

**THIS IS A CLAIMS MADE COVERAGE WITH DEFENSE EXPENSES INCLUDED IN THE LIMIT OF LIABILITY.
PLEASE READ ALL TERMS CAREFULLY.**

I. INSURING AGREEMENTS

- A. The Company shall pay on behalf of the **Insured Loss** for any **Employment Claim** first made during the **Policy Period**, or if exercised, during the Extended Reporting Period or Run-Off Extended Reporting Period, for a **Wrongful Employment Practice**.
- B. If ITEM 5 of the Declarations indicates that Third Party Wrongful Act Coverage has been purchased, the Company shall pay on behalf of the **Insured Loss** for any **Third Party Claim** first made during the **Policy Period**, or if exercised, during the Extended Reporting Period or Run-Off Extended Reporting Period, for a **Third Party Wrongful Act**.

II. DEFINITIONS

Wherever appearing in this **Liability Coverage**, the following words and phrases appearing in bold type shall have the meanings set forth in this Section II. DEFINITIONS:

- A. “**Claim**” means an **Employment Claim** or, if Third Party Wrongful Act Coverage is purchased, a **Third Party Claim**.
A **Claim** shall be deemed to be made on the earliest date such written notice thereof is received by an **Executive Officer**.
- B. “**Claimant**” means:
1. a past, present or future **Employee** of or applicant for employment with the **Insured Organization**;
 2. a governmental entity or agency, including but not limited to the Equal Employment Opportunity Commission or similar federal, state or local agency, when acting on behalf of or for the benefit of a past, present or future **Employee** or applicant for employment; or
 3. any **Independent Contractor**.
- C. “**Discrimination**” means any actual or alleged:
1. violation of any employment discrimination law; or
 2. disparate treatment of, or the failure or refusal to hire a **Claimant** or **Outside Claimant** because he or she is or claims to be a member of a class which is or is alleged to be legally protected.
- D. “**Employee**” means a natural person whose labor or service is engaged by and directed by the **Insured Organization** and:
1. who is on the payroll of the **Insured Organization**, including:
 - a. any in-house general counsel of the **Insured Organization**; and
 - b. any other full-time, part-time, temporary and seasonal workers;
 2. who is a volunteer; or
 3. whose services have been leased by the **Insured Organization**.

Independent Contractors are not **Employees**. The status of an individual as an **Employee** shall be determined as of the date of the alleged **Wrongful Act**.

E. “**Employment Agreement**” means any express or implied employment agreement regardless of the basis in which such agreement is alleged to exist, other than a collective bargaining agreement.

F. “**Employment Claim**” means:

1. a written demand for monetary or non-monetary relief;
2. a civil proceeding commenced by service of a complaint or similar pleading;
3. a formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order, service of summons or similar document, including, but not limited to, a proceeding before the Equal Employment Opportunity Commission or any similar governmental agency; 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 or non-monetary relief;
4. an arbitration, mediation or similar alternative dispute resolution proceeding if the **Insured** is obligated to participate in such proceeding or if the **Insured** agrees to participate in such proceeding, with the Company’s written consent, such consent not to be unreasonably withheld; or
5. a written request to toll or waive a statute of limitations relating to a potential civil or administrative proceeding;

against an **Insured** by or on behalf of or for the benefit of a **Claimant** or **Outside Claimant** for a **Wrongful Employment Practice**; provided, that **Employment Claim** does not include any labor or grievance arbitration or other proceeding pursuant to a collective bargaining agreement or any type of criminal proceeding.

G. “**Executive Officer**” means an officer, member of the board of directors, natural person partner, principal, risk manager, **LLC Manager**, in-house general counsel, member of the staff of the human resources department of the **Insured Organization** or a functional equivalent thereof.

H. “**Independent Contractor**” means any natural person independent contractor who performs labor or service solely for the **Insured Organization** on a full-time basis pursuant to a written contract or agreement, where such labor or service is under the exclusive direction of the **Insured Organization**. The status of an individual as an **Independent Contractor** shall be determined as of the date of the alleged **Wrongful Act**.

I. “**Insured**” means the **Insured Persons** and the **Insured Organization**.

J. “**Insured Organization**” means the **Named Insured** and any **Subsidiary**.

K. “**Insured Person**” means any natural person who was, is or becomes an **Employee**, duly elected or appointed member of the board of directors, officer, member of the board of trustees, member of the board of regents, member of the board of governors, natural person partner, **LLC Manager** or a functional equivalent thereof of the **Insured Organization** for **Wrongful Acts** committed in the discharge of his or her duties as such, or while serving in an **Outside Position**.

In the event of the death, incapacity or bankruptcy of an **Insured Person**, any **Claim** against the estate, heirs, legal representatives or assigns of such **Insured Person** for a **Wrongful Act** of such **Insured Person** will be deemed to be a **Claim** against such **Insured Person**.

L. “**Loss**” means **Defense Expenses** and money which an **Insured** is legally obligated to pay as a result of a **Claim**, including settlements; judgments; back and front pay; compensatory damages; punitive or exemplary damages or the multiple portion of any multiplied damage award if insurable under the applicable law most favorable to the insurability of punitive, exemplary, or multiplied damages; prejudgment and postjudgment interest; and legal fees and expenses of a **Claimant** or **Outside Claimant** awarded pursuant to a court order or judgment. “**Loss**” does not include:

1. civil or criminal fines; sanctions; liquidated damages other than liquidated damages awarded under the Age Discrimination in Employment Act or the Equal Pay Act; payroll or other taxes; or damages, penalties or types of relief deemed uninsurable under applicable law;
2. future compensation, including salary or benefits, for a **Claimant** or **Outside Claimant** who has been or will be hired, promoted or reinstated to employment pursuant to a settlement, court order, judgment, award or other resolution of a **Claim**; or that part of any judgment or settlement which constitutes front pay, future monetary losses including but not limited to pension and other benefits, or other future economic relief or the value or equivalent thereof, if the **Insured** has been ordered, or has the option

pursuant to a judgment, order or other award or disposition of a **Claim**, to promote, accommodate, reinstate, or hire the **Claimant** or **Outside Claimant** to whom such sums are to be paid, but fails to do so;

3. medical, pension, disability, life insurance, stock options or other similar employee benefits, except and to the extent that a judgment or settlement of a **Claim** includes a monetary component measured by the value of pension, medical, disability, life insurance, stock options or other similar employee benefits, as consequential damages for a **Wrongful Act**; or

4. any amount allocated to non-covered loss pursuant to Section III. CONDITIONS P. ALLOCATION of the Liability Coverage Terms and Conditions.

M. “**Outside Claimant**” means:

1. a past, present or future **Outside Employee** of or applicant for employment with an **Outside Entity**;
2. a governmental entity or agency, including but not limited to the Equal Employment Opportunity Commission or similar federal, state or local agency, when acting on behalf of or for the benefit of present or former **Outside Employees** or applicants for employment; or
3. any natural person independent contractor who performs labor or service solely for the **Outside Entity** on a full-time basis pursuant to a written contract or agreement, where such labor or service is under the exclusive direction of the **Outside Entity**.

N. “**Outside Employee**” means a natural person whose labor or service is engaged by and directed by an **Outside Entity** and:

1. who is on the payroll of an **Outside Entity**, including:
 - a. any in-house general counsel of the **Outside Entity**; and
 - b. any other full-time, part-time, temporary and seasonal workers;
2. who is a volunteer; or
3. whose services have been leased by the **Outside Entity**.

The status of an individual as an **Outside Employee** shall be determined as of the date of the alleged **Wrongful Employment Practice**.

O. “**Outside Entity**” means a corporation or organization:

1. other than the **Insured Organization**, which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended; or
2. specifically scheduled as an **Outside Entity** by endorsement to this **Liability Policy**.

P. “**Outside Position**” means service by an **Insured Person** as a member of the board of directors, officer, member of the board of trustees, member of the board of managers, member of the board of regents, member of the board of governors or a functional equivalent thereof with an **Outside Entity**, but only during such time that such service is with the knowledge, consent, and at the specific request of the **Insured Organization**.

Q. “**Retaliation**” means any actual or alleged **Wrongful Termination** or other adverse employment action against a **Claimant** or **Outside Claimant** on account of such **Claimant's** or **Outside Claimant's** exercise or attempted exercise of rights protected by law, refusal to violate any law, disclosure or threat to disclose to a superior or to any governmental agency alleged violations of the law, or on account of the **Claimant** or **Outside Claimant** having assisted or testified in or cooperated with a proceeding or investigation regarding alleged violations of law.

R. “**Sexual Harassment**” means any actual or alleged unwelcome sexual advances, requests for sexual favors or any other conduct of a sexual nature:

1. which is made a term or condition of a **Claimant's** or **Outside Claimant's** employment or advancement;

2. which the submission to or rejection of is used as a basis for decisions affecting the **Claimant** or **Outside Claimant**; or

3. which has the purpose or effect of creating an intimidating, hostile or offensive work environment.

S. “**Subsidiary**” means:

1. If ITEM 4 of the Declarations indicates that Non-Profit Organization Directors and Officers Liability coverage has been purchased, then **Subsidiary** shall have the meaning set forth in such **Liability Coverage**;

2. If ITEM 4 of the Declarations indicates that Non-Profit Organization Directors and Officers Liability coverage has not been purchased, then **Subsidiary** means:

a. any corporation, partnership or limited liability company organized under the laws of any state, in which, on or prior to the Inception Date set forth in ITEM 2 of the Declarations, the **Named Insured** owns, directly or through one or more **Subsidiaries**, more than fifty percent (50%) of the outstanding securities or voting rights representing the right to vote for the election of, or to appoint such organization’s board of directors, board of trustees, board of managers or a functional equivalent thereof, or to exercise a majority control of the board of directors, board of trustees, board of managers or a functional equivalent thereof;

b. any corporation, partnership or limited liability company operated as a joint venture, in which, on or prior to the Inception Date set forth in ITEM 2 of the Declarations, the **Named Insured** owns, directly or through one or more **Subsidiaries**, exactly fifty percent (50%) of the issued and outstanding voting stock and which, pursuant to a written agreement with the owner(s) of the remaining issued and outstanding voting stock of such organization, the **Named Insured** solely controls the management and operation of such organization; or

c. subject to the provisions set forth in Section III. CONDITIONS L. ACQUISITIONS of the Liability Coverage Terms and Conditions, any organization that the **Insured Organization** forms or acquires during the **Policy Period** in which the **Named Insured** owns, directly or through one or more **Subsidiaries**, more than fifty percent (50%) of the outstanding securities or voting rights representing the right to vote for the election of, or to appoint such organization’s board of directors, board of trustees, board of managers or a functional equivalent thereof, or to exercise a majority control of the board of directors, board of trustees, board of managers or a functional equivalent thereof.

T. “**Third Party Claim**” means:

1. a written demand for monetary or non-monetary relief;

2. a civil proceeding commenced by service of a complaint or similar pleading;

3. a formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order, service of summons, or similar document;

4. an arbitration, mediation or similar alternative dispute resolution proceeding if the **Insured** is obligated to participate in such proceeding or if the **Insured** agrees to participate in such proceeding, with the Company’s written consent, such consent not to be unreasonably withheld; or

5. a written request to toll or waive a statute of limitations relating to a potential civil or administrative proceeding;

against an **Insured** by or on behalf of or for the benefit of any natural person other than a **Claimant** for a **Third Party Wrongful Act**; provided, that **Third Party Claim** does not include any labor or grievance arbitration or other proceeding pursuant to a collective bargaining agreement or any type of criminal proceeding.

U. “**Third Party Wrongful Act**” means, with respect to any natural person other than a **Claimant**, any actual or alleged:

1. disparate treatment in violation of any discrimination law or because he or she is or claims to be a member of a class which is or is alleged to be legally protected; or

2. unwelcome sexual advances, requests for sexual favors or any other conduct of a sexual nature which violates the civil rights of any such person.

V. “**Workplace Harassment**” means any actual or alleged harassment, other than **Sexual Harassment**, which creates a work environment that interferes with job performance, or creates an intimidating, hostile, or offensive work environment.

W. “**Wrongful Act**” means:

1. a **Wrongful Employment Practice** occurring in the course of or arising out of a **Claimant's** employment, application for employment or performance of services with the **Insured Organization**;
2. a **Wrongful Employment Practice** by an **Insured Person** in his or her **Outside Position** occurring in the course of or arising out of an **Outside Claimant's** employment, application for employment or performance of services with an **Outside Entity**; or
3. a **Third Party Wrongful Act**, if ITEM 5 of the Declarations indicates that Third Party Wrongful Act Coverage has been purchased.

All **Related Wrongful Acts** are a single **Wrongful Act** for purposes of this **Liability Coverage**, and all **Related Wrongful Acts** shall be deemed to have occurred at the time the first of such **Related Wrongful Acts** occurred whether prior to or during the **Policy Period**.

X. “**Wrongful Employment Practice**” means any actual or alleged:

1. **Discrimination**;
2. **Retaliation**;
3. **Sexual Harassment**;
4. **Workplace Harassment**;
5. **Wrongful Termination**;
6. breach of **Employment Agreement**;
7. violation of the Family Medical Leave Act;
8. employment-related misrepresentation;
9. defamation, including libel or slander, or invasion of privacy;
10. failure to create or enforce adequate workplace or employment policies and procedures, employ or promote, or grant tenure;
11. wrongful discipline, denial of training, deprivation of career opportunity, denial or deprivation of seniority, or evaluation; or
12. negligent hiring, supervision of others, training, or retention, but only if such act is alleged in connection with a **Wrongful Employment Practice** set forth in 1. through 11. above; brought by or on behalf of any **Claimant** or **Outside Claimant**; and committed or allegedly committed by any **Insured**.

Y. “**Wrongful Termination**” means the actual, alleged or constructive termination of an employment relationship between a **Claimant** and the **Insured Organization**, or the actual or constructive termination of an employment relationship between an **Outside Claimant** and an **Outside Entity**, in a manner or for a reason which is contrary to applicable law or public policy, or in violation of an **Employment Agreement**.

III. EXCLUSIONS

A. This **Liability Coverage** shall not apply to, and the Company shall have no duty to defend or to pay, advance or reimburse **Defense Expenses** for, any **Claim**:

1. for any actual or alleged damage to, or destruction of, loss of, or loss of use of, any tangible property including without limitation inadequate or insufficient protection from soil or ground water movement, soil subsidence, mold, toxic mold, spores, mildew, fungus, or wet or dry rot;

2. for any actual or alleged bodily injury, sickness, disease, death, or loss of consortium; provided, that this exclusion shall not apply to that portion of a **Claim** seeking **Loss** for emotional distress, mental anguish, humiliation, or loss of reputation;
3. based upon, alleging, arising out of, or in any way relating to, directly or indirectly, any actual or alleged nuclear reaction, nuclear radiation, radioactive contamination, or radioactive substance, or the hazardous properties of nuclear material; or infectious waste or medical waste;
4. based upon, alleging, arising out of, or in any way relating to, directly or indirectly any **Pollution**; provided that this exclusion shall not apply to **Claims** for **Retaliation**;
5. based upon, alleging, arising out of, or in any way relating to, directly or indirectly, any fact, circumstance, situation, transaction, event or **Wrongful Act** underlying or alleged in any prior or pending civil, criminal, administrative or regulatory proceeding, including audits initiated by the Office of Federal Contract Compliance Programs, against any **Insured** as of or prior to the applicable Prior and Pending Proceeding Date set forth in ITEM 5 of the Declarations for this **Liability Coverage**;
6. for or arising out of facts, transactions or events which are or reasonably would be regarded as a **Wrongful Act**, about which any **Executive Officer** had knowledge prior to the applicable Continuity Date set forth in ITEM 5 of the Declarations for this **Liability Coverage**;
7. based upon, alleging, arising out of, or in any way relating to, directly or indirectly, any fact, circumstance, situation, transaction, event or **Wrongful Act** which, before the Inception Date set forth in ITEM 2 of the Declarations, was the subject of any notice of claim or potential claim given by or on behalf of any **Insured** under any policy of insurance of which this **Liability Coverage** is a direct or indirect renewal or replacement;
8. for any actual or alleged violation of responsibilities, duties or obligations under any law concerning Social Security, unemployment insurance, workers' compensation, disability insurance, or any similar or related federal, state or local law or regulation; or for any actual or alleged violation of the Worker Adjustment and Retraining Notification Act (WARN), Occupational Safety and Health Act (OSHA), Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), or amendments thereto or regulations promulgated thereunder, or any similar or related federal, state or local law or regulation; provided, that this exclusion shall not apply to **Claims** for **Retaliation**;
9. for any actual or alleged liability of others assumed by an **Insured** under any contract or agreement, whether oral or written, except to the extent that the **Insured** would have been liable in the absence of such contract or agreement;
10. for any actual or alleged violation of responsibilities, duties or obligations under the Employee Retirement Income Security Act of 1974 (ERISA), including amendments thereto and regulations promulgated thereunder, or any similar or related federal, state or local law or regulation; or for an **Insured's** failure or refusal to establish, contribute to, pay for, insure, maintain, provide benefits pursuant to, or enroll or maintain the enrollment of an **Employee** or **Outside Employee** or dependent in, any employee benefit plan, fund or program, including contracts or agreements which are not subject to the provisions of ERISA; provided, that this exclusion shall not apply to **Claims** for **Retaliation**;
11. for any actual or alleged violation of responsibilities, duties or obligations imposed on an **Insured** under the National Labor Relations Act (NLRA) or amendments thereto or regulations promulgated thereunder, or any similar or related federal, state or local law or regulation; or for any actual or alleged lockout, strike, picket line, hiring of replacement workers or other similar action in connection with any labor dispute or labor negotiation;
12. based upon, alleging, arising out of, or in any way relating to, directly or indirectly, any **Wrongful Act** by a **Subsidiary** or any related **Insured Person** occurring at any time during which such entity was not a **Subsidiary**;
13. for a **Third Party Claim**:
 - a. alleging price discrimination, or other violation of any antitrust or unfair trade practices law; or
 - b. against an **Insured Person** solely due to their service in an **Outside Position**; or
14. for any actual or alleged liability under any agreement governing the terms of the labor or service of an **Independent Contractor**, temporary worker or leased employee with the **Insured Organization** or for liability under any agreement governing the terms of the labor or service of any natural person independent contractor who performs labor or service solely for the **Outside Entity** on a full-time basis pursuant to a written contract or agreement.

B. The Company shall have no duty to pay **Loss**, other than **Defense Expenses**, for any **Claim**:

1. seeking costs and expenses incurred or to be incurred to comply with an order, judgment or award of injunctive or other equitable relief of any kind, or that portion of a settlement encompassing injunctive or other equitable relief, including but not limited to actual or anticipated costs and expenses associated with or arising from an **Insured's** obligation to provide reasonable accommodation under, or otherwise comply with, the Americans With Disabilities Act or the Rehabilitation Act of 1973, including amendments thereto and regulations promulgated thereunder, or any similar or related federal, state or local law or regulation;

2. seeking severance pay, damages or penalties under an express written **Employment Agreement**, or under any policy or procedure providing for payment in the event of separation from employment; or sums sought solely on the basis of a claim for unpaid services; or

3. for an alleged violation of responsibilities, duties or obligations imposed on an **Insured** under any **Wage and Hour Law**; provided, that this exclusion shall not apply to **Claims** for **Retaliation** or any actual or alleged violation of the Equal Pay Act.

The Company's maximum aggregate limit of liability for all **Defense Expenses** resulting from **Claims** for an alleged violation of responsibilities, duties or obligations imposed on an **Insured** under any **Wage and Hour Law**, except for **Claims** for **Retaliation** or any actual or alleged violation of the Equal Pay Act shall be \$100,000, which amount shall be part of and not in addition to, the applicable limit of liability set forth in the Declarations.

IV. CONDITIONS

A. SETTLEMENT

1. The Company may, with the written consent of the **Insured**, make such settlement or compromise of any **Claim** as the Company deems expedient. In the event that:

a. the **Insured** and the party bringing a **Claim** hereunder consent to the first settlement offer recommended by the Company (the "Settlement Offer") within thirty (30) days of being made aware of such offer by the Company; and

b. the amount of such Settlement Offer:

i. is less than the remaining applicable limit of liability available at the time; and

ii. combined with **Defense Expenses** incurred with respect to such **Claim**, exceeds the Retention;

the Retention shall be retroactively reduced by ten percent (10%) with respect to such **Claim**.

2. If the **Insured** does not consent to the Settlement Offer within thirty (30) days of being made aware of such offer by the Company:

a. the Retention shall not be reduced as provided in paragraph 1. above even if consent is given to the same or subsequent Settlement Offer; and

b. the **Insured** shall be solely responsible for thirty percent (30%) of all **Defense Expenses** incurred or paid by the **Insured** after the date the **Insured** refused to consent to the Settlement Offer, and the **Insured** shall also be responsible for thirty percent (30%) of all **Loss**, other than **Defense Expenses**, in excess of the Settlement Offer, provided that the Company's liability under this **Liability Coverage** for such **Claim** shall not exceed the remaining applicable limit of liability.

B. OTHER INSURANCE

Except for **Claims** against **Insured Persons** for **Wrongful Employment Practices** in their **Outside Positions**, this **Liability Coverage** shall apply only as excess insurance over, and shall not contribute with any:

1. fiduciary liability insurance or other insurance which applies to any claim for any violation of ERISA (other than Fiduciary Liability coverage, if purchased from the Company); or

2. insurance which applies to any **Claim**:

a. against an **Independent Contractor** or leased or temporary employee; or

b. for a **Third Party Wrongful Act**.

With respect to **Claims** against **Insured Persons** for **Wrongful Employment Practices** in their **Outside Positions**, this **Liability Coverage** shall apply only as excess insurance over, and shall not contribute with: (1) any other valid and collectible insurance available to any **Insured**, including but not limited to any insurance under which there is a duty to defend, unless such insurance is written specifically excess of this **Liability Coverage** by reference in such other policy to the Policy Number of this **Liability Policy**; or (2) indemnification to which an **Insured Person** is entitled from any **Outside Entity** other than the **Insured Organization**. This **Liability Coverage** will not be subject to the terms of any other insurance.

C. OUTSIDE POSITIONS – LIMIT OF LIABILITY

If any **Claim** against an **Insured Person** gives rise to an obligation both under this **Liability Coverage** and under any other coverage or policy of insurance issued by the Company or any of its affiliates to any **Outside Entity**, the Company's maximum aggregate limit of liability under all such policies for any **Loss**, for such **Claim** shall not exceed the largest single available limit of liability under such coverage.