agree that in the event that the particulars and statements contained in the **Application** are not accurate and complete and materially affect either the acceptance of the risk or the hazard assumed by the **Insurer** under the Policy and there is a **Claim** based upon or arising out of such particulars or statements, then no coverage shall be afforded under this Policy for such **Claim** with respect to any **Individual Insured** who had actual knowledge as of the inception date of the **Policy Period** that the material facts were not accurately and completely disclosed in the **Application** and only to the extent it was made with the intent to deceive the **Insurer**. Such aforesaid knowledge possessed by any **Insured** shall not be imputed to any other **Insured**.

The **Insurer** shall not be entitled under any circumstances to rescind coverage under this Policy with respect to any **Insured**, but such coverage will be subject to all other terms, conditions and exclusions of this Policy.

It is understood and agreed that this Clause 18. REPRESENTATIONS AND SEVERABILITY supersedes any inconsistent language contained in the **Application**.

19. FIRST DOLLAR E-DISCOVERY CONSULTANT SERVICES

For any **Claim**, no Retention shall apply to the first \$25,000 in **Defense Costs** incurred for **E-Discovery Consultant Services**.

The list of pre-approved e-discovery consulting firms ("**E-Consultant Firms**") is accessible through the online directory at <http://www.aig.com/us/panelcounseldirectory> under the "e-Consultant Panel Members" link. The list provides the **Insureds** with a choice of firms from which a selection of an **E-Consultant Firm** shall be made. Any **E-Consultant Firm** may be hired by an **Insured** to perform **E-Discovery Consultant Services** without further approval by the **Insurer**.

20. HEADINGS

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

**Directors, Officers and Private Company Liability Insurance
("D&O COVERAGE SECTION")**

Notice: Pursuant to Clause 1 of the General Terms and Conditions, the General Terms and Conditions are incorporated by reference into, made a part of, and are expressly applicable to this D&O Coverage Section, unless otherwise explicitly stated to the contrary in either the General Terms and Conditions or in this D&O Coverage Section. This is a Claims Made Coverage Section with Defense Costs included in the Designated Separate Limit of Liability or the Designated Shared Limit of Liability.

In consideration of the payment of the premium, and in reliance upon the statements made to the Insurer by Application, which forms a part of this Policy, the Insurer agrees as follows:

1. INSURING AGREEMENTS

With respect to Coverage A, B, D, E and F and the Defense Provisions, solely with respect to Claims first made during the Policy Period or the Discovery Period (if applicable) and reported to the Insurer pursuant to the terms of this Policy, and subject to the other terms, conditions and limitations of this Policy, this D&O Coverage Section affords the following coverage:

COVERAGE A: INDIVIDUAL INSURED INSURANCE

This D&O Coverage Section shall pay the Loss of an Individual Insured arising from a Claim made against such Individual Insured for any Wrongful Act of such Individual Insured, except when and to the extent that the Company has indemnified such Individual Insured. Payment of Defense shall be made in accordance with and subject to Clause 7 of this D&O Coverage Section..

COVERAGE B: PRIVATE COMPANY INSURANCE

This D&O Coverage Section shall pay the Loss of the Company arising from a:

- (i) Claim made against the Company; or
- (ii) Claim made against an Individual Insured;

for any Wrongful Act, but, in the case of Coverage B(ii) above, only when and to the extent that the Company has indemnified the Individual Insured for such Loss. The Insurer shall, in accordance with and subject to Clause 7 of this D&O Coverage Section, advance Defense Costs of such Claim prior to its final disposition.

COVERAGE C: CRISISFUND. INSURANCE

This D&O Coverage Section shall pay the Crisis Management Loss of a Company solely with respect to a Crisis Management Event occurring during the Policy Period or the Discovery Period (if applicable) and reported to the Insurer pursuant to the terms of this Policy, up to the amount of the Crisis Management Fund; provided that payment of any Crisis Management Loss under this D&O Coverage Section shall not waive any of the Insurer's rights under this D&O Coverage Section or at law. This Coverage C shall apply regardless of whether a Claim is ever made against an Insured arising from such Crisis Management Event and, in the case where a Claim is made, regardless of whether the amount is incurred prior to or subsequent to the Claim being first made.

COVERAGE D: COSTS OF INVESTIGATION FOR DERIVATIVE DEMAND

This D&O Coverage Section shall pay the Costs of Investigation of the Company arising from a Company Shareholder Derivative Investigation in response to a Derivative Demand up to the amount set forth in Item 5 of the Declarations as amended by Item 3(b) of each Program Participants Endorsement. Payment of Costs of Investigation to a Company shall be made in accordance with and subject to Clause 7 of this D&O Coverage Section.

COVERAGE E: CONTRACT CLAIM DEFENSE COSTS COVERAGE

This D&O Coverage Section shall pay the Defense Costs of a Company arising from a Contract Claim up to the amount set forth in Item 3(e) of each Program Participants Endorsement. Payment of Defense Costs to a Company shall be made in accordance with and subject to Clause 7 of this D&O Coverage Section.

COVERAGE F: PRE-CLAIM INQUIRY COSTS FOR PRE-CLAIM INQUIRY

- (a) This policy shall pay the Loss of any Individual Insured arising from a Pre-Claim Inquiry first received by such Individual Insured during the Policy Period or any applicable Discovery Period, to the extent that such Loss is either Pre-Claim Inquiry Costs or Liberty Protection Costs; except when and to the extent that an Company has indemnified such Individual Insured; and
- (b) This policy shall pay the Loss of a Company arising from a Pre-Claim Inquiry first received by such Individual Insured during the Policy Period or any applicable Discovery Period, to the extent that such Loss is either Pre-Claim Inquiry Costs or Liberty Protection Costs, but only to the extent that such Company has indemnified such Individual Insured.

DEFENSE PROVISIONS

The Insurer does not assume any duty to defend. The Insurer shall advance Defense Costs of such Claim, excess of the applicable Retention amount, on a current basis and, in any event, no later than sixty (60) days after the receipt of invoices of such Defense Costs. Selection of counsel to defend a Securities Claim shall be made in accordance with Clause 9 of this D&O Coverage Section.

With respect to Coverage D above, it shall be the duty of the Company and not the duty of the Insurer to conduct, investigate and evaluate any Company Shareholder Derivative Investigation against its own Executives; *provided, however,* that the Insurer shall be entitled to effectively associate in the investigation and evaluation of, and the negotiation of any settlement of, any such Company Shareholder Derivative Investigation.

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, a Company; or
 - (ii) any person or entity that directly, or indirectly through one or more intermediaries, is a successor in interest to another person or entity.

- (b) "**Asset Protection Costs**" means reasonable fees, costs and expenses consented to by the **Insurer** incurred by an **Executive** of a **Company** to oppose any efforts by an **Enforcement Body** to seize or otherwise enjoin the personal assets or real property of such **Executive** or to obtain the discharge or revocation of a court order entered during the **Policy Period** in any way impairing the use thereof.
- (c) "**Company Shareholder Derivative Investigation**" means the investigation by the **Company** or, on behalf of the **Company** by its board of directors (or the equivalent management body) or any committee of the board of directors (or the equivalent management body), as to whether or not the **Company** should bring the civil proceeding demanded in a **Derivative Demand**.
- (d) "**Contract Claim**" means any **Claim** for any actual or alleged contractual liability of the **Company** under any express written contract or agreement.
- (e) "**Controlling Person**" means any **Individual Insured** who, directly or indirectly:
 - (i) holds a ten percent (10%) or greater equity or debt ownership interest in a **Company**; or
 - (ii) controls a **Company** within the meaning of Section 15 of the Securities Act of 1933, as amended, or Section 20 of the Securities Act of 1934, as amended, or under common law or under any other applicable statute, rule, regulation or law.
- (f) "**Costs of Investigation**" means all reasonable costs, charges, fees and expenses consented to by the **Insurer** (including but not limited to attorney's fees and expert's fees but not including any settlement, judgment or damages and not including any compensation or fees of any **Individual Insured**) incurred by the **Company** or its board of directors (or any equivalent management body), or any committee of the board of directors (or any equivalent management body), solely in connection with a **Company Shareholder Derivative Investigation**.
- (g) "**Crisis Management Event**" means **Crisis Management Event**, as that term is defined in Appendix D attached to this Policy.
- (h) "**Crisis Management Fund**" means the dollar amount set forth in Item 5 of the Declarations as amended by Item 3(a) of each **Program Participants**.
- (i) "**Crisis Management Loss**" means **Crisis Management Loss**, as that term is defined in Appendix D attached to this Policy.
- (j) "**Crisis Management Services**" means **Crisis Management Services**, as that term is defined in Appendix D attached to this Policy.
- (k) "**Derivative Demand**" means a written demand by shareholders or creditors upon the board of directors (or equivalent management body) of a **Company** requesting that it file, on behalf of the **Company**, a civil proceeding in a court of law against any **Executive** of the **Company** for a **Wrongful Act** of such **Executive** in order to obtain relief from damages arising out of such **Wrongful Acts**.
- (l) "**Derivative Investigation**" means after receipt by any **Insured** of a **Claim** that is either a derivative lawsuit or a **Derivative Demand**, any investigation conducted by the **Company**, or on behalf of the **Company** by its board of directors (or the equivalent management body) or any committee of the board of directors (or equivalent management body), as to how the Organization should respond.

- (m) **"Employed Lawyer"** means any employee of the **Company** if and to the extent such employee is, or during the course of such person's employment was:
- (i) admitted to practice law; and
 - (ii) employed, or was employed, at the time of the alleged **Wrongful Act**, within the **Company's** office of general counsel or its functional equivalent for the purpose of providing legal services to or for the benefit of the **Company**.
- (n) **"Enforcement Body"** means:
- (i) any federal, state, local or foreign law enforcement authority or other governmental investigation authority (including, but not limited to, the U.S. Department of Justice, the U.S. Securities and Exchange Commission and any attorney general), or
 - (ii) the enforcement unit of any securities or commodities exchange or other self-regulatory organization.
- (o) **"Extradition"** means any formal process by which an **Individual Insured** located in any country is surrendered to any other country for trial or otherwise to answer any criminal accusation.
- (p) **"Extradition Costs"** means reasonable fees, costs and expenses incurred through legal counsel and consented to by the **Insurer** resulting from an **Individual Insured** lawfully (a) opposing, challenging, resisting or defending against any request for any effort to obtain the **Extradition** of that **Individual Insured**, or (b) appealing any order or other grant of **Extradition** of that **Individual Insured**.
- (q) **"Individual Insured"** means any:
- (i) **Executive of a Company;**
 - (ii) **Employee of a Company;**
 - (iii) **Controlling Person;** or
 - (iv) **Outside Entity Executive.**
- (r) **"Insured"** means:
- (i) an **Individual Insured;** or
 - (ii) a **Company**.
- (s) **"Liberty Protection Costs"** means:
- (i) reasonable fees, costs and expenses consented to by the **Insurer** and incurred by an **Individual Insured** in order for an **Individual Insured** to lawfully seek the release of the **Individual Insured** from any pre-**Claim** arrest or confinement to a (a) specified residence or (b) secure custodial premises operated by or on behalf of any law enforcement authority; or
 - (ii) reasonable premiums (but not collateral) consented to by the **Insurer** and incurred by an **Individual Insured** for a bond or other financial instrument to guarantee the contingent obligation of the **Individual Insured** for a specified amount required by a court that are incurred or required outside the United States of America during the **Policy Period**, if such premiums: (a) arise out of an actual or alleged **Wrongful Act**, or (b) are incurred solely by reason of such **Individual Insured's** status as an **Executive** or **Employee** of a **Company**.

- (t) **"Local Policy"** means any **Foreign Policy** issued to a **Company** in a **Foreign Jurisdiction** in order to comply with laws of such **Foreign Jurisdiction**.
- (u) **"Loss"** means damages, judgments, settlements, pre-judgment and post-judgment interest, **Crisis Management Loss and Defense Costs**; *provided, however, Loss, other than **Defense Costs**, shall not include:*
- (i) civil or criminal fines or penalties deemed uninsurable by law pursuant to which this Policy shall be construed other than civil penalties assessed against any individual director or officer pursuant to Sections 2(g)(2)(B) of the Foreign Corrupt Practices Act, 15 U.S.C. ' 78dd - 2(g)(2)(B);
 - (ii) taxes; or
 - (iii) any amounts for which an **Insured** is not financially liable or which are without legal recourse to an **Insured**; or
 - (iv) amounts which may be deemed uninsurable under the law pursuant to which this Policy shall be construed including, without limitation, any disgorgement or payment of ill gotten gains, or any other monies to which an **Insured** was not legally entitled, as established by final adjudication (notwithstanding the foregoing, the Insurer shall not assert that a **Claim** alleging violations of Section 11, 12, 15 or 17 of the Securities Act of 1933, as amended, constitutes uninsurable loss under this Policy);

Loss shall also mean the following items, provided that they arise out of a **Claim**:

- (1) **SOX 304 Costs**;
- (2) **Extradition Costs**;
- (3) **UK Corporate Manslaughter Act Defense Costs**;
- (4) **Personal Reputation Expenses**, subject to \$100,000 per **Executive** and a \$1,000,000 aggregate sublimit of liability; and
- (5) **Asset Protection Costs**, subject to \$50,000 per **Executive** and a \$500,000 aggregate sublimit of liability.

Defense Costs shall be provided for items specifically excluded from **Loss** pursuant to subparagraphs (u)(i) through (u)(iv) above of this Definition, subject to the other terms, conditions and exclusions of this Policy. *Provided, however,* that the Insurer shall not assert that in a **Claim** alleging violation of Section 11, 12, 15 or 17 of the Securities Act of 1933, as amended, the portion of any amounts incurred by **Insureds** which are attributable to such violations constitutes uninsurable loss and shall treat that portion of all settlements, judgments, and **Defense Costs** as constituting **Loss** under this Policy.

Loss shall specifically include, subject to the other terms, conditions and exclusions of this **D&O Coverage Section**, including, but not limited to, exclusions 4(a), 4(b) and 4(c) of this **D&O Coverage Section**, punitive, exemplary and multiple damages where insurable by law. The enforceability of the first sentence of this paragraph shall be governed by such applicable law which most favors coverage for punitive, exemplary and multiple damages.

Loss shall also include any reasonable fees and expenses of any attorney representing any party who has brought a **Claim** against any **Insured** where such fees and expenses are awarded pursuant to a covered judgment against an **Insured** or a covered settlement (consented to by the **Insurer**, which consent shall not be unreasonably withheld or denied) to which an **Insured** is a party.

Whether an **Insured** has incurred **Loss** under this Policy shall be determined without regard to any indemnification that may be available to such **Insured** from the **Insured's Representative** or any affiliate or subsidiary thereof that is not a **Company** and without regard to any other insurance coverage that may be available to such **Insured** under any insurance policy issued to any **Insured's Representative** or any affiliate or subsidiary thereof that is not a **Company**.

- (v) "**Personal Reputation Crisis**" means any negative statement that is included in any press release or published by any print or electronic media outlet regarding an **Executive** of a **Company** made during the **Policy Period** by any individual authorized to speak on behalf of an **Enforcement Body**.
- (w) "**Personal Reputation Expenses**" means reasonable fees, costs and expenses of a **Crisis Management Firm** (as defined in the CrisisFund Appendix, attached to this policy) retained within thirty (30) days of a **Personal Reputation Crisis** solely and exclusively by an **Executive** to mitigate the adverse effects specifically to such **Executive's** reputation from a **Personal Reputation Crisis**. **Personal Reputation Expenses** shall not include any fees, costs, or expenses of any **Crisis Firm** incurred by an **Executive** if such **Crisis Firm** is also retained by or on behalf of a **Company**.
- (x) "**Pre-Claim Inquiry**" means any pre- **Claim**:
 - (i) verifiable request for an **Individual Insured** of any Organization: (a) to appear at a meeting or interview; or (b) produce documents that, in either case, concerns the business of that Organization or that **Individual Insured's** insured capacities, but only if the request came from any:
 - (1) **Enforcement Body**; or
 - (2) **Company**, or, on behalf of a **Company**, by its board of directors (or the equivalent management body) or any committee of the board of directors (or the equivalent management body):
 - (A) arising out of an inquiry or investigation by an **Enforcement Body** concerning the business of that **Company** or that **Individual Insured's** insured capacities; or
 - (B) as part of its **Derivative Investigation**; and
 - (ii) arrest or confinement of an **Executive** of a **Company** to a: (a) specified residence; or (b) secure custodial premises operated by or on behalf of an **Enforcement Body**, in connection with the business of any **Company** or an **Individual Insured's** capacity as an **Executive** or **Employee** of a **Company**.

"**Pre-Claim Inquiry**" shall not include any routine or regularly scheduled regulatory or internal supervision, inspection, compliance, review, examination, production or audit, including any request for mandatory information from a regulated entity, conducted in a **Company's** and/or **Enforcement Body's** normal review or compliance process.

- (y) **"Pre-Claim Inquiry Costs"** means:
- (i) with respect to any **Pre-Claim Inquiry** as defined in subparagraph (1) of the Definition of such term, the reasonable pre-Claim fees, costs and expenses consented to by the Insurer and incurred by an **Individual Insured** solely in connection with his/her preparation for and response to a **Pre-Claim Inquiry** directed to such **Individual Insured**, including attendance at an interview or meeting requested by an **Enforcement Body**, but excluding (i) any compensation of any **Individual Insured**; and (ii) the costs of complying with any formal or informal discovery or other request seeking documents, records or electronic information in the possession or control of a **Company**, the requestor or any other third party; and
 - (ii) with respect to any **Pre-Claim Inquiry** as defined in subparagraph (2) of the Definition of such term, any **Liberty Protection Costs**.
- (z) **"Securities Claim"** means a **Claim** made against any **Insured** and brought anywhere in the world:
- (i) alleging a violation of any federal, state, local or foreign regulation, rule or statute regulating securities (as defined in the Securities Act of 1933) or common law, including, but not limited to, the purchase or sale, or offer or solicitation of an offer to purchase or sell securities which is:
 - (1) brought by, on behalf of, or in the right of any person or entity alleging, arising out of, based upon or attributable to the purchase or sale, or offer or solicitation of an offer to purchase or sell, any securities (as defined in the Securities Act of 1933) of a **Company**; or
 - (2) brought by, on behalf of, or in the right of a security holder, purchaser or seller of securities of a **Company** with respect to such security holder's, purchaser's or seller's interest in securities (as defined in the Securities Act of 1933) of such **Company**; or
 - (ii) brought derivatively on the behalf of a **Company** by a security holder, purchaser or seller of such **Company**.
 - (iii) which is brought by or on behalf of one or more securities holders of a **Company** in their capacity as such; or
 - (iv) which arises from the purchase or sale of, or offer to purchase or sell, any securities (as defined in the Securities Act of 1933) issued by a **Company**, whether such purchase, sale or offer involves a transaction with a **Company** or occurs in the open market.

The term **"Securities Claim"** shall include an administrative or regulatory proceeding against a **Company**.

- (aa) **"SOX 304 Costs"** means reasonable fees, costs and expenses consented to by the **Insurer** (including the premium or origination fee for a loan or bond) and incurred by the chief executive officer or chief financial officer of the **Named Entity** solely to facilitate the return of amounts required to be repaid by such **Executive** pursuant to Section 304(a) of the Sarbanes Oxley Act of 2002. **SOX 304 Costs** do not include the payment, return, reimbursement, disgorgement or restitution of any such amounts requested or required to be repaid by such **Executive** pursuant to Section 304(a).

- (bb) "**UK Corporate Manslaughter Act Defense Costs**" means **Defense Costs** incurred by an **Individual Insured** that result solely from the investigation, adjustment, defense and/or appeal of a **Claim** against a **Company** for violation of the United Kingdom Corporate Manslaughter and Corporate Homicide Act of 2007 or any similar statute in any jurisdiction.
- (cc) "**Written Sale Agreement**" means any purchase or sale agreement, plan of merger document, asset sale agreement or other similar document.
- (dd) "**Wrongful Act**" means:
- (i) with respect to any **Executive** or **Employee** of a **Company**, any actual or alleged act, breach of duty, neglect, error, statement, misstatement, misleading statement, or omission by such **Executive** or **Employee** in their respective capacities as such, or any matter claimed against such **Executive** or **Employee** of a **Company** by reason of his or her status as an **Executive** or **Employee** of a **Company**;
 - (ii) with respect to a **Company**, any actual or alleged act, breach of duty, neglect, error, statement, misstatement, misleading statement, or omission by a **Company**;
 - (iii) with respect to any **Outside Entity Executive**, any actual or alleged act, breach of duty, neglect, error, statement, misstatement, misleading statement, or omission by such **Outside Entity Executive** in his or her capacity as such or any matter claimed against such **Outside Entity Executive** by reason of his or her status as such; or
 - (iv) with respect to any **Controlling Person**, any actual or alleged act, or other duty, neglect, error, statement, misstatement, misleading statement, or omission, by such **Controlling Person** in his or her capacity as such, or any matter claimed against such **Controlling Person** solely by reason of his or her status as a **Controlling Person**, but solely to the extent that a **Company** indemnifies such **Controlling Person**.

3. **WORLDWIDE EXTENSION**

Where legally permissible, this Policy shall apply to any **Claim** made against any **Insured** anywhere in the world.

For **Claims** made and maintained in a **Foreign Jurisdiction** against a **Company** formed and operating in such **Foreign Jurisdiction** or an **Individual Insured** thereof for **Wrongful Acts** committed in such **Foreign Jurisdiction**, the **Insurer** shall apply to such **Claims** those terms and conditions (and related provisions) of the relevant **Foreign Policy**, if any, in the **Foreign Jurisdiction** that are more favorable to such **Insured** in the **Foreign Jurisdiction** than the terms and conditions of this Policy; *provided however*, that this paragraph shall apply only to provisions more favorable by virtue of insuring clauses, extensions, definitions, exclusions, pre-authorized securities or other defense counsel, discovery or extended reporting period, notice and authority, dispute resolution process or order of payments provisions, if any, of the **Foreign Policy** when compared to the same or similar clauses of this **D&O Coverage Section**. This paragraph shall not apply to excess provisions or policy provisions that address non-renewal, duty to defend, defense within or without limits, taxes, claims made and reported provisions or any other provision of this policy intended to govern coverage worldwide.

All premiums, limits, retentions, **Loss** and other amounts under this **D&O Coverage Section** 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 **D&O Coverage Section** (subject to the terms, conditions and limitations of this **D&O Coverage Section**) will be made either in such other currency (at the option of the particular **Named Entity** and if agreeable to the **Insurer**) 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).

It is hereby understood and agreed that with respect to any **Claim** covered under any **Local Policy**, this Policy shall, subject to the terms and conditions of this Policy, pay such **Claim** if and when the **Claim** is not covered under such **Local Policy** or would have been covered but for the erosion of such **Local Policy's** limit of liability.

Notwithstanding the foregoing, in the event of a **Claim** otherwise covered under both this Policy and a **Local Policy**, coverage under the **Local Policy** shall prevail. With respect to a **Claim** for which coverage is provided by this Policy and which is partially covered by a **Local Policy** there shall be no applicable retention to such **Claim** sustained by the **Insured** under this Policy.

4. EXCLUSIONS

Solely with respect to this **D&O Coverage Section**, the **Insurer** shall not be liable to make any payment for that portion of **Loss** in connection with that portion of any **Claim** made against an **Insured**:

- (a) arising out of, based upon or attributable to the gaining of any personal profit or financial advantage to which a final non-appealable adjudication adverse to such **Insured** in the underlying action establishes that the **Insured** was not legally entitled; *provided, however*, this exclusion shall not apply to any **Defense Costs** incurred prior to such final non-appealable adjudication;
- (b) arising out of, based upon or attributable to the payment to such **Insured** of any remuneration without the previous approval of the stockholders of the **Company**, if a final non-appealable adjudication adverse to such **Insured** in the underlying action establishes such payment without such previous approval was illegal; *provided, however*, this exclusion shall not apply to any **Defense Costs** incurred prior to such final non-appealable adjudication;
- (c) arising out of, based upon or attributable to the committing of any deliberate criminal or deliberate fraudulent act if a final non-appealable adjudication adverse to the **Insured** in the underlying action establishes that such deliberate criminal or deliberate fraudulent act committed by the **Insured**; *provided, however*, this exclusion shall not apply to any **Defense Costs** incurred prior to such final non-appealable adjudication;

provided, however:

- (i) EXCLUSIONS (a), (b), and (c) shall not apply to any **Claim** alleging violations of Section 11, 12 or 15 of the Securities Act of 1933 as amended to the portion of any **Loss** attributable to such violations; or

- (ii) with respect to **EXCLUSION (b)**, for acts or omissions which are treated as a criminal violation in a **Foreign Jurisdiction** that are not treated as a criminal violation in the United States of America, the imposition of a criminal fine or other criminal sanction in such **Foreign Jurisdiction** will not, by itself, be conclusive proof that a deliberate criminal or deliberate fraudulent act occurred.
- (d) alleging, arising out of, based upon or attributable to the facts alleged, or to the same or **Related Wrongful Act(s)** 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 **D&O Coverage Section** is a renewal or replacement of in whole or in part or which it may succeed in time; *provided, however*, that this exclusion shall not apply if a notice of circumstance was rejected for lack of specificity under the prior program;
- (e) alleging, arising out of, based upon or attributable to, as of the **Continuity Date**, any pending or prior:
 - (i) litigation against an **Insured**; or
 - (ii) administrative or regulatory proceeding against or investigation of an **Insured**,
of which the **Insured** had notice as of the inception date of the **Policy Period**, or alleging any **Wrongful Act** which is the same or **Related Wrongful Act(s)** to that alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation;
- (f) with respect to an **Outside Entity Executive**, for any **Wrongful Act** occurring prior to the **Continuity Date** if any **Insured**, as of such **Continuity Date**, knew that such **Wrongful Act** would lead to a **Claim** under this **D&O Coverage Section**.
- (g) 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 an **Executive, Employed Lawyer, Controlling Person or Employee** of a **Company**, or as an **Outside Entity Executive** of an **Outside Entity**;
- (h) for any **Wrongful Act** arising out of an **Individual Insured** serving in a capacity as an **Outside Entity Executive** of an **Outside Entity** if such **Claim** is brought by the **Outside Entity** or any **Executive** thereof; or which is brought by any security holder of the **Outside Entity**, whether directly or derivatively, unless such security holder's **Claim** is instigated and continued independent of, and without the solicitation of, or assistance of, or active participation of, or intervention of the **Outside Entity**, the **Company**, or any **Executive** of the **Outside Entity** or the **Company**; *provided, however*, this exclusion shall not apply to:
 - (i) any **Claim** brought by an **Executive** of an **Outside Entity** in the form of a cross-claim or third-party claim for contribution or indemnity which is part of and results directly from a **Claim** that is covered by this **D&O Coverage Section**;
 - (ii) in any bankruptcy, insolvency, or liquidation proceeding by or against an **Outside Entity**, any **Claim** brought by the examiner, trustee, trust, receiver, liquidator, rehabilitator, conservator, creditors' committee or any comparable authority (or any assignee thereof) of such **Outside Entity**, if any, or the debtor-in-possession;

- (iii) any **Claim** brought by any former **Executive** of an **Outside Entity** who has not served in such position for an **Outside Entity** for at least two (2) years prior to such **Claim** being first made against any person;
 - (iv) any **Claim** brought by an **Executive** of an **Outside Entity** formed and operating in a **Foreign Jurisdiction** against any **Outside Entity Executive** of such **Outside Entity**, provided that such **Claim** is brought and maintained outside the United States, Canada or any other common law country (including any territories thereof);
 - (v) any **Claim** brought by such **Outside Entity** or any **Executive** thereof if failure to make such **Claim** reasonably could result in liability to the **Insured** for failure to do so;
 - (vi) any **Claim** brought by or with the assistance, participation, solicitation or intervention of one particular **Named Entity** listed in a **Program Participants Endorsement** or by or with the assistance, participation, solicitation or intervention of a **Subsidiary** or **Insured** thereof, against a different respective **Named Entity** listed in a **Program Participants Endorsement**, or a **Subsidiary** or **Insured** of such different respective **Named Entity**, so long as such **Claim** is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of **Insured's Representative**, and/or any director, officer, partner, management committee members or members of the Board of Managers of **Insured's Representative**.
- (i) which is brought by or on behalf of a **Company** or any **Executive** of a **Company**; or which is brought by any security holder, creditor or other interest holder of the **Company** (other than an **Employee** security holder), whether directly or derivatively, unless such security holder's, creditor's or other interest holder's **Claim** is instigated and continued independent of, and without the active solicitation, active assistance, or active participation of, or intervention of, any **Company** or any **Executive** of a **Company**; *provided, however*, this exclusion shall not apply to:
- (i) any **Claim** brought by an **Individual Insured** in the form of a cross-claim or third-party claim for contribution or indemnity which is part of and results directly from a **Claim** which is covered by this policy;
 - (ii) in any bankruptcy, insolvency, or liquidation proceedings brought by or against a **Company**, any **Claim** brought by the examiner, trustee, trust, receiver, liquidator, rehabilitator, conservator, creditors' committee or any comparable authority (or any assignee thereof) of such **Company**, if any, or the debtor-in-possession;
 - (iii) any **Claim** brought by any former **Executive** of a **Company** who has not served in such capacity for a **Company** for at least two (2) years prior to such **Claim** being first made against any person;
 - (iv) any **Claim** brought and maintained outside the United States, Canada or any other common law country (including any territories thereof);

- (v) any **Claim** brought by or with the assistance, participation, solicitation or intervention of one particular **Named Entity** listed in a **Program Participants Endorsement** or by or with the assistance, participation, solicitation or intervention of a **Subsidiary** or **Insured** thereof, against a different respective **Named Entity** listed in a **Program Participants Endorsement**, or a **Subsidiary** or **Insured** of such different respective **Named Entity**, so long as such **Claim** is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of the **Insured's Representative** and/or any director, officer, partner, management committee members or members of the Board of Managers of the **Insured's Representative**;
- (vi) any **Claim** against any **Employed Lawyer**;
- (vii) any **Defense Costs** which constitute **Non-Indemnifiable Loss** incurred by any **Individual Insured** in defending any **Claim** against that **Individual Insured**;
- (viii) any **Claim** brought by or with the solicitation, assistance, participation or intervention of an **Individual Insured** who is engaging in any protected activity specified in 18 U.S.C. 1514A(a) ("whistleblower" protection pursuant to the Sarbanes-Oxley Act of 2002), the Dodd Frank Act or any other protected activity specified in any other "whistleblower" protection pursuant to any state, local or foreign laws;
- (j) alleging, arising out of, based upon or attributable to any public offering of equity securities by a **Company**, an **Outside Entity** or an **Affiliate** or alleging a purchase or sale of such equity securities subsequent to such public equity securities offering; *provided, however*, this exclusion will not apply to:
 - (i) any purchase or sale of equity securities exempted pursuant to Section 3(b) of the Securities Act of 1933. Coverage for such purchase or sale transaction shall not be conditioned upon payment of any additional premium;
 - (ii) any public offering of equity securities (other than a public equity securities offering described in subparagraph 4(j)(i) above), as well as any purchase or sale of such equity securities subsequent to such public equity securities offering, in the event that within thirty (30) days prior to the effective time of such public equity securities offering:
 - (1) the particular **Named Entity** shall give the **Insurer** written notice of such public equity securities offering together with full particulars and underwriting information required thereto; and
 - (2) the particular **Named Entity** accepts such terms, conditions and additional premium required by the **Insurer** for such coverage. Such coverage is also subject to the particular **Named Entity** paying when due any such additional premium. In the event the **Company** gives written notice with full particulars and underwriting information pursuant to subpart 4(j)(ii)(1) above, then the **Insurer** must offer a quote for coverage under this paragraph;

- (iii) any **Claim for Loss** alleging a **Wrongful Act** which occurred during the **Insured's** preparations to commence an initial public offering ("**IPO**"), including but not limited to any failed offering, and which occurred at any time prior to **12:01 a.m.** on the date the initial public offering commences ("**IPO Effective Time**"), including any **Claim for Loss** alleging a **Wrongful Act** which occurred during the road show; *provided, however* that the coverage otherwise afforded under this subparagraph (iii) shall be deemed to be void *ab initio* effective the **IPO Effective Time**; *provided further, however*, that coverage shall not be deemed void *ab initio* if:
 - (1) the **Claim** is first made and reported pursuant to Clause 7(a) of the **General Terms and Conditions** prior to the **IPO Effective Time**, and
 - (2) a public company D&O policy does not provide coverage for such **Claim**;
- (iv) any purchase or sale or offer or solicitation of an offer to purchase or sell any securities made pursuant to any exemption under the Securities Act of 1933, including but not limited to any purchase or sale made pursuant to Regulation D or Regulation S under the Securities Act of 1933; or
- (v) any public offering of debt securities, including any purchase or sale of such debt subsequent to such public debt securities offering;
- (k) alleging, arising out of, based upon or attributable to the purchase by a **Company** of securities of a "**Publicly Traded Entity**" (as defined below) in a transaction which resulted in such entity becoming an **Affiliate** or a **Subsidiary** of a **Company** (herein, a "**Public Company Acquisition**"); *provided, however*, this exclusion shall not apply:
 - (i) to any **Public Company Acquisition** in which:
 - (1) the **Publicly Traded Entity** has a total asset value of less than 50% of the total assets value of the respective **Named Entity**; and
 - (2) the securities of the **Publicly Traded Entity** are no longer publicly traded after the acquisition; or
 - (ii) to any **Public Company Acquisition** not described in subparagraph (1) above, if within thirty (30) days prior to it becoming an **Affiliate** or **Subsidiary**, the respective **Named Entity** or **Insureds' Representative** gives written notice of the transaction to the **Insurer** together with full particulars and underwriting information required and agrees to any additional premium or amendment of the provisions of this **D&O Coverage Section** required by the **Insurer** relating to the transaction. Further, coverage as shall be afforded to the transaction is conditioned upon the respective **Named Entity** paying when due any additional premium required by the **Insurer** relating to the transaction.

An entity is a **Publicly Traded Entity** if any securities of such entity have previously been subject to a public offering;

- (l) for bodily injury, sickness, disease or death of any person, or damage to, loss of use of or destruction of any tangible property; *provided, however*, this exclusion shall not apply to any **Securities Claim** or **UK Corporate Manslaughter Act Defense Costs**;
- (m) for emotional distress or mental anguish, or for injury from libel or slander, or defamation or disparagement, or for injury from a violation of a person's right of privacy; *provided, however*, this exclusion shall not apply to any **Securities Claim**;
- (n) for: (i) any actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants**; or (ii) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**; *provided, however*, this exclusion shall not apply to:
 - (1) **Non-Indemnifiable Loss**, other than **Non-Indemnifiable Loss** constituting **Cleanup Costs**; or
 - (2) **Loss** in connection with a **Securities Claim**, other than **Loss** constituting **Clean-up Costs**;
- (o) for violation(s) of any of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act (except the Equal Pay Act), the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, any rules or regulations of the foregoing promulgated thereunder, and amendments thereto or any similar federal, state, local or foreign statutory law or common law;

It is acknowledged that **Claims** for violation(s) of any of the responsibilities, obligations or duties imposed by "similar federal, state, local or foreign statutory law or common law," as such quoted language is used in the immediately-preceding paragraph, including without limitation, any and all **Claims** which in whole or in part allege, arise out of, are based upon, are attributable to, or are in any way related to any of the circumstances described in any of the following:

- (i) the refusal, failure or inability of any **Insured(s)** 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(s)** from any **Employee(s)** or purported **Employee(s)**; or
- (iii) failure to provide or enforce legally required meal or rest break periods;

provided, however, this exclusion shall not apply to:

- (1) any **Securities Claim**;
 - (2) the extent any **Claim** alleges personal liability of an **Executive** in which case, **Defense Costs** shall be available.
- (p) for any **Wrongful Act(s)** of a particular **Named Entity**, or any **Insured** thereof, which occurred prior to the applicable **Prior Acts Date** for such **Named Entity** as set forth in the respective **Program Participants Endorsement**;

Notwithstanding the foregoing, this Exclusion (p) shall not apply to any **Company**, or its respective **Individual Insureds**, formed prior to the **Prior Acts Date** for the purpose of facilitating the acquisition of another **Company**; provided, further, that the **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured** alleging any **Wrongful Act** occurring prior to the **Prior Acts Date** if any **Insured** knew that such **Wrongful Act** would lead to a **Claim** under this policy.

- (q) with respect to Coverage B(i) only:
- (i) for any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, trade secret or any other intellectual property rights; *provided, however*, this exclusion shall not apply to any **Securities Claim**;
 - (ii) alleging, arising out of, based upon, or attributable to any **Employment Practices Violations** and/or any **Third Party Violations** (as such terms are defined in the **EPL Coverage Section**); or
 - (iii) for any actual or alleged contractual liability of the **Company** under any express written contract or agreement; *provided, however*, this exclusion shall not apply to any:
 - (1) **Written Sale Agreement**;
 - (2) **Contract Claim Defense Costs Coverage**;
 - (3) **Securities Claim**; or
 - (4) liability which would have attached in the absence of such express contract or agreement.

For the purpose of determining the applicability of the foregoing Exclusions the facts pertaining to and knowledge possessed by any **Insured** shall not be imputed to any other **Insured**.

Notwithstanding the foregoing, except for paragraph (d) of this Clause 4, **EXCLUSIONS**, this Clause 4. **EXCLUSIONS** shall not apply to any **Pre-Claim Inquiry Costs** in connection with a **Pre-Claim Inquiry**.

This Clause 4. **EXCLUSIONS** shall not be applicable to **Crisis Management Loss**.

5. **LIMIT OF LIABILITY**

The following provisions shall apply in addition to the provisions of Clause 4. of the **General Terms and Conditions**:

CRISISFUND. INSURANCE

The maximum limit of the **Insurer's liability** for all **Crisis Management Loss** arising from all **Crisis Management Events** occurring during the **Policy Period** or the **Discovery Period** (if applicable), in the aggregate, shall be the amount set forth in Item 3(a) of each **Program Participants Endorsement** as the **Crisis Management Fund**. This **Crisis Management Fund** shall be the maximum limit of the **Insurer** under this **D&O Coverage Section** for **Crisis Management Loss**, regardless of the number of **Crisis Management Events** occurring during the **Policy Period**; *provided, however*, the **Crisis Management Fund** shall be part of and not in addition to the **Designated Policy Aggregate Limit of Liability** stated in Item 2 of each **Program Participants Endorsement** and any **Designated Separate Limit of Liability** or **Designated Shared Limit of Liability** applicable to this **D&O Coverage Section** as set forth in Item 2 of each **Program Participants Endorsement**.

SIDE A EXCESS LIMIT OF LIABILITY

The **Side A Excess Limit of Liability** shall be the amount set forth in Item 3(f) of each **Program Participants Endorsement** and is the aggregate limit of the **Insurer's liability** under this **D&O Coverage Section** excess of:

- (i) any **Designated Separate Limit of Liability** or **Designated Shared Limit of Liability** applicable to this **D&O Coverage Section**; and
- (ii) any coverage for **Loss** (whether or not **Non-Indemnifiable Loss**) under any policy of insurance specifically written as excess over any **Designated Separate Limit of Liability** or **Designated Shared Limit of Liability** applicable to this **D&O Coverage Section**,

for all **Non-Indemnifiable Loss** and all **Loss** incurred by an **Executive** that the **Company** fails or refuses to indemnify or advance to or on behalf of an **Executive** for any reason, including **Financial Insolvency**, under this **D&O Coverage Section** arising out of all **Claims** first made against an **Executive** of a **Company** during the **Policy Period** or the **Discovery Period** (if applicable). The **Side A Excess Limit of Liability** for the **Discovery Period** shall be part of, and not in addition to, the **Side A Excess Limit of Liability** for the **Policy Period**. The **Side A Excess Limit of Liability** shall be in addition to the **Designated Policy Aggregate Limit of Liability** and any **Designated Separate Limit of Liability** or **Designated Shared Limit of Liability** applicable to this **D&O Coverage Section**.

It is agreed that the **Insurer's liability** to pay **Non-Indemnifiable Loss** shall only attach to the **Side A Excess Limit of Liability** after:

- (a) the full amount of any **Designated Separate Limit of Liability** or **Designated Shared Limit of Liability** applicable to this **D&O Coverage Section** has been exhausted due to **Loss** paid by or on behalf of the **Insurer** or by or on behalf of the **Insureds**; and
- (b) any coverage for **Loss** (whether or not **Non-Indemnifiable Loss**) under any policy of insurance specifically written as excess over any **Designated Separate Limit of Liability** or **Designated Shared Limit of Liability** applicable to this **D&O Coverage Section** has been exhausted by reason of loss(es) paid by or on behalf of the **Insurer** or by or on behalf of the **Insureds**.

The **Side A Excess Limit of Liability** shall "drop down" (continue in force as primary insurance) only in the event of (a) and (b) above and shall not drop down for any other reason.

COSTS OF INVESTIGATION FOR DERIVATIVE DEMAND

The maximum limit of the **Insurer's** liability for **Costs of Investigation** arising from all **Company Shareholder Derivative Investigations** occurring during the **Policy Period** or the **Discovery Period** (if applicable), in the aggregate, shall be the amount set forth in Item 3(b) of each **Program Participants Endorsement** (the "**Costs of Investigation Sublimit of Liability**"). The **Costs of Investigation Sublimit of Liability** is the maximum limit of the **Insurer** under this **D&O Coverage Section** for **Costs of Investigation** regardless of the number of such **Company Shareholder Derivative Investigations** occurring during the **Policy Period** or the **Discovery Period** (if applicable), or the number of **Executives** subject to such **Company Shareholder Derivative Investigations**; *provided, however*, that the **Costs of Investigation Sublimit of Liability** shall be part of and not in addition to the **Designated Policy Aggregate Limit of Liability** set forth in Item 2 of each **Program Participants Endorsement** and any **Designated Separate Limit of Liability** or **Designated Shared Limit of Liability** applicable to this **D&O Coverage Section** as set forth in Item 2 of each **Program Participants Endorsement**.

CONTRACT CLAIM DEFENSE COSTS COVERAGE

The maximum limit of the **Insurer's** liability for all **Defense Costs** under this **D&O Coverage Section** arising from any **Contract Claim** shall be the amount set forth in Item 3(e) of each **Program Participants Endorsement** (hereinafter called the "**Contractual Defense Costs Sublimit of Liability**"). This **Contractual Defense Costs Sublimit of Liability** shall be part of and not in addition to the **Designated Policy Aggregate Limit of Liability** set forth in Item of the **Declarations** and any **Designated Separate Limit of Liability** or **Designated Shared Limit of Liability** applicable to this **D&O Coverage Section** as set forth in Item 3(e) of each **Program Participants Endorsement**.

6. RETENTION CLAUSE

The following provision shall apply in addition to the provisions of Clause 5. **RETENTION CLAUSE** of the **General Terms and Conditions**:

The **Insurer** shall only be liable for the amount of **Loss** arising from a **Claim** which is in excess of the applicable **Retention** amount stated in Item 6 of the respective **Program Participants Endorsement** for this **D&O Coverage Section**, such **Retention** amount to be borne by the **Company** and/or the **Insureds**, with regard to:

- (i) all **Indemnifiable Loss**; and
- (ii) **Loss of the Company**.

A single **Retention** amount shall apply to **Loss** arising from all **Claims** alleging the same **Wrongful Act** or **Related Wrongful Act(s)**.

It is further understood and agreed that in the event the **Company** is unable to pay an applicable **Retention** amount due to **Financial Insolvency** or, with respect to **Loss** incurred by an **Individual Insured**, fails to indemnify an **Individual Insured** for any reason, then the **Insurer** shall commence advancing **Loss** within the **Retention**; *provided, however*, the **Insurer** shall be entitled to recover the amount of **Loss** advanced within the **Retention** from the **Company** pursuant to Clause 10. **SUBROGATION** of the **General Terms and Conditions**.

Advancement, payment or indemnification of an **Individual Insured** by an **Organization** is deemed failed if it has been requested by an **Individual Insured** in writing and has not been provided by, agreed to be provided by or acknowledged as an obligation by an **Organization** within 60 days of such request.

No Retention amount is applicable to **Crisis Management Loss** or **Non-Indemnifiable Loss**.

7. 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.

The **Insurer** shall advance **Defense Costs** on a current basis and, in any event, no later than sixty (60) days after receipt of invoices of such **Defense Costs**. Such advanced payments by the **Insurer** shall be repaid to the **Insurer** by each and every **Insured** or the **Company**, severally according to their respective interests, in the event and to the extent that any such **Insured** or the **Company** shall not be entitled under the terms and conditions of this **D&O Coverage Section** to payment of such **Loss**.

No **Insured** may incur any **Defense Costs** in excess of the Retention, or admit any liability for, or settle any **Claim** in excess of the Retention, without the **Insurer's** consent, such consent not to be unreasonably withheld. The **Insurer** shall have the right to fully and effectively associate with each and every **Insured** in the defense of any **Claim** that appears reasonably likely to involve the **Insurer**, including, but not limited to, negotiating a settlement. Each and every **Insured** agrees to provide such information as the **Insurer** may reasonably require and to give the **Insurer** full cooperation.

Additionally, the **Insured** shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment, or incur any **Defense Costs** in excess of the Retention without the prior written consent of the **Insurer**. If the **Insured** admits or assumes any liability in connection with any **Claim** without the consent of the **Insurer**, then the **Insurer** shall not have any obligation to pay **Loss** with respect to such **Claim**. 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 **D&O Coverage Section**. The **Insurer** shall not unreasonably withhold any consent required under this **D&O Coverage Section**, provided that the **Insurer** shall be entitled to effectively associate in the defense and the negotiation of any settlement of any **Claim** in excess of the Retention, and provided further that in all events the **Insurer** may withhold consent to any settlement, stipulated judgment or **Defense Costs** in excess of the Retention, or any portion thereof, to the extent such **Loss** is not covered under the terms of this **D&O Coverage Section**. In addition, the **Insured** shall not take any action, without the **Insurer's** written consent, which prejudices the **Insurer's** rights under this **D&O Coverage Section**.

This Clause 7 shall not be applicable to **Crisis Management Loss**.

The failure of any **Individual Insured** to give the **Insurer** cooperation and information as required above shall not impair the rights of any other **Individual Insured** under this policy.

8. COSTS OF INVESTIGATION FOR DERIVATIVE DEMAND COVERAGE PROVISION

It is understood and agreed that the **Company** shall be entitled to payment under Coverage D of this **D&O Coverage Section** for reimbursement of its covered **Costs of Investigation** ninety (90) days after:

- (i) the **Company** has made its final decision not to bring a civil proceeding in a court of law against any of its **Executives**; and
- (ii) such decision has been communicated to the shareholders or creditors who made the **Derivative Demand** upon the **Company**. However, such payment shall be subject to an undertaking by the **Company**, in a form acceptable to the **Insurer**, that the **Company** shall return to the **Insurer** such payment in the event any **Company** or any shareholder of the **Company** brings a **Claim** alleging, arising out of, based upon or attributable to any **Wrongful Acts** which were the subject of the **Derivative Demand**.

9. PRE-AUTHORIZED DEFENSE ATTORNEYS FOR SECURITIES CLAIMS

This Clause 9 applies only to **Securities Claims**.

Affixed as Appendix A hereto and made a part of this **D&O Coverage Section** 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 **Securities Claim** against an **Insured** pursuant to the terms set forth in this Clause.

The selection of the **Panel Counsel Firm** shall be from the list of **Panel Counsel Firms** designated for the type of **Claim** and be either:

- (i) from the jurisdiction in which the **Securities Claim** is brought; or
- (ii) from the state indicated in Item 1 of the **Program Participants Endorsement** as the mailing address for the particular **Named Entity**.

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

With the express prior written consent of the **Insurer**, an **Insured** may select 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 during the **Policy Period** to the **Panel Counsel Firms** listed in Appendix A without the consent of the **Insureds' Representative**.

Note that this Clause 9. PRE-AUTHORIZED DEFENSE ATTORNEYS FOR SECURITIES CLAIMS does not apply to **Defense Costs** solely relating to **Extradition** even if the underlying **Wrongful Acts** relate to a **Securities Claim**.

10. **ORDER OF PAYMENTS**

In the event of **Loss** arising from a **Claim** for which payment is due under the provisions of this **D&O Coverage Section**, the **Insurer** shall at the written request of the particular **Named Entity**:

- (a) first pay such **Loss** for which coverage is provided under Coverage A of this **D&O Coverage Section**, then with respect to whatever remaining amount of the applicable **Separate Limit of Liability** or **Shared Limit of Liability** is available after payment of such **Loss**,
- (b) then, only after payment of **Loss** has been made pursuant to Clause 10(a) above, pay such other **Loss** for which coverage is provided under Coverage B(ii) of this **D&O Coverage Section**, and
- (c) then, only after payment of **Loss** has been made pursuant to Clause 10(a) and Clause 10(b) above, pay such **Loss** for which coverage is provided under Coverage B(i), C or D of this **D&O Coverage Section**..

The **Financial Insolvency** of any **Company** or any **Individual Insured** shall not relieve the **Insurer** of any of its obligations to prioritize payment of covered **Loss** under this **D&O Coverage Section** pursuant to this Clause 10.

In addition, if a bankruptcy, liquidation, administration, receivership, rehabilitation or reorganization proceeding is commenced by a **Company** (whether voluntarily or involuntarily) under Title 11 of the United States Code (as amended), state or federal receivership, administration or liquidation statute or law, or under any other federal, state, local or foreign law related to insolvency (collectively, "Insolvency Law") then, in regard to a covered **Claim** under this Policy, the Insureds hereby: (a) waive and release any automatic stay or injunction to the extent it may apply in such proceeding to the proceeds of this Policy under such Insolvency Law and (b) agree not to oppose or object to any efforts by the **Insurer** or any **Insured** to obtain relief from any stay or injunction to the extent applicable to the proceeds of this Policy as a result of the commencement of such proceeding.

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**Employment Practices Liability Insurance
("EPL COVERAGE SECTION")**

Notice: Pursuant to Clause 1 of the General Terms and Conditions, the General Terms and Conditions are incorporated by reference into, made a part of, and are expressly applicable to this EPL Coverage Section, unless otherwise explicitly stated to the contrary in either the General Terms and Conditions or in this EPL Coverage Section. This is a Claims Made Coverage Section with Defense Costs included in the Designated Separate Limit of Liability or Designated Shared Limit of Liability.

In consideration of the payment of the premium, and in reliance upon the statements made to the Insurer by **Application**, which forms a part of this policy, the Insurer agrees as follows:

1. INSURING AGREEMENTS

With respect to the Insuring Agreement and the Defense Provisions of this Clause 1, solely with respect to **Claims** first made during the **Policy Period** or the **Discovery Period** (if applicable) and reported to the **Insurer** pursuant to the terms of this policy, and subject to the other terms, conditions and limitations of this policy, this **EPL Coverage Section** affords the following coverage:

This **EPL Coverage Section** shall pay the **Loss** of an **Insured** arising from a **Claim** first made against such **Insured** for any **Wrongful Act**. Payment of **Defense** shall be made in accordance with and subject to Clause 5 of this **EPL Coverage Section**.

This **EPL Coverage Section** shall also pay the **Loss** of a **Company** arising from any **Claim** made against such **Company** for its actual or alleged liability for any **Wrongful Internet Activity** of an **Employee**.

DEFENSE PROVISIONS

The Insurer does not assume any duty to defend. The Insurer shall advance **Defense Costs** of such **Claim**, excess of the applicable **Retention** amount, on a current basis and, in any event, no later than sixty (60) days after the receipt of invoices of such **Defense Costs**. Selection of counsel to defend a **Designated Employment Practices Claim** shall be made in accordance with Clause 6 of this **EPL Coverage Section**.

2. DEFINITIONS

(a) "**Designated Employment Practices Claim**" means a **Claim**:

- (i) alleging discrimination or **Retaliation**; or
- (ii) that is certified as, or which is seeking certification as, a class action.

(b) "**Employment Practices Violation**" means any actual or alleged:

- (i) wrongful dismissal, discharge or termination (either actual or constructive) of employment, including breach of an implied contract;
- (ii) harassment (including, but not limited to, sexual harassment whether "quid pro quo", hostile work environment or other harassment in the workplace, including "same-sex" sexual harassment);
- (iii) discrimination (including, but not limited to, discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, genetic information, pregnancy, military status or disability);

- (iv) **Retaliation** (including, but not limited to, lockouts);
- (v) employment-related misrepresentation(s) to an **Employee** of the **Company** or applicant for employment with the **Company** or an **Outside Entity**;
- (vi) employment-related libel, slander, humiliation, defamation or invasion of privacy;
- (vii) wrongful failure to employ or promote;
- (viii) wrongful deprivation of career opportunity with the **Company**, wrongful demotion or negligent **Employee** evaluation, including, but not limited to, the giving of negative or defamatory statements in connection with an employee reference;
- (ix) wrongful discipline;
- (x) failure to grant tenure;
- (xi) false arrest or false imprisonment; or
- (xii) with respect to any of the foregoing items (i) through (xi) of this definition: negligent hiring, retention, training or supervision, infliction of emotional distress or mental anguish, failure to provide or enforce adequate or consistent corporate policies and procedures, or violation of an individual's civil rights;

but only if the **Employment Practices Violation** relates to an **Employee** of a **Company** or an **Outside Entity**, or applicants for employment with a **Company** or an **Outside Entity**, whether committed directly, indirectly, intentionally or unintentionally.

(c) **"Individual Insured"** means any:

- (i) **Executive** of a **Company**;
- (ii) **Employee** of a **Company**; or
- (iii) **Outside Entity Executive**.

(d) **"Insured"** means:

- (i) an **Individual Insureds**; or
- (ii) a **Company**.

"Company", as defined in **General Terms and Conditions** Definition (f), shall be deemed to include the **Insureds' Representative**.

Coverage as is afforded under the **EPL Coverage Section** with respect to a **Claim** made against the **Insureds' Representative** or any **Individual Insured** thereof shall only apply if: (1) such **Claim** arises out of a covered **Claim** for a **Wrongful Act** actually or allegedly committed by an **Insured** (other than the **Insureds' Representative** or an **Individual Insured** thereof); and (2) an **Insured** (other than the **Insureds' Representative** or an **Individual Insured** thereof) is and remains a defendant in the action along with such **Insureds' Representative** or any **Individual Insured** thereof.

In all events coverage as is afforded under this **EPL Coverage Section** with respect to a **Claim** made against the **Insureds' Representative** or any **Individual Insured** thereof shall only apply to **Wrongful Acts** committed or allegedly committed after the time that such **Insureds' Representative** became an **Insureds' Representative** and prior to the time such **Insureds' Representative** ceases to be an **Insureds' Representative**.

An entity ceases to be a **Insureds' Representative** when it ceases to have **Management Control** of the **Named Entity**, either directly, or indirectly through one or more of its subsidiaries.

- (e) "**Loss**" means damages (including back pay and front pay), judgments, settlements, pre- and post-judgment interest and **Defense Costs**; *provided, however, Loss* shall not include:
- (i) civil or criminal fines or penalties imposed by law;
 - (ii) taxes;
 - (iii) any amounts for which an **Insured** is not financially liable or which are without legal recourse to an **Insured**;
 - (iv) employment-related benefits, stock options, perquisites, deferred compensation or any other type of compensation other than salary, wages or bonus compensation;
 - (v) 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;
 - (vi) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.

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

Loss shall specifically include, subject to the other terms, conditions and exclusions of this **EPL Coverage Section**, including, but not limited to, Exclusion 3(a) of this **EPL Coverage Section**, punitive, exemplary and multiple damages (including the multiple or liquidated damages awards under the Age Discrimination in Employment Act and the Equal Pay Act). The enforceability of the first sentence of this paragraph shall be governed by such applicable law which most favors coverage for punitive, exemplary and multiple damages.

Loss shall also include any reasonable fees and expenses of any attorney representing any party who has brought a **Claim** against any **Insured** where such fees and expenses are awarded pursuant to a covered judgment against an **Insured** or a covered settlement (consented to by the Insurer, which consent shall not be unreasonably withheld or denied) to which an **Insured** is a party.

- (f) **"Retaliation"** means a retaliatory act of an **Insured** alleged to be in response to any of the following activities:
- (i) 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;
 - (ii) 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;
 - (iii) the filing of any claim under the Federal False Claims Act or any other federal, state, local or foreign "whistle-blower" law; or
 - (iv) strikes of an **Employee** of the **Company** or an **Outside Entity**.
- (g) **"Third Party Violation"** means any actual or alleged harassment or unlawful discrimination, as described in subparagraphs 2(b)(ii) and 2(b)(iii) of the definition of **Employment Practices Violation**, or the violation of the civil rights of a person relating to such harassment or discrimination, when such acts are alleged to be committed against anyone other than an **Individual Insured** or applicant for employment with the **Company** or an **Outside Entity**, including, but not limited to, students, patients, members, customers, vendors and suppliers.
- (h) **"Wrongful Act"** means any actual or alleged:
- (i) **Employment Practices Violation**, or
 - (ii) **Third Party Violation**.
 - (iii) **Wrongful Internet Activity**
- (i) **"Wrongful Internet Activity"** means any actual or alleged:
- (i) **Employment Practices Violation** alleged by an **Employee**; or
 - (ii) **Third Party Violation**,
- when committed by an **Employee** 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, an individual shall be deemed to be an **Employee** regardless of whether such individual was acting in his or her capacity as an **Employee**.

3. EXCLUSIONS

Solely with respect to this **EPL Coverage Section**, the **Insurer** shall not be liable to make any payment for that portion of the **Loss** in connection with any **Claim** made against an **Insured**:

- (a) alleging, arising out of, based upon or attributable to the facts alleged, or to the same or **Related Wrongful Acts** 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 **EPL Coverage Section** is a renewal or replacement of in whole or in part or which it may succeed in time; *provided, however,* that this EXCLUSION (a) shall not apply if a notice of circumstance was rejected for lack of specificity under such prior policy;
- (b) alleging, arising out of, based upon or attributable to, as of the **Continuity Date**, any pending or prior:
 - (i) litigation against an **Insured**; or
 - (ii) **EEOC** (or similar state, local or foreign agency) proceeding or investigation of an **Insured**,

of which the General Counsel (or equivalent position if none) of the **Company** had written notice, or alleging any **Wrongful Act** which is the same or **Related Wrongful Act** to that alleged in such pending or prior litigation or EEOC (or similar state, local or foreign agency) proceeding or investigation;
- (c) with respect to an **Outside Entity Executive**, for any **Wrongful Act** occurring prior to the **Continuity Date** if the **Insured**, as of such **Continuity Date**, knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim** under this **EPL Coverage Section**;
- (d) 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 an **Executive** or **Employee** of a **Company**, or as an **Outside Entity Executive** of an **Outside Entity**;
- (e) for bodily injury (not including emotional distress or mental anguish), sickness, disease, or death of any person, or damage to, loss of use of or destruction of any tangible property;
- (f) for violation(s) of any of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act (except the Equal Pay Act), the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, any rules or regulations of the foregoing promulgated thereunder, and amendments thereto or any similar federal, state, local or foreign statutory law or common law;

It is acknowledged that **Claims** for violations of any of the responsibilities, obligations or duties imposed by "similar federal, state, local or foreign statutory law or common law," as such quoted language is used in the immediately-preceding paragraph, include, without limitation, any and all **Claims** which in whole or in part allege, arise out of, are based upon, are attributable to, or are in any way related to any of the circumstances described in any of the following:

- (i) the refusal, failure or inability of any **Insured(s)** 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(s)** from any **Employee(s)** or purported **Employee(s)**; or
- (iii) failure to provide or enforce legally required meal or rest break periods;

provided, however, this exclusion (f) shall not apply to the extent that a **Claim** is for **Retaliation**;

- (g) 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 the extent that a **Claim** is for **Retaliation**;
- (h) alleging, arising out of, based upon or attributable to any actual or alleged contractual liability of any **Insured** under any express contract or agreement; *provided, however*, this exclusion shall not apply to:
 - (i) liability which would have attached in the absence of such express contract or agreement; or
 - (ii) **Defense Costs**;
- (i) alleging, arising out of, based upon or attributable to any **Claim** brought by a securities holder of a **Company**, an **Outside Entity** or an affiliate of a respective **Named Entity** in their capacity as such in the form of a shareholder class, direct or derivative action on behalf of such **Company**, **Outside Entity** or affiliate;
- (j) for any **Wrongful Act(s)** of a particular **Named Entity**, or any **Insured** thereof, which occurred prior to the applicable **Prior Acts Date** for such **Named Entity** as set forth in the respective **Program Participants Endorsement**.

Notwithstanding the foregoing, this Exclusion (j) shall not apply to any **Company**, or its respective **Individual Insureds**, formed prior to the **Prior Acts Date** for the purpose of facilitating the acquisition of another **Company**; *provided, further*, that the **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured** alleging any **Wrongful Act** occurring prior to the **Prior Acts Date** if any **Insured** knew that such **Wrongful Act** would lead to a **Claim** under this policy.

For the purpose of determining the applicability of the foregoing Exclusions, other than exclusions 3(b) and 3(c), the facts pertaining to and knowledge possessed by any **Insured** shall not be imputed to any other **Insured**.

4. RETENTION CLAUSE

The following provision shall apply in addition to the provisions of Clause 5. RETENTION CLAUSE of the **General Terms and Conditions**:

The **Insurer** shall only be liable for the amount of **Loss** arising from a **Claim** which is in excess of the applicable Retention amount stated in Item 6 of the respective **Program Participants Endorsement** for this **EPL Coverage Section**, such Retention amount to be borne by the **Company** or the **Insureds** and shall remain uninsured, with regard to all:

(a) **Indemnifiable Loss**; or

(b) **Loss of the Company**.

A single Retention amount shall apply to **Loss** arising from all **Claims** alleging the same **Wrongful Act** or **Related Wrongful Acts**.

It is further understood and agreed that in the event the **Company** does not in fact pay an applicable Retention amount due to any reason, then the **Insurer** shall commence advancing **Defense Costs** and pay any other covered **Loss** within the Retention; *provided, however*, except in the event of **Financial Insolvency**, the **Insurer** shall be entitled to recover the amount of **Defense Costs** and any other **Loss** advanced within the Retention from the **Company** pursuant to Clause 10. SUBROGATION of the **General Terms and Conditions**.

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

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

The **Insurer** shall advance **Defense Costs** on a current basis and, in any event, no later than sixty (60) days after receipt of invoices of such **Defense Costs**. 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 **EPL Coverage Section** 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** in excess of the Retention without the prior written consent of the **Insurer**. Only those settlements, stipulated judgments and **Defense Costs** in excess of the Retention which have been consented to by the **Insurer**, in writing, shall be recoverable as **Loss** under the terms of this **EPL Coverage Section**. The **Insurer's** consent shall not be unreasonably withheld, provided that the **Insurer** shall be entitled to fully and effectively associate in the defense and negotiation of any settlement of any **Claim** in excess of the Retention, and provided further that in all events the **Insurer** may withhold consent to any settlement, stipulated judgment or **Defense Costs** in excess of the Retention, or any portion thereof, to the extent such **Loss** is not covered under the terms of this **EPL Coverage Section**.

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 the **Insurer** may reasonably require.

The failure of any **Individual Insured** to give the **Insurer** cooperation and information as required above shall not impair the rights of any other **Individual Insured** under this policy.

6. PRE-AUTHORIZED DEFENSE ATTORNEYS FOR DESIGNATED EMPLOYMENT PRACTICES CLAIMS

This Clause 6 applies only to **Designated Employment Practices Claims**.

Affixed as Appendix B hereto and made a part of this **EPL Coverage Section** 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 in this Clause.

The selection of the **Panel Counsel Firm** shall be from the list of **Panel Counsel Firms** designated for the type of **Claim** and be either:

- (a) from the jurisdiction in which the **Designated Employment Practices Claim** is brought; or
- (b) from the state indicated in Item 1 of the **Program Participants Endorsement** as the mailing address for the respective **Named Entity**.

In the event a **Designated Employment Practices Claim** is brought in a jurisdiction not included on the appropriate list, the selection shall be made from a listed jurisdiction which is the nearest geographic jurisdiction to either where the **Designated Employment Practices Claim** is maintained or where the corporate headquarters or state of formation of the respective **Named Entity** is located. In such instance, however, the **Insurer** may, if at the written request of the respective **Named Entity** or the **Insureds' Representative**, 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 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 during the **Policy Period** to the **Panel Counsel Firms** listed in Appendix B without the consent of the **Insureds' Representative**.

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**Fiduciary Liability Insurance
("FLI COVERAGE SECTION")**

Notice: Pursuant to Clause 1 of the General Terms and Conditions, the General Terms and Conditions are incorporated by reference into, made a part of, and are expressly applicable to this FLI Coverage Section, unless otherwise explicitly stated to the contrary in either the General Terms and Conditions or in this FLI Coverage Section. This is a Claims Made Coverage Section with Defense Costs included in the Designated Separate Limit of Liability or Designated Shared Limit of Liability.

In consideration of the payment of the premium, and in reliance upon the statements made to the Insurer by Application, which forms a part of this policy, the Insurer agrees as follows:

1. INSURING AGREEMENTS

Coverage for Loss under this policy is provided solely with respect to: (i) Claims first made against an Insured; (ii) Voluntary Compliance Losses first ascertained by or assessed against an Insured; and (iii) Pension Crises first occurring, in each such event, during the Policy Period or any applicable Discovery Period and reported to the Insurer as required by this policy. Claims that are fact-finding investigations which do not allege a Wrongful Act and Claims that are Internal Appeals shall each be deemed first made when they are reported. Subject to the foregoing and the other terms, conditions, and limitations of this policy, this policy affords the following coverage:

A. Individual Insured Coverage

This policy shall pay the Loss of any Individual Insured that no Company or Plan has indemnified or paid that arises from any Claim:

- (1) made against such Individual Insured for any Wrongful Act of such Individual Insured; or
- (2) that is a fact-finding investigation which does not allege in writing a Wrongful Act or that is an Internal Appeal, if an Insured elects to give notice.

B. Individual Insured Indemnification Coverage

This policy shall pay the Loss of a Company or Plan that arises from any Claim:

- (1) made against any Individual Insured for any Wrongful Act of such Individual Insured; or
- (2) that is a fact-finding investigation which does not allege in writing a Wrongful Act or that is an Internal Appeal, if an Insured elects to give notice;

but only to the extent that such Company or Plan has indemnified such Loss of, or paid such Loss on behalf of, the Individual Insured.

C. Company And Plan Coverage

This policy shall pay the Loss of any Company or Plan arising from any Claim:

- (1) made against such Company or Plan for any Wrongful Act of such Company or Plan (or of any employee for whom such Company is legally responsible); or

- (2) that is a fact-finding investigation which does not allege in writing a **Wrongful Act** or that is an **Internal Appeal**, if an **Insured** elects to give notice.

D. Voluntary Compliance Loss Coverage

This policy shall pay any **Voluntary Compliance Loss** first ascertained by or assessed against an **Insured**, subject to the aggregate sublimit of liability set forth on the Declarations.

The payment of any **Voluntary Compliance Loss** under this policy shall not waive any of the Insurer's rights under this policy or at law, including in the event that circumstances giving rise to such **Voluntary Compliance Loss** result in a **Claim**.

E. Pension CrisisFund Coverage

This policy shall pay the **Pension Crisis Loss** of a **Company** up to the **Insured's** aggregate sublimit of liability for all **Pension Crisis Loss** under the **Pension CrisisFund** set forth in the Declarations (as amended by this endorsement).

The payment of any **Pension Crisis Loss** under this policy shall not waive any of the Insurer's rights under this policy or at law, including in the event that circumstances giving rise to such **Pension Crisis Loss** result in a **Claim**.

2. DEFENSE AGREEMENT

The **Insurer** does not assume any duty to defend a **Claim**. The **Insurer** shall advance **Defense Costs** on a current basis and, in any event, no later than sixty (60) days after the receipt of invoices of such **Defense Costs**, subject to the other provisions of this **FLI Coverage Section**. Such advance payments by the **Insurer** shall be repaid to the **Insurer** by the **Insureds**, severally according to their respective interests, in the event and to the extent that the **Insureds** shall not be entitled to payment of such **Loss** under the terms and conditions of this **FLI Coverage Section**.

Selection of counsel to defend a **Claim** shall be made in accordance with Clause 8 of this **FLI Coverage Section** (if applicable).

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 in writing by the **Insurer** shall be recoverable as **Loss** under the terms of this **FLI Coverage Section**, such consent not to be unreasonably withheld.

The **Insureds** shall give the **Insurer** full cooperation and such information as the **Insurer** may reasonably require.

Notwithstanding the provisions above, 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 the Retention, then the **Insurer's** consent shall not be required for such disposition.

Notwithstanding the provisions above, the failure of any **Insured** to give the **Insurer** cooperation and information as it may reasonably require shall not impair the rights of any **Individual Insured** under this policy.

3. DEFINITIONS

- (a) "**Benefits**" means any obligation under a **Plan** to a participant or beneficiary under a **Plan** which is a payment of money or property, or the grant of a privilege, right, option or perquisite.
- (b) "**Breach of Fiduciary Duty**" means a violation of the responsibilities, obligations or duties imposed upon **Insureds** by **ERISA**.
- (c) "**Cafeteria Plan**" means a plan as defined in Section 125 of the Internal Revenue Code of 1986, as amended or a plan from which the participants may choose among two or more benefits consisting of cash and qualified benefits.
- (d) "**CAP Penalties**" means fines, penalties, sanctions, voluntary correction fees, compliance fees or user fees assessed against or collected from an **Insured** by the Internal Revenue Service ("**IRS**") pursuant to a written agreement to correct an inadvertent **Plan** defect under an Employee Plans Compliance Resolution System, provided that such agreement to correct such **Plan** defect was entered into in writing by the **Insured** with the **IRS** during the **Policy Period** (or during the policy period of a policy issued by the **Insurer** of which this **FLI Coverage Section** is a continuous renewal).
- (e) "**Claim**," solely with respect to this **FLI Coverage Section** shall also mean, (i) any fact-finding investigation, whether or not a **Wrongful Act** is alleged, by the U.S. Department of Labor ("**DOL**") or the Pension Benefit Guaranty Corporation ("**PBGC**") or any similar governmental authority located outside the United States, including, but not limited to the United Kingdom's Pensions Ombudsman or Pensions Regulator; or (ii) any **Internal Appeal**.
- (f) "**Company**," solely with respect to this **FLI Coverage Section** shall also mean, in any Foreign Jurisdiction, a **Trustee Company**:
- (g) "**Consulting Fees**" means fees charged by a third party actuary, benefits consultant or accountant resulting solely from the correction of an actual or potential **Breach of Fiduciary Duty**, but excluding any fees, costs or expenses associated with:
- (i) a **Plan** audit; or
 - (ii) identifying, finding or assessing such **Breach of Fiduciary Duty**.
- (h) "**Covered Penalties**" means solely in connection with a **Plan**:
- (i) the 5% or less civil penalty imposed upon an **Insured** under Section 502(i) of **ERISA**;
 - (ii) the 20% or less civil penalty imposed upon an **Insured** under Section 502(l) of **ERISA**, with respect to a covered settlement or judgment;
 - (iii) the civil fines and penalties assessed against an **Insured** by either the United Kingdom's Pensions Ombudsman or the Pensions Regulator or any successor body thereto;
 - (iv) **Voluntary Compliance Loss** subject to the sublimit of liability set forth in the Limit of Liability Clause of this **FLI Coverage Section**;
 - (v) the civil penalties under Section 502(c) of **ERISA**, other than penalties under the Pension Protection Act, subject to the sublimit of liability set forth in the Limit of Liability Clause of this **FLI Coverage Section** ("**Section 502(c) Penalties**");

- (vi) the civil penalties under the Pension Protection Act of 2006, subject to the sublimit of liability set forth in the Limit of Liability Clause of this **FLI Coverage Section ("Pension Protection Act Penalties")**;
 - (vii) **HIPAA Penalties**, subject to the sublimit of liability set forth in the Limit of Liability Clause of this **FLI Coverage Section**;
 - (viii) The civil penalties imposed under rules and regulations (including interim final rules and regulations) provided by governmental agencies (including the U.S. Department of Health and Human Services, the U.S. Department of the Treasury, the U.S. Internal Revenue Service ("**IRS**"), and the DOL, the Office of Consumer Information and Insurance Oversight, and the Employee Benefits Security Administration), for inadvertent violations by an Insured of **Health Care Reform Law**, subject to the sublimit of liability set forth in the Limit of Liability Clause of this **FLI Coverage Section ("Health Care Reform Penalties")**; and
 - (ix) the 15% or less tax penalty imposed upon an Insured under Section 4975 of the Internal Revenue Code of 1986, with respect to covered judgments, subject to the sublimit of liability set forth in the Limit of Liability Clause of this **FLI Coverage Section ("Section 4975 Penalties")**.
- (i) "**Defense Costs**" means reasonable attorney's fees, costs or expenses consented to in writing by the **Insurer** resulting solely from the correction of an actual or potential **Breach of Fiduciary Duty**, but excluding any fees, costs and expenses associated with finding or assessing such **Breach of Fiduciary Duty** and any compensation of **Individual Insureds**.
 - (j) "**Delinquent Filer Penalties**" means penalties assessed by the "**DOL**" or the **IRS** under a Delinquent Filer Voluntary Compliance Program for inadvertent failure to file Form 5500, provided that the failure to file such Form 5500 occurred during the **Policy Period** (or during the policy period of a policy issued by the **Insurer** of which this **FLI Coverage Section** is a continuous renewal).
 - (k) "**Dependent Care Assistance Program**" means a dependent care assistance program as defined in Section 129 of the Internal Revenue Code of 1986, as amended.
 - (l) "**Employee Benefit Law**" means **ERISA** or any similar common or statutory law of the United States of America, Canada or any state or other jurisdiction anywhere in the world to which a **Plan** is subject. Solely with respect to subparagraph 3(cc)(ii) of the Definition of **Wrongful Act** in this **FLI Coverage Section**, **Employee Benefit Law** shall also include **HIPAA Privacy Regulations** and any laws concerning unemployment insurance, Social Security, government-mandated disability benefits or similar law. Except as provided in the previous sentence, **Employee Benefit Law** shall not include any law concerning workers' compensation, unemployment insurance, Social Security, government-mandated disability benefits or similar law.
 - (m) "**ERISA**" means the Employee Retirement Income Security Act of 1974 (including, but not limited to, amendments relating to the Consolidated Omnibus Budget Reconciliation Act of 1985, the Health Insurance Portability and Accountability Act of 1996, the Newborns' and Mothers' Health Protection Act of 1996, the Mental Health Parity Act of 1996, and the Women's Health and Cancer Rights Act of 1998, the Pension Protection Act of 2006 and the **Health Care Reform Law**), including any amendment or revision thereto.

- (n) "**ESOP**" means any employee stock ownership plan as defined in **ERISA**, or any other **Plan** under which investments are made primarily in securities of or issued by: (i) the **Company**; (ii) any acquired **Subsidiary**; or (iii) any parent of any acquired **Subsidiary**, or whose assets at any time within twelve (12) months prior to the inception date of this **FLI Coverage Section** were comprised of ten percent (10%) or more of securities of:
- (1) the **Company**;
 - (2) any acquired **Subsidiary**; or
 - (3) any parent of any acquired **Subsidiary**.
- (o) "**Fiduciary**" means a fiduciary as defined in an **Employee Benefit Law** (if applicable), with respect to a **Plan**, or a person or entity who exercises discretionary control as respects the management of a **Plan** or the disposition of its assets.
- (p) "**Fringe Benefit**" means any plan or benefit described in Section 132 of the Internal Revenue Code of 1986, as amended.
- (q) "**Health Care Reform Law**" means the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010.
- (r) "**HIPAA Penalties**" means civil money penalties imposed upon an **Insured** for violation of **HIPAA Privacy Regulations**.
- (s) "**HIPAA Privacy Regulations**" means the privacy provisions of the Health Insurance Portability and Accountability Act of 1996 and any amendments thereto.
- (t) "**Individual Insured**" means any:
- (i) past, present or future natural person director, officer, governor, general partner, management committee member, **Pension Oversight Committee Member**, member of the board of managers or employee of a **Company** or, if applicable, of a **Plan**, and as to all of the above in his or her capacity as a **Fiduciary**, administrator or trustee of a **Plan**; or
 - (ii) past, present or future natural person in a position equivalent to a position listed in subparagraph (i) of this Definition (t) in the event that the **Company** is operating in a **Foreign Jurisdiction**.
- (u) "**Insured**" means:
- (i) any **Individual Insured**;
 - (ii) any **Plan**;
 - (iii) the **Company**;
 - (iv) any **Pension Oversight Committee**;
 - (v) **Trustee Company**; or
 - (vi) any other person or entity in his, her or its capacity as a **Fiduciary**, administrator or trustee of a **Plan** and included in the Definition of **Insured** by specific written endorsement attached to this **FLI Coverage Section**.

- (v) "**Internal Appeal**" means an appeal of an adverse benefits determination by an Insured pursuant to the DOL's claim procedure regulation at 29 C.F.R. Section 2560.503-1(h) or similar claim procedures pursuant to applicable law.
- (w) "**Loss**" means damages, judgments (including pre and post-judgment interest on a covered judgment), settlements, **Defense Costs**, **Voluntary Compliance Loss**, **Pension Crisis Loss** and **Covered Penalties**; *provided, however, Loss shall not include:*
- (i) civil or criminal fines or penalties imposed by law (other than **Covered Penalties**);
 - (ii) taxes or tax penalties;
 - (iii) Cleanup costs relating to hazardous materials, pollution or product defects;
 - (iv) Wages, tips and commissions;
 - (v) any amount for which an **Insured** is not financially liable or which is without legal recourse to the **Insured**;
 - (vi) **Benefits**, or that portion of any settlement or award in an amount equal to such **Benefits**, unless and to the extent that recovery of such **Benefits** is based upon a covered **Wrongful Act** and is payable as a personal obligation of an **Individual Insured**; provided however, that **Loss** shall include a monetary award in, or fund for settling, a **Claim** against any **Insured** to the extent it alleges a loss to a **Plan** or loss in the actual accounts of participants in a **Plan** by reason of a change in value of the investments held by that **Plan**, including, but not limited to, the securities of the particular **Named Entity**, regardless of whether the amounts sought in such **Claim** have been characterized by plaintiffs as "benefits" or held by a court to be "benefits"; or
 - (vii) amounts which may be deemed uninsurable under the law pursuant to which this policy shall be construed.

Defense Costs shall be provided for items specifically excluded from **Loss** pursuant to subparagraphs (w)(i) through (w)(v) above of this Definition, subject to the other terms, conditions and exclusions of this **FLI Coverage Section**.

Where permitted by law, **Loss** shall specifically include (subject to the policy's other terms, conditions and exclusions, including, but not limited to, exclusions 5(a) and 5(b) of this **FLI Coverage Section**), punitive or exemplary damages or the multiplied portion of multiplied damages imposed upon any **Insured**. The enforceability of this paragraph shall be governed by such applicable law which most favors coverage for punitive, exemplary and multiple damages.

Loss shall include **Voluntary Compliance Loss**.

- (x) "**Managed Care Services**" means the administration or management of a health care, pharmaceutical, vision or dental Plan utilizing cost control mechanisms, including, but not limited to utilization review, case management, disease management, pharmacy management, the use of a preferred provider medical, vision or dental network, or a health maintenance organization.

- (y) **"Non-qualified Plan"** means any of the following plans for a select group of management or highly compensated directors, officers or employees: deferred compensation plan, supplemental executive retirement plan, top-hat plan or excess benefit plan.
- (z) **"Pension Crisis"** has the meaning set forth in the **Pension CrisisFundSM** Appendix attached to this policy.
- (aa) **"Pension CrisisFundSM"** means the aggregate sublimit of liability set forth in the Declarations (as amended by this endorsement) for all **Pension Crisis Loss** in the aggregate for all **Pension Crises** first occurring during the **Policy Period** or any applicable **Discovery Period**.
- (bb) **"Pension Crisis Loss"** has the meaning set forth in the **Pension CrisisFundSM** Appendix attached to this policy.
- (cc) **"Pension Oversight Committee"** means any pension oversight committee duly formed by a **Trustee Company** and duly appointed to act as a trustee of the **Plan** or acting as a constructive trustee of the **Plan**.
- (dd) **"Pension Oversight Committee Member"** means any duly elected or appointed member of a **Pension Oversight Committee**.
- (ee) **"Pension Plan"** means a pension plan as defined in any **Employee Benefit Law**.
- (ff) **"Plan"** means automatically any plan, fund, trust or program (including, but not limited to, any plan, fund, trust or program considered or created by the particular **Named Entity** during the **Policy Period**, any IRA-based Plan, **Welfare Plan**, **Cafeteria Plan**, **Dependent Care Assistance Program**, **Fringe Benefit**, **Non-qualified Plan**, or qualified **Pension Plan**), established anywhere in the world, which was, is or shall be sponsored solely by the **Company**, or sponsored jointly by the **Company** and a labor organization, solely for the benefit of the employees or the directors and officers of the **Company**, subject to the provisions set forth below:
 - (i) if such **Plan** is a **Pension Plan**, other than an **ESOP** or **Pension Plan** described in subparagraphs (ff)(iv) below, then the particular **Named Entity** shall provide written notice of such **Plan** to the **Insurer** prior to the inception date of this **FLI Coverage Section**, unless such **Plan** was already covered under a policy issued by the **Insurer** of which this **FLI Coverage Section** is a continuous renewal;
 - (ii) if such **Plan** was sold, spun-off or terminated prior to the inception date of this **FLI Coverage Section** the particular **Named Entity** shall have provided written notice of such sale, spin-off or termination to the **Insurer** prior to the inception date of this **FLI Coverage Section** and pay any required premium relating to such **Plan**, unless such sale, spin-off or termination had already been reported to the **Insurer** under a policy issued by the **Insurer** of which this **FLI Coverage Section** is a continuous renewal;
 - (iii) if such **Plan** is sold, spun-off or terminated during the **Policy Period**, the particular **Named Entity** shall provide written notice of such sale, spin-off or termination to the **Insurer** prior to the end of the **Policy Period**;
 - (iv) if such **Plan** is an **ESOP**, stock option plan or stock based compensation plan, this **FLI Coverage Section** shall only provide coverage for such plan upon written notice of such **Plan** to the **Insurer**, payment of any required premium, and such **Plan** has been added to the Definition of **Plan** by specific written endorsement attached to this policy; or

- (v) if such **Plan** is a **Pension Plan** (other than an **ESOP**) and is acquired during the **Policy Period** as a result of the particular **Named Entity's** acquisition of a **Subsidiary**, then this **FLI Coverage Section** shall apply to such **Plan** (but solely with respect to any **Wrongful Act** occurring after the date of such acquisition). The particular **Named Entity** shall provide the **Insurer** with full particulars of such new **Plan** before the end of the **Policy Period**.

The Definition of **Plan** shall also include: the following government-mandated programs: unemployment insurance, Social Security or disability benefits, but solely with respect to a **Wrongful Act** defined in subparagraph (ii) of the Definition of **Wrongful Act** in this **FLI Coverage Section**; and any other plan, fund or program which is included in the Definition of **Plan** by specific written endorsement attached to this **FLI Coverage Section**.

In no event, however, shall the definition of **Plan** include (i) any plan of an **Affiliated Entity**; or (ii) any multiemployer plan as defined in **Employee Benefit Law**.

- (gg) "**Section 502(c)**" means the civil penalties under Section 502(c) of **ERISA**, other than penalties under the Pension Protection Act.
- (hh) "**Trustee Company**" means a corporate trustee company that is:
 - (i) established by a **Company** formed and operating in a **Foreign Jurisdiction**, or any predecessor of such **Company**, and
 - (ii) duly appointed to act as a trustee of a **Plan** in a **Foreign Jurisdiction** and sponsored solely by such **Company**.
- (ii) "**UK Fines and Penalties**" means civil fines and penalties assessed against an **Insured** by either the Pensions Ombudsman appointed by the Secretary of State for Social Services in the United Kingdom, by the Occupational Pensions Regulatory Authority in the United Kingdom, by the Pensions Regulator in the United Kingdom or any successor body thereto, subject to the other terms, conditions and exclusions of this **FLI Coverage Section**.
- (jj) "**Voluntary Compliance Loss**" means fines, penalties, sanctions, and reasonable fees, costs or expenses related to the assessment of or correction of a **Plan's** non-compliance in accordance with any **Voluntary Compliance Program** and which are incurred during the **Policy Period** (or during the policy period of a policy issued by the Insurer of which this policy is a continuous renewal). **Voluntary Compliance Loss** shall not include any compensation of any **Individual Insureds** or any employee of an **Insured**.
- (kk) "**Voluntary Compliance Program**" means any voluntary compliance resolution program or similar voluntary settlement program administered by the DOL, IRS, PBGC or other similar governmental authority or any similar program administered by any governmental authority located outside the United States of America, to correct any inadvertent non-compliance by a **Plan**, including, but not limited to:
 - (i) Employee Plans Compliance Resolution System;
 - (ii) Delinquent Filer Voluntary Compliance Program;
 - (iii) Voluntary Fiduciary Correction Program;
 - (iv) Premium Compliance Evaluation Program; and
 - (v) Participant Notice Voluntary Correction Program.

- (ii) **"Voluntary Fiduciary Correction Loss"** means damages, **Defense Costs** and **Consulting Fees** incurred in connection with the **DOL Voluntary Fiduciary Correction Program** as set forth in the Federal Register, resulting from an inadvertent **Breach of Fiduciary Duty** occurring during the **Policy Period** (or during the policy period of a policy issued by the **Insurer** of which this **FLI Coverage Section** is a continuous renewal), provided that such compliance with the **DOL's Voluntary Fiduciary Correction Program** results in the **Insured** obtaining a "No Action" letter from the **DOL**; *provided, however, Voluntary Fiduciary Correction Loss shall not include:*
- (i) civil or criminal fines or penalties imposed by law;
 - (ii) punitive or exemplary damages;
 - (iii) the multiplied portion of multiplied damages;
 - (iv) taxes or tax penalties;
 - (v) any amount for which an **Insured** is not financially liable or which is without legal recourse to the **Insured**;
 - (vi) **Benefits**, or that portion of damages equal to such **Benefits**;
 - (vii) matters of which the **Insured** had knowledge prior to the inception date of this **FLI Coverage Section** or the first policy issued by the **Insurer** to the particular **Named Entity** of which this **FLI Coverage Section** is a continuous renewal; or
 - (viii) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.
- (mm) **"Welfare Plan"** means a welfare plan as defined in **Employee Benefit Law**.
- (nn) **"Wrongful Act"** means:
- (i) a violation of any of the responsibilities, obligations or duties imposed upon **Fiduciaries** by **Employee Benefit Law** with respect to a **Plan**; including, but not limited to, the improper selection of or inadequate monitoring of third-party service providers; or any matter claimed against an **Insured** solely by reason of his, her or its status as a **Fiduciary**, but only with respect to a **Plan**;
 - (ii) any act, error or omission solely in the performance of one or more of the following administrative duties or activities, but only with respect to a **Plan**:
 - (1) counseling employees, participants and beneficiaries;
 - (2) providing interpretations;
 - (3) handling of records;
 - (4) activities effecting enrollment, termination or cancellation of employees, participants and beneficiaries under the **Plan**;
 - (5) complying with **HIPAA Privacy Regulations**; or

(6) in a settlor capacity;

or any matter claimed against an **Insured** solely by reason of his, her or its status as an administrator, but only with respect to a **Plan**; and

(iii) as respects an **Individual Insured**, any matter claimed against him or her arising out of his or her service as a **Fiduciary** or administrator of any multiemployer plan as defined by **ERISA**, but only if such service is at the specific written request or direction of the **Company** and such multiemployer plan is added by specific written endorsement attached to this **FLI Coverage Section**, identified as a multiemployer plan and any required premium is paid. In no event shall coverage under this **FLI Coverage Section** extend to a **Claim** against a multiemployer plan itself, its contributing employer(s) or any other fiduciaries or administrators of such plan, other than an **Individual Insured**.

4. **WORLDWIDE EXTENSION**

For **Claims** made and maintained in a **Foreign Jurisdiction** for **Wrongful Acts** committed in such **Foreign Jurisdiction**, the **Insurer** shall apply to such **Claims** the provisions of the **Foreign Policy** in the **Foreign Jurisdiction** that are more favorable to such **Insured** in the **Foreign Jurisdiction**; *provided, however*, this paragraph shall apply only to provisions more favorable by virtue of insuring clauses, extensions, definitions, exclusions, pre-authorized securities or other defense counsel, discovery or extended reporting period, notice and authority, dispute resolution process or order of payments provisions, if any, of the **Foreign Policy** when compared to the same or similar clauses of this **FLI Coverage Section**. This paragraph shall not apply to excess provisions or policy provisions that address non-renewal, duty to defend, defense within or without limits, taxes, claims made and reported provisions or any other provision of this policy intended to govern coverage worldwide.

All premiums, limits, retentions, **Loss** and other amounts under this **FLI Coverage Section** 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 **FLI Coverage Section** (subject to the terms, conditions and limitations of this **FLI Coverage Section**) will be made either in such other currency (at the option of the **Insurer** and if agreeable to the particular **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).

5. **EXCLUSIONS**

Solely with respect to this **FLI Coverage Section**, the **Insurer** shall not be liable to make any payment for **Loss** in connection with that portion of any **Claim** made against an **Insured**:

(a) arising out of, based upon or attributable to the gaining of any personal profit or advantage to which any final non-appealable adjudication adverse to the **Insured** in the underlying action establishes that the **Insured** was not legally entitled; *provided, however*, this exclusion shall not apply to **Defense Costs** incurred prior to such final non-appealable adjudication.

- (b) arising out of, based upon or attributable to the committing of any deliberate criminal or deliberate fraudulent act, or any knowing or willful violation of any statute, rule or law, including, but not limited to **Employee Benefit Law** by the **Insured** if any final non-appealable adjudication adverse to the **Insured** in the underlying action establishes that such criminal or deliberate fraudulent act was committed; *provided, however*, this exclusion shall not apply to **Defense Costs** incurred prior to such final non-appealable adjudication.
- (c) for discrimination in violation of any law; *provided, however*, this exclusion shall not apply to discrimination in violation of **Employee Benefit Law**;
- (d) alleging, arising out of, based upon or attributable to the facts alleged, or to the same or **Related Wrongful Act** alleged or contained, in any **Claim** which has been reported, or in any circumstances of which notice has been given, under any policy of which this **FLI Coverage Section** is a renewal or replacement of in whole or part or which it may succeed in time; *provided, however*, that this EXCLUSION (d) shall not apply if a notice of circumstance was rejected for lack of specificity under such prior policy;
- (e) alleging, arising out of, based upon or attributable to, as of the **Continuity Date**, any pending or prior:
 - (i) litigation against an **Insured**; or
 - (ii) administrative or regulatory proceeding or investigation of an **Insured**, of which an **Insured** had notice, or alleging or derived from the same or essentially the same facts as alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation;
- (f) for failure to fund a **Plan** in accordance with **Employee Benefit Law** or the **Plan** instrument, or the failure to collect contributions owed to the **Plan**; *provided, however*, this exclusion shall not apply to:
 - (i) **Defense Costs**; or
 - (ii) the portion of **Loss** that is payable as a personal obligation or an **Individual Insured**;
- (g) for bodily injury, sickness, disease, death or emotional distress of any person, or damage to, loss of use of or destruction of any tangible property; *provided, however*, this exclusion shall not apply to (i) **Defense Costs** incurred in the defense of a **Claim** for **Breach of Fiduciary Duty**; or (ii) the coverage afforded under Clause 11(C), **Managed Care Coverage**.
- (h) alleging, arising out of, based upon or attributable to any **Wrongful Act** as respects the **Plan** taking place at any time when the **Company** did not sponsor such **Plan** or when the **Individual Insured** was not a **Fiduciary**, administrator, trustee, director(s), officer(s) or employee of the **Company** or, if applicable, a **Plan**; or
- (i) for any **Wrongful Act(s)** of a particular **Named Entity**, or any **Insured** thereof, which occurred prior to the applicable **Prior Acts Date** for such **Named Entity** as set forth in the respective **Program Participants Endorsement**.

Notwithstanding the foregoing, this Exclusion (i) shall not apply to any **Company**, or its respective **Individual Insureds**, formed prior to the **Prior Acts Date** for the purpose of facilitating the acquisition of another **Company**; provided, further, that the **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured** alleging any **Wrongful Act** occurring prior to the **Prior Acts Date** if any **Insured** knew that such **Wrongful Act** would lead to a **Claim** under this policy.

For the purpose of determining the applicability of the foregoing Exclusions, other than exclusions 5(d) and 5(e) the facts pertaining to and knowledge possessed by any **Insured** shall not be imputed to any other **Insured**.

6. LIMIT OF LIABILITY

The following provision shall apply in addition to the provisions of Clause 4. LIMIT OF LIABILITY of the **General Terms and Conditions**:

VOLUNTARY COMPLIANCE LOSS SUBLIMIT OF LIABILITY

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

HIPAA PENALTIES SUBLIMIT OF LIABILITY

The maximum limit of the **Insurer's** liability for all **HIPAA Penalties**, in the aggregate, shall be the amount set forth in Item 3(d) of each **Program Participants Endorsement** ("**HIPAA Penalties Sublimit of Liability**"). The **HIPAA Penalties Sublimit of Liability** shall be part of, and not in addition to, the **Designated Policy Aggregate Limit of Liability** and any **Designated Separate Limit of Liability** or **Designated Shared Limit of Liability** applicable to this **FLI Coverage Section**, and shall in no way serve to increase the **Insurer's Designated Policy Aggregate Limit of Liability** or any **Designated Separate Limit of Liability** or **Designated Shared Limit of Liability** as stated therein.

ADDITIONAL SUBLIMITS OF LIABILITY

Each of the following sublimits of liability is the maximum limit of the **Insurer's** liability per **Program Participants Endorsement** for all **Loss** under this policy that is subject to that sublimit of liability. Each such sublimit of liability shall be part of, and not in addition to, the **Designated Policy Aggregate Limit of Liability** and any **Designated Separate Limit of Liability** or **Designated Shared Limit of Liability** applicable to this **FLI Coverage Section**, as set forth in Item 2 of each **Program Participants Endorsement**, and shall in no way serve to increase the **Insurer's Designated Policy Aggregate Limit of Liability** or any **Designated Separate Limit of Liability** or **Designated Shared Limit of Liability** as stated therein.

Additional Sublimits of Liability:

<i>Section 502(c) Penalties:</i>	\$250,000 or 5% of the applicable Designated Separate Limit of Liability or Designated Shared Limit of Liability, whichever is less
<i>Pension Protection Act Penalties:</i>	\$250,000 or 5% of the applicable Designated Separate Limit of Liability or Designated Shared Limit of Liability, whichever is less
<i>Health Care Reform Penalties:</i>	\$250,000 or 5% of the applicable Designated Separate Limit of Liability or Designated Shared Limit of Liability, whichever is less
<i>Section 4975 Penalties:</i>	\$250,000
<i>Pension CrisisFundSM</i>	\$100,000

7. RETENTION CLAUSE

The following provision shall apply in addition to the provisions of Clause 5. RETENTION CLAUSE of the **General Terms and Conditions**:

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 6 of the respective **Program Participants Endorsement**, such Retention amount to be borne by the **Insured** and shall remain uninsured, with regard to:

- (a) all **Indemnifiable Loss**; and
- (b) **Loss of a Company**.

A single Retention amount shall apply to **Loss** arising from all **Claims** alleging the same **Wrongful Act** or related **Wrongful Acts**.

Notwithstanding the foregoing, no Retention is applicable to **Pension Crisis Loss**, **Voluntary Compliance Loss**, **Pension Protection Act Penalties**, **Health Care Reform Penalties**, **Section 4975 Penalties**, **HIPAA Penalties** or **Section 502(c) Penalties**.

8. PRE-AUTHORIZED DEFENSE ATTORNEYS

This Clause 8 applies only to:

- (a) a **Claim** brought by any government entity;
- (b) a request for coverage for a **Voluntary Compliance Loss**; or
- (c) a **Claim** brought in the form of a class or representative action or which purports to be brought as a class or representative action.

Affixed as Appendix C hereto and made a part of this **FLI Coverage Section** is a list of Panel Counsel law firms ("**Panel Counsel Firm(s)**") from which a selection of legal counsel shall be made to conduct the defense of any **Claim** against an **Insured** to which this Clause 8 applies and pursuant to the terms set forth in this Clause.

The **Insureds** shall select a **Panel Counsel Firm** to defend the **Insured**. In addition, with the express prior written consent of the **Insurer**, which consent shall not be unreasonably withheld, the **Insured** may select a **Panel Counsel Firm** different from that selected by other **Insureds** if such selection is required due to an actual conflict of interest or is otherwise reasonably justifiable.

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

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

9. **WAIVER OF RECOURSE**

Except for the **Insurer's** subrogation rights set forth in Clause 9 of the **General Terms and Conditions**, the **Insurer** shall have no right of recourse against an **Insured** unless required pursuant to any **Employee Benefit Law**.

It is further provided that in the event of any recovery under this Clause 9, any **Designated Separate Limit of Liability** or **Designated Shared Limit of Liability** applicable to this **FLI Coverage Section** shall be restored to the extent of such recovery after subtracting any costs, expenses or reimbursements incurred by the **Insurer** in connection therewith.

10. **ORDER OF PAYMENTS**

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

- (a) first, pay **Loss** for which coverage is provided under this **FLI Coverage Section** for any **Individual Insured**;
- (b) second, only after payment of **Loss** has been made pursuant to Clause 10(a) above with respect to whatever remaining amount of any **Designated Separate Limit of Liability** or **Designated Shared Limit of Liability** applicable to this **FLI Coverage Section** is available after such payment, pay the **Loss** of any covered **Plan**; and
- (c) then, only after payment of **Loss** has been made pursuant to Clause 10(a) and 10(b) above, with respect to whatever remaining amount of any **Designated Separate Limit of Liability** or **Designated Shared Limit of Liability** applicable to this **FLI Coverage Section** is available after such payment, shall payment for the **Company** be made for such other **Loss** for which coverage is provided under this **FLI Coverage Section**.

11. FIDUCIARY EXTENSIONS OF COVERAGE

A. Disproven Allegation Protection

In the event that an allegation which triggers potential coverage under this policy is disproven, so that a **Claim** is outside the scope of coverage under this policy, the Insurer shall not seek recovery of amounts that it has previously paid. Situations that would trigger this protection include, but are not limited to when it is proven that:

- (1) an **Executive** or employee of the **Company** who was alleged to be a **Plan** fiduciary was not in fact a **Plan** fiduciary;
- (2) an **Insured's** alleged breach of fiduciary duty was in fact a settlor act;
- (3) an alleged **Plan** was not a plan or was not a covered **Plan**; or
- (4) a **Company** alleged to be the sponsor of a **Plan** was not in fact the sponsor of such plan.

B. Independent Fiduciary Fees

Loss shall include reasonable and necessary fees and expenses of an independent fiduciary if such fiduciary is retained to review a proposed settlement of a covered **Claim**. **Loss** shall also include reasonable and necessary fees and expenses of any law firm hired by such independent fiduciary to facilitate a review of such proposed settlement.

C. Managed Care Coverage

This policy shall pay the **Loss** of an **Insured** arising from a **Claim** made against such **Insured** alleging improper or negligent selection of a **Managed Care Services** provider or denial or delay of any benefit under a health care, pharmaceutical, vision, or dental **Plan** of an **Insured**.

D. LMRA Coverage

If, and during the time that, coverage is provided under this policy, then this policy shall also pay the **Loss** of an **Insured** arising from an allegation that such **Insured** violated Section 301 of the Labor Management Relations Act ("LMRA") relating to alleged violations of collectively bargained contracts in connection with a **Plan**.

APPENDIX A
SECURITIES CLAIMS PANEL COUNSEL LIST

98

In consideration of the premium charged, it is understood and agreed as follows: The information in our Panel Counsel lists/appendices is accessible through our online Panel Counsel Directory at <http://www.aig.com/us/panelcounseldirectory>. To access the applicable online Panel Counsel Directory, please go to the website and click on the "Directors & Officers (Securities Claims)" link.

References in this policy to list of Panel Counsel law firms or related appendices are deemed amended to refer to the applicable Panel Counsel Directories at the website referenced above.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

APPENDIX B

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EMPLOYMENT PRACTICES CLAIM PANEL COUNSEL

In consideration of the premium charged, it is understood and agreed as follows: The information in our Panel Counsel lists/appendices is accessible through our online Panel Counsel Directory at <http://www.aig.com/us/panelcounseldirectory>. To access the applicable online Panel Counsel Directory, please go to the website, click on the "Public and Private Companies (Employment Practices Liability)" link and then select the applicable Panel Counsel Directory, either the "4- 97 Monoline/Public Companies" link or the "Private Edge" link.

References in this policy to list of Panel Counsel law firms or related appendices are deemed amended to refer to the applicable Panel Counsel Directories at the website referenced above.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

APPENDIX C

EMPLOYEE BENEFIT PLAN FIDUCIARY LIABILITY
PANEL COUNSEL LIST

100

In consideration of the premium charged, it is understood and agreed as follows: The information in our Panel Counsel lists/appendices is now accessible through our online Panel Counsel Directory at AIG Panel Counsel Directory <http://www.aig.com/us/panelcounseldirectory>. To access the applicable online Panel Counsel Directory, please go to the website, click on the "Fiduciary Liability (ERISA and Non-ERISA)" link.

References in this policy to list of Panel Counsel law firms or related appendices are deemed amended to refer to the applicable Panel Counsel Directories at the website referenced above.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

POLICYHOLDER NOTICE
REGARDING
E- DISCOVERY CONSULTANT SERVICES

101

You are hereby notified that the Insureds under the attached policy are entitled to retain the services of a pre-approved E- Consultant Firm from the E- DISCOVERY CONSULTING FIRMS listed below at the rates negotiated by the Insurer for any Claim covered under the policy in which E- Discovery is required or becomes necessary.

For the purpose of the E- Discovery Consultant Services discussed in this notice, the following definitions shall apply:

- (a) "E- Consultant Firm" means any E- DISCOVERY CONSULTING FIRMS listed below. Any "E- Consultant Firm" may be hired by an Insured to perform E- Discovery Consultant Services without further approval by the Insurer.
- (b) "E- Discovery" means the development, collection, storage, organization, cataloging, preservation and/or production of electronically stored information.
- (c) "E- Discovery Loss" means the reasonable and necessary consulting fees for the E- Discovery Consultant Services provided solely to the Insured(s) by an E- Consultant Firm.

Provided, however, E- Discovery Loss shall not include any costs of discovery other than E- Discovery Loss.

- (d) "E- Discovery Consultant Services" means solely the following services performed by an E- Consultant Firm:
 - 1. assisting the Insured with managing and minimizing the internal and external costs associated with E- Discovery;
 - 2. assisting the Insured in developing or formulating an E- Discovery strategy which shall include interviewing qualified and cost effective E- Discovery vendors;
 - 3. serving as project manager, advisor and/or consultant to the Insured, defense counsel and the Insurer in executing and monitoring the E- Discovery strategy; and
 - 4. such other services provided by the E- Consultant Firm that the Insured, Insurer and E- Consultant Firm agree are reasonable and necessary given the circumstances of the Securities Claim.

PLEASE NOTE: The Insurer shall only be liable for the amount of E- Discovery Loss arising from a Claim (with the exception of a Securities Claim) under the attached policy that is in excess of the applicable Retention amounts stated in Item 4 of the Declarations. The E- DISCOVERY CONSULTANT SERVICES COVERAGE provided for Securities Claims shall be governed by the terms, conditions and exclusions set forth in the attached policy. In all events, the Insurer shall not waive any of the Insurer's rights under this policy or at law.

E- DISCOVERY CONSULTING FIRMS

The list of approved E- Consultant Firms is accessible through our online directory at <http://www.aig.com/us/panelcounseldirectory>. To access the applicable online E- Consultant Firm Directory, please go to the website and click on the "e- Consultant Panel Members" link.

References in this policy to the list of E- Consultant Firms or related appendices are deemed amended to refer to the applicable online E- Consultant Firm Directory at the website referenced above.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

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**APPENDIX D
CRISIS MANAGEMENT COVERAGE FOR D&O COVERAGE SECTION**

I. DEFINITIONS

(a) "**Crisis Management Event**" means one of the following events which, in the good faith opinion of the **Company**, did cause or is reasonably likely to cause a **Material Effect**:

1. **Management Crisis:**
The death, incapacity or criminal indictment of any **Executive** of the **Company**, or any **Employee** on whom the **Company** maintains key person life insurance.
2. **Employee Layoffs:**
The public announcement of layoffs of **Employees** of the **Company**.
3. **Debt Default:**
The public announcement that the **Company** had defaulted or intends to default on its debt.
4. **Bankruptcy:**
The public announcement that the **Company** intends to file for bankruptcy protection or that a third party is seeking to file for involuntary bankruptcy on behalf of the **Company**; or the imminence of bankruptcy proceedings, whether voluntary or involuntary.
5. **Mass Tort:**
The public announcement or accusation that a **Company** has caused the bodily injury, sickness, disease, death or emotional distress of a group of persons, or damage to or destruction of any tangible group of properties, including the loss of use thereof.
6. **Regulatory Crisis:**
The public announcement of the commencement or threat of commencement of litigation or governmental or regulatory proceedings against a **Company**.

The descriptions in the headings of the **Crisis Management Events** are solely for convenience and form no part of the terms and conditions of coverage.

A **Crisis Management Event** shall first commence when the **Company** or any of its **Executives** shall first become aware of the event during the **Policy Period** and shall conclude at the earliest of the time when the **Crisis Management Firm** advises the **Company** that the crisis no longer exists or when the **Crisis Management Fund** has been exhausted.

- (b) "**Crisis Management Firm**" means any public relations firm, crisis management firm or law firm listed below in Section III of this Appendix D. Any "**Crisis Management Firm**" may be hired by the **Company** or its **Executives** or **Employees** to perform **Crisis Management Services** without further approval by the Insurer.
- (c) "**Crisis Management Loss**" means the following amounts incurred during the pendency of or within 90 days prior to and in anticipation of, the **Crisis Management Event**, regardless of whether a **Claim** is ever made against an Insured arising from the **Crisis Management Event** and, in the case where a

Claim is made, regardless of whether the amount is incurred prior to or subsequent to the making of the Claim:

- (1) amounts for which the **Company** is legally liable for the reasonable and necessary fees and expenses incurred by a **Crisis Management Firm** in the performance of **Crisis Management Services** for the **Company** arising from a **Crisis Management Event**; and
 - (2) amounts for which the **Company** is legally liable for the reasonable and necessary printing, advertising, mailing of materials, or travel by **Executives, Employees** or agents of the **Company** or the **Crisis Management Firm**, in connection with the **Crisis Management Event**.
- (d) "**Crisis Management Services**" means those services performed by a **Crisis Management Firm** in advising the **Company** or any of its **Executives** or **Employees** on minimizing potential harm to the **Company** arising from the **Crisis Management Event**, including but not limited to maintaining and restoring public confidence in the **Company**.
- (e) "**Material Effect**" means the publication of unfavorable information regarding the **Company** which can reasonably be considered to lessen public confidence in the competence of the **Company**. Such publication must in occur in either:
- (1) a daily newspaper of general circulation in the geographic area of the **Company**, or
 - (2) a radio or television news report on a **Company** received in the geographic area of the **Company**.

II. EXCLUSIONS

The term **Crisis Management Event** shall not include any event relating to:

1. any pending or prior litigation as of the **Continuity Date** for the **D&O Coverage Section** indicated in Item 3 of the Declarations;
2. any **Claim** which has been reported, or 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;
3. the actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants**, or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**; or
4. the hazardous properties of nuclear materials.

III. PRE-APPROVED CRISIS FIRMS

For all **Crisis Management Events**, **Crisis Management Firm(s)** means any public relations firm listed in (1) - (8) below:

1. [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

ENDORSEMENT# 1

105

This endorsement, effective *12:01 am September 3, 2018* forms a part of
policy number *01-825-10-59*
issued to *EDUCATION CORPORATION OF AMERICA*

by *AIG Specialty Insurance Company*

**NOTICE OF CLAIM
(REPORTING BY E-MAIL)**

In consideration of the premium charged, it is hereby understood and agreed as follows:

1. *Email Reporting of Claims:* In addition to the postal address set forth for any Notice of Claim Reporting under this policy, such notice may also be given in writing pursuant to the policy's other terms and conditions to the Insurer by email at the following email address:

c-claim@AIG.com

Your email must reference the policy number for this policy. The date of the Insurer's receipt of the emailed notice shall constitute the date of notice.

In addition to Notice of Claim Reporting via email, notice may also be given to the Insurer by mailing such notice to: AIG, Financial Lines Claims, P.O. Box 25947, Shawnee Mission, KS 66225 or faxing such notice to (866) 227-1750.

2. *Definitions:* For this endorsement only, the following definitions shall apply:
 - (a) "Insurer" means the "Insurer," "Underwriter" or "Company" or other name specifically ascribed in this policy as the insurance company or underwriter for this policy.
 - (b) "Notice of Claim Reporting" means "notice of claim/circumstance," "notice of loss" or other reference in the policy designated for reporting of claims, loss or occurrences or situations that may give rise or result in loss under this policy.
 - (c) "Policy" means the policy, bond or other insurance product to which this endorsement is attached.
3. This endorsement does not apply to any Kidnap & Ransom/Extortion Coverage Section, if any, provided by this policy.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



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END 001

ENDORSEMENT# 2

106

This endorsement, effective at 12:01 am September 3, 2018 forms a part of
Policy number 01-825-10-59
Issued to: EDUCATION CORPORATION OF AMERICA

By: AIG Specialty Insurance Company

Product Name: PrivateEdge Plus

ECONOMIC SANCTIONS ENDORSEMENT

This endorsement modifies insurance provided under the following:

Coverage shall only be provided and payment of loss under this policy shall only be made in full compliance with enforceable United Nations economic and trade sanctions and the trade and economic sanction laws or regulations of the European Union and the United States of America, including, but not limited to, sanctions, laws and regulations administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC").

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



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END 002

ENDORSEMENT# 3

107

This endorsement, effective *12:01 am September 3, 2018* forms a part of
policy number *01-825-10-59*
issued to *EDUCATION CORPORATION OF AMERICA*

by *AIG Specialty Insurance Company*

**NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT
(ALL COVERAGE SECTIONS)**

In consideration of the premium charged, it is hereby understood and agreed that the **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

- A. alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly, the **Hazardous Properties of Nuclear Material**, including but not limited to:
- (1) **Nuclear Material** located at any **Nuclear Facility** owned by, or operated by or on behalf of, the **Company**, or discharged or dispersed therefrom; or
 - (2) **Nuclear Material** contained in spent fuel or waste which was or is at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of the **Company**; or
 - (3) the furnishing by an **Insured** or the **Company** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any **Nuclear Facility**; or
 - (4) **Claims** for damage or other injury to the **Company** or its shareholders which allege, arise from, are based upon, are attributed to or in any way involve, directly or indirectly, the **Hazardous Properties of Nuclear Material**.
- B. (1) which is insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability underwriters, or Nuclear Insurance Association of Canada, or would be insured under any such policy but for its termination or exhaustion of its limit of liability; or,
- (2) with respect to which: (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the **Insured** is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

As used in this endorsement:

"**Hazardous Properties**" include radioactive, toxic or explosive properties.

"**Nuclear Facility**" means:

- (a) any nuclear reactor;
- (b) any equipment or device designed or used for

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END 003

ENDORSEMENT# 3 (continued)

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- (1) separating the isotopes of uranium or plutonium,
 - (2) processing or utilizing spent fuel, or
 - (3) handling, processing or packaging wastes;
- (c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the Insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235; and
- (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

"Nuclear Material" means source material, special nuclear material or byproduct material.

"Nuclear Reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

"Source Material," "Special Nuclear Material," and **"Byproduct Material"** have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

"Spent Fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor.

"Waste" means any waste material (1) containing by product material and (2) resulting from the operation by any person or organization of any **Nuclear Facility** included within the definition of nuclear facility under paragraph (a) or (b) thereof.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



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ENDORSEMENT# 4

109

This endorsement, effective *12:01 am September 3, 2018* forms a part of
policy number *01-825-10-59*
issued to *EDUCATION CORPORATION OF AMERICA*

by *AIG Specialty Insurance Company*

**SPECIFIC INVESTIGATION/CLAIM/LITIGATION/EVENT OR ACT EXCLUSION
(D&O, EPL AND FLI COVERAGE SECTIONS)**

In consideration of the premium charged, it is hereby understood and agreed that, solely with respect to **Loss** as may have otherwise been covered under the **D&O Coverage Section**, the **EPL Coverage Section** or the **FLI Coverage Section**, the Insurer shall not be liable to make any payment for any **Loss** in connection with: (i) any **Claim(s)**, notices, events, investigations or actions referred to in any of items listed below (hereinafter "**Events**"); (ii) the prosecution, adjudication, settlement, disposition, resolution or defense of: (a) any **Event(s)**; or (b) any **Claim(s)** arising from any **Event(s)**; or (iii) any **Wrongful Act**, underlying facts, circumstances, acts or omissions in any way relating to any **Event(s)**:

Events:

1. *All claims per RSUI loss runs dated 09/16/2011*

It is further understood and agreed that the Insurer shall not be liable for any **Loss** in connection with any **Claim(s)** alleging, arising out of, based upon, attributable to or in any way related directly or indirectly, in part or in whole, to an **Interrelated Wrongful Act** (as that term is defined below), regardless of whether or not such **Claim** involved the same or different Insureds, the same or different legal causes of action or the same or different claimants or is brought in the same or different venue or resolved in the same or different forum.

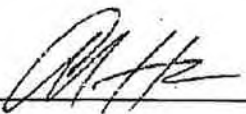
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END 004

ENDORSEMENT# 4 (continued)

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For the purposes of this endorsement an "Interrelated Wrongful Act" means: (i) any fact, circumstance, act or omission alleged in any Event(s) and/or (ii) any Wrongful Act which is a Related Wrongful Act to any Wrongful Act alleged in any Event(s).

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



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END 004

ENDORSEMENT# 5

This endorsement, effective 12:01 am September 3, 2018 forms a part of policy number 01-825-10-59 issued to EDUCATION CORPORATION OF AMERICA

by AIG Specialty Insurance Company

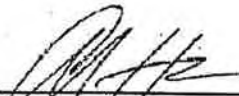
CLASS ACTION OR MULTIPLE PLAINTIFF CLAIMS SEPARATE RETENTION (D&O COVERAGE SECTION)

In consideration of the premium charged, it is hereby understood and agreed that Clause 6. **RETENTION CLAUSE** of the **D&O Coverage Section** is amended by adding the following paragraph at the end thereof:

Notwithstanding the foregoing, with regard to any **Class Action or Multiple Plaintiff Claim**, the **Insurer** shall only be liable for the amount of **Loss** arising from such **Class Action or Multiple Plaintiff Claim** which is in excess of a Retention amount of \$1,500,000, such Retention amount to be borne by the **Company** and/or the **Insureds** and shall remain uninsured, with regard to: (i) all **Indemnifiable Loss**; and (ii) **Loss** of the **Company**. A single Retention amount shall apply to **Loss** arising from all **Claims** alleging the same **Wrongful Act or Related Wrongful Acts**. In the event a **Claim** triggers more than one applicable retention amount, only the highest such amount shall apply, which amount shall apply to all **Loss** under such **Claim**.

For purposes of this endorsement only and solely with respect to the **D&O Coverage Section**, the term "**Class Action or Multiple Plaintiff Claim**" means any **Claim** brought by or on behalf of an actual or alleged class, whether or not certified as such, or by multiple plaintiffs, or which is seeking certification as a class action.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



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END 5

ENDORSEMENT# 6

This endorsement, effective *12:01 am September 3, 2018* forms a part of
policy number *01-825-10-59*
issued to *EDUCATION CORPORATION OF AMERICA*

112

by *AIG Specialty Insurance Company*

**SPECIFIC ENTITY/INDIVIDUAL EXCLUSION
(CLAIMS BROUGHT BY OR AGAINST)
(ALL COVERAGE SECTIONS)**

In consideration of the premium charged, it is hereby understood and agreed that, with respect to all **Coverage Sections**, the **Insurer** shall not be liable to make any payment for any **Loss** arising out of or in connection with any **Claim(s)** made against any **Insured** which is brought by or on behalf of or against (i) the entity(ies) or individual(s) listed below, including but not limited to any Claim brought by any director, officer, heir, trustee or partner of the entity, or by any security holder thereof, whether such Claim is brought directly or derivatively:

1. Geomarion Bradley, Sandra Friend, Willie Keyes, Stephanie Holmes, Lamonica Walker, Persephine Hopkins, Angela Wiggins, Darlanda Robinson, Mary James, Lupe Randell, Julie Garner, Philip J. Shelnut

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



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END 6

ENDORSEMENT# 7

113

This endorsement, effective *12:01 am September 3, 2018* forms a part of
policy number *01-825-10-59*
issued to *EDUCATION CORPORATION OF AMERICA*

by *AIG Specialty Insurance Company*

**ADDITIONAL LISTED PLAN(S) ENDORSEMENT - AP
(FLI COVERAGE SECTION)**

In consideration of the additional premium of _____, it is hereby understood
and agreed that, with respect to the **FLI Coverage Section**, the Definition of "Plan" shall
also include the following listed Plan(s), subject to the corresponding **Continuity Date**:

PLAN(S)	CONTINUITY DATE
<i>Retirement Plan for Employees of the New England College of Business & Finance</i>	<i>June 6, 2012</i>

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



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END 007

ENDORSEMENT# 8

114

This endorsement, effective at 12:01 am September 3, 2018 forms a part of
Policy number 01-825-10-59
Issued to: EDUCATION CORPORATION OF AMERICA

By: AIG Specialty Insurance Company

Product Name: PrivateEdge Plus

AFFORDABLE CARE ACT COVERAGE
(FLI Coverage Section)

In consideration of the additional premium of \$0, it is hereby understood and agreed that the **FLI Coverage Section** is amended as follows:

I.

The **FLI Coverage Section** is amended to include the following **FLI EXTENSION** Clause at the end thereof:

AA. FLI EXTENSION

Affordable Care Act Coverage

This policy shall pay the **Loss** of an **Insured** arising from a **Claim** made against such **Insured** for any **Healthcare Exchange Wrongful Act**.

II.

Solely with respect to the coverage afforded under this endorsement, in Clause 3, **DEFINITIONS** of the **FLI Coverage Section**, paragraph (kk), "**Wrongful Act**," is amended to include the following at the end thereof:

"**Wrongful Act**" also means any **Healthcare Exchange Wrongful Act**.

III.

As used herein, the following terms have the following meanings:

"**Healthcare Exchange**" means any public, private or government-sponsored entity set up to facilitate the purchase of health insurance in accordance with the Patient Protection and Affordable Care Act.

"**Healthcare Exchange Wrongful Act**" means any actual or alleged act, error or omission by an **Insured** in connection with insurance purchased through, or attempted to be purchased through, a **Healthcare Exchange**.

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END 008

IV.

Solely with respect to the coverage afforded by this endorsement, the term "**Plan**" is amended to include any **Healthcare Exchange**, but no coverage shall be provided for such **Healthcare Exchange**.

V.

Solely with respect to the coverage provided by this endorsement, in the event that the **Insured's** business is that of an insurer, insurance provider, or insurance exchange provider or marketplace, then the **Insurer** shall not be liable to make any payment for **Loss** in connection with such business, including but not limited to any professional services related thereto.

VI.

Further, coverage as is afforded by virtue of this endorsement shall apply excess of any other valid and collectible insurance under which payment of the claim is required or actually made. If said other insurance is provided by the **Insurer** or any other insurance company thereof (or would be provided but for the application of the retention amount or the exhaustion of the limit of liability) (herein, "**Other Policy**"), then the **Insurer's** maximum aggregate limit of liability for all **Loss** combined in connection with a **Claim** covered, in part or in whole, by this policy and such **Other Policy**, shall not exceed the greater of the **Limit of Liability** set forth on the Declarations page of this policy or the limit of liability of such **Other Policy**.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



AUTHORIZED REPRESENTATIVE

Or Countersignature (In states where applicable)

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END 008

ENDORSEMENT# 9

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This endorsement, effective 12:01 am September 3, 2018 forms a part of
policy number 01-825-10-59
issued to EDUCATION CORPORATION OF AMERICA

by AIG Specialty Insurance Company

**PANEL COUNSEL FIRM LIST AMENDED
(EPL COVERAGE SECTION)**

In consideration of the premium charged, it is hereby understood and agreed as follows:

1. Appendix B "Panel Counsel List" for Clause 7. of the **EPL Coverage Section** is hereby amended to include the following law firm(s) (the "**Listed Firms**"), but solely with regard to a **Claim(s)** in its (their) respective jurisdiction(s) listed below:

<u>LAW FIRM</u>	<u>JURISDICTION</u>
(a) [REDACTED]	US

(b)

2. The foregoing amendment to Appendix B shall not apply to any **Claim**:
 - (a) for which the Insurer has assumed the defense pursuant to Clause 6 of this policy;
 - (b) alleging **Retaliation**;
 - (c) brought in the form of a class or multiple plaintiff action; or
 - (d) alleging discrimination or sexual harassment by a duly elected or appointed director or officer of the **Company**.
3. Billing rates for the **Listed Firms** shall not exceed the following:

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END 009

ENDORSEMENT# 9 (continued) *

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LAW FIRM

(a) [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

(b)

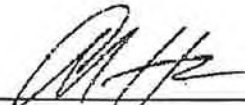
Partners:

Associates:

Paralegals:

4. With respect to the defense of any **Claims** by the **Listed Firm(s)**, it is agreed that to the extent that services are billed at rates that exceed the rates listed above, the excess over such rates shall not be covered under this policy as **Defense Costs** or otherwise as **Loss**.
5. The rates set forth in Clause 3 shall apply for the life of any **Claim** as long as such **Claim** is in any way covered under this policy. Such rates will be applied to (i) all covered **Defense Costs** and (ii) **Defense Costs** applied against an applicable **Retention**. The **Named Entity** shall bear, at its own expense, that portion of any fees charged by the **Listed Firms** that exceeds the applicable rates set forth in this endorsement.
6. The **Insureds** agree to require the **Listed Firms** to follow the **Insurer's** litigation guidelines ("**Litigation Guidelines**"). Copies of the **Litigation Guidelines** will be provided to (i) any **Insured** upon request and (ii) a **Listed Firm** once a **Claim** that such firm has been retained to handle is submitted to the **Insurer**.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



AUTHORIZED REPRESENTATIVE

Or Countersignature (In states where applicable)

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END 009

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issued to EDUCATION CORPORATION OF AMERICA

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by AIG Specialty Insurance Company

**HIGHER EDUCATION ENDORSEMENT
(D&O AND EPL COVERAGE SECTIONS)**

In consideration of the premium charged, it is hereby understood and agreed that the D&O Coverage Section and the EPL Coverage Section are amended as follows:

I. AMENDMENTS TO D&O COVERAGE SECTION

The following amendments only apply if the D&O Coverage Section was purchased by the Insured.

A. Amendments to Definitions.

1. In Clause 2. **DEFINITIONS** of the **D&O Coverage Section**, the definition of "**Individual Insured(s)**" is amended to include the following at the end thereof:

Individual Insured(s) shall also include any past, present or future member of the faculty, student teacher, teaching assistant, faculty aide, representative to an education association of which the **Company** is a member, and any president, regent, chancellor, provost, treasurer, vice-president, dean, personnel director, governor, executive director, risk manager, university counsel, or other comparable senior administrator of the **Company**, regardless of whether they are considered as an **Employee** of the **Company** or as an independent contractor. **Individual Insureds(s)** shall also include any administrator, association member, member manager or alumni council member of the **Company**.

2. In Clause 2. **DEFINITIONS** of the **D&O Coverage Section**, the definition of "**Loss**" is amended to include the following at the end thereof:

(v) IRS Fines:

Loss shall include **Defense Costs** incurred in connection with a **Claim** seeking an assessment of taxes, initial taxes, additional taxes, tax deficiencies, excise taxes or penalties pursuant to the following sections of the Internal Revenue Code of 1986 (as amended):

Section 4911 (tax on excess expenditures to influence legislation);
Section 4940 (a) (tax on net investment income of tax-exempt foundations);
Section 4941 (taxes on self-dealing);
Section 4942 (taxes on failure to distribute income);
Section 4943 (taxes on excess business holding);

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by *AIG Specialty Insurance Company*

Section 4944 (taxes on investments which jeopardize charitable purpose);
Section 4945 (taxes on taxable expenditures);
Section 6652 (c) (1) (A) and (B) (penalties for failure to file certain
information returns or registration statements);
Section 6655 (a) (1) (penalties for failure to pay estimated income tax); and
Section 6656 (a) and (b) (penalties for failure to make deposit of taxes).

(vi) GOVERNMENTAL FUNDING DEFENSE COST COVERAGE

Loss shall not include the return of funds which were received from any federal, state or local governmental agency and any interest, fines or penalties arising out of the return of such funds; provided, however, that with regard to **Claims for Wrongful Acts** arising out of the return, or request to return such funds, this policy shall pay **Defense Costs** up to an amount not to exceed \$1,000,000 ("**Government Funding Defense Costs Sublimit of Liability**"). This **Government Funding Sub-Limit of Liability** shall be part of and not in addition to the **Designated Policy Aggregate Limit of Liability** and any **Designated Separate Limit of Liability** or **Designated Shared Limit of Liability** applicable to the **D&O Coverage Section**, and shall in no way serve to increase such **Designated Policy Aggregate Limit of Liability, Designated Separate Limit of Liability** or **Designated Shared Limit of Liability**. With respect to any **Defense Costs** coverage afforded pursuant to this subparagraph (vi), it is further understood and agreed that the Insurer shall be liable to pay only 50% of such **Defense Costs**, excess of a retention in the amount of \$1,000,000, up to the **Government Funding Defense Costs Sublimit of Liability**, and subject to the **Designated Policy Aggregate Limit of Liability** and any **Designated Separate Limit of Liability** or **Designated Shared Limit of Liability** applicable to the **D&O Coverage Section**. It is a condition of this insurance that the remaining 50% of such **Defense Costs** shall be carried by the **Insureds** at their own risk and be uninsured.

(vii) EXCESS BENEFIT PENALTY COVERAGE

Loss shall also include any "**Excess Benefits**" penalty assessed in the amount of 10% by the Internal Revenue Service ("**IRS**") against any **Insured(s)** for management's involvement in the award of an "**Excess Benefit**" and the **Defense Costs** attributable thereto. **Loss** shall specifically exclude: (1) any 25% penalty assessed by the **IRS** against an **Insured** deemed to have received an **Excess Benefit**; (2) **Defense Costs** incurred to defend any **Insured** if it has been in fact determined that such individual received an **Excess Benefit**; and (3) any 200% penalty assessed by the **IRS** for failure to correct the award of an **Excess Benefit**. In all events, the assessment by the **IRS** of a 200% penalty against any **Insured** shall void ab initio all coverage afforded pursuant to this paragraph.

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(viii) RETURN OF TUITION FEES

Subject to all other terms, conditions and exclusions of the policy, **Loss** shall also include any damages, judgments, settlements, pre-judgment and post-judgment interest arising out of, based upon or attributable to any return of tuition fees.

In the event that any **Claim** arising out of, based upon or attributable to return of tuition fees, then the **Insureds**, the **Insurer** and the **Company** shall allocate **Loss** relating to any such **Claim** in the manner set forth below.

Loss incurred in connection with a **Claim** described in the preceding paragraph shall be allocated as follows: 80% of such **Loss** shall be allocated as **Loss** covered under the policy and 20% of such **Loss** shall be allocated as not constituting **Loss** and not covered under the policy. The **Insurer's** liability for payment of the 80% of such **Loss** shall be subject to all other terms, conditions, exclusions and limitations of the policy and all endorsements thereto (whether any such endorsement precedes or follows this endorsement), including without limitation all terms and conditions of Clause 7 and Clause 9 of the policy. This **Loss** allocation shall not apply to or create any presumption with respect to the allocation of any other **Loss** in connection with any other **Claim**.

The maximum limit of the **Insurer's** liability for all **Loss** arising from any **Claim** arising out of, based upon or attributable to the return of tuition fees is \$10,000,000 ("Sublimit of Liability"). This **Sublimit of Liability** is part of, and not in addition to, the **Designated Separate Limit of Liability** or **Designated Shared Limit of Liability** for the **D&O Coverage Section** and the **Designated Policy Aggregate Limit** of set forth in Item 2 of the **Program Participant Endorsement**, and shall in no way serve to increase such **Designated Separate Limit of Liability**, **Designated Shared Limit of Liability** or **Designated Policy Aggregate Limit of Liability**.

3. In Clause 2. "DEFINITIONS" of the **D&O Coverage Section**, the definition of "**Wrongful Act**" is amended to include the following at the end thereof:

With respect to all **Insureds**, educational malpractice or failure to educate; negligent instruction; failure to supervise; inadequate or negligent academic guidance or counseling; improper or inappropriate academic placement or discipline; failure to grant due process; invasion of privacy or humiliation, including violation of the Buckley Amendment, the "Uniform Student Freedom of Expression Act" if adopted by any applicable jurisdiction; the publication of any alleged defamatory material in a book, newspaper or other publication of the **Company** or any alleged defamatory material broadcast over a radio, cable or television station owned or operated by the **Company**.

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by *AIG Specialty Insurance Company*

4. Clause 2. **DEFINITIONS** of the **D&O Coverage Section** is amended to include the following definition at the end thereof:

(ee) "**Excess Benefits**" means an excess benefit as defined in the Taxpayer Bill of Rights Act, 2, 26 U.S.C. 4958.

B. Amendments To Exclusions.

1. Clause 4. **EXCLUSIONS** of the **D&O Coverage Section**, paragraphs (l) and (q)(iii) are deleted in their entirety and replaced as followed:

(l) for bodily injury, sickness, disease or death of any person, or damage to, loss of use of or destruction of any tangible property; provided, however, this exclusion shall not apply to: (1) **Securities Claims**; (2) **UK Corporate Manslaughter Act Defense Costs**; or (3) emotional distress or mental anguish;

(q)(iii) for any actual or alleged contractual liability of the **Company** under any express contract or agreement; provided, however, this exclusion shall not apply to:

- (1) **Written Sale Agreement**;
- (2) **Contract Claim Defense Costs Coverage**;
- (3) **Securities Claim**;
- (4) liability which would have attached in the absence of such express contract or agreement; or
- (5) covered **Loss** incurred in connection with a **Claim** alleging **Wrongful Acts of an Insured(s)** arising out of a contract with a student for educational services.

2. Clause 4. **EXCLUSIONS** of the **D&O Coverage Section** is amended to include the following at the end thereof:

The **Insurer** shall also not be liable to make any payment for **Loss** in connection with any **Claim** made against an **Insured** alleging, arising out of, based upon or attributable to or in any way relating to the rendering or failure to render any professional services for which registration or license is required by the federal, state or applicable local government. This exclusion shall not apply to the provision of or failure to provide educational services by the **Company** or an **Individual Insured**

This endorsement, effective *12:01 am* *September 3, 2018* forms a part of
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by *AIG Specialty Insurance Company*

C. Pre-Authorized Defense Attorneys For All Claims.

Clause 9. **PRE-AUTHORIZED DEFENSE ATTORNEYS FOR SECURITIES CLAIMS** of the **D&O Coverage Section** is deleted in its entirety and replaced with the following:

9. PRE-AUTHORIZED DEFENSE ATTORNEYS FOR ALL CLAIMS

This Clause 9 applies to all **Claims**.

Affixed as Appendix A hereto and made a part of this **D&O Coverage Section** 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 **Claim** against an **Insured** pursuant to the terms set forth in this Clause.

In the event the **Insureds** are already defending a **Claim**, then the **Insureds** shall select a Panel Counsel Firm to defend the **Insureds**.

The selection of the **Panel Counsel Firm** by the **Insureds** shall be from the list of **Panel Counsel Firms** designated for the type of **Claim** and be from the jurisdiction in which the **Claim** is brought. In the event a **Claim** is brought in a jurisdiction not included on the appropriate list, the selection shall be made from a listed jurisdiction which is the nearest geographic jurisdiction to either where the **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 **Claim** is brought to function as "local counsel" on the **Claim** to assist the **Panel Counsel Firm** which will function as "lead counsel" in conducting the defense of the **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 during the **Policy Period** to the **Panel Counsel Firms** listed in Appendix A without the consent of the **Named Entity**.

This endorsement, effective *12:01 am September 3, 2018* forms a part of
policy number *01-825-10-59*
issued to *EDUCATION CORPORATION OF AMERICA*

by *AIG Specialty Insurance Company*

D. Panel Counsel Firm List Amended.

1. Appendix A "Panel Counsel List" for Clause 9. of the **D&O Coverage Section** is hereby amended to include the following law firm(s) (the "**Listed Firms**"), but solely with regard to a **Claim(s)** in its (their) respective jurisdiction(s) listed below:

<u>LAW FIRM</u>	<u>JURISDICTION</u>
[REDACTED]	U.S.
[REDACTED]	U.S.
[REDACTED]	U.S.
[REDACTED]	U.S.
[REDACTED]	U.S.
[REDACTED]	U.S.
[REDACTED]	U.S.
[REDACTED]	U.S.
[REDACTED]	U.S.

2. Billing rates for the **Listed Firms** shall not exceed the following:

[REDACTED]

3. With respect to the defense of any **Claims** by the **Listed Firm(s)**, it is agreed that to the extent that services are billed at rates that exceed the rates listed above, the excess over such maximum rates shall not be covered under this policy as **Defense Costs** or otherwise as **Loss**.
4. The rates set forth in Clause 3 shall apply for the life of any **Claim** as long as such **Claim** is in any way covered under this policy. Such rates will be applied to (i) all covered **Defense Costs** and (ii) **Defense Costs** applied against an applicable **Retention**. The **Named Entity** shall bear, at its own expense, that portion of any fees charged by the **Listed Firms** that exceeds the applicable rates set forth in this endorsement.

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policy number *01-825-10-59*
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by *AIG Specialty Insurance Company*

5. The Insureds agree to require the **Listed Firms** to follow the **Insurer's D&O Liability Litigation Guidelines ("Litigation Guidelines")**. Copies of the **Litigation Guidelines** will be provided to (i) any **Insured** upon request and (ii) a **Listed Firm** once a **Claim** that such firm has been retained to handle is submitted to the **Insurer**.

E. Antitrust Claims.

Solely with regard to **Loss** as may have otherwise been covered under the **D&O Coverage Section**:

1. In Item 6. **RETENTION AMOUNTS** of the **Program Participation Endorsement**, the section applicable to the **D&O Retention** is deleted in its entirety and replaced with the following:

Liability Coverage Section		Retention/Deductible
D&O	D&O Coverage Section	Antitrust Claims: \$1,500,000 All Other Claims: \$500,000

2. In Clause 5. **RETENTION CLAUSE** of the **General Terms and Conditions**, subparagraph (a) is amended by inserting the following paragraph at the end thereof:

Notwithstanding the foregoing, with respect to any **Antitrust Claims**, the **Insurer** shall only be liable for **Loss** arising from an **Antitrust Claim** which is in excess of the applicable **Retention** amount stated in Item 3 of the **Declarations for Antitrust Claims**, such **Retention** amount to be borne by the **Organization** and/or the **Insureds** and shall remain uninsured, with regard to: (i) all **Indemnifiable Loss**; and (ii) **Loss** of the **Organization**. A single **Retention** amount shall apply to **Loss** arising from all **Claims** alleging the same **Wrongful Act** or **Related Wrongful Acts**. In the event a **Claim** triggers more than one amount stated in Item 3 of the **Declarations**, only the highest such amount shall apply, which amount shall apply to all **Loss** under such **Claim**.

3. Solely with respect to the coverage provided by this endorsement, Clause 2. **DEFINITIONS** of the **General Terms and Conditions** is hereby amended by adding the following Definition to the end thereof:

"**Antitrust Claim**" means any **Claim** alleging, arising out of, based upon or attributable to, or in any way involving, either directly or indirectly, antitrust violations, including any violation of the **Sherman Antitrust Act**, the **Clayton Act**, the **Robinson-Patman Act** or any similar federal, state or local statutes or rules, price fixing, price discriminations, unfair competition, deceptive trade practices and/or monopolies, including any actions, proceedings, claims or investigations related thereto.

This endorsement, effective *12:01 am* *September 3, 2018* forms a part of
policy number *01-825-10-59*
issued to *EDUCATION CORPORATION OF AMERICA*

by *AIG Specialty Insurance Company*

II. AMENDMENTS TO EPL COVERAGE SECTION

The following amendments only apply if the **EPL Coverage Section** was purchased by the Insured.

A. Amendments to Definitions.

1. In Clause 2. **DEFINITIONS** of the **EPL Coverage Section**, the definition of "**Employment Practices Violation**" is amended by deleting subparagraph (xii) and replacing it with the following subparagraphs:

- (xii) defect in the tenure or peer review process, including the denial or removal of tenure.
- (xiii) with respect to any of the foregoing items (i) through (xii) of this definition: negligent hiring, retention, training or supervision, infliction of emotional distress or mental anguish, failure to provide or enforce adequate or consistent corporate policies and procedures, or violation of an individual's civil rights;

2. In Clause 2. **DEFINITIONS** of the **EPL Coverage Section**, the definition of "**Individual Insured(s)**" is amended to include the following at the end thereof:

Individual Insured(s) shall also include any past, present or future member of any duly constituted committee; any individual person engaged by a duly constituted committee for purposes of providing an expert opinion with regard to peer review or credentialing decision concerning an individual physician; any individual in charge of any operational department or any medical director, staff physician or faculty member of the **Company**, regardless of whether or not such person is directly employed by the **Company** or is considered to be an independent contractor.

B. Amendments To Exclusions.

1. In Clause 3. **EXCLUSIONS** of the **EPL Coverage Section**, paragraph (h) is deleted in their entirety and replaced with the following:

- (h) alleging, arising out of, based upon or attributable to any actual or alleged contractual liability of any **Insured** under any express contract or agreement; provided, however, that this exclusion shall not apply to:
 - (i) **Liability** which would have attached in the absence of such express contract or agreement;
 - (ii) **Defense Costs**; or
 - (iii) **Claims for Loss** alleging **Wrongful Acts** of an **Insured(s)** with respect to hospital practice privileges, credentialing or peer review matters;

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issued to *EDUCATION CORPORATION OF AMERICA*

by *AIG Specialty Insurance Company*

C. PRE-AUTHORIZED DEFENSE ATTORNEYS FOR ALL CLAIMS.

Clause 6. "PRE-AUTHORIZED DEFENSE ATTORNEYS FOR SECURITIES CLAIMS" of the EPL Coverage Section is deleted in its entirety and replaced with the following:

6. PRE-AUTHORIZED DEFENSE ATTORNEYS FOR ALL CLAIMS

This Clause 6 applies to all Claims.

Affixed as Appendix B hereto and made a part of this EPL Coverage Section 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 Claim against an Insured pursuant to the terms set forth in this Clause.

In the event the Insureds are already defending a Claim, then the Insureds shall select a Panel Counsel Firm to defend the Insureds.

The selection of the Panel Counsel Firm by the Insureds shall be from the list of Panel Counsel Firms designated for the type of Claim and be from the jurisdiction in which the Claim is brought. In the event a Claim is brought in a jurisdiction not included on the appropriate list, the selection shall be made from a listed jurisdiction which is the nearest geographic jurisdiction to either where the 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 Claim is brought to function as "local counsel" on the Claim to assist the Panel Counsel Firm which will function as "lead counsel" in conducting the defense of the 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 during the Policy Period to the Panel Counsel Firms listed in Appendix B without the consent of the Named Entity.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



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END 10

This endorsement, effective 12:01 am September 3, 2018 forms a part of policy number 01-825-10-59 issued to EDUCATION CORPORATION OF AMERICA

by AIG Specialty Insurance Company

PROGRAM PARTICIPANT ENDORSEMENT - EDUCATION CORPORATION OF AMERICA

In consideration of the premium amount charged for the Named Entity listed on this endorsement and any Insured of such Named Entity, as such premium amount is set forth in Item 7 of this endorsement, it is understood and agreed that the following terms and conditions are particular to such Named Entity and any Insured thereof:

Item 1. **NAMED ENTITY:** EDUCATION CORPORATION OF AMERICA

MAILING ADDRESS: 3660 GRANDVIEW PKWY
 BIRMINGHAM, AL 35243-3330

STATE OF INCORPORATION/FORMATION OF THE NAMED ENTITY: DE

Item 2. **DESIGNATED POLICY AGGREGATE LIMIT OF LIABILITY:** \$35,000,000

Coverage Section	Designated Shared Limit of Liability	Designated Separate Limit of Liability
D&O Coverage Section:	N/A	\$10,000,000
EPLI Coverage Section:	N/A	\$15,000,000
FLI Coverage Section:	N/A	\$10,000,000

Item 3. **OTHER POLICY YEAR LIMITS OF LIABILITY:**

- a. Crisis Management Fund for D&O: \$50,000
- b. Costs of Investigation Coverage Sublimit for D&O: \$250,000
- c. Voluntary Compliance Loss Sublimit of Liability for FLI: \$100,000
- d. HIPAA Penalties Sublimit of Liability for FLI: \$100,000
- e. Contract Claim Defense Costs Coverage Sublimit of Liability for D&O: \$1,000,000
- f. Side A Excess Limit of Liability \$1,000,000
 excess aggregate limit of liability for all **Non-Indemnifiable Loss** solely for **Executives** of a Company (including **Defense Costs**) under the **D&O Coverage Section** (herein the "Side A Excess Limit of Liability")

This endorsement, effective *12:01 am September 3, 2018* forms a part of
policy number *01-825-10-59*
issued to *EDUCATION CORPORATION OF AMERICA*

by *AIG Specialty Insurance Company*

Item 4. **CONTINUITY DATES:**

D&O Coverage Section: 12/21/2004
EPLI Coverage Section: 12/21/2004
FLI Coverage Section: 12/21/2004

Item 5. **PRIOR ACT DATES:**

D&O Coverage Section: N/A
EPLI Coverage Section: N/A
FLI Coverage Section: N/A

Item 6. **RETENTION AMOUNTS (for Loss arising from Claims alleging the same Wrongful Act or Related Wrongful Acts):**

D&O Coverage Section: \$500,00
EPLI Coverage Section: \$350,000
FLI Coverage Section: \$100,000

Note: No Retention amount is applicable to non-Indemnifiable Loss.

Item 7.

PREMIUM [REDACTED]

Item 8.

ANNUAL PREMIUM [REDACTED]



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ENDORSEMENT# 12

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This endorsement, effective at 12:01 am September 3, 2018 forms a part of
Policy number 01-825-10-59
Issued to: EDUCATION CORPORATION OF AMERICA

By: AIG Specialty Insurance Company

Product Name: PrivateEdge Plus

**FEDERAL SHARE OF COMPENSATION UNDER TRIA AND CAP ON LOSSES
ENDORSEMENT**

This endorsement modifies insurance provided by this Policy:

DISCLOSURE

You should know that where coverage is provided by this Policy for losses resulting from "Certified Acts of Terrorism" (as defined by Section 102 (1) of United States Terrorism Risk Insurance Act), such losses may be partially reimbursed by the United States Government under a formula established by federal law. However, your Policy may contain other exclusions which might affect your coverage such as, an exclusion for nuclear events. Under the formula, the United States Government generally reimburses 85% through 2015; 84% beginning on January 1, 2016; 83% beginning on January 1, 2017; 82% beginning January 1, 2018; 81% beginning January 1, 2019 and 80% beginning on January 1, 2020, of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage.

You should also know that the Terrorism Risk Insurance Act, as amended, contains a \$100 billion cap that limits United States Government reimbursement as well as insurers' liability for losses resulting from "Certified Acts of Terrorism" when the amount of such losses in any one calendar year exceeds \$100 billion. If the aggregate insured losses for all insurers exceed \$100 billion in a calendar year and if we have met our insurer deductible, we are not liable for the payment of any portion of the amount of such losses that exceeds \$100 billion; and for aggregate insured losses up to \$100 billion, we will only pay a pro rata share of such insured losses as determined by the Secretary of the Treasury.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



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END 012

ENDORSEMENT# 13

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This endorsement, effective *12:01 am September 3, 2018* forms a part of
 policy number *01-825-10-59*
 issued to *EDUCATION CORPORATION OF AMERICA*

by *AIG Specialty Insurance Company*

FORMS INDEX ENDORSEMENT

The contents of the Policy is comprised of the following forms:

FORM NUMBER	EDITION DATE	FORM TITLE
MNSCPT		DIRECTORS & OFFICERS LIABILITY INSURANCE, EMPLOYMENT PRACTICES LIABILITY INSURANCE, FIDUCIARY LIABILITY INSURANCE - DECLARATIONS
96555	01/15	TRIA DEC DISCLOSURE FORM
MNSCPT		GENERAL TERMS AND CONDITIONS
MNSCPT		D&O COVERAGE SECTION
MNSCPT		EPL COVERAGE SECTION
MNSCPT		FLI COVERAGE SECTION
	06/08	SECURITIES CLAIM PANEL COUNSEL LIST
	06/08	EMPLOYMENT PRACTICES CLAIM PANEL COUNSEL
99544	07/08	EMPLOYEE BENEFIT PLAN FIDUCIARY LIABILITY PANEL COUNSEL
97886	04/08	POLICYHOLDER NOTICE REGARDING E-DISCOVERY CONSULTANT SERVICES
96311	02/08	APPENDIX D - CRISIS MANAGEMENT COVERAGE FOR D&O COVERAGE SECTION
99758	08/08	NOTICE OF CLAIM (REPORTING BY E-MAIL)
119679	09/15	ECONOMIC SANCTIONS ENDORSEMENT
95737	09/07	NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT (ALL COVERAGE SECTIONS)
99193	05/08	SPECIFIC INVESTIGATION-CLAIM-LITIGATION-EVENT OR ACT EXCLUSION (D&O EPL AND FLI COVERAGE SECTION)
MNSCPT		CLASS ACTION OR MULTIPLE PLAINTIFF CLAIMS SEPARATE RETENTION
MNSCPT		SPECIFIC ENTITY/INDIVIDUAL EXCLUSION
95855	09/07	ADDITIONAL LISTED PLAN(S) ENDORSEMENT (AP) FLI COVERAGE SECTION
117285	02/14	AFFORDABLE CARE ACT (OBAMACARE) COVERAGE ENHANCEMENT
99560	07/08	PANEL COUNSEL FIRM LIST AMENDED (EPL COVERAGE SECTION)
MNSCPT		HIGHER EDUCATION ENDORSEMENT

© All rights reserved.

END 013

ENDORSEMENT# 13

131

This endorsement, effective 12:01 am September 3, 2018 forms a part of
policy number 01-825-10-59
issued to EDUCATION CORPORATION OF AMERICA

by AIG Specialty Insurance Company

FORMS INDEX ENDORSEMENT

The contents of the Policy is comprised of the following forms:

FORM NUMBER	EDITION DATE	FORM TITLE
MNSCPT		PROGRAM PARTICIPANT ENDORSEMENT - EDUCATION CORPORATION OF AMERICA
125595	03/17	FEDERAL SHARE OF COMPENSATION UNDER TRIA AND CAP ON LOSSES ENDORSEMENT
78859	10/01	FORMS INDEX ENDORSEMENT

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



AUTHORIZED REPRESENTATIVE
Or Countersignature (In states where applicable)

END 013

Page 2 of 2



CLAIM REPORTING FORM

Issuing Company: *AIG Specialty Insurance Company*

Reported under Policy/Bond Number: 01-825-10-59 Date: _____

Type of Coverage: D&O _____ E&O _____ Fidelity _____ (complete the Fidelity Supplemental on the next page)

Insured's Name, as given on Policy Declarations (Face Page):

EDUCATION CORPORATION OF AMERICA

Contact Person: _____

Title: _____

Phone: (_____) _____ Ext _____

eMail: _____ @ _____

Case or Claimant Name: _____

If the party involved is different from "Insured" Name (as given on Policy Declarations) state relationship:

Insurance Broker/Agent: WILLIS OF NEW YORK, INC

Address: 200 LIBERTY STREET, 7TH FL

Address: NEW YORK, NY 10281-1003

Contact: COURTNEY LOGAN Phone: _____

eMail: MAILHUB@WILLISTOWERSWATSON.COM

Send Notice of Claims to:	AIG	Phone: (888) 602- 5246
	Financial Lines Claims	Fax: (866) 227- 1750
	P.O. Box 25947	Email: <u>c- Claim@AIG.com</u>
	Shawnee Mission, KS 66225	



**CLAIM REPORTING FORM
FIDELITY SUPPLEMENTAL**

(Only complete this supplemental if the Claim is being reported under Fidelity Coverage)

Issuing Company: *AIG Specialty Insurance Company*

Reported under Policy/Bond Number: 01-825-10-59

Date of Discovery: _____ Estimated Amount of loss: _____

Cause of Loss: Employee Dishonesty _____ Computer Fraud _____
Funds Transfer _____ Robbery/Burglary _____
ID Theft _____ Forgery _____
Client Property _____ In Transit _____
ERISA _____ Credit Card Forgery _____
Other _____ if Other, describe: _____

Send Notice Of Claims To: AIG Phone: (888) 602- 5246
Financial Lines Claims Fax: (866) 227- 1750
P.O. Box 25947 Email: c- Claim@AIG.com
Shawnee Mission, KS 66225

EXHIBIT B

Proposed Order

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

VC MACON GA, LLC

Plaintiff,

v.

Civil Action No. 5:18-cv-00388-TES

**VIRGINIA COLLEGE, LLC; and
EDUCATION CORPORATION OF
AMERICA,**

Defendants.

**ORDER GRANTING RECEIVER'S
EXPEDITED MOTION FOR ORDER CLARIFYING THAT
COURT'S INJUNCTION DOES NOT APPLY TO INSURANCE POLICY**

This matter came to be heard upon the Receiver' motion (the "Motion") for an order clarifying that the injunction imposed by the Court in the Order Appointing Receiver and Preliminary Injunction (the "Receivership Order") (Doc. 26), as modified in the Supplemental Order (the "Supplemental Order") (Doc. 104), does not apply to the Policy¹ and authorizing AIG to pay for any Losses (as defined in the Policy), including the advancement of legal fees and expenses, stemming from any Claim (as defined in the Policy). Upon consideration of the Motion; and it appearing that the notice of the Motion provided is appropriate and sufficient under the circumstances and that no other or further notice need be given; and it appearing that the relief requested is in the best interests of the Receivership Estate, its creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND, DETERMINED AND ORDERED THAT:

¹ Unless otherwise defined herein, capitalized terms shall have the meaning given to them in the Motion.

1. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure (the "Rules").

2. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

3. The Court has jurisdiction over this matter and over the property of the Receivership Estate pursuant to Rule 66 of the Rules and this Court's broad equitable powers.

4. Proper, timely, adequate, and sufficient notice of the Motion have been provided. Such notice was sufficient and appropriate under the particular circumstances. No other or further notice of the Motion or of the entry of this Order is necessary or shall be required.

5. A reasonable opportunity to object or be heard regarding the requested relief in the Motion and this Order has been afforded to all entities who have appeared in this action.

6. The Motion is **GRANTED**.

7. To the extent the Policy and the proceeds from the Policy are property of the Receivership Estate, the injunction imposed by the Court in the Receivership Order, as modified in the Supplemental Order, does not apply to the Policy or the proceeds therefrom.

8. Due to the Receivership, neither the Receiver nor the Receivership Entities are required to pay the Retention (as defined in the Policy).

9. AIG is authorized to disburse proceeds in accordance with the terms and conditions of the Policy, including the payment for any Losses, such as the advancement of legal fees and expenses, stemming from any Claim under the Policy.

10. This Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Order, notwithstanding anything to the contrary proscribed by applicable law.

11. This Court shall retain jurisdiction with respect to all matters arising from or related to the enforcement of this Order.

Dated: _____

U.S. District Court Judge

General Civil and Domestic Relations Case Filing Information Form

Superior or State Court of GWINNETT County

Robert J. Alford
CLERK OF STATE COURT

For Clerk Use Only

Date Filed 08-23-2019
MM-DD-YYYY

Case Number 19-C-06260-S6

Plaintiff(s)

CHEATHAM MATTHEW

Last First Middle I. Suffix Prefix

Last First Middle I. Suffix Prefix

Last First Middle I. Suffix Prefix

Last First Middle I. Suffix Prefix

Defendant(s)

VIRGINIA COLLEGE, LLC

Last First Middle I. Suffix Prefix

EDUCATION CORPORATION OF AMERICA

Last First Middle I. Suffix Prefix

Last First Middle I. Suffix Prefix

Last First Middle I. Suffix Prefix

Plaintiff's Attorney CHRISTOPHER ARMOR

Bar Number 614061

Self-Represented

Check One Case Type in One Box

General Civil Cases

- Automobile Tort
- Civil Appeal
- Contract
- Garnishment
- General Tort
- Habeas Corpus
- Injunction/Mandamus/Other Writ
- Landlord/Tenant
- Medical Malpractice Tort
- Product Liability Tort
- Real Property
- Restraining Petition
- Other General Civil

Domestic Relations Cases

- Adoption
- Dissolution/Divorce/Separate Maintenance
- Family Violence Petition
- Paternity/Legitimation
- Support - IV-D
- Support - Private (non-IV-D)
- Other Domestic Relations

Post-Judgment - Check One Case Type

- Contempt
- Non-payment of child support, medical support, or alimony
- Modification
- Other/Administrative

Check if the action is related to another action(s) pending or previously pending in this court involving some or all of the same parties, subject matter, or factual issues. If so, provide a case number for each.

_____ Case Number

_____ Case Number

I hereby certify that the documents in this filing, including attachments and exhibits, satisfy the requirements for redaction of personal or confidential information in O.C.G.A. § 9-11-7.1.

Is an interpreter needed in this case? If so, provide the language(s) required. _____
Language(s) Required

Do you or your client need any disability accommodations? If so, please describe the accommodation request.

AFFIDAVIT OF SERVICE


CLERK OF STATE COURT

State of Georgia

County of Gwinnett

State Court

Case Number: 19-C-06260-S6

Plaintiff:

Matthew Cheatham

vs.

Defendant:

Virginia College, LLC

For:

Christopher Armor
Armor Law
160 Clairemont Avenue
Suite 200
Decatur, GA 30030

Received by Ancillary Legal Corporation on the 6th day of September, 2019 at 12:31 pm to be served on **Virginia College c/o National Registered Agents, 289 S Culver Street, Lawrenceville, GA 30046.**

I, Christopher Todd Horton, being duly sworn, depose and say that on the **6th day of September, 2019 at 3:05 pm, I:**

served **Virginia College c/o National Registered Agents** by delivering a true copy of the **Summons, Class Action Complaint and Demand for Jury Trial, Plaintiff's Exhibit A, General Civil and Domestic Relations Case Filing Information Form** to: National Registered Agents as **Registered Agent, BY LEAVING THE SAME WITH** Linda Banks, as **Process Specialist / Authorized Agent** at the address of: **289 S Culver Street, Lawrenceville, GA 30046 .**

Additional Information pertaining to this Service:

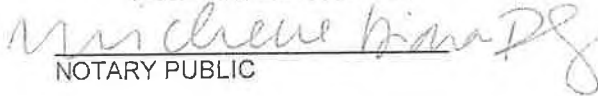
9/6/2019 3:05 pm Perfected corporate service at 289 S Culver Street, Lawrenceville, GA 30046, by serving Jane Richardson, process specialist.

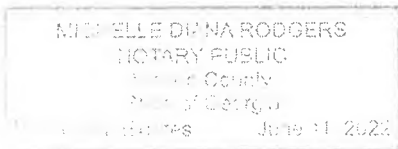
White female
Gray hair
55-60 years old
5'6" 170 lbs
Wears glasses

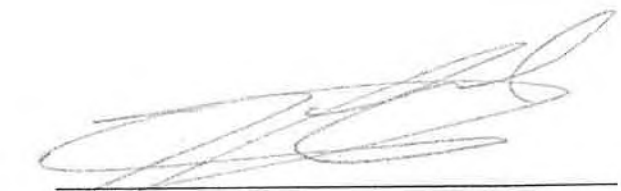
AFFIDAVIT OF SERVICE For 19-C-06260-S6

I am an agent of Ancillary Legal Corporation and am competent in all respects to testify regarding the matters set forth herein. I have personal knowledge of the facts stated herein and know them to be true. I have no interest in the outcome of this action and am not related to any of the parties. I am 18 or more years of age and am authorized to serve process.

Subscribed and Sworn to before me on the 9
day of Sept, 2019 by the affiant
who is personally known to me.


NOTARY PUBLIC





Christopher Todd Horton
Process Server

Ancillary Legal Corporation
2900 Chamblee Tucker Road
Building 13
Atlanta, GA 30341
(404) 459-8006

Our Job Serial Number: ANC-2019004192

IN THE STATE COURT OF GWINNETT COUNTY

19-C-06260-S6
8/26/2019 10:05 AM

STATE OF GEORGIA

Richard T. Alexander, Jr.
CLERK OF STATE COURT

MATTHEW CHEATHAM

CIVIL ACTION
NUMBER: **19-C-06260-S6**

PLAINTIFF

VS.

EDUCATION CORP. OF AMERICA

3660 Grandview Parkway
Birmingham, Alabama 35243

DEFENDANT

SUMMONS

TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned and required to file with the Clerk of said court and serve upon the Plaintiff's attorney, whose name and address is:

CHRISTOPHER ARMOR
ARMOR LAW, LLC
P.O. BOX 451328
ATLANTA, GA 31145

an answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This **26TH** day of **AUGUST**, 20**19**.

Richard T. Alexander, Jr.,
Clerk of State Court

By *Nichole Norton*
Deputy Clerk

INSTRUCTIONS: Attach addendum sheet for additional parties if needed, make notation on this sheet if addendum sheet is used.

EXHIBIT 4

Documents from GA Secretary of State

Retrieved from: <https://www.mvp.sos.ga.gov/MVP/voterDetails.do>

MVP
MY VOTER PAGE
GEORGIA SECRETARY OF STATE BRAD RAFFENSPERGER

Corporations
Elections
News Room
Professional Licensing Boards
Securities
Charities

My Voter Page ?

Voter Information

MATTHEW CHRISTOPHER CHEATHAM
[REDACTED]
 WOODSTOCK, GA, 30189
 Race: Unknown
 Gender: **Male** Status: **Active**
 Registration Date: **08/12/2016**

Change Voter Information

Polling Place for State, County, and Municipal Elections

Precinct 015
 THE LODGE AT DEER RUN
 7032 HUNTERS RIDGE
 WOODSTOCK, GA, 30189 - 0000
Election Day polling place hours are 7:00 am - 7:00 pm.

Directions to Polling Place

[Click Here for Early Voting Locations and Times](#)
[Click Here for Municipal Polling Place](#)

NOTE: Non-specific rural addresses may not be available.

Georgia Voter ID
Learn more about
 Georgia's voter
 identification
 requirements.

Stop Voter Fraud
Work with us to help
 protect your vote and
 the integrity of
 elections.

Elections Division
Georgia
 Secretary of State's
 elections division.

Elections Advisory Council
Make Your Voice
 Heard on the
 Georgia Election

Georgia VoteSafe
Get the most up-to-date
 information on the
 Georgia VoteSafe
 Program.

Absentee Ballot Request Information

If you prefer to vote off site, mail or fax your absentee ballot application to your county registrar.

[Click Here for an Absentee Ballot Application](#)

[Click here for Absentee Ballot status](#)

Your Elected Officials

Candidates Elected:	Officials Elected Statewide
District Maps:	Congressional District Maps
U.S. Congress:	District 011
Georgia Senate:	District 021
Georgia House:	District 020
Judicial:	Blue Ridge District
Commission:	District 004
School:	District 005
Ward:	At Large

[Click Here for Qualified Candidates](#)

Please Note: Polling places are subject to change. Always check your designated polling place location via this website prior to going to vote.

Newly Registered Voters: Please review your registration date which is located under your name and address above. You must be registered on or before the established deadlines to vote in upcoming elections. Please view the [current election calendar](#) to confirm the first election in which you will be eligible to vote.

Print / Email Precinct Card
Back

VOTER REGISTRATION OFFICE
 400 EAST MAIN ST
 CANTON GA 30114
 PHONE: 770-479-0407

RETURN SERVICE REQUESTED

REG. DATE	08/12/2016
ISSUE DATE	10/02/2019
REG. No.	10859554

CHEROKEE COUNTY PRECINCT CARD
 SIGN CARD AND KEEP FOR YOUR RECORDS

PRECINCT NAME: DEER RUN
 POLLING PLACE: THE LODGE AT DEER RUN
 7032 HUNTERS RIDGE
 WOODSTOCK GA 30189 - 0000

CITY PRECINCT NAME: WOODSTOCK
 POLLING PLACE: WOODSTOCK PUBLIC LIBRARY
 7735 MAIN ST
 WOODSTOCK GA 30188 - 0000

VOTING DISTRICTS:

011	021	020	BLRD	004	005	LRG
CONG	SENAT	HOUSE	JUDIC	COMMI	SCHOL	WARD

MATTHEW CHRISTOPHER CHEATHAM
 [REDACTED]
 WOODSTOCK GA 30189

ATTENTION: This is your NEW Voter Registration Precinct Card. It replaces any other Voter Card you currently have in your possession. Keep for your records.

(Cut or fold on the dotted line for wallet card)

If you change your address within the county, complete this form and mail to the return address on the front of this card.

Note: Change of address must be submitted at least 30 days preceding any election.

If you move to another county or if there is a change in your legal name, you must complete a new voter registration application in order to remain qualified to vote.


This card may not be used as evidence to prove United States Citizenship or as identification to vote. (ref.1996 United States Public Law 104-99)

YOUR NEW RESIDENCE ADDRESS WITHIN COUNTY (PLEASE PRINT)

Number	Street	Apartment
City		Zip Code
Mailing Address (If Different)		
City		Zip Code
Daytime		Date

VOTER'S SIGNATURE

From the Secretary of State website, www.sos.ga.gov, a registered voter with a valid Georgia driver's license or identification card issued by the GA Department of Driver Services may change his or her name or address using Online Voter Registration. You may also access Online Voter Registration by downloading the GA Votes app. Visit our website at www.mvp.sos.ga.gov/MVP, download the GA Votes app or contact your local registrar's office.

 For Android


 For Apple

EXHIBIT 5

Answer

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

MATTHEW CHEATHAM,)
on behalf of himself and all others)
similarly situated,)

Plaintiff,)

v.)

VIRGINIA COLLEGE, LLC and)
EDUCATION CORPORATION)
OF AMERICA,)

Defendants.)

CIVIL ACTION NO.

_____)
JURY TRIAL DEMANDED

ANSWER AND AFFIRMATIVE DEFENSES

Defendants Virginia College, LLC (“Virginia College”) and Education Corporation of America (“ECA”) (collectively, “Defendants”), by and through undersigned counsel, hereby submit this Answer to the Class Action Complaint (“Complaint”) filed by Plaintiff Matthew Cheatham on behalf of himself and those similarly situated.

Plaintiff entered into an agreement with Defendants in which he agreed to both a mandatory arbitration agreement and a class action waiver provision. Accordingly, Defendants submit this Answer without waiving, and specifically preserving, their right to move this Court to compel individual arbitration of Plaintiff’s claims in the Complaint under the Federal Arbitration Act, 9 U.S.C. § 1,

et seq., to deny class arbitration, and further to move this Court to dismiss and/or strike Plaintiff's class claims and/or deny certification of such claims.

INTRODUCTION¹

1. Defendants admit that both Virginia College and ECA operated colleges in the United States. Defendants lack knowledge or information concerning the accuracy of the remaining allegations in Paragraph 1 and therefore denies those allegations.

2. Defendants admit that the Accrediting Council for Independent Colleges and Schools suspended Virginia College's accreditation on December 4, 2018. Defendants deny the remaining allegations in Paragraph 2.

3. Defendants deny the allegations in Paragraph 3.

4. Defendants deny the allegations in Paragraph 4.

5. Defendants admit that Virginia College had campuses in Huntsville, Alabama and Macon, Georgia. Defendants deny the remaining allegations in Paragraph 5.

6. Defendants deny the allegations in Paragraph 6.

7. Defendants deny the allegations in Paragraph 7.

¹ Defendants include the headings set forth in the Complaint for reference purposes only.

PARTIES, JURISDICTION, AND VENUE

8. Upon information and belief, Defendants admit the allegations in Paragraph 8.

9. Defendants admit the allegations in Paragraph 9, except that they deny that Virginia College's principal place of business is in Montgomery, Alabama. Virginia College was headquartered in Birmingham, Alabama.

10. Defendants admit the allegations in Paragraph 10.

11. Defendants admit the allegations in Paragraph 11.

12. Defendants deny the allegations in Paragraph 12.

13. Defendants deny the allegations in Paragraph 13.

14. Defendants deny the allegations in Paragraph 14.

15. Defendants admit the allegations in Paragraph 15.

16. Defendants deny the allegations in Paragraph 16. The court order was not entered on January 16, 2019 and it is not attached as Exhibit A.

17. The allegations in Paragraph 17 appears to be a quote from the insurance policy. The insurance policy document speaks for itself. To the extent a response is required, Defendants deny those allegations.

18. The allegations in Paragraph 18 appears to be an interpretation of the insurance policy. The insurance policy document speaks for itself. To the extent a response is required, Defendants deny those allegations.

19. The allegations in Paragraph 19 appears to be an interpretation of the insurance policy. The insurance policy document speaks for itself. To the extent a response is required, Defendants deny those allegations.

20. The allegations in Paragraph 20 appears to be an interpretation of the insurance policy. The insurance policy document speaks for itself. To the extent a response is required, Defendants deny those allegations.

21. Defendants admit the AIG Policy is attached as Exhibit A to the Receiver's Expedited Motion for Order Clarifying That Court's Injunction Does Not Apply to Insurance Policy filed on January 16, 2019 in *VC Macon GA, LLC v. Virginia College, LLC, Education Corporation of America*, 5:18-cv-00388 (M.D. Ga).

22. Defendants admit the allegations of Paragraph 22.

PLAINTIFF MATTHEW CHEATHAM

23. Upon information and belief, Defendants admit the allegations in Paragraph 23.

24. Defendants admit the allegations in Paragraph 24.

25. Defendants admit the allegations in Paragraph 25.

26. Defendants lack knowledge or information concerning the accuracy of the allegations in Paragraph 26 and therefore deny those allegations.

27. Defendants lack knowledge or information concerning the accuracy of

the allegations in Paragraph 27 and therefore deny those allegations.

28. Defendants lack knowledge or information concerning the accuracy of the allegations in Paragraph 28 and therefore deny those allegations.

29. Defendants lack knowledge or information concerning the accuracy of the allegations in Paragraph 29 and therefore deny those allegations.

30. Defendants lack knowledge or information concerning the accuracy of the allegations in Paragraph 30 and therefore deny those allegations.

31. Defendants lack knowledge or information concerning the accuracy of the allegations in Paragraph 31 and therefore deny those allegations.

32. Defendants lack knowledge or information concerning the accuracy of the allegations in Paragraph 32 and therefore deny those allegations.

33. Defendants deny the allegations in Paragraph 33.

CLASS ALLEGATIONS

34. The allegations in Paragraph 34 constitute characterizations of the Complaint to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 34. Defendants further deny that the certification of any class, under any applicable rule, is appropriate.

35. The allegations in Paragraph 35 and each subpart thereto constitute characterizations of the Complaint to which no response is required. To the extent a response is required, Defendants deny those allegations.

36. The allegations in Paragraph 36 constitute characterizations of the Complaint to which no response is required. To the extent a response is required, Defendants deny those allegations.

37. The allegations in Paragraph 37 constitute characterizations of the Complaint to which no response is required. To the extent a response is required, Defendants deny those allegations.

38. Defendants deny the allegations in Paragraph 38.

39. Defendants deny the allegations in Paragraph 39 and each of the subparagraphs thereto.

40. Defendants deny the allegations in Paragraph 40.

41. Defendants deny the allegations in Paragraph 41.

42. Defendants deny the allegations in Paragraph 42.

43. Defendants deny the allegations in Paragraph 43.

44. Defendants deny the allegations in Paragraph 44.

45. Defendants deny the allegations in Paragraph 45.

46. Defendants deny the allegations in Paragraph 46.

47. Defendants deny the allegations in Paragraph 47.

COUNT I – NEGLIGENCE

48. Defendants adopt and expressly incorporate their responses to Paragraphs 1-47 as if fully set forth herein.

49. Defendants deny the allegations in Paragraph 49.

50. Defendants admit that the Accrediting Council for Independent Colleges and Schools suspended Virginia College's accreditation on December 4, 2018. Defendants deny the remaining allegations in Paragraph 50.

51. Defendants deny the allegations in Paragraph 51.

52. Defendants deny the allegations in Paragraph 52.

53. Defendants deny the allegations in Paragraph 53.

54. Defendants deny the allegations in Paragraph 54.

55. Defendants deny the allegations in Paragraph 55.

56. The allegations in Paragraph 56 constitute conclusions of law to which no response is required. To the extent a response is required, Defendants admit that they owe certain duties to students under the law, but deny that any such duties were breached.

57. Defendants deny the allegations in Paragraph 57.

58. The allegations in Paragraph 58 constitute conclusions of law to which no response is required. To the extent a response is required, Defendants admit that they owe certain duties to students under the law, but deny that any such duties were breached.

59. The allegations in Paragraph 59 constitute conclusions of law to which no response is required. To the extent a response is required, Defendants admit that

they owe certain duties to students under the law, but deny that any such duties were breached.

60. The allegations in Paragraph 60 constitute conclusions of law to which no response is required. To the extent a response is required, Defendants admit that they owe certain duties to students under the law, but deny that any such duties were breached.

61. Defendants deny the allegations in Paragraph 61.

62. The allegations in Paragraph 62 constitute conclusions of law to which no response is required. To the extent a response is required, Defendants admit that they owe certain duties to students under the law, but deny that any such duties were breached.

63. Defendants deny the allegations in Paragraph 63.

64. Defendants deny the allegations in Paragraph 64.

65. Defendants deny the allegations in Paragraph 65.

COUNT II – BREACH OF CONTRACT

66. Defendants adopt and expressly incorporate their responses to Paragraphs 1-65 as if fully set forth herein.

67. Defendants admit that Plaintiff and former students and online students entered into contracts with Defendants. Defendants deny the remaining allegations in Paragraph 67.

68. Defendants admit that Plaintiff and former students and online students entered into contracts with Defendants. Those contracts speak for themselves. To the extent a response is required, Defendants deny the remaining allegations in Paragraph 68.

69. Defendants admit that Plaintiff and former students and online students entered into contracts with Defendants. Those contracts speak for themselves. To the extent a response is required, Defendants deny the remaining allegations in Paragraph 69.

70. Defendants deny the allegations in Paragraph 70.

71. Defendants deny the allegations in Paragraph 71.

72. Defendants deny the allegations in Paragraph 72.

73. Defendants deny the allegations in Paragraph 73.

74. Defendants deny the allegations in Paragraph 74.

75. Defendants deny the allegations in Paragraph 75.

COUNT III – UNJUST ENRICHMENT

76. Defendants adopt and expressly incorporate their responses to Paragraphs 1-75 as if fully set forth herein.

77. Defendants admit Plaintiff and at least some former students and online students paid tuition to Defendants while enrolled. Defendants deny the remaining allegations in Paragraph 77.

78. Defendants deny the allegations in Paragraph 78.

79. Defendants deny the allegations in Paragraph 79.

80. Defendants deny the allegations in Paragraph 80.

ANY ARBITRATION AGREEMENTS ARE UNENFORCEABLE

In ¶¶ 81-86 of the Complaint, Plaintiff claims that his claims, and the claims of putative class members, should be allowed to proceed in court, rather than be arbitrated as Plaintiff and putative class members agreed, based on certain federal regulations. Plaintiff essentially is asking this Court to interpret and declare those federal regulations to allow his claims to proceed in court. Defendants dispute Plaintiff's position.

81. The allegations in Paragraph 81 constitute conclusions of law to which no response is required. To the extent a response is required, Defendants deny those allegations.

82. The allegations in Paragraph 82 constitute conclusions of law to which no response is required. To the extent a response is required, Defendants deny those allegations.

83. Defendants deny the allegations in Paragraph 83.

84. The allegations in Paragraph 84 constitute conclusions of law to which no response is required. To the extent a response is required, Defendants deny those allegations.

85. The allegations in Paragraph 85 constitute conclusions of law to which no response is required. To the extent a response is required, Defendants deny those allegations.

86. The allegations in Paragraph 86 constitute conclusions of law to which no response is required. To the extent a response is required, Defendants deny those allegations.

PRAYER FOR RELIEF

Defendants deny that Plaintiff or any members of the proposed classes are entitled to any of the requested relief set forth in Plaintiff's prayer for relief and each of the subparagraphs (a-j) thereto.

AFFIRMATIVE DEFENSES

Defendants deny each and every allegation contained in Plaintiff's Complaint not specifically admitted or denied, or otherwise responded to, in their Answer and Affirmative Defenses, or in any amendment or supplement to their Answer and Affirmative Defenses, and demand strict proof of each and every allegation contained in Plaintiff's Complaint, including strict proof as to the nature and extent of the injuries and damages alleged.

Defendants specifically reserve the right to assert additional affirmative defenses as warranted based on any clarification or modification of the allegations or on facts later learned, discovered, pled or offered.

FIRST AFFIRMATIVE DEFENSE

Defendants plead the applicability of the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.*, to any and all claims made against them that fall within any arbitration provision contained in any applicable contract or agreement. This Answer is filed without waiving, and specifically reserving, the right to arbitrate any claims covered by any arbitration provision.

SECOND AFFIRMATIVE DEFENSE

All of Plaintiff's claims on behalf of the proposed class are barred because Plaintiff and Defendants entered a written agreement signed by Plaintiff that included a class action waiver whereby each party agreed to bring claims against the other only in an individual capacity.

THIRD AFFIRMATIVE DEFENSE

Neither Plaintiff nor any purported class member has suffered, and none will suffer, any injury to a legally protected or cognizable interest by reason of the conduct of Defendants as alleged in the Complaint.

FOURTH AFFIRMATIVE DEFENSE

Defendants deny they owed Plaintiff and some or all members of the proposed class any legal duty; however, even if any such duty were determined to exist, Defendants deny breaching the same.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims, and those of some or all of the other persons he purports to represent, against Defendants are not appropriate for resolution through class action practice under Rule 23 of the Federal Rules of Civil Procedure or any other applicable rule, state or otherwise.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff, and some or all of the other persons he purports to represent, cannot demonstrate that irreparable harm will result without the granting of permanent injunctive relief and that any harm will not be compensable by money damage therefore any claim for injunctive relief cannot stand.

SEVENTH AFFIRMATIVE DEFENSE

The Complaint, and each and every count thereof, fails to state a claim against Defendants.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims, and those of some or all of the other persons he purports to represent, are barred by the applicable statutes of limitation and/or statute of repose.

NINTH AFFIRMATIVE DEFENSE

Some or all of Plaintiff's claims, and those of some or all of the other persons he purports to represent, are barred by the doctrines of accord and satisfaction, waiver, estoppel, ratification, consent, release, acquiescence, economic loss,

necessity, frustration of purpose, laches and unclean hands.

TENTH AFFIRMATIVE DEFENSE

All of Plaintiff's claims are precluded on the ground that Plaintiff and some or all members of the proposed class lack standing to bring some or all of the claims set forth in the Complaint.

ELEVENTH AFFIRMATIVE DEFENSE

Some or all of Plaintiff's claims, and those of some or all of the other persons he purports to represent, are barred by the statute of frauds.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff, and some or all of the other persons he purports to represent, failed to mitigate any of their alleged damages.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff, and some or all of the other persons he purports to represent, is not entitled to attorneys' fees, costs, or expenses for any claim asserted against Defendants in this action.

FOURTEENTH AFFIRMATIVE DEFENSE

Each count of the Complaint is barred because Defendants fully performed all of their contractual obligations to Plaintiff and other persons he purports to represent.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff, and the other persons he purports to represent, suffered no damages

because of any act or omission of Defendants.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff's action or inaction and/or the actions of the proposed class members caused or contributed to the alleged damages.

SEVENTEENTH AFFIRMATIVE DEFENSE

Defendants acted in good faith at all times, and did not accidentally, negligently, wantonly, recklessly, knowingly, willfully, or fraudulently commit any act, without any information, or directly or indirectly induce any act or inaction that created liability to Plaintiff or any other person he purports to represent.

EIGHTEENTH AFFIRMATIVE DEFENSE

Class certification is inappropriate because of conflicts of interest between Plaintiff and the members of the putative class and/or between and among members of the putative class.

NINETEENTH AFFIRMATIVE DEFENSE

Class certification is inappropriate because the Plaintiff and/or Plaintiff's counsel are inadequate representatives of the members of the putative class.

TWENTIETH AFFIRMATIVE DEFENSE

To the extent special damages are sought, such damages may never be the subject of class treatment under Rule 23 of the Federal Rules of Civil Procedure or any state rule.

TWENTY-FIRST AFFIRMATIVE DEFENSE

The Complaint fails to adequately define any class of persons who could properly maintain this action as a class action.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Class certification is inappropriate because there is a lack of commonality of questions of law and/or questions of fact.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Class certification is inappropriate because there is a lack of typicality.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Class certification is inappropriate because there are likely to be difficulties in the management of the proposed class action.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Class certification is inappropriate because the claims and types of relief alleged by Plaintiff on his behalf and that of the putative class are matters in which individual questions of fact and law predominate over common questions.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Class certification is inappropriate because the claims and types of relief alleged by Plaintiff are not common to or typical of any claims of the members of the putative class which Plaintiff purports to represent.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Class certification is inappropriate because the Plaintiff has not, and cannot, show that class treatment of the claims alleged and relief sought is superior to other methods of the adjudicating the dispute.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Plaintiff has not expressly requested punitive damages in his Complaint. In the even that Plaintiff nonetheless is allowed to make a claim for punitive damages, Defendants deny that they are guilty of any conduct that would entitle Plaintiff, and some or all of the other persons he purports to represent, to recover punitive damages.

TWENTY-NINTH AFFIRMATIVE DEFENSE

Plaintiff has not expressly requested punitive damages in his Complaint. In the even that Plaintiff nonetheless is allowed to make a claim for punitive damages, Defendants aver that any award of punitive damages to the Plaintiff, and some or all of the other persons he purports to represent, in this case would be in violation of the constitutional safeguards provided to Defendants under the Constitution of the State of Georgia.

THIRTIETH AFFIRMATIVE DEFENSE

Plaintiff has not expressly requested punitive damages in his Complaint. In the even that Plaintiff nonetheless is allowed to make a claim for punitive damages,

Defendants aver that any award of punitive damages in this case would be in violation of the constitutional safeguards provided to Defendants under the Constitution of the United States of America.

THIRTY-FIRST AFFIRMATIVE DEFENSE

Plaintiff has not expressly requested punitive damages in his Complaint. In the even that Plaintiff nonetheless is allowed to make a claim for punitive damages, Plaintiff is not entitled to punitive damages. Plaintiff cannot meet the requirements of O.C.G.A. § 51-12-5.1, and as a result, punitive damages may not be awarded in this case. Without waiving their denial of liability to Plaintiff, including without limitation their denial of any liability for punitive damages, Defendants plead the limitations on punitive damages imposed by O.C.G.A. § 51-12-5.1. The award of punitive damages pursuant to a procedure which fails to provide a reasonable limit on the amount of the award against the Defendants violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution and the Due Process Clause of Article I, Section 1, Paragraph 1 of the Georgia Constitution. The award of punitive damages under a procedure which results in the imposition of different penalties for the same or similar acts violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. The procedures pursuant to which punitive damages are awarded are unconstitutionally vague. Punitive damages are not available for breach of contract.

THIRTY-SECOND AFFIRMATIVE DEFENSE

Plaintiff has not expressly requested punitive damages in his Complaint. In the event that Plaintiff nonetheless is allowed to make a claim for punitive damages, the imposition of punitive damages in this case will constitute an excessive fine in violation of the Eighth Amendment of the Constitution of the United States and Due Process Clause of Article I, Section 1, Paragraph 1 of the Georgia Constitution.

THIRTY-THIRD AFFIRMATIVE DEFENSE

Plaintiff has not expressly requested punitive damages in his Complaint. In the event that Plaintiff nonetheless is allowed to make a claim for punitive damages, the imposition of punitive damages in this case is unconstitutional under the due process clause of the Fourteenth Amendment of the Constitution of the United States for the following reasons, jointly and separately: (1) The punitive damages sought in this case are vastly disproportionate to the actual damages allegedly sustained by the Plaintiff, and some or all of the other persons he purports to represent; (2) The imposition of punitive damages in this case constitutes an arbitrary and capricious taking of Defendants' property with no rationally stated purpose; (3) Allowing a jury to award punitive damages with unfettered discretion is inconsistent with due process; and, (4) Such damages are vague and ambiguous and are not rationally related to any legitimate government interest.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

Plaintiff has not expressly requested punitive damages in his Complaint. In the event that Plaintiff nonetheless is allowed to make a claim for punitive damages, any award of punitive damages in this case would be subject to scrutiny under the factors set forth in *Cooper Indust., Inc., v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001); *BMW of North America, Inc. v. Gore*, 517 U.S. 599 (1996), and the application thereof in *BMW of North America, Inc. v. Gore*, 701 So. 2d 507 (Ala. 1997); and *State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408 (2003)

THIRTY-FIFTH AFFIRMATIVE DEFENSE

Plaintiff has not expressly requested punitive damages in his Complaint. In the event that Plaintiff nonetheless is allowed to make a claim for punitive damages, any jury making an award of punitive damages in this case must consider the factors set forth in *Cooper Indust., Inc., v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001); *BMW of North America, Inc. v. Gore*, 517 U.S. 599 (1996), and the application thereof in *BMW of North America, Inc. v. Gore*, 701 So. 2d 507 (Ala. 1997); and *State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408 (2003)

THIRTY-SIXTH AFFIRMATIVE DEFENSE

Plaintiff has not expressly requested punitive damages in his Complaint. In the event that Plaintiff nonetheless is allowed to make a claim for punitive damages, any jury award of punitive damages in this case would be unconstitutional under

Cooper Indust., Inc., v. Leatherman Tool Group, Inc., 532 U.S. 424 (2001); *BMW of North America, Inc. v. Gore*, 517 U.S. 599 (1996), and the application thereof in *BMW of North America, Inc. v. Gore*, 701 So. 2d 507 (Ala. 1997); and *State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims, and those of some or all of the other persons he purports to represent, are barred in whole or in part under the doctrine of impossibility.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims, and those of some or all of the other persons he purports to represent, are barred in whole or in part under the doctrine of impracticability.

THIRTY-NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims, and those of some or all of the other persons he purports to represent, are barred because any injuries he suffered were not due to the Defendants.

FORTIETH AFFIRMATIVE DEFENSE

Defendants avail themselves to all defenses, in whole or in part, available under the Higher Education Act of 1965, 20 U.S.C. § 1001 *et seq.*

FORTY-FIRST AFFIRMATIVE DEFENSE

The Department of Education rule and regulations referenced in the Complaint, ¶¶ 81-86 conflict with and/or are preempted by the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.*, in that they, *inter alia*, disfavor arbitration and they ignore

the FAA's federal substantive law stating that arbitration is a matter of contract and that arbitration agreements must be enforced as written. The Department's condition on payment serves no reasonable or legitimate purpose, is impermissibly coercive, and is not a permissible spending condition under the Spending Clause of the United States Constitution, U.S.C.A. Const. Art. 1, §8, cls. 1, 3. The Department of Education, in promulgating the rule and regulations, exceeded the Department of Education's statutory authority, exceeded the authority delegated to it by Congress, and violated the Administrative Procedures Act. Under *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612 (2018), the Department of Education lacks the authority to preclude schools from enforcing arbitration agreements that are valid and enforceable under the FAA. Further, the rule and regulations violate Article 1, section 1 of the United States Constitution in that they are an impermissible assumption of legislative power by the Department of Education.

FORTY-SECOND AFFIRMATIVE DEFENSE

Plaintiff has no private right of action, nor standing, under the Higher Education Act to enforce the Department of Education's rule/regulations referenced in the Complaint, ¶¶ 81-86.

Defendants reserve the right to assert other defenses as the matter proceeds.

WHEREFORE, Defendants, through the undersigned, respectfully request the Court to enter an order dismissing Plaintiff's Complaint, awarding Defendants the

costs expended herein, and granting such relief as the Court deems just and proper.

Dated: October 4, 2019

Respectfully submitted,

/s/ Alexander B. Feinberg

Alexander B. Feinberg (Georgia Bar No. 956505)

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Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on October 4, 2019, a copy of the above and foregoing was filed with the United States District Court for the Northern District of Georgia using the CM/ECF system which sent notification to all counsel of record, including:

Christopher N. Armor
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Attorneys for Plaintiff

/s/ Alexander B. Feinberg _____
Of Counsel

CIVIL COVER SHEET

The JS44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

I. (a) PLAINTIFF(S)

Matthew Cheatham, on behalf of others similarly situated

DEFENDANT(S)

Virginia College, LLC and Education Corporation of America

(b) COUNTY OF RESIDENCE OF FIRST LISTED

PLAINTIFF Cherokee County, GA (EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED

DEFENDANT Jefferson County, AL (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS)

Christopher Armor, Armor Law, 160 Clairemont Ave Ste 200, Decatur, GA 30030 chris.armor@armor.com and James Hurt, Hurt Stolz, 1551 Jennings Mill Rd, Watkinsville, GA 30677 jhurt@hurtstolz.com

ATTORNEYS (IF KNOWN)

Alexander B. Feinberg, Maynard Cooper & Gale, P.C. 1901 6th Avenue North, Suite 2400, Birmingham, AL 35203 afeinberg@maynardcooper.com

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. GOVERNMENT PLAINTIFF, 2 U.S. GOVERNMENT DEFENDANT, 3 FEDERAL QUESTION (U.S. GOVERNMENT NOT A PARTY), 4 DIVERSITY (INDICATE CITIZENSHIP OF PARTIES IN ITEM III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (FOR DIVERSITY CASES ONLY)

- PLF DEF 1 CITIZEN OF THIS STATE, 2 CITIZEN OF ANOTHER STATE, 3 CITIZEN OR SUBJECT OF A FOREIGN COUNTRY, 4 INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE, 5 INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE, 6 FOREIGN NATION

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- 1 ORIGINAL PROCEEDING, 2 REMOVED FROM STATE COURT, 3 REMANDED FROM APPELLATE COURT, 4 REINSTATED OR REOPENED, 5 TRANSFERRED FROM ANOTHER DISTRICT (Specify District), 6 MULTIDISTRICT LITIGATION - TRANSFER, 7 APPEAL TO DISTRICT JUDGE FROM MAGISTRATE JUDGE JUDGMENT, 8 MULTIDISTRICT LITIGATION - DIRECT FILE

V. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

28 U.S.C. 1441, 28 U.S.C. 1332(d), 28 U.S.C. 1332(a), 28 U.S.C. 1331

Suit regarding closure of Defendants' institution of higher education

(IF COMPLEX, CHECK REASON BELOW)

- 1. Unusually large number of parties. 2. Unusually large number of claims or defenses. 3. Factual issues are exceptionally complex. 4. Greater than normal volume of evidence. 5. Extended discovery period is needed. 6. Problems locating or preserving evidence. 7. Pending parallel investigations or actions by government. 8. Multiple use of experts. 9. Need for discovery outside United States boundaries. 10. Existence of highly technical issues and proof.

CONTINUED ON REVERSE

FOR OFFICE USE ONLY

RECEIPT #, AMOUNT \$, APPLYING IFP, MAG. JUDGE (IFP), JUDGE, MAG. JUDGE (Referral), NATURE OF SUIT, CAUSE OF ACTION

VI. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT - "0" MONTHS DISCOVERY TRACK

- 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- 152 RECOVERY OF DEFAULTED STUDENT LOANS (Excl. Veterans)
- 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS

CONTRACT - "4" MONTHS DISCOVERY TRACK

- 110 INSURANCE
- 120 MARINE
- 130 MILLER ACT
- 140 NEGOTIABLE INSTRUMENT
- 151 MEDICARE ACT
- 160 STOCKHOLDERS' SUITS
- 190 OTHER CONTRACT
- 195 CONTRACT PRODUCT LIABILITY
- 196 FRANCHISE

REAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 210 LAND CONDEMNATION
- 220 FORECLOSURE
- 230 RENT LEASE & EJECTMENT
- 240 TORTS TO LAND
- 245 TORT PRODUCT LIABILITY
- 290 ALL OTHER REAL PROPERTY

TORTS - PERSONAL INJURY - "4" MONTHS DISCOVERY TRACK

- 310 AIRPLANE
- 315 AIRPLANE PRODUCT LIABILITY
- 320 ASSAULT, LIBEL & SLANDER
- 330 FEDERAL EMPLOYERS' LIABILITY
- 340 MARINE
- 345 MARINE PRODUCT LIABILITY
- 350 MOTOR VEHICLE
- 355 MOTOR VEHICLE PRODUCT LIABILITY
- 360 OTHER PERSONAL INJURY
- 362 PERSONAL INJURY - MEDICAL MALPRACTICE
- 365 PERSONAL INJURY - PRODUCT LIABILITY
- 367 PERSONAL INJURY - HEALTH CARE/ PHARMACEUTICAL PRODUCT LIABILITY
- 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

TORTS - PERSONAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 370 OTHER FRAUD
- 371 TRUTH IN LENDING
- 380 OTHER PERSONAL PROPERTY DAMAGE
- 385 PROPERTY DAMAGE PRODUCT LIABILITY

BANKRUPTCY - "0" MONTHS DISCOVERY TRACK

- 422 APPEAL 28 USC 158
- 423 WITHDRAWAL 28 USC 157

CIVIL RIGHTS - "4" MONTHS DISCOVERY TRACK

- 440 OTHER CIVIL RIGHTS
- 441 VOTING
- 442 EMPLOYMENT
- 443 HOUSING/ ACCOMMODATIONS
- 445 AMERICANS with DISABILITIES - Employment
- 446 AMERICANS with DISABILITIES - Other
- 448 EDUCATION

IMMIGRATION - "0" MONTHS DISCOVERY TRACK

- 462 NATURALIZATION APPLICATION
- 465 OTHER IMMIGRATION ACTIONS

PRISONER PETITIONS - "0" MONTHS DISCOVERY TRACK

- 463 HABEAS CORPUS- Alien Detainee
- 510 MOTIONS TO VACATE SENTENCE
- 530 HABEAS CORPUS
- 535 HABEAS CORPUS DEATH PENALTY
- 540 MANDAMUS & OTHER
- 550 CIVIL RIGHTS - Filed Pro se
- 555 PRISON CONDITION(S) - Filed Pro se
- 560 CIVIL DETAINEE: CONDITIONS OF CONFINEMENT

PRISONER PETITIONS - "4" MONTHS DISCOVERY TRACK

- 550 CIVIL RIGHTS - Filed by Counsel
- 555 PRISON CONDITION(S) - Filed by Counsel

FORFEITURE/PENALTY - "4" MONTHS DISCOVERY TRACK

- 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
- 690 OTHER

LABOR - "4" MONTHS DISCOVERY TRACK

- 710 FAIR LABOR STANDARDS ACT
- 720 LABOR/MGMT. RELATIONS
- 740 RAILWAY LABOR ACT
- 751 FAMILY and MEDICAL LEAVE ACT
- 790 OTHER LABOR LITIGATION
- 791 EML. RET. INC. SECURITY ACT

PROPERTY RIGHTS - "4" MONTHS DISCOVERY TRACK

- 820 COPYRIGHTS
- 840 TRADEMARK

PROPERTY RIGHTS - "8" MONTHS DISCOVERY TRACK

- 830 PATENT
- 835 PATENT-ABBREVIATED NEW DRUG APPLICATIONS (ANDA) - a/k/a Hatch-Waxman cases

SOCIAL SECURITY - "0" MONTHS DISCOVERY TRACK

- 861 HIA (1395f)
- 862 BLACK LUNG (923)
- 863 DIWC (405(g))
- 863 DIWW (405(g))
- 864 SSID TITLE XVI
- 865 RSI (405(g))

FEDERAL TAX SUITS - "4" MONTHS DISCOVERY TRACK

- 870 TAXES (U.S. Plaintiff or Defendant)
- 871 IRS - THIRD PARTY 26 USC 7609

OTHER STATUTES - "4" MONTHS DISCOVERY TRACK

- 375 FALSE CLAIMS ACT
- 376 Qui Tam 31 USC 3729(a)
- 400 STATE REAPPORTIONMENT
- 430 BANKS AND BANKING
- 450 COMMERCE/ICC RATES/ETC.
- 460 DEPORTATION
- 470 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
- 480 CONSUMER CREDIT
- 490 CABLE/SATELLITE TV
- 890 OTHER STATUTORY ACTIONS
- 891 AGRICULTURAL ACTS
- 893 ENVIRONMENTAL MATTERS
- 895 FREEDOM OF INFORMATION ACT
- 899 ADMINISTRATIVE PROCEDURES ACT / REVIEW OR APPEAL OF AGENCY DECISION
- 950 CONSTITUTIONALITY OF STATE STATUTES

OTHER STATUTES - "8" MONTHS DISCOVERY TRACK

- 410 ANTI-TRUST
- 850 SECURITIES / COMMODITIES / EXCHANGE

OTHER STATUTES - "0" MONTHS DISCOVERY TRACK

- 896 ARBITRATION (Confirm / Vacate / Order / Modify)

*** PLEASE NOTE DISCOVERY TRACK FOR EACH CASE TYPE. SEE LOCAL RULE 26.3**

VII. REQUESTED IN COMPLAINT:

CHECK IF CLASS ACTION UNDER F.R.Civ.P. 23 DEMAND \$ _____

JURY DEMAND YES NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)

VIII. RELATED/REFILED CASE(S) IF ANY

JUDGE _____ DOCKET NO. _____

CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX)

- 1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.
- 5. REPETITIVE CASES FILED BY PRO SE LITIGANTS.
- 6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S)):

7. EITHER SAME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO. _____, WHICH WAS DISMISSED. This case IS IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.

/s/ Alexander B. Feinberg

October 4, 2019

SIGNATURE OF ATTORNEY OF RECORD

DATE

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Loss of Accreditation Made Virginia College Degrees 'Worthless.' Class Action Claims](#)
