



AIG Specialty Insurance Company

A capital stock company

DIRECTORS, OFFICERS AND NOT-FOR-PROFIT ORGANIZATION LIABILITY COVERAGE SECTION ONE ("D&O COVERAGE SECTION")

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

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

1. INSURING AGREEMENTS

COVERAGE A: INDIVIDUAL INSURED INSURANCE

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

COVERAGE B: ORGANIZATION INDEMNIFICATION REIMBURSEMENT INSURANCE

This policy shall pay on behalf of the **Organization Loss** arising from a **Claim** first made against an **Individual Insured** during the **Policy Period** or the **Discovery Period** (if applicable) and reported to the Insurer pursuant to the terms of this policy for any actual or alleged **Wrongful Act** of such **Individual Insured**, but only when and to the extent that the **Organization** has indemnified such **Individual Insured** for such **Loss** pursuant to law, common or statutory, or contract, or the Charter or By-laws of the **Organization** duly effective under such law which determines and defines such rights of indemnity. The Insurer shall, in accordance with and subject to Clause 5 of this Coverage Section, advance **Defense Costs** of such **Claim** prior to its final disposition.

COVERAGE C: ORGANIZATION ENTITY COVERAGE

This policy shall pay on behalf of the **Organization Loss** arising from a **Claim** first made against the **Organization** during the **Policy Period** or the **Discovery Period** (if applicable) and reported to the

Insurer pursuant to the terms of this policy for any actual or alleged **Wrongful Act** of the **Organization**. The **Insurer** shall, in accordance with and subject to Clause 5 of this **Coverage Section**, advance **Defense Costs** of such **Claim** prior to its final disposition.

COVERAGE D: CRISISFUND® INSURANCE

This policy shall pay the **Crisis Management Loss** of an **Organization** 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 policy shall not waive any of the **Insurer's** rights under this policy or at law. Coverage D 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 making of the **Claim**.

DEFENSE PROVISIONS

The **Insurer** does not assume any duty to defend; provided, however, the **Named Organization** may at its sole option, and in accordance with Clause 5 of this **Coverage Section**, tender to the **Insurer** the defense of a **Claim** for which coverage is provided by this policy. Regardless of whether the defense is so tendered, the **Insurer** shall advance **Defense Costs** (excess of the Retention amount) of such **Claim** prior to its final disposition. Selection of counsel to defend a **Claim** shall be made in accordance with Clause 6 of this **Coverage Section**.

2. DEFINITIONS

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

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

(b) "**Crisis Management Event**" means **Crisis Management Event**, as that term is defined in Appendix B attached to this policy.

(c) "**Crisis Management Fund**" means the dollar amount set forth in Item 7(b) of the Declarations.

(d) "**Crisis Management Loss**" means **Crisis Management Loss**, as that term is defined in Appendix B attached to this policy.

(e) "**Crisis Management Services**" means **Crisis Management Services**, as that term is defined in Appendix B attached to this policy.

- (f) "Employee(s)" means any past, present or future employee of the **Organization**, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any full-time, part-time, seasonal and temporary employee or volunteer of the **Organization** in his or her capacity as such. An individual who is leased to the **Organization** shall also be an **Employee**, but only if the **Organization** provides indemnification to such leased individual in the same manner as is provided to the **Organization's** employees. Any other individual who is contracted to perform work for the **Organization**, or who is an independent contractor for the **Organization** shall also be an **Employee**, but only if the **Organization** provides or is required to provide indemnification to such individual in the same manner as provided to the **Organization's** employees, pursuant to a written contract.
- (g) "Individual Insured(s)" means a past, present or future duly elected or appointed director, officer, trustee, trustee emeritus, executive director, department head, committee member (of a duly constituted committee of the **Organization**), staff or faculty member (salaried or non-salaried), or **Employee** of the **Organization**, or **Outside Entity Executive**. Coverage will automatically apply to all new persons who become **Individual Insureds** after the inception date of this policy.
- (h) "Insured(s)" means the **Organization** and all **Individual Insureds**.
- (i) "Loss" means damages, judgments, settlements, pre- and post-judgment interest, **Defense Costs** and **Crisis Management Loss**; however, **Loss** shall not include: (1) any amount for which the **Insureds** are not financially liable or which are without legal recourse to the **Insureds**; (2) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed; (3) civil or criminal fines or penalties; (4) taxes or tax penalties (whether imposed by federal, state, local or other governmental authority);

Subject to the other terms, conditions and exclusions of this policy, **Loss** shall include **Defense Costs** for items specifically excluded from **Loss** pursuant to subparagraphs (1)-(4), including, without limitation, **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);
- 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).

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**. The term "Excess Benefits" means an excess benefit as defined in the Taxpayer Bill of Rights Act, 2, 26 U.S.C. 4958.

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

- (j) "**Material Effect**" means **Material Effect**, as that term is defined in Appendix B attached to this policy.
- (k) "**Settlement Opportunity**" means an **Insurer** recommended settlement that is within the **Policy Aggregate Limit of Liability, Separate Limit of Liability or Shared Limit of Liability**, if any, and that is acceptable to the claimant.
- (l) "**Wrongful Act**" means:
 - (1) with respect to **Individual Insureds**, any breach of duty, neglect, error, misstatement, misleading statement, omission or act by such **Insureds** in his/her respective capacities as such, or any matter claimed against such **Individual Insured** solely by reason of his/her status as an **Individual Insured** of the **Organization**;
 - (2) with respect to the **Organization** under Coverage C, any breach of duty, neglect, error, misstatement, misleading statement, omission or act by or on behalf of the **Organization**;
 - (3) with respect to **Outside Entity Executives**, any breach of duty, neglect, error, misstatement, misleading statement, omission or act by such **Outside Entity Executive** in his or her capacity as such or any matter claimed against such **Outside Entity Executive** solely by reason of his or her status as such;
 - (4) with respect to both the **Individual Insureds** and the **Organization** and subject to subparagraphs (1), (2) and (3) above, "**Wrongful Act**" shall specifically include:
 - (a) violation of the Sherman Antitrust Act or similar federal, state or local statutes or rules;
 - (b) libel, slander, defamation or publication or utterance in violation of an individual's right of privacy;
 - (c) wrongful entry or eviction or other invasion of the right of occupancy;
 - (d) false arrest or wrongful detention;
 - (e) plagiarism; and
 - (f) infringement of copyright or trademark or unauthorized use of title.

3. EXCLUSIONS

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

- (a) arising out of, based upon or attributable to the committing of any criminal or deliberate fraudulent act if any final adjudication establishes that such criminal or deliberate fraudulent act was committed;

[The **Wrongful Act** of an **Insured** shall not be imputed to any other **Insured** for the purpose of determining the applicability of this exclusion.]

- (b) alleging, arising out of, based upon or attributable to any actual or alleged act or omission of an **Individual Insured** serving in his/her capacity as a director, officer, trustee, trustee emeritus, governor or **Employee** (or equivalent position) of any entity that is not the **Organization** or an **Outside Entity**, or by reason of his/her status as a director, trustee, trustee emeritus, governor or **Employee** (or equivalent position) of such other entity;
- (c) which is brought by or on behalf of the **Organization** against any **Individual Insured**; provided however, this exclusion shall not apply to any derivative **Claim** made on behalf of the **Organization** by a member, an attorney general or any other such representative party if such action is brought and maintained independently of and without the solicitation of or assistance of, or active participation of or intervention of any **Individual Insured** or the **Organization** or any **Affiliate** thereof;
- (d) for any **Wrongful Act** arising out of an **Individual Insured** serving as an **Outside Entity Executive**, if such **Claim** is brought by the **Outside Entity** or by any director, officer, trustee, trustee emeritus or governor thereof;
- (e) alleging, arising out of, based upon or attributable to any actual or alleged contractual liability of an **Insured** under any express contract or agreement; provided, however, that this exclusion shall not apply to liability which would have attached in the absence of such express contract or agreement;
- (f) alleging, arising out of, or in any way relating to any purchase or sale of securities by the **Named Organization, Subsidiary** or **Affiliate** or **Claims** brought by securities holders of the **Organization** in their capacity as such; provided, however, this exclusion shall not apply to the issuance by the **Organization** of tax exempt bond debt or **Claims** brought by tax exempt bond debt holders;
- (g) alleging, arising out of, based upon, or attributable to, directly or indirectly resulting from, in consequence of, or in any way involving employment of any individual or any employment practice (including but not limited to wrongful dismissal, discharge or termination, discrimination, harassment, retaliation or other employment-related claim); and
- (h) alleging, arising out of, based upon, or attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged harassment (including sexual harassment, whether "quid pro quo", hostile work environment or otherwise) or unlawful discrimination (including, but not limited to, discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy, or disability), 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 **Organization** or an **Outside Entity**, including, but not limited to, students, patients, members, customers and suppliers.

This Clause 3 shall not be applicable to **Crisis Management Loss**.

4. LIMIT OF LIABILITY

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

The maximum limit of the Insurer's liability for Crisis Management Loss arising from all Crisis Management Events combined occurring during the Policy Period or the Discovery Period (if applicable), in the aggregate, shall be the amount set forth in Item 7(b) of the Declarations as the Crisis Management Fund. The Crisis Management Fund shall be the aggregate limit of the Insurer's liability under this policy for all Crisis Management Events regardless of the number of Crisis Management Events occurring during the Policy Period or the Discovery Period (if applicable). The Crisis Management Fund shall be part of, and not in addition to, the Policy Aggregate Limit of Liability stated in Item 7(a) of the Declarations of this policy or any Separate Limit of Liability or Shared Limit of Liability applicable to this Coverage Section as stated in Item 3 of the Declarations, and will in no way serve to increase the Insurer's Policy Aggregate Limit of Liability or any Separate Limit of Liability or Shared Limit of Liability as stated therein.

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

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

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

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

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

consent to any settlement, stipulated judgment or Defense Costs, or any portion thereof, to the extent such Loss is not covered under the terms of this policy.

The Insurer shall have the right to fully and effectively associate with each and every Organization and Individual Insured in the defense of any Claim that involves, or appears reasonably likely to involve, the Insurer, including but not limited to negotiating a settlement. Each and every Organization and Individual Insured shall give the Insurer full cooperation and such information as it may reasonably require.

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

However, if a Settlement Opportunity arises and the Insureds do not consent to the settlement within the time prescribed above, the Retention amount shall remain the applicable amount set forth in Item 3 of the Declarations even if consent is given to a subsequent Settlement Opportunity.

Furthermore, in the event the Insureds do not consent to the first Settlement Opportunity within the time prescribed above, then, subject to the Policy Aggregate Limit of Liability and Separate Limit of Liability or Shared Limit of Liability, if any, the Insurer's liability for all Loss on account of such Claim shall not exceed: (1) the amount for which the Insurer could have settled such Claim plus Defense Costs incurred as of the date such settlement was proposed in writing by the Insurer ("Settlement Opportunity Amount"), plus (2) 50% of covered Loss in excess of such Settlement Opportunity Amount, it being a condition of this insurance that the remaining 50% of such Loss excess of the Settlement Opportunity Amount shall be carried by the Organization and the Insureds at their own risk and be uninsured. Notwithstanding the foregoing, this paragraph shall not apply until the Settlement Opportunity Amount exceeds the applicable Retention amount stated in Item 3 of the Declarations.

This Clause 5 shall not be applicable to Crisis Management Loss. Nevertheless, the Insurer does not, under this policy, assume any duty to defend.

6. PRE-AUTHORIZED DEFENSE ATTORNEYS

This Clause applies to all Claims under this Coverage Section. Affixed as Appendix A hereto and made a part of this policy is a list or lists of Panel Counsel law firms (herein "Panel Counsel Firms") from which a selection of legal counsel shall be made to conduct the defense of any Claim(s) against any Insured(s) pursuant to the terms set forth below.

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

The selection of the Panel Counsel Firm, whether done by the Insurer or the Insureds, shall be from the list of Panel Counsel Firms designated for the type of Claim and shall 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(s), 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 headquarters or State of formation of the Named Organization is located. In such instance, however, the Insurer shall, at the written request

of the **Named Organization**, 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.

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

7. DISCOVERY CLAUSE

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

The **Additional Premium Amount** for: (1) one year shall be 125% of the "full annual premium"; (2) two years shall be 175% of the "full annual premium"; (3) three years shall be 225% of the "full annual premium"; (4) four years shall be 250% of the "full annual premium"; (5) five years shall be 275% of the "full annual premium"; (6) six years shall be 300% of the "full annual premium"; and (7) a discovery period of unlimited duration shall be 325% of the "full annual premium". As used herein, "full annual premium" means the premium level in effect for this **Coverage Section** immediately prior to the end of the **Policy Period**.

In the event of a **Transaction**, as defined in Clause 9 of the General Terms and Conditions, the **Named Organization** shall have the right, within thirty (30) days before the end of the **Policy Period**, to request an offer from the **Insurer** of a **Discovery Period** (with respect to **Wrongful Acts** occurring prior to the effective time of the **Transaction**) for a period of no less than six (6) years or for such longer or shorter period as the **Named Organization** may request. The **Insurer** shall offer such **Discovery Period** pursuant to such terms, conditions and premium as the **Insurer** may reasonably decide. In the event of a **Transaction**, the right to a **Discovery Period** shall not otherwise exist except as indicated in this paragraph.

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

8. ORDER OF PAYMENTS

In the event of **Loss** arising from any **Claim(s)** for which payment is due under the provisions of this **Coverage Section** but which **Loss**, in the aggregate, exceeds the remaining available **Limit of Liability** of this **Coverage Section**, then the **Insurer** shall:

- (i) first pay such **Loss** for which coverage is provided under Coverage A of this **Coverage Section**, then with respect to whatever remaining amount of the **Limit of Liability** is available after payment of such **Loss**,
- (ii) then pay such **Loss** for which coverage is provided under Coverage B of this **Coverage Section**, and
- (iii) then pay such **Loss** for which coverage is provided under Coverage C or Coverage D of this **Coverage Section**.

In the event of **Loss** arising from a **Claim(s)** for which payment is due under the provisions of this **Coverage Section** (including those circumstances described in the first paragraph of this Section 8), the **Insurer** shall at the written request of the **Named Organization**:

- (i) first pay such **Loss** for which coverage is provided under Coverage A of this **Coverage Section**, then
- (ii) either pay or hold payment for such **Loss** for which coverage is provided under Coverage B, Coverage C or Coverage D of this **Coverage Section**.

In the event that the **Insurer** withholds payment under Coverage B, Coverage C or Coverage D of this **Coverage Section** pursuant to the above request, then the **Insurer** shall at any time in the future, at the request of the **Organization**, release such **Loss** payment to the **Organization**, or make such **Loss** payment directly to the **Individual Insured** in the event of covered **Loss** under any **Claim(s)** covered under this **Coverage Section** pursuant to Coverage A of this **Coverage Section**.

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