



# AIG Executive Liability<sup>®</sup>

Insurance provided by a member of American International Group, Inc.

## Specialty Risk Protector<sup>SM</sup>

### Specialty Professional Liability Insurance ("SPL COVERAGE SECTION")

#### THIS IS A CLAIMS MADE AND REPORTED COVERAGE SECTION AND A THIRD PARTY COVERAGE SECTION

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

#### 1. INSURING AGREEMENTS

With respect to the **ERRORS AND OMISSIONS INSURING AGREEMENT**, the **DEFENSE** provisions and the **SETTLEMENT** provisions of this Clause 1., solely with respect to **Claims** first made against the **Insured** during the **Policy Period** or the **Discovery Period** (if applicable) and reported to the **Insurer** pursuant to the terms of this policy, this **SPL Coverage Section** affords the following coverage:

##### ERRORS AND OMISSIONS INSURING AGREEMENT

The **Insurer** shall pay on the **Insured's** behalf all **Loss** in excess of the applicable Retention that the **Insured** is legally obligated to pay resulting from a **Claim** alleging the **Insured's Wrongful Acts**.

##### DEFENSE

- (a) The **Insurer** has the right and duty to defend a **Suit** for the **Insured's Wrongful Acts**, even if the **Suit** is groundless, false or fraudulent.
- (b) The **Insurer** has the right to investigate any **Claim**.
- (c) The **Insurer's** duty to defend ends if the **Insured** refuses to consent to a settlement that the **Insurer** recommends pursuant to the **SETTLEMENT** provision below and that the claimant will accept. The **Insured** must then defend the **Claim** at the **Insured's** own expense. As a consequence of the **Insured's** refusal, the **Insurer's** liability shall not exceed the amount for which the **Insurer** could have settled such **Claim** had the **Insured** consented, plus **Defense Costs** incurred prior to the date of such refusal, plus 50% of **Defense Costs** incurred with the **Insurer's** prior written consent after the date of such refusal. This Clause shall not apply to any settlement where the total incurred **Loss** does not exceed the applicable Retention amount.

## SETTLEMENT

- (a) The **Insurer** has the right, with the written consent of the **Insured**, which consent shall not be unreasonably withheld, to settle any **Claim** if the **Insurer** believes that it is proper;
- (b) The **Insured** may settle any **Claim** on behalf of all **Insureds** to which this insurance applies and which are subject to one Retention amount where the total incurred **Loss** does not exceed the Retention amount.

## 2. DEFINITIONS

- (a) "**Bodily Injury**" means physical injury, sickness or disease, and, if arising out of the foregoing, mental anguish, mental injury, shock, humiliation or death at any time.
- (b) "**Claim**" means:
  - (1) a written demand for money, services, non-monetary relief or injunctive relief; or
  - (2) a **Suit**.
- (c) "**Defense Costs**" means all reasonable and necessary fees charged by an attorney appointed pursuant to the terms of this policy, as well as all other reasonable and necessary fees, costs and expenses (including premiums for any appeal bond, attachment bond or similar bond arising out of a covered judgment, but without any obligation to apply for or furnish any such bond) incurred in the defense or investigation of a **Claim** by the **Insurer** or by the **Insured** with the **Insurer's** written consent. **Defense Costs** shall not include: (i) compensation of any natural person **Insured**; or (ii) any fees, costs or expenses incurred prior to the time that a **Claim** is first made against an **Insured**.
- (d) "**Insured**" means:
  - (1) the **Company**;
  - (2) any past, present or future officer, director, trustee, employee or leased worker of the **Company** acting in their capacity as such (and in the event the **Company** is a partnership, limited liability partnership or limited liability company, then any general or managing partner or principal thereof acting in their capacity as such); and
  - (3) any entity which the **Company** is required by contract to add as an **Insured** under this **SPL Coverage Section**, but only for the **Wrongful Acts** of the **Company**.
- (e) "**Loss**" means damages, judgments, settlements, pre-judgment and post-judgment interest and **Defense Costs**, including punitive, exemplary and multiple damages where insurable by the applicable law which most favors coverage for such punitive, exemplary and multiple damages.
- (f) "**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.

- (g) **“Professional Services”** means those services described and set forth by endorsement to this **SPL Coverage Section**.
- (h) **“Property Damage”** means damage to, loss of use of or destruction of any tangible property. For purposes of this definition, “tangible property” shall not include electronic data.
- (i) **“Suit”** means a civil proceeding for monetary, non-monetary or injunctive relief, which is commenced by service of a complaint or similar pleading. **Suit** includes a binding arbitration proceeding to which the **Insured** must submit or does submit with the **Insurer’s** consent.
- (j) **“Wrongful Act(s)”** means any negligent act, error or omission, misstatement or misleading statement in the **Insured’s** performance of **Professional Services** for others occurring on or after the **Retroactive Date** and prior to the end of the **Policy Period**.

### 3. EXCLUSIONS

This policy shall not cover **Loss** in connection with a **Claim** made against an **Insured**:

- (a) alleging, arising out of, based upon or attributable to a dishonest, fraudulent, criminal or malicious act, error or omission, or any intentional or knowing violation of the law; provided, however, the **Insurer** will defend **Suits** that allege any of the foregoing conduct, and that are not otherwise excluded, until there is a final judgment against, final adjudication against, adverse finding of fact against an **Insured** in a binding arbitration proceeding or plea of guilty or no contest by an **Insured** as to such conduct, at which time the **Insured** shall reimburse the **Insurer** for **Defense Costs**.
- (b) alleging, arising out of, based upon or attributable to any misappropriation of trade secret or infringement of patent, copyright, trademark, trade dress or any other intellectual property right.
- (c) alleging, arising out of, based upon or attributable to any (1) presence of **Pollutants**, (2) the actual or threatened discharge, dispersal, release or escape of **Pollutants**, or (3) direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants, or in any way respond to or assess the effects of **Pollutants**.
- (d) alleging, arising out of, based upon or attributable to any **Bodily Injury** or **Property Damage**;
- (e) alleging, arising out of, based upon or attributable to any:
  - (1) fire, smoke, explosion, lightning, wind, water, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, act of God or any other physical event, however caused;
  - (2) strikes or similar labor action, war, invasion, act of foreign enemy, hostilities or warlike operations (whether declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power, or any action taken to hinder or defend against these actions;
  - (3) electrical or mechanical failures of infrastructure not under the control of an **Insured**, including any electrical power interruption, surge, brownout or blackout;

- (4) failure of telephone lines, data transmission lines or other telecommunications or networking infrastructure not under the control of an **Insured**; or
- (5) satellite failure.

(f) alleging, arising out of, based upon or attributable to any:

- (1) purchase, sale, or offer or solicitation of an offer to purchase or sell securities;
- (2) violation of any securities law, including the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, or any regulation promulgated under the foregoing statutes, or any federal, state or local laws similar to the foregoing statutes (including "Blue Sky" laws), whether such law is statutory, regulatory or common law; or
- (3) violation of the Organized Crime Control Act of 1970 (commonly known as Racketeer Influenced And Corrupt Organizations Act, or "RICO"), as amended, or any regulation promulgated thereunder or any federal, state or local law similar to the foregoing, whether such law is statutory, regulatory or common law.

(g) alleging, arising out of, based upon or attributable to any breach of fiduciary duty, responsibility, or obligation in connection with any employee benefit or pension plan, including violations of the responsibilities, obligations or duties imposed upon fiduciaries by the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, or similar statutory or common law of the United States of America or any state or jurisdiction therein.

(h) alleging, arising out of, based upon or attributable to the **Insured's** employment of any individual or any of the **Insured's** employment practices (including, without limitation, wrongful dismissal, discharge or termination, discrimination, harassment, retaliation or other employment-related claim).

(i) alleging, arising out of, based upon or attributable to antitrust, unfair competition, restraint of trade, unfair or deceptive business practices, including, without limitation, violations of any local, state or federal consumer protection laws.

(j) brought by or on behalf of:

- (1) any **Insured**, except as described in subparagraph (3) of the Definition of **Insured**;
- (2) any business entity that is owned, managed or operated, directly or indirectly, in whole or in part, by an **Insured**; or
- (3) any parent company, **Subsidiary**, successor or assignee of the **Insured**, or anyone affiliated with the **Insured** or such business entity through common **Management Control**.

(k) for any of the following:

- (1) the return of the **Insured's** fees or compensation;
- (2) any profit or advantage to which the **Insured** is not legally entitled;
- (3) the **Insured's** expenses or charges, including compensation, benefits, overhead, over-charges or cost over-runs;
- (4) the **Insured's** cost of providing, correcting, re-performing or completing any **Professional Services**;

- (5) the monetary value of any electronic fund transfer or transaction by an **Insured** or on the **Insured's** behalf, which is lost or diminished during transfer into, out of or between an **Insured's** accounts;
  - (6) civil or criminal fines or penalties imposed by law against an **Insured** and any matters deemed uninsurable under the law pursuant to which this policy shall be construed;
  - (7) the **Insured's** costs and expenses of complying with any injunctive or other form of equitable relief;
  - (8) taxes incurred by an **Insured**;
  - (9) the amounts for which the **Insureds** are not financially liable or which are without legal recourse to the **Insureds**;
  - (10) amounts an **Insured** agrees to pay pursuant to a contract, including without limitation, liquidated damages, setoffs or amounts assumed in the form of a hold harmless or indemnity agreement.
- (l) alleging, arising out of, based upon or attributable to any **Related 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 **SPL Coverage Section** is a renewal or replacement or which it may succeed in time.
- (m) alleging, arising out of, based upon or attributable to any **Wrongful Act** occurring prior to the **Retroactive Date** or any **Related Act** thereto, regardless of when such **Related Act** occurs.
- (n) alleging, arising out of, based upon or attributable to any **Wrongful Act** occurring prior to the **Continuity Date**, or any **Related Act** thereto (regardless of when such **Related Act** occurs), if, as of the **Continuity Date**, the **Insured** knew or could have reasonably foreseen that such **Wrongful Act** did or would result in a **Claim** against such **Insured**.
- (o) alleging, arising out of, based upon or attributable to any obligation the **Insured** assumes under contract; provided, however, this exclusion shall not apply to:
- (1) the obligation to perform **Professional Services**; or
  - (2) liability for such obligations that would exist in absence of the contract, including without limitation, the obligation to conform **Professional Services** to any implied or statutory standards of care.
- (p) alleging, arising out of, based upon or attributable to false advertising or misrepresentation in advertising.
- (q) brought by or on behalf of any federal, state or local government agency or professional or trade licensing organizations; provided, however, this exclusion shall not apply where the **Claim** is alleging a **Wrongful Act** in the **Insured's** rendering **Professional Services** to such entity.
- (r) alleging, arising out of, based upon or attributable to:
- (1) false arrest, detention or imprisonment;
  - (2) libel, slander or defamation of character; or
  - (3) wrongful entry or eviction;

- (4) malicious prosecution; or
- (5) invasion of any right of privacy.

(s) alleging, arising out of, based upon or attributable to the **Insured's** advising, requiring, obtaining or failing to advise, require or obtain any bond, suretyship or other form of insurance.

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