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

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**I. INSURING CLAUSES**

**(A) Employment Practices Liability Coverage**

The **Company** shall pay **Loss** on behalf of the **Insureds** resulting from any **Employment Claim** first made against such **Insureds** during the **Policy Period**, or any applicable the Extended Reporting Period, for **Wrongful Acts**.

**(B) Third Party Liability Coverage (Optional)**

If Third Party Liability Coverage is purchased as set forth in Item 5 of the Declarations, the **Company** shall pay **Loss** on behalf of the **Insureds** resulting from any **Third Party Claim** first made against such **Insureds** during the **Policy Period**, or any applicable Extended Reporting Period, for **Wrongful Acts** in the amount set forth in Item 5 of the Declarations. Such amount shall be part of and not in addition to the Limit of Liability as set forth in Item 4 of the Declarations.

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**II. DEFINITIONS**

For purposes of this Coverage Section:

- (A) Benefits** means perquisites, fringe benefits, deferred compensation or payments (including insurance premiums) in connection with an employee benefit plan and any other payment. **Benefits** shall not include salary or wages, **Stock Benefits** or non-deferred cash incentive compensation.
- (B) Breach of Employment Contract** means any breach of any oral, written or implied contract or contractual obligation including but not limited to any such obligation arising out of any personnel manual, employee handbook, policy statement or other representation.
- (C) Claim** means any **Employment Claim** and any **Third Party Claim**.
- (D) 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 or fees of the directors, officers or employees of the **Insured Organization**) incurred in defending any **Claim** and the premium for appeal, attachment or similar bonds.
- (E) Discrimination** means any violation of employment discrimination laws including any actual, alleged or constructive employment termination, dismissal, or discharge, employment demotion, denial of tenure, modification of any term or condition of employment, any failure or refusal to hire or promote, 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, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, Vietnam Era Veteran status or other protected military status or other status that is protected pursuant to any federal, state, or local statutory law or common law anywhere in the world.



- (F) **Employee** means any natural person whose labor or service is engaged by and directed by the **Insured Organization**, including part-time, seasonal, leased and temporary employees as well as volunteers, but only while that natural person is acting in his or her capacity as such. **Employee** shall not include any **Independent Contractor**.
- (G) **Employment Claim** means:
- (1) any of the following:
    - (a) a written demand for monetary damages or non-monetary relief, including but not limited to a written demand for reinstatement, reemployment or re-engagement;
    - (b) a civil proceeding commenced by the service of a complaint or similar pleading;
    - (c) an arbitration proceeding; or
    - (d) a formal administrative or regulatory proceeding or tribunal proceeding, commenced by the filing of a notice of charges, formal investigative order or similar document, including, but not limited to, any Equal Employment Opportunity Commission proceeding or any other similar governmental agency located anywhere in the world; provided however that in the context of an audit conducted by the Office of Federal Contract Compliance Programs ("OFCCP"), **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, Executive or Independent Contractor** or by the OFCCP, with respect to paragraph (d) above, against any **Insured** for a **Wrongful Act** in connection with any actual or alleged **Breach of Employment Contract, Discrimination, Harassment, Retaliation, Workplace Tort or Wrongful Employment Decision** (even if such **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.

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

- (H) **Executive** means any natural person specified below:
- (1) duly elected or appointed as a directors, officers, members of the Board of Managers or management committee members of any **Insured Organization** incorporated in the United States of America;
  - (2) in-house general counsel of any **Insured Organization** incorporated in the United States of America; or
  - (3) equivalent positions of (1) or (2) above in any **Insured Organization** chartered in any other jurisdiction anywhere in the world.



- (I) **Harassment** means:
- (1) sexual harassment, including 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 **Insured Organization**; or
  - (2) 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 **Insured Organization**.
- (J) **Independent Contractor** means any natural person working for the **Insured Organization** in the capacity of an independent contractor and pursuant to an **Independent Contractor Services Agreement**.
- (K) **Independent Contractor Services Agreement** means any express contract or agreement between an **Independent Contractor** and the **Insured Organization** governing the nature of the **Insureds'** engagement of such **Independent Contractor**.
- (L) **Insured** means the **Insured Organization** and any **Insured Person**.
- (M) **Insured Person** means:
- (1) any past, present or future **Executive** or **Employee** of the **Insured Organization**; and
  - (2) with respect to Insuring Clause (A), any **Independent Contractor**, but only if the **Insured Organization** agrees in writing, prior to or no later than thirty (30) days after the **Employment Claim** or **Third Party Liability Claim** is made, to indemnify the **Independent Contractor** for liability arising out of any **Employment Claim** or **Third Party Liability Claim**.
- (N) **Loss** means the total amount which any **Insured** becomes legally obligated to pay as a result of any **Claim** made against any **Insured** for **Wrongful Acts**, including, but not limited to, damages (including punitive or 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, to the extent such damages are insurable under the law of any jurisdiction which has a substantial relationship to the **Insureds**, the **Company**, this Policy or the **Claim** and which is most favorable to the insurability of such damages), judgments, settlements, pre-judgment and post-judgment interest and **Defense Costs**. **Loss** does not include:
- (1) any amount for which an **Insured Organization** or an **Insured Person** is absolved from payment by reason of any covenant, agreement (other than indemnification of an **Insured Person** by the **Insured Organization**) or court order;
  - (2) matters uninsurable under the law pursuant to which this Policy is construed;
  - (3) taxes, fines or penalties imposed by law;
  - (4) **Stock Benefits**;
  - (5) any amount allocated to uncovered loss pursuant to Section X Allocation of the General Terms and Conditions Section;



- (6) the future compensation or **Benefits** of a claimant who has been or shall be hired, promoted or reinstated to employment pursuant to a settlement, order or other resolution of such **Claim**; or
- (7) any monetary payment for violation of any notice requirement pursuant to or for a notice period under any applicable law, including the Worker Adjustment and Retraining Notification Act or any amendments thereto or any rules or regulations promulgated thereunder, or any similar provisions of any federal, state, or local statutory law or common law anywhere in the world.
- (O) **Pollutants** means 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. Such substances shall include, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials. **Pollutants** shall also mean any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products and any noise.
- (P) **Pollution** means the actual, alleged or threatened discharge, release, escape or disposal of **Pollutants** into or on real or personal property, water or the atmosphere or any direction or request that the **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so.
- (Q) **Retaliation** means retaliatory treatment against an **Employee, Executive or Independent Contractor** on account of such individual:
- (1) exercising his or her rights under law, including but not limited to rights under any workers compensation laws, the Family and Medical Leave Act, or the Americans with Disabilities Act;
  - (2) refusing to violate any law;
  - (3) having assisted or testified in or cooperated with a proceeding or investigation regarding alleged violations of law by the **Insured Organization**;
  - (4) disclosing or threatening to disclose to a superior or to any governmental agency any alleged violations of law; or
  - (5) filing any claim against the **Insured Organization** under the Federal False Claims Act or any other similar "whistle blower" federal, state, or local statutory law or common law anywhere in the world.
- (R) **Stock Benefits** means any offering, plan or agreement between the **Insured Organization** and any **Executive or Employee** which grants stock or stock options or stock appreciation rights as to the **Insured Organization** to such individual, including but not limited to stock options, restricted stock or any other stock grant, but not including employee stock ownership plans or employee stock purchase plans.
- (S) **Third Party** means any natural person who is a customer, vendor, service provider or other business invitee of the **Insured Organization**. **Third Party** shall not include **Employees**.



- (T) **Third Party Claim** means:
- (1) any of the following:
    - (a) a written demand for monetary damages or non-monetary relief;
    - (b) a civil proceeding commenced by the service of a complaint or similar pleading;
    - (c) an arbitration proceeding; or
    - (d) a formal administrative regulatory or tribunal proceeding commenced by the filing of a notice of charges, formal investigative order or similar document;which is brought and maintained by or on behalf of a **Third Party** against an **Insured** for a **Wrongful Act** in connection with any actual or alleged **Third Party Discrimination or Sexual Harassment**, 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.
- (U) **Third Party Discrimination or Sexual Harassment** means:
- (1) discrimination against a **Third Party** based upon such **Third Party's** race, color, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, Vietnam Era Veteran status or other protected military status or other status that is protected pursuant to any federal, state, or local statutory law or common law anywhere in the world; or
  - (2) sexual harassment, including unwelcome sexual advances, requests for sexual favors or other conduct of a sexual nature against a **Third Party**.
- (V) **Workplace Tort** means actual or alleged:
- (1) employment-related misrepresentation, defamation (including libel and slander), invasion of privacy, negligent evaluation, wrongful discipline or wrongful deprivation of career opportunity; or
  - (2) employment-related negligent retention, supervision, hiring or training, employment-related wrongful infliction of emotional distress, mental anguish or humiliation or failure to provide or enforce consistent employment-related corporate policies and procedures; when alleged as part of an **Employment Claim** for actual or alleged **Wrongful Employment Decision, Breach of Employment Contract, Discrimination, Harassment, or Retaliation**.
- (W) **Wrongful Act** means any error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed, attempted, or allegedly committed or attempted by any **Insured Organization** or by any **Insured Person** in his or her capacity as such, or any matter claimed against any **Insured Person** solely by reason of his or her status as such.
- (X) **Wrongful Employment Decision** means the actual, alleged or constructive termination, dismissal, or discharge of employment, demotion, denial of tenure, or failure or refusal to hire or promote. **Wrongful Employment Decision** shall not include **Breach of Employment Contract**.



**III. EXCLUSIONS**

- (A) No coverage will be available under this Coverage Section for any **Claim**:
- (1) based upon, arising from, or in consequence of any circumstance, if written notice of such circumstance has been given under any policy of which this Coverage Section is a direct or indirect renewal or replacement and if such prior policy affords coverage (or would afford such coverage except for the exhaustion of its limits of liability) for such **Claim**, in whole or in part, as a result of such notice;
  - (2) based upon, arising from, or in consequence of a written demand, suit, formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document, an audit conducted by the Office of Federal Contract Compliance Programs or arbitration proceeding pending or order, decree or judgment entered for or against any **Insured** on or prior to the applicable Pending or Prior Litigation Date as set forth in Item 10 of the Declarations or the same or any substantially similar fact, circumstance or situation underlying or alleged therein;
  - (3) based upon, arising from, or in consequence of **Pollution**; provided that this Exclusion (A)(3) shall not apply to any **Employment Claim** for **Retaliation**;
  - (4) for bodily injury, mental anguish, emotional distress, 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 (A)(4) shall not apply to any emotional distress, mental anguish or humiliation;
  - (5) 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 (A)(5) shall not apply to any **Employment Claim** for **Retaliation**;
  - (6) based upon, arising from, or in consequence of the liability of others assumed by any **Insured** under any contract or agreement, either oral or written, except to the extent that an **Insured** would have been liable in the absence of the contract or agreement;
  - (7) for any actual or alleged breach of any **Independent Contractor Services Agreement**;
  - (8) for any actual or alleged violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Securities Act of 1974 (except Section 510 thereof), the Fair Labor Standards Act (except the Equal Pay Act), the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act, or any amendments thereto or any rules or regulations promulgated thereunder, or any similar provisions of any federal, state, or local statutory law or common law anywhere in the world; provided that this Exclusion (A)(8) shall not apply to any **Employment Claim** for **Retaliation**; or



- (9) for any actual or alleged violation of the responsibilities, obligations or duties imposed by the National Labor Relations Act or any amendments thereto or any rules or regulations promulgated thereunder, or any similar provisions of any federal, state, or local statutory law or common law anywhere in the world.
- (B) No coverage will be available under this Coverage Section for **Loss**, other than **Defense Costs**:
- (1) which constitutes **Benefits** due or to become due or the equivalent value of such **Benefits**; provided that this Exclusion (B)(1) shall not apply to any **Employment Claim** for actual or alleged wrongful termination, dismissal or discharge of employment;
  - (2) which constitutes costs associated with any accommodation pursuant to the Americans with Disabilities Act or the Civil Rights Act of 1964 or any amendments thereto or any rules or regulations promulgated thereunder, or any similar provisions of any federal, state, or local statutory law or common law anywhere in the world;
  - (3) which constitutes costs of compliance with any order for, grant of or agreement to provide non-monetary relief; or
  - (4) which constitutes severance payments pursuant to an express written obligation in the event of a termination of employment; provided that this Exclusion (B)(4) shall not apply to the extent such payments are negotiated with and consented to by the **Company** as part of a settlement.
- (C) No coverage will be available under this Coverage Section 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 (C) shall not apply to the extent an **Insured** would have been liable for such **Loss** in the absence of such written employment contract.
- (D) No coverage will be available under this Coverage Section for any **Third Party Claim** in connection with any actual or alleged price discrimination or violation of any anti-trust statute or other law designed to protect competition or prevent unfair trade practices.
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#### **IV. EMPLOYMENT CLAIM ARBITRATION**

- (A) Any dispute between any **Insured** and the **Company** based upon, arising from or in connection with any actual or alleged coverage under this Coverage Section, including but not limited to any dispute sounding in contract or tort, shall be submitted to binding arbitration.
- (B) The **Insured 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.
- (C) If the parties cannot resolve the dispute by non-binding mediation, the parties shall submit the dispute to binding arbitration pursuant to the 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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**V. OTHER INSURANCE**

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 or temporary **Employee** or **Independent Contractor**, **Loss**, including **Defense Costs**, payable on behalf of such leased or 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, unless such other insurance is specifically stated to be in excess over the Limit of Liability of this Coverage Section.
  - (B) for **Third Party Claims**, shall 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, unless such other insurance is specifically stated to be in excess over the Limit of Liability of this Coverage Section.
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**VI. COORDINATION OF COVERAGE**

Any **Loss** covered under this Coverage Section and either the Directors and Officers Liability Coverage Section or the Fiduciary Liability Coverage Section, if purchased, shall be first covered under this Coverage Section, subject to its terms, conditions and limitations.

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SPECIMEN