



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 **Claim** first made against such **Insured** during the **Policy Period** or, if exercised, during the Extended Reporting Period, for a **Wrongful Act**, but only if such **Claim** is reported to the Company in writing in the manner and within the time provided in Subsection 10 of this coverage section.

### Definitions

2. When used in this coverage section:

**Application** means all signed applications, including attachments and other materials submitted therewith or incorporated therein, submitted by the **Insureds** to the Company for this coverage section or for any coverage section or policy of which this coverage section is a direct or indirect renewal or replacement. All such applications, attachments and materials are deemed attached to, incorporated into and made a part of 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, **Stock Benefits**, or non-deferred cash incentive compensation.

**Breach of Employment Contract** means any breach of any oral, written or implied contract or 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:

- (a) any of the following:
  - (i) a written demand for monetary relief or a written demand for reinstatement, re-employment or re-engagement;
  - (ii) 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;
  - (iii) a criminal proceeding outside the United States of America commenced by a return of an indictment or information or similar document;
  - (iv) 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; or



- (v) an 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 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, **Claim** shall be limited to a Notice of Violation or Order to Show Cause or written demand for monetary relief or injunctive relief,

which is brought and maintained by or on behalf of a past, present or prospective employee, volunteer or **Independent Contractor** of the **Organization** against any **Insured** for a **Wrongful Act** (even if such **Wrongful Act** is related to allegations in a criminal proceeding), including any appeal therefrom; or

- (b) a written request received by an **Insured** to toll or waive a statute of limitations relating to a potential **Claim** as described in paragraph (a) above;

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

Except as may otherwise be provided in Subsection 8, Subsection 9(e), or Subsection 10(c) of this coverage section, a **Claim** will be deemed to have first been made when such **Claim** is commenced as set forth in this definition or, in the case of a written demand or request, when such demand or request is first received by an **Insured**

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

**Domestic Partner** means any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Organization**.

**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 any 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, 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**.



**Financial Impairment** means the status of an **Organization** resulting from:

- (a) the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate such **Organization**; or
- (b) such **Organization** becoming a debtor in possession under the United States bankruptcy law or the equivalent of a debtor in possession under the law of any other country.

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

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

**Insured** 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 director, officer or trustee 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** shall 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) **Stock Benefits**;
- (e) 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;
- (f) any salary, wages, commissions, **Benefits** or other monetary payments which constitute severance payments or payments pursuant to a notice period;
- (g) any amount incurred by an **Insured** in the defense or investigation of any action, proceeding, investigation 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, investigation or demand subsequently gives rise to a **Claim**; or
- (h) any amount allocated to non-covered loss pursuant to Subsection 12 of this coverage section.

**Mass or Class Action** means any **Claim** brought or maintained:

- (a) by or on behalf of five or more natural persons who are acting in concert, whether or not such natural persons are represented by one or more legal counsel;
- (b) by or on behalf of one to four natural persons if any of such natural persons are making a pattern and practice or systemic discrimination allegation and are seeking monetary relief on behalf of a class or group of complainants in order to resolve such **Claim**, whether or not such natural persons are represented by one or more legal counsel; or
- (c) by a governmental entity, department or agency making a pattern and practice or systemic discrimination allegation or seeking monetary relief on behalf of a class or group of complainants in order to resolve such **Claim**.

**Non-Mass or Non-Class Action** means any **Claim** brought or maintained by or on behalf of one to four natural persons, whether or not such natural persons are represented by one or more legal counsel, provided that: (a) none of such natural persons are making a pattern and practice or systemic discrimination allegation; and/or (b) none of such natural persons are seeking monetary relief on behalf of a class or group of complainants in order to resolve such **Claim**.

**Organization** means, collectively, those organizations designated in Item 5 of the Declarations for this coverage section, and the **Subsidiaries** of such designated organizations.

**Pollutants** means (a) any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by, the United States Environmental Protection Agency or any state, county, municipality or locality counterpart thereof, including but not limited to solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials, or (b) any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products or any noise.

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

**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 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**.

**Stock Benefits** means (a) any offering, plan or agreement between the **Organization** and any employee which grants stock, stock warrants or stock options of the **Organization** to such employee, including but not limited to grants of stock options, restricted stock, stock warrants, performance stock shares, or any other compensation or incentive granted in the form of securities of the **Organization**; or (b) any payment or instrument the amount or value of which is derived from the value of securities of the **Organization**, including but not limited to stock appreciation rights or phantom stock plans or arrangements. **Stock Benefits** shall not include employee stock ownership plans or employee stock purchase plans.

**Subsidiary** means any organization while more than fifty percent (50%) of the outstanding securities or voting rights representing the present right to vote for election of or to appoint directors or trustees of such organization are owned, directly or indirectly, in any combination, by one or more of those organizations designated in Item 5 of the Declarations for this coverage section.

**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 a **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 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.

**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**.

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### **Exclusions**

3. 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 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 or non-monetary relief;
      - (B) civil proceeding seeking monetary or non-monetary relief;
      - (C) criminal proceeding commenced by the return of an indictment, information or similar document;
      - (D) administrative, regulatory or tribunal proceeding commenced by the issuance of a notice of charge or complaint of discrimination filed with or issued by the Equal Employment Opportunity Commission or any other federal, state or local governmental agency authorized to investigate or adjudicate an actual or alleged **Wrongful Act**;
      - (E) Notice of Violation or Order to Show Cause resulting from an audit conducted by the Office of Federal Contract Compliance Programs; or



(F) arbitration proceeding;

which was pending against any **Insured** on or prior to the applicable Pending or Prior Date set forth in Item 7 of the Declarations for this coverage section, or any of the same or substantially similar facts, circumstances, situations, transactions, events, or **Wrongful Acts** 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)-(F) 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 7 of the Declarations for this coverage section, or any of the same or substantially similar facts, circumstances, situations, transactions, events, or **Wrongful Acts** 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 3(c) shall not apply to any **Claim** for **Retaliation**;

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- (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 3(d) shall not apply to any **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 3(e) shall not apply to any **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 3(f) shall not apply to any **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 3(h) shall not apply to mental anguish, emotional distress or humiliation alleged as part of an otherwise covered **Claim**;
- (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 3(i) shall not apply to any **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 securityholders or its creditors based upon, arising from, or in consequence of any matter described in clause (i) or clause (ii) of this Exclusion 3(j); provided that this Exclusion 3(j) shall not apply to any **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 3(k) shall not apply to the extent that an **Insured** would have been liable in the absence of such contract or agreement;
- (l) for any **Wrongful Act** committed, attempted, or allegedly committed or attempted by a **Subsidiary** or an **Insured Person** of a **Subsidiary** during any time when such entity was not a **Subsidiary**;
- (m) for any actual or alleged breach of any **Independent Contractor 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 Cellar-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 Organization 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.

4. 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 4(a) shall not apply to any **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.
5. 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 5 shall not apply to the extent an **Insured** would have been liable for such **Loss** in the absence of such written employment contract.

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### **Spouses, Estates and Legal Representatives**

6. Subject otherwise to the General Terms and Conditions and the limitations, conditions, provisions and other terms of this coverage section, coverage shall extend to **Claims** for the **Wrongful Acts** of an **Insured Person** made against:
- (a) the estate, heirs, legal representatives or assigns of such **Insured Person** if such **Insured Person** is deceased or the legal representatives or assigns of such **Insured Person** if such **Insured Person** is incompetent, insolvent or bankrupt; or
  - (b) the lawful spouse or **Domestic Partner** of such **Insured Person** solely by reason of such spouse or **Domestic Partner**'s status as a spouse or **Domestic Partner**, or such spouse or **Domestic Partner**'s ownership interest in property which the claimant seeks as recovery for an alleged **Wrongful Act** of such **Insured Person**.

All terms and conditions of this coverage section, including without limitation the Retention applicable to **Loss** incurred by such **Insured Person**, shall also apply to loss incurred by the estate, heir, legal representative, assign, spouse and **Domestic Partner** of such **Insured Person**. The coverage provided by this Subsection 6 shall not apply with respect to any loss arising from an act or omission by an **Insured Person's** estate, heirs, legal representatives, assigns, spouse or **Domestic Partner**.

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### **Coordination of Coverage**

7. Any **Loss** otherwise covered by both this coverage section and either any directors and officers liability coverage section or policy or 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, Retention and Coinsurance Percentage applicable to, this coverage section.



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**Extended Reporting Period**

8. If the Company or the **Parent Organization** terminates or does not renew this coverage section, other than termination by the Company for nonpayment of premium, the **Parent Organization** and the **Insured Persons** shall have the right, upon payment of the additional premium set forth in Item 6(B) of the Declarations for this coverage section, to an extension of the coverage granted by this coverage section for **Claims** that are (i) first made during the period set forth in Item 6(A) of the Declarations for this coverage section (the "Extended Reporting Period") following the effective date of termination or non-renewal, and (ii) reported to the Company in writing as soon as practicable during the Extended Reporting Period, but only to the extent such **Claims** are for **Wrongful Acts** committed, attempted, or allegedly committed or attempted before the earlier of the effective date of termination or non-renewal or the date of the first merger, consolidation, acquisition, cessation, or **Financial Impairment** event described in Subsection 16 below. The offer of renewal terms and conditions or premiums different from those in effect prior to renewal shall not constitute refusal to renew. The right to purchase an extension of the coverage as described in this subsection shall lapse unless written notice of election to purchase the extension, together with payment of the additional premium due, is received by the Company within thirty (30) days after the effective date of termination or non-renewal. Any **Claim** made during the Extended Reporting Period shall be deemed to have been made during the immediately preceding **Policy Period**. The entire additional premium for the Extended Reporting Period shall be deemed fully earned at the inception of such Extended Reporting Period.

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**Limit of Liability, Retention and Coinsurance**

9. (a) The Company's maximum liability for all **Loss** on account of each **Claim** first made during the **Policy Period** shall be the Limit of Liability set forth in Item 2(A) of the Declarations for this coverage section. The Company's maximum aggregate liability for all **Loss** on account of all **Claims** first made during the **Policy Period** shall be the Limit of Liability set forth in Item 2(B) of the Declarations for this coverage section.
- (b) **Defense Costs** are part of and not in addition to the Limits of Liability set forth in Item 2 of the Declarations for this coverage section, and the payment by the Company of **Defense Costs** shall reduce and may exhaust such applicable Limits of Liability.
- (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 12 of this coverage section) on account of each **Claim** which is excess of the applicable Retention set forth in Item 4 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 **Parent Organization** to bear such Retention uninsured and at its own risk. With respect to the coverage afforded hereunder, the Retention applicable to: (i) each **Non-Mass or Non-Class Action** shall be the amount set forth in Item 4(A) of the Declarations for this coverage section; and (ii) each **Mass or Class Action** shall be the amount set forth in Item 4(B) of the Declarations for this coverage section. If at any time a **Claim** ceases to be a **Mass or Class Action**, and becomes a **Non-Mass or Non-Class Action**, the Retention applicable to such **Claim** shall be the amount set forth in Item 4(A) of the Declarations for this coverage section, however, no Retention borne by the **Insureds** while the **Claim** was a **Mass or Class Action** will be reimbursed or indemnified by the Company. If at any time a **Claim** ceases to be a **Non-Mass or Non-Class Action**, and becomes a **Mass or Class Action**, the Retention applicable to such **Claim** shall be the amount set forth in Item 4(B) of the Declarations for this coverage section.



- (d) With respect to **Loss** otherwise covered under this coverage section (excess of the applicable Retention) on account of any **Non-Mass or Non-Class Action**, the **Insureds** shall bear uninsured and at their own risk that percentage of such **Loss** specified as the Coinsurance Percentage in Item 3(A) of the Declarations for this coverage section, and the Company's liability shall apply only to the remaining percentage of such **Loss**. With respect to **Loss** otherwise covered under this coverage section (excess of the applicable Retention) on account of any **Mass or Class Action**, the **Insureds** shall bear uninsured and at their own risk that percentage of such **Loss** specified as the Coinsurance Percentage in Item 3(B) of the Declarations for this coverage section, and the Company's liability shall apply only to the remaining percentage of such **Loss**. If at any time a **Claim** ceases to be a **Mass or Class Action**, and becomes a **Non-Mass or Non-Class Action**, the **Insureds** shall thereafter bear uninsured and at their own risk that percentage of **Loss** on account of such **Non-Mass or Non-Class Action** specified as the Coinsurance Percentage in Item 3(A) of the Declarations for this coverage section, and the Company's liability shall apply only to the remaining percentage of such **Loss** on account of such **Non-Mass or Non-Class Action**. Provided that, no **Loss** borne by the **Insureds** while such **Claim** was a **Mass or Class Action** will be reimbursed or indemnified by the Company. If at any time a **Claim** ceases to be a **Non-Mass or Non-Class Action**, and becomes a **Mass or Class Action**, the **Insureds** shall thereafter bear uninsured and at their own risk that percentage of **Loss** on account of such **Mass or Class Action** specified as the Coinsurance Percentage in Item 3(B) of the Declarations for this coverage section, and the Company's liability shall apply only to the remaining percentage of such **Loss** on account of such **Mass or Class Action**.
- (e) 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 10(c) below, regardless of whether such date is before or during the **Policy Period**.
- (f) 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 liability for all **Loss** on account of all **Claims** first made during the immediately preceding **Policy Period**.

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### Reporting and Notice

10. (a) The **Insureds** shall, as a condition precedent to exercising any right to coverage under this coverage section, give to the Company written notice of any **Claim** as soon as practicable, but in no event later than the earliest of the following dates:
- (i) sixty (60) days after the date on which any **Organization's** natural person director, officer, trustee, or member of the in-house general counsel, risk management or human resources department first becomes aware that the **Claim** has been made;
  - (ii) if this coverage section expires (or is otherwise terminated) without being renewed and if no Extended Reporting Period is purchased, sixty (60) days after the effective date of such expiration or termination; or
  - (iii) the expiration date of the Extended Reporting Period, if purchased;

provided that if the Company sends written notice to the **Parent Organization**, at any time before the date set forth in (i) above with respect to any **Claim**, stating that this coverage section is being terminated for non-payment of premium, the **Insureds** shall give to the Company written notice of such **Claim** prior to the effective date of such termination.



- (b) The **Insureds** shall, as a condition precedent to exercising any right to coverage under this coverage section, give to the Company every demand, notice, summons, complaint, or other process received by any **Insured** or **Insured** representative and shall give to the Company such information, assistance and cooperation as the Company may reasonably require, and shall include in any notice under Subsection 10(a) a description of the **Claim**, the nature of the alleged **Wrongful Acts**, the nature of the alleged or potential damage, the names of all actual or potential claimants, the names of all actual or potential defendants or **Insureds** involved, and the manner in which the **Insured** first became aware of the **Claim**.
- (c) If during the **Policy Period** any natural person who is a director, officer, trustee, or member of the in-house general counsel, risk management or human resources department of any **Organization** becomes aware of a **Potential Claim**, and the **Insured** during the **Policy Period**:
- (i) gives the Company written notice of such **Potential Claim**, including a description of the **Potential Claim**, the nature of the alleged **Wrongful Act**, the names of the potential claimants, the consequences which have resulted or may result from such **Potential Claim**, the damages which may result from such **Potential Claim** and the manner in which the natural person director, officer, trustee, the in-house general counsel, risk manager or director of human resources of any **Organization** first became aware of such **Potential Claim**; and
- (ii) requests coverage under this coverage section for any **Claim** subsequently resulting from such **Potential Claim**;

then the Company will treat any such subsequently resulting **Claim** as if it had been made against the **Insured** during the **Policy Period**. Written notice of any such subsequently resulting **Claim** must be given to the Company as soon as practicable, but in no event later than sixty (60) days after such **Claim** is first made. With respect to any such **Claim**, no coverage under this coverage section shall apply to loss incurred prior to the date such subsequent **Claim** is actually made.

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### **Defense and Settlement**

11. (a) Except as provided in Subsection 11(b), 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 covered **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 set forth in Item 2 of the Declarations for this coverage section.
- (b) Notwithstanding Subsection 11(a), 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 3(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. If any **Insured** withholds consent to any settlement acceptable to the claimant and the Company (a "Proposed Settlement"), the Company's liability for all **Loss**, including **Defense Costs**, on account of 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 of such **Claim**; 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 the available Limit of Liability for such **Claim**. The remaining thirty percent (30%) of any **Loss**, including **Defense Costs**, in excess of the amount referenced in paragraph (i) above shall be borne by the **Insured** uninsured and at its own risk, notwithstanding anything to the contrary contained in Subsection 12.
- (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 shall not be unreasonably withheld. The Company shall not be liable for any **Defense Costs**, for any other 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 **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.

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#### Allocation

12. If both **Loss** covered by this coverage section and loss not covered by this coverage section are incurred by an **Insured** on account of any **Claim** because such **Claim** against the **Insured** 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**;
  - (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; and
  - (c) Defense costs incurred by the **Insured** on account of a **Claim** which is in part excluded from coverage pursuant to Exclusion 3(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 noncovered matters.

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#### Arbitration

13. 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.

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### Other Insurance

14. Unless specifically stated otherwise, the coverage afforded under this coverage section for any **Claim** shall be primary; provided that with respect to that portion of a **Claim** made against any leased employee, temporary employee or **Independent Contractor**, **Loss**, including **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.

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### Changes in Exposure

#### Acquisition/Creation Of Another Organization

15. If before or during the **Policy Period** any **Organization**:
- (a) acquires securities or voting rights in another organization or creates another organization, which as a result of such acquisition or creation becomes a **Subsidiary**; or
  - (b) acquires another organization by merger into or consolidation with an **Organization** such that the **Organization** is the surviving entity,

then such other organization and its **Insured Persons** shall be **Insureds** under this coverage section, but only with respect to **Wrongful Acts** committed, attempted, or allegedly committed or attempted after such acquisition or creation unless the Company agrees, after presentation of a complete application and all other appropriate information, to provide coverage by endorsement for **Wrongful Acts** committed, attempted, or allegedly committed or attempted by such **Insureds** before such acquisition or creation.

If, at the time of any such acquisition or creation described above, the total number of employees of the organization so acquired or created exceeds ten percent (10%) of the total number of employees of the **Parent Organization** immediately prior to such acquisition or creation, the **Parent Organization** shall give written notice of such acquisition or creation to the Company as soon as practicable, but in no event later than sixty (60) days after the date of such acquisition or creation, together with such other information as the Company in its sole discretion may require and shall pay any additional premium required by the Company. If the **Parent Organization** fails to give such notice within the time specified in the preceding sentence, or fails to pay the additional premium required by the Company, coverage for such acquired or created organization and its **Insured Persons** shall terminate with respect to **Claims** first made more than sixty (60) days after such acquisition or creation. Coverage for any acquired or created organization described in this paragraph, and for the **Insured Persons** of such organization, shall be subject to such additional or different terms, conditions and limitations of coverage as the Company in its sole discretion may require.



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*Acquisition by Another Organization*

16. If:
- (a) the **Parent Organization** merges into or consolidates with another organization and the **Parent Organization** is not the surviving entity;
  - (b) another organization or person or group of organizations and/or persons acting in concert acquires securities or voting rights which result in ownership or voting control by the other organization(s) or person(s) of more than fifty percent (50%) of the outstanding securities or voting rights representing the present right to vote for the election of or to appoint directors or trustees of the **Parent Organization**;
  - (c) an **Organization** completely ceases to actively engage in its primary business (“cessation”); or
  - (d) **Financial Impairment** occurs,

then coverage under this coverage section shall continue until termination of this coverage section, but only with respect to **Claims for Wrongful Acts** committed, attempted, or allegedly committed or attempted by **Insureds** before such merger, consolidation, acquisition, cessation, or **Financial Impairment**. Upon the occurrence of any event described in (a), (b), (c), or (d) of this Subsection 16, the entire premium for this coverage section shall be deemed fully earned.

The **Parent Organization** shall give written notice of such merger, consolidation or acquisition to the Company as soon as practicable, but in no event later than sixty (60) days after the date of such merger, consolidation, acquisition, cessation, or **Financial Impairment**, together with such other information as the Company may require. Upon receipt of such notice and information and at the request of the **Parent Organization**, the Company shall provide to the **Parent Organization** a quotation for an extension of coverage (for such period as may be negotiated between the Company and the **Parent Organization**) with respect to **Claims for Wrongful Acts** committed, attempted, or allegedly committed or attempted by **Insureds** before such merger, consolidation, acquisition, cessation, or **Financial Impairment**. Any coverage extension pursuant to such quotation shall be subject to such additional or different terms, conditions and limitations of coverage and payment of such additional premium, as the Company in its sole discretion may require.

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**Cessation of Subsidiaries**

17. In the event an organization ceases to be a **Subsidiary** before or during the **Policy Period**, coverage with respect to such **Subsidiary** and its **Insured Persons** shall continue until termination of this coverage section, but only with respect to **Claims for Wrongful Acts** committed, attempted, or allegedly committed or attempted while such organization was a **Subsidiary**.

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**Representations and Severability**

18. In issuing this coverage section the Company has relied upon the statements, representations and information in the **Application**. All of the **Insureds** acknowledge and agree that all such statements, representations and information:
- (a) are true and accurate;
  - (b) were made or provided in order to induce the Company to issue this coverage section; and
  - (c) are material to the Company’s acceptance of the risk to which this coverage section applies.





In the event that any of the statements, representations or information in the **Application** are not true and accurate, this coverage section shall be void with respect to:

- (i) any **Insured Person** who knew as of the effective date of the **Application** the facts that were not truthfully and accurately disclosed (whether or not such **Insured Person** knew of such untruthful disclosure in the **Application**);
- (ii) any **Organization** to which knowledge of such facts is imputed; and
- (iii) any **Organization** to the extent it indemnifies any **Insured Person** who had knowledge of such facts or to whom knowledge of such facts is imputed (whether or not knowledge of such facts is also imputed to such **Organization**).

For the purposes of this Subsection 18:

- (aa) the knowledge of any **Insured Person** who is a past, present or future chief financial officer, in-house general counsel, chief executive officer, president, chairperson, trustee, or director of human resources of any **Organization** shall be imputed to such **Organization** and its **Subsidiaries**;
- (bb) the knowledge of the person(s) who signed the **Application** for this coverage section shall be imputed to all of the **Insureds**; and
- (cc) except as provided in (aa) above, the knowledge of an **Insured Person** who did not sign the **Application** shall not be imputed to any other **Insured**.

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