



In consideration of payment of the premium and subject to the Declarations, the General Terms and Conditions, and the limitations, conditions, provisions and other terms of this Coverage Section, the Company and the Insureds agree as follows:

Insuring Clauses

Employment Practices Liability Coverage

1. The Company shall pay, on behalf of the **Insureds, Loss** on account of any **Employment Claim** first made against such **Insureds** during the **Policy Period** or, if exercised, during the Extended Reporting Period, for **Employment Practices Wrongful Acts**, but only if such **Employment Claim** is reported to the Company in writing in the manner and within the time provided in Subsection 6 of the General Terms and Conditions Section of this Policy.
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Third Party Liability Coverage (if purchased)

2. If Third Party Liability Coverage is purchased as set forth in Item 5 of the Declarations for this Coverage Section, the Company shall pay, on behalf of the **Insureds, Loss** on account of any **Third Party Claim** first made against such **Insureds** during the **Policy Period** or, if exercised, during the Extended Reporting Period, for **Third Party Wrongful Acts**, but only if such **Third Party Claim** is reported to the Company in writing in the manner and within the time provided in Subsection 6 of the General Terms and Conditions Section of this Policy.
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Definitions

3. When used in this Coverage Section:

Benefits means perquisites, fringe benefits, deferred compensation or payments (including insurance premiums) in connection with an employee benefit plan and any other payment to or for the benefit of an employee arising out of the employment relationship. **Benefits** shall not include salary, wages, commissions, or non-deferred cash incentive compensation.

Breach of Employment Contract means any breach of any oral, written or implied employment contract or employment contractual obligation, including but not limited to any contract or contractual obligation arising out of any personnel manual, employee handbook, policy statement or other representation.

Claim means any **Employment Claim** and any **Third Party Claim**.

Defense Costs means reasonable costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries, fees, or **Benefits** of the directors, officers, trustees, faculty or any duly constituted committee member or employees of the **Organization**) incurred in defending any **Claim** and the premium for appeal, attachment or similar bonds.



Employment Claim means:

- (1) any of the following:
 - (a) a written demand for monetary relief or a written demand for reinstatement, re-employment or re-engagement;
 - (b) a civil proceeding commenced by the service of a complaint, summons, notice of application, writ, claim form or similar pleading in any jurisdiction in the world;
 - (c) an arbitration proceeding pursuant to an employment contract, policy or practice of the **Organization** commenced by receipt of a demand for arbitration or similar document;
 - (d) a criminal proceeding outside the United States of America commenced by a return of an indictment or information or similar document; or
 - (e) a formal administrative, regulatory or tribunal proceeding commenced by the issuance of a notice of charge, formal investigative order or similar document, including but not limited to any such proceeding brought by or in association with the Equal Employment Opportunity Commission or any other similar governmental agency located anywhere in the world with jurisdiction over the **Organization's** employment practices; provided that in the context of an audit conducted by the Office of Federal Contract Compliance Programs, **Employment Claim** shall be limited to a Notice of Violation or Order to Show Cause or written demand for monetary damages or injunctive relief, which is brought and maintained by or on behalf of any past, present or prospective employee, volunteer or **Independent Contractor** of the **Organization** against any **Insured** for any **Employment Practices Wrongful Act** (even if such **Employment Practices Wrongful Act** is related to allegations in a criminal proceeding), including any appeal therefrom; or
- (2) a written request received by an **Insured** to toll or waive a statute of limitations relating to a potential **Employment Claim** as described in paragraph (1) above;

provided that, **Employment Claim** shall not include any labor or grievance arbitration or other proceeding pursuant to a collective bargaining agreement.

Employment Discrimination means any violation of employment discrimination laws including any actual, alleged or constructive termination, dismissal, or discharge of employment, employment demotion, denial of tenure, modification of any term or condition of employment, any failure or refusal to hire or promote an employee or applicant for employment, or any limitation, segregation or classification of any employee or applicant for employment in any way that would deprive or tend to deprive such person of employment opportunities or otherwise affect his or her status as an employee based on such person's race, color, religion, creed, age, sex, national origin, disability, pregnancy, HIV status, marital status, sexual orientation or preference, military status or other status that is protected pursuant to any applicable federal, state, or local statutory law or common law anywhere in the world.

Employment Harassment means:

- (a) sexual harassment, including any unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature that is made a condition of employment with or used as a basis for employment decisions by, interferes with performance or creates an intimidating, hostile or offensive working environment within, the **Organization**; or



- (b) workplace harassment, including work related harassment of a non-sexual nature that interferes with performance or creates an intimidating, hostile or offensive working environment within the **Organization**.

Employment Practices Wrongful Act means any actual or alleged:

- (a) **Breach of Employment Contract;**
- (b) **Employment Discrimination;**
- (c) **Employment Harassment;**
- (d) **Retaliation;**
- (e) **Workplace Tort;**
- (f) **Wrongful Employment Decision;** or
- (g) **Wrongful Termination,**

committed, attempted, or allegedly committed or attempted by any **Organization** or by any **Insured Person** in his or her capacity as such.

Independent Contractor means any natural person working for the **Organization** in the capacity of an independent contractor pursuant to an **Independent Contractor Services Agreement**.

Independent Contractor Services Agreement means any express contract or agreement between an **Independent Contractor** and the **Organization**.

Insured(s) means the **Organization** and any **Insured Person**.

Insured Person means any natural person who was, now is or shall become:

- (a) a full-time, part-time, temporary, leased or seasonal employee or volunteer of the **Organization** but only while acting in his or her capacity as such;
- (b) a duly elected or appointed natural person director, officer, trustee or duly constituted committee member of any **Organization** but only while acting in his or her capacity as such; or
- (c) an **Independent Contractor** working for the **Organization**, but only while acting in his or her capacity as such and only if the **Organization** agrees in writing, prior to or no later than thirty (30) days after the **Claim** is made, to indemnify the **Independent Contractor** for liability arising out of such **Claim**.

Interrelated Wrongful Acts means any causally connected **Wrongful Acts**.

Loss means the amount which an **Insured** becomes legally obligated to pay on account of any covered **Claim**, including but not limited to damages (including punitive and exemplary damages, liquidated damages awarded pursuant to the Age Discrimination in Employment Act or the Equal Pay Act, or the multiple portion of any multiplied damage award, if and to the extent such punitive, exemplary, liquidated or multiple damages are insurable under the law of the jurisdiction most favorable to the insurability of such damages provided such jurisdiction has a substantial relationship to the relevant **Insureds**, the Company, this Policy or the **Claim** giving rise to the damages), back pay, front pay, claimant's attorney's fees awarded by a court against an **Insured** or agreed to by the Company in connection with a settlement (but only if such claimant's attorney's fees are agreed to in writing by the Company at the time of or after a



final settlement), judgments, settlements, pre-judgment interest, post-judgment interest, and **Defense Costs**.

Loss does not include:

- (a) any amount not indemnified by the **Organization** for which an **Insured** is absolved from payment by reason of any covenant, agreement or court order;
- (b) the future salary, wages, commissions or **Benefits** of a claimant who has been or shall be hired, promoted or reinstated to employment pursuant to a settlement of, order in or other resolution of any **Claim**;
- (c) taxes, fines, or penalties, except as provided above with respect to punitive, exemplary, liquidated or the multiple portion of any multiplied damages;
- (d) any amount not insurable under the law pursuant to which this Coverage Section is construed, except as provided above with respect to punitive, exemplary, liquidated or the multiple portion of any multiplied damages;
- (e) any salary, wages, commissions, **Benefits** or other monetary payments which constitute severance payments or payments pursuant to a notice period;
- (f) any amount incurred by an **Insured** in the defense or investigation of any action, proceeding or demand that is not then a **Claim** even if (i) such amount also benefits the defense of a covered **Claim**, or (ii) such action, proceeding or demand subsequently gives rise to a **Claim**; or
- (g) any amount allocated to non-covered loss pursuant to Subsection 10 of this Coverage Section.

Potential Employment Claim means a complaint or allegation of an **Employment Practices Wrongful Act** by or on behalf of a potential claimant if such complaint or allegation (a) does not constitute an **Employment Claim** but may subsequently give rise to an **Employment Claim**, and (b) is lodged with the **Organization's** human resources department or other comparable department.

Potential Third Party Claim means a complaint or allegation of a **Third Party Wrongful Act** if such complaint or allegation (a) does not constitute a **Third Party Claim** but may subsequently give rise to a **Third Party Claim**, (b) is brought by or on behalf of a **Third Party**, and (c) is lodged with the **Organization's** legal department or with an individual responsible to receive such complaints or allegations.

Retaliation means retaliatory treatment against an employee, volunteer or **Independent Contractor** of the **Organization** on account of such individual:

- (a) exercising his or her rights under law;
- (b) refusing to violate any law;
- (c) opposing any unlawful practice;
- (d) disclosing or threatening to disclose to a superior or to any governmental agency any alleged violations of law; or
- (e) having assisted or testified in or cooperated with a proceeding or investigation regarding alleged violations of law by the **Insured**.



Third Party means any natural person who is a customer, vendor, service provider or other business invitee of the **Organization**.

Third Party Claim means:

- (1) any of the following:
 - (a) a written demand for monetary relief or non-monetary relief;
 - (b) a civil proceeding commenced by the service of a complaint, summons, notice of application, writ, claim form or similar pleading in any jurisdiction in the world;
 - (c) an arbitration proceeding commenced by receipt of a demand for arbitration or similar document; or
 - (d) an administrative, regulatory or tribunal proceeding commenced by the issuance of a notice of charge, formal investigative order or similar document,

which is brought and maintained by or on behalf of a **Third Party** against any **Insured** for a **Third Party Wrongful Act**, including any appeal therefrom; or

- (2) a written request received by an **Insured** to toll or waive a statute of limitations relating to a potential **Third Party Claim** as described in paragraph (1) above.

Third Party Services Agreement means any express contract between a **Third Party** and the **Organization**.

Third Party Wrongful Act means:

- (a) discrimination against a **Third Party** based upon such **Third Party's** race, color, religion, creed, age, sex, national origin, disability, pregnancy, HIV status, marital status, sexual orientation or preference, military status or other status that is protected pursuant to any applicable federal, state, or local statutory law or common law anywhere in the world; or
- (b) sexual harassment, including unwelcome sexual advances, requests for sexual favors or other conduct of a sexual nature against a **Third Party**,

committed, attempted, or allegedly committed or attempted by any **Organization** or by any **Insured Person** in his or her capacity as such.

Workplace Tort means:

- (a) any employment-related: defamation (including libel and slander), invasion of privacy, negligent evaluation, or wrongful discipline; or
- (b) any of the following:
 - (i) employment-related negligent retention;
 - (ii) employment-related negligent supervision;
 - (iii) employment-related negligent hiring;
 - (iv) employment-related negligent training;



- (v) employment-related negligent or intentional misrepresentation;
- (vi) employment-related wrongful infliction of emotional distress, mental anguish or humiliation; or
- (vii) failure to provide or consistently enforce employment-related corporate policies and procedures;

but only when alleged as part of an **Employment Claim** for any actual or alleged **Breach of Employment Contract, Employment Discrimination, Employment Harassment, Retaliation, Wrongful Termination, Wrongful Employment Decision** or act set forth in paragraph (a) above.

Wrongful Act means an **Employment Practices Wrongful Act** and, if Third Party Liability Coverage is purchased, a **Third Party Wrongful Act**.

Wrongful Employment Decision means any wrongful demotion, denial of tenure or failure or refusal to promote.

Wrongful Termination means any wrongful termination, dismissal, or discharge of employment, including constructive termination, dismissal or discharge. **Wrongful Termination** does not include **Breach of Employment Contract**.

Exclusions

4. The Company shall not be liable for **Loss** on account of any **Claim**:
- (a) based upon, arising from, or in consequence of any fact, circumstance, situation, transaction, event or **Wrongful Act** that, before the inception date set forth in Item 2(A) of the Declarations for the General Terms and Conditions, was the subject of any notice given under any policy or coverage section of which this Coverage Section is a direct or indirect renewal or replacement;
 - (b) based upon, arising from, or in consequence of:
 - (i) any:
 - (A) written demand seeking monetary relief;
 - (B) written demand alleging an **Employment Practices Wrongful Act** and seeking reinstatement, re-employment or re-engagement;
 - (C) written demand alleging a **Third Party Wrongful Act** and seeking non-monetary relief;
 - (D) civil proceeding seeking monetary or non-monetary relief;
 - (E) administrative, regulatory or tribunal proceeding commenced by the issuance of a notice of charge or complaint of discrimination by the Equal Employment Opportunity Commission or any other federal, state or local governmental agency authorized to investigate or adjudicate an actual or alleged **Employment Practices Wrongful Act** or **Third Party Wrongful Act**;



(F) Notice of Violation or Order to Show Cause resulting from an audit conducted by the Office of Federal Contract Compliance Programs; or

(G) arbitration proceeding;

which was pending against any **Insured** on or prior to the applicable Pending or Prior Date set forth in Item 4 of the Declarations for this Coverage Section, or any of the same or substantially similar facts or situations underlying or alleged therein, including but not limited to any such **Claim** which is brought by or on behalf of the original claimant in any matter set forth in subparagraphs (A)-(G) above or any other claimant; or

(ii) any order, decree or judgment which was entered for or against any **Insured** on or prior to the applicable Pending or Prior Date set forth in Item 4 of the Declarations for this Coverage Section, or any of the same or substantially similar facts or situations underlying any such order, decree or judgment;

(c) for any actual or alleged violation of the responsibilities, obligations or duties imposed by any federal, state, or local statutory law or common law anywhere in the world (including but not limited to the Employee Retirement Income Security Act of 1974 (except section 510 thereof) and the Consolidated Omnibus Budget Reconciliation Act of 1985) or amendments to or regulations promulgated under any such law that governs any employee benefit arrangement, program, policy, plan or scheme of any type (whether or not legally required or whether provided during or subsequent to employment with an **Organization**) ("Employee Benefits Program Laws"), including but not limited to any:

(i) retirement income or pension benefit program;

(ii) employee stock purchase or employee stock ownership plan;

(iii) profit sharing plan;

(iv) deferred compensation plan;

(v) vacation, maternity leave, personal leave, or parental leave;

(vi) severance pay arrangement;

(vii) supplementary unemployment compensation plan;

(viii) apprenticeship program;

(ix) pre-paid legal service plan or scholarship plan;

(x) life insurance plan;

(xi) health, sickness, medical, dental, disability or dependant care plan;

(xii) welfare plan; or

(xiii) similar arrangement, program, plan or scheme;

provided that this Exclusion 4(c) shall not apply to any **Employment Claim** for **Retaliation**;



- (d) for any actual or alleged violation of the responsibilities, obligations or duties imposed by any federal, state, or local statutory law or common law anywhere in the world (including but not limited to the Occupational Safety and Health Act) or amendments to or regulations promulgated under any such law that governs workplace safety and health ("Occupational Safety and Health Laws"), including but not limited to any obligation to maintain a place of employment free from hazards likely to cause physical harm, injury or death; provided that this Exclusion 4(d) shall not apply to any **Employment Claim for Retaliation**;
- (e) for any actual or alleged violation of the responsibilities, obligations or duties imposed by any federal, state, or local statutory law or common law anywhere in the world (including but not limited to the Fair Labor Standards Act) or amendments to or regulations promulgated under any such law that governs wage, hour and payroll policies and practices, except the Equal Pay Act ("Wage and Hour Laws"), including but not limited to:
- (i) the calculation, timing or manner of payment of minimum wages, prevailing wage rates, overtime pay or other compensation alleged to be due and owing;
 - (ii) the classification of any organization or person for wage and hour purposes;
 - (iii) garnishments, withholdings or other deductions from wages;
 - (iv) child labor;
 - (v) pay equity or comparable worth; or
 - (vi) any similar policies or practices;
- provided that this Exclusion 4(e) shall not apply to any **Employment Claim for Retaliation**;
- (f) for any actual or alleged violation of the responsibilities, obligations or duties imposed by any federal, state, or local statutory law or common law anywhere in the world (including but not limited to the Worker Adjustment and Retraining Notification Act) or amendments to or regulations promulgated under any such law that governs any obligation of an employer to notify, discuss or bargain with its employees or others in advance of any plant or facility closing, or mass layoff, or any similar obligation ("Workforce Notification Laws"); provided that this Exclusion 4(f) shall not apply to any **Employment Claim for Retaliation**;
- (g) for any actual or alleged violation of the responsibilities, obligations or duties imposed by any federal, state, or local statutory law or common law anywhere in the world (including but not limited to the National Labor Relations Act) or any amendments to or regulations promulgated under any such law that governs:
- (i) the rights of employees to engage in, or to refrain from engaging in, union or other collective activities, including but not limited to union organizing, union elections and other union activities;
 - (ii) the duty or obligation of an employer to meet, discuss, notify or bargain with any employee or employee representative, collectively or otherwise;
 - (iii) the enforcement of any collective bargaining agreement, including but not limited to grievance and arbitration proceedings;
 - (iv) strikes, work stoppages, boycotts, picketing and lockouts; or
 - (v) any similar rights or duties ("Labor Management Relations Laws");



- (h) for bodily injury, mental anguish, emotional distress, humiliation, sickness, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof whether or not it is damaged or destroyed; provided that this Exclusion 4(h) shall not apply to mental anguish, emotional distress or humiliation resulting from any **Wrongful Act**;
- (i) based upon, arising from, or in consequence of any actual or alleged obligation of any **Insured** pursuant to any workers' compensation, unemployment insurance, social security, disability benefits or any similar federal, state, or local statutory law or common law anywhere in the world; provided that this Exclusion 4(i) shall not apply to any **Employment Claim** for **Retaliation**;
- (j) based upon, arising from, or in consequence of:
 - (i) any actual, alleged, or threatened exposure to, or generation, storage, transportation, discharge, emission, release, dispersal, escape, treatment, removal or disposal of any **Pollutants**; or
 - (ii) any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any **Pollutants**, or any action taken in contemplation or anticipation of any such regulation, order, direction or request,including but not limited to any **Claim** for financial loss to the **Organization**, its members or its creditors based upon, arising from, or in consequence of any matter described in clause (i) or clause (ii) of this Exclusion 4(j); provided that this Exclusion 4(j) shall not apply to any **Employment Claim** for **Retaliation**;
- (k) based upon, arising from, or in consequence of the liability of others assumed by any **Insured** under any written or oral contract or agreement; provided that this Exclusion 4(k) shall not apply to the extent that an **Insured** would have been liable in the absence of such contract or agreement;
- (l) made against a **Subsidiary** or **Affiliate** or an **Insured Person** of such **Subsidiary** or **Affiliate** for any **Wrongful Act** committed, attempted, or allegedly committed or attempted during any time when such entity was not a **Subsidiary** or **Affiliate**;
- (m) for any actual or alleged breach of any **Independent Contractor Services Agreement** or **Third Party Services Agreement**;
- (n) based upon, arising from, or in consequence of any federal, state, or local statutory law or common law anywhere in the world, including but not limited to the Interstate Commerce Act of 1887, the Sherman Antitrust Act of 1890, the Clayton Act of 1914, the Robinson-Patman Act of 1936, the Celler-Kefauver Act of 1950, the Federal Trade Commission Act of 1914, or amendments to or regulations promulgated under any such law, that governs competition, monopolistic practices, or price fixing (including horizontal or other price fixing of wages, hours, salaries, compensation, benefits or any other terms and conditions of employment); or
- (o) for any actual or alleged violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961 et seq., or the Federal False Claims Act or any similar federal, state, or local statutory law or common law anywhere in the world.



5. The Company shall not be liable for that part of **Loss**, other than **Defense Costs**:
 - (a) which constitutes **Benefits** due or to become due or the equivalent value of such **Benefits**; provided that this Exclusion 5(a) shall not apply to any **Employment Claim for Wrongful Termination**;
 - (b) which constitutes costs associated with providing any accommodation for persons with disabilities or any other status which is protected under any applicable federal, state, or local statutory law or common law anywhere in the world, including but not limited to the Americans With Disabilities Act, the Civil Rights Act of 1964, or amendments to or rules or regulations promulgated under any such law; or
 - (c) which constitutes costs of compliance with any order for, grant of or agreement to provide non-monetary relief.
6. The Company shall not be liable for **Loss**, other than **Defense Costs**, resulting from any **Claim** based upon, arising from, or in consequence of any actual or alleged breach of any written employment contract; provided that this Exclusion 6 shall not apply to the extent an **Insured** would have been liable for such **Loss** in the absence of such written employment contract.

Coordination of Coverage

7. Any **Loss** otherwise covered by both this Coverage Section and any fiduciary liability coverage section or policy issued by the Company or by any affiliate of the Company first shall be covered as provided in, and shall be subject to the Limit of Liability and Retention applicable to, this Coverage Section.

Limit of Liability and Retention

8. (a) The Company's maximum aggregate liability for all **Loss** on account of all **Claims** first made during each **Policy Year**, whether covered under one or more Insuring Clauses, shall be the Limit of Liability set forth in Item 2(A) of the Declarations for this Coverage Section. If Third Party Liability Coverage is purchased, the Company's maximum aggregate liability for all **Loss** on account of all **Third Party Claims** first made during each **Policy Year** shall be the Sublimit set forth in Item 2(B) of the Declarations for this Coverage Section, which amount shall be part of and not in addition to the Company's maximum aggregate Limit of Liability for all **Claims** first made during that **Policy Year** as set forth in Item 2(A) of the Declarations for this Coverage Section.
- (b) Solely in the event that the Defense Outside the Limits of Liability Option is purchased as indicated in Item 6 of the Declarations of this Coverage Section, **Defense Costs** shall be in addition to, and not part of, the applicable Limits of Liability set forth in Item 2 of the Declarations for this Coverage Section, and payment of **Defense Costs** by the Company shall not reduce or exhaust such applicable Limits of Liability; provided, however, that when such applicable Limits of Liability are exhausted by payment of **Loss** other than **Defense Costs**, any obligation of the Company to pay **Defense Costs** or to defend or continue to defend any **Claim** shall cease.

If the Defense Outside the Limits of Liability Option is not purchased as indicated in Item 6 of the Declarations of this Coverage Section, **Defense Costs** are part of and not in addition to the Limits of Liability set forth in Item 2 of the Declarations of this Coverage Section and payment of **Defense Costs** by the Company shall reduce, and may exhaust, such Limits of Liability. When the Limits of Liability are exhausted by payment of **Defense Costs** or other **Loss**, any obligation of the Company to pay **Defense Costs** or to defend or continue to defend any **Claim** shall cease.



- (c) The Company's liability under this Coverage Section shall apply only to that part of covered **Loss** (as determined by any applicable provision in Subsection 10 of this Coverage Section) on account of each **Claim** which is excess of the applicable Retention set forth in Item 3 of the Declarations for this Coverage Section. Such Retention shall be depleted only by **Loss** otherwise covered under this Coverage Section and shall be borne by the **Insureds** uninsured and at their own risk. In the event that any **Insured** is unwilling or unable to bear the Retention it shall be the obligation of the **Organization** to bear such Retention uninsured and at its own risk.
- (d) All **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** of any **Insured** shall be deemed one **Claim**, regardless of the number of **Claims** made, claimants, or **Insureds** against whom such **Claims** are made. Such **Claims** shall be treated as a single **Claim** first made on the date the earliest of such **Claims** was first made, or on the date the earliest of such **Claims** is treated as having been made in accordance with Subsection 6 of the General Terms and Conditions, regardless of whether such date is before or during the **Policy Period**.
- (e) The limit of liability available during the Extended Reporting Period (if exercised) shall be part of, and not in addition to, the Company's maximum aggregate limit of liability for all **Loss** on account of all **Claims** first made during the immediately preceding **Policy Year**.

Defense and Settlement

- 9. (a) Except as provided in this Subsection 9, the Company shall have the right and duty to defend any **Claim** covered by this Coverage Section, even if any of the allegations in such **Claim** are groundless, false or fraudulent. Defense counsel shall be selected by the Company from the Company's list of approved employment defense firms. The Company's duty to defend any **Claim** shall cease upon exhaustion of the applicable Limit of Liability.
- (b) Notwithstanding the foregoing, it shall be the duty of the **Insureds** and not the duty of the Company to defend any **Claim** which is in part excluded from coverage pursuant to Exclusion 4(e) of this Coverage Section. For such portion of such **Claim** that is otherwise covered under this Coverage Section, the **Insureds** shall select as defense counsel for such **Claim** a law firm included in the Company's then current list of approved employment defense firms for the jurisdiction in which such **Claim** is pending.
- (c) The Company may make any investigation it deems necessary and may, with the consent of the **Insured**, make any settlement of any **Claim** it deems expedient.

Solely in the event that the Defense Outside the Limits of Liability Option is purchased as indicated in Item 6 of the Declarations of this Coverage Section, if an **Insured** in any **Claim** withholds consent to any settlement acceptable to the claimant in accordance with the Company's recommendation (a "Proposed Settlement"), the **Insureds** will thereafter be responsible for defending such **Claim** at their own expense and, subject in all events to the Company's maximum Limit of Liability, the Company's liability for **Loss** with respect to any such **Claim** will not exceed the amount of the Proposed Settlement plus **Defense Costs** incurred up to the date of the **Insured's** refusal to consent to the Proposed Settlement.

If the Defense Outside the Limits of Liability Option is not purchased as indicated in Item 6 of the Declarations of this Coverage Section, in the event an **Insured** in any **Claim** withholds consent to a Proposed Settlement, the Company's liability with respect to such **Claim** shall not exceed:

- (i) the amount of the Proposed Settlement plus **Defense Costs** incurred up to the date of the **Insured's** refusal to consent to the Proposed Settlement; plus



- (ii) seventy percent (70%) of any **Loss**, including **Defense Costs**, in excess of the amount referenced in paragraph (i) above, incurred in connection with such **Claim**; subject in all events to the applicable Retention and Limits of Liability for such **Claim**. The remaining thirty percent (30%) of **Loss**, including **Defense Costs**, in excess of the amount referenced in paragraph (i) above shall be borne by the **Insureds** uninsured and at their own risk, notwithstanding anything to the contrary contained in Subsection 10(a) Allocation.
- (d) The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Defense Costs**, or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the Company's prior written consent, which consent shall not be unreasonably withheld. The Company shall not be liable for any element of **Loss** incurred, for any obligation assumed, or for any admission made, by any **Insured** without the Company's prior written consent.
- (e) The Company will have no obligation to pay **Loss**, including **Defense Costs**, or to defend or continue to defend any **Claim** after the maximum Limit of Liability applicable to the **Policy Year** in which such **Claim** was first made or is deemed to have first been made has been exhausted. If the Company's Limit of Liability in any **Policy Year** is exhausted, the premium applicable to such **Policy Year** will be fully earned.
- (f) If the Combined Maximum Aggregate Limit of Liability for all **Liability Coverage Sections** is elected, as set forth in Item 3 of the Declarations of the General Terms and Conditions, then the Company will have no obligation to pay **Loss**, including **Defense Costs**, or to defend or continue to defend any **Claim** after the Company's Combined Maximum Aggregate Limit of Liability applicable to the **Policy Year** in which such **Claim** was first made or is deemed to have first been made has been exhausted. If the Company's Combined Maximum Aggregate Limit of Liability in any **Policy Year** is exhausted, the Policy premium applicable to such **Policy Year** will be fully earned.
- (g) The **Insureds** agree to provide the Company with all information, assistance and cooperation which the Company reasonably requires and agree that in the event of a **Claim** the **Insureds** will do nothing that could prejudice the Company's position or its potential or actual rights of recovery.

Allocation

- 10. If both **Loss** covered under this Coverage Section and loss not covered under this Coverage Section are incurred by the **Insureds** on account of any **Claim** because such **Claim** against the **Insureds** includes both covered and non-covered matters, then coverage under this Coverage Section with respect to such **Claim** shall apply as follows:
 - (a) **Defense Costs**: Except as provided in (c) below, one hundred percent (100%) of reasonable and necessary **Defense Costs** incurred by the **Insured** on account of such **Claim** will be considered covered **Loss**; and
 - (b) Loss other than **Defense Costs**: All remaining loss incurred by the **Insured** on account of such **Claim** shall be allocated by the Company between covered **Loss** and non-covered loss based on the relative legal and financial exposures of the parties to covered and non-covered matters and, in the event of a settlement in such **Claim**, also based on the relative benefits to the **Insureds** from such settlement.
 - (c) Defense costs incurred by the **Insured** on account of a **Claim** which is in part excluded from coverage pursuant to Exclusion 4(e) of this Coverage Section shall be allocated between covered **Defense Costs** and non-covered defense costs based on the relative legal and financial exposures of the parties to covered and non-covered matters.



Arbitration

11. Any dispute between any **Insured** and the Company based upon, arising from, or in any way involving any actual or alleged coverage under this Coverage Section, or the validity, termination or breach of this Coverage Section, including but not limited to any dispute sounding in contract or tort, shall be submitted to binding arbitration.

The **Organization**, however, shall first have the option to resolve the dispute by non-binding mediation pursuant to such rules and procedures, and using such mediator, as the parties may agree. If the parties cannot so agree, the mediation shall be administered by the American Arbitration Association pursuant to its then prevailing commercial mediation rules.

If the parties cannot resolve the dispute by non-binding mediation, the parties shall submit the dispute to binding arbitration pursuant to the then prevailing commercial arbitration rules of the American Arbitration Association, except that the arbitration panel shall consist of one arbitrator selected by the **Insureds**, one arbitrator selected by the Company, and a third arbitrator selected by the first two arbitrators.

Other Insurance

12. Unless specifically stated otherwise, the coverage afforded under this Coverage Section:
- (a) for **Employment Claims**, shall be primary; provided that with respect to that portion of an **Employment Claim** made against any leased employee, temporary employee or **Independent Contractor, Loss and Defense Costs**, payable on behalf of such leased employee, temporary employee or **Independent Contractor** under this Coverage Section will be specifically excess of and will not contribute with other valid insurance, including but not limited to any other insurance under which there is a duty to defend, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is specifically stated to be in excess of this Coverage Section.
 - (b) for **Third Party Claims**, will be specifically excess of and will not contribute with other valid insurance, including but not limited to general liability insurance or any other insurance under which there is a duty to defend, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is: (i) specifically stated to be in excess of this Coverage Section; or (ii) subject to Subsection 7 of this Coverage Section.