



AIG Specialty Insurance Company

A capital stock company

EMPLOYMENT PRACTICES LIABILITY COVERAGE SECTION TWO ("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 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 AGREEMENT

This policy shall pay the Loss of each and every Insured arising from a Claim first made against such Insured during the Policy Period or the Discovery Period (if applicable) and reported to the Insurer pursuant to the terms of this policy for any Wrongful Act. The Insurer shall, in accordance with and subject to Clause 4 of this Coverage Section advance Defense Costs of such Claim prior to its final disposition.

2. DEFINITIONS

(a) "Claim" means:

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

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

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

(b) "Employee" 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 that provided to the **Organization's** employees, pursuant to a written contract.

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

- (1) wrongful dismissal, discharge or termination (either actual or constructive) of employment, including breach of an implied contract;
- (2) harassment (including sexual harassment, whether "quid pro quo", hostile work environment or otherwise);
- (3) discrimination (including, but not limited to, discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy, or disability);
- (4) **Retaliation**;
- (5) employment-related misrepresentation(s) to an **Employee** or applicant for employment with the **Organization**;
- (6) employment-related libel, slander, humiliation, defamation or invasion of privacy;
- (7) wrongful failure to employ or promote;
- (8) wrongful deprivation of career opportunity with the **Organization**, wrongful demotion or negligent **Employee** evaluation, including the giving of negative or defamatory statements in connection with an **Employee** reference;
- (9) wrongful discipline;
- (10) failure to grant tenure or practice privileges;
- (11) failure to provide or enforce adequate or consistent **Organization** policies or procedures relating to any **Employment Practices Violation**; and
- (12) violation of an individual's civil rights relating to any of the above.

but only if the **Employment Practices Violation** relates to an **Individual Insured**, or applicant for employment, with the **Organization** or an **Outside Entity**, whether direct, indirect, intentional or unintentional.

(d) "**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**, and an **Outside Entity Executive**. Coverage will automatically apply to all new persons who become **Individual Insureds** after the inception date of this policy.

(e) "**Insured(s)**" means the **Organization** and any **Individual Insured**.

(f) "**Loss**" means damages (including front pay and back pay), judgments (including pre-judgment and post-judgment interest on that part of any covered judgment paid under this **Coverage Section**), settlements, statutory attorneys' fees and **Defense Costs**; 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) employment-related benefits, stock options, perquisites, deferred compensation or any other type of compensation other than salary, wages or bonus compensation; (3) civil or criminal fines or penalties; (4) taxes or tax penalties (whether imposed by federal, state, local or other governmental authority); (5) any liability or costs incurred by any **Insured** to modify any building or property in order to make said building or property more accessible or accommodating to any disabled person, or any liability or costs incurred in connection with any educational, sensitivity or other corporate program, policy or seminar relating to a **Claim**; (6) 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 (1)-(6) above of this Definition, subject to the other terms, conditions and exclusions of this policy.

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

- (g) "**Non-Employment Discrimination**" means any actual or alleged harassment or unlawful discrimination, as described in subparagraphs 2(c)(2) and 2(c)(3) 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 **Organization** or an **Outside Entity**, including, but not limited to, students, patients, members, customers and suppliers.
- (h) "**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.
- (i) "**Wrongful Act(s)**" means: (1) an **Employment Practices Violation**, or (2) **Non-Employment Discrimination**.

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 a **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 the foregoing exclusion.]

(b) 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) the extent any liability does not arise under such express contract or agreement; or
- (ii) Loss constituting Defense Costs for express, written employment contracts; or

(c) 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 Individual Insured of the Organization or as an Outside Entity Executive of an Outside Entity.

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

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

Notwithstanding the foregoing, the Insureds shall have the right to tender the defense of the Claim to the Insurer, which right shall be exercised in writing by the Named 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 sent thereof by the Insurer to the Named Organization. Once the defense has been so tendered, the Insured shall have the right to fully and effectively associate with the Insurer in the defense and negotiation of any settlement of any Claim, subject to the provisions of this Clause 4. However, the Insurer shall not be obligated to defend such Claim after the Policy Aggregate Limit of Liability, 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 prescribed time herein) a Settlement Opportunity.

When the Insurer has not assumed the defense of a Claim pursuant to this Clause 4, the Insurer shall advance nevertheless, at the written request of the Insured, Defense Costs prior to the final disposition of a Claim. Such advanced payments by the Insurer shall be repaid to the Insurer by the Insureds or the Organization, severally according to their respective interests, in the event and to the extent that the Insureds or the 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, in writing, shall be recoverable as Loss under the terms of this policy. The Insurer's consent shall not be unreasonably withheld, provided that the Insurer, when it has not assumed the defense of a Claim pursuant to this Clause 4, shall be entitled to fully and effectively associate in the defense and negotiation of any settlement of any Claim, and provided further that in all events the Insurer may withhold consent to any settlement, stipulated judgment or Defense Costs, or any portion thereof, to the extent such loss is not covered under the terms of this policy.

The Insurer shall have the right to fully and effectively associate with the Organization in the defense of any Claim that appears reasonably likely to involve the Insurer, including but not limited to negotiating a settlement. The Organization and the Insureds 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.

5. 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 4, then the Insurer shall select a Panel Counsel Firm to defend the Insureds. In the event the Insureds are already defending a Claim, then the Insureds shall select a Panel Counsel Firm to defend the Insureds.

The selection of the Panel Counsel Firm, whether done by the Insurer or the Insureds, shall be from the list of Panel Counsel Firms 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(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 corporate 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.

6. 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, except for non-payment of premium. This clause and the rights contained herein shall not apply to any cancellation resulting from non-payment of premium.

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