

**I. INSURING AGREEMENT**

The Insurer shall pay on behalf of **Insured** that **Loss**, in excess of the retention and up to the applicable limit of liability, resulting from any **Claim** first made against the **Insureds** during the **Policy Period** or the Extended Reporting Period, if applicable, by or on behalf of:

- A. a natural person who is an **Employee** or an applicant for employment for a **Wrongful Employment Practice** as described in paragraphs 1. through 11. of the definition of **Wrongful Employment Practice**.
- B. any other natural person, for a **Wrongful Employment Practice** but solely to the extent that such **Wrongful Employment Practice** is as described in paragraph 12. of the definition of **Wrongful Employment Practice**.

Provided, however, that such **Claim** must be reported in accordance with Section **XXII. NOTICE/DATE OF CLAIM/INTERRELATED CLAIM CLAUSE** of the General Terms and Conditions for coverage to apply.

**II. EXCLUSIONS****A. Exclusions Applicable to All Loss**

The Insurer shall not be liable to pay any **Loss** under this **Coverage Part** in connection with any **Claim** made against any **Insured**:

**1. Bodily Injury /Property Damage**

for any actual or alleged bodily injury (including death), sickness, disease of any person, or **Property Damage** except that this exclusion shall not apply to allegations of emotional distress, humiliation, mental anguish or loss of reputation;

**2. Prior Notice**

based upon or arising out of:

- a. any **Wrongful Act** or any matter, fact, circumstance, situation, transaction, or event which has been the subject of any notice given by an **Insured** under any policy of which this Policy is a direct or indirect renewal or replacement; or
- b. any other **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** described in a. above, would constitute **Interrelated Wrongful Acts**;

**3. Prior or Pending**

based upon or arising out of or constituting any administrative or regulatory or alternative dispute resolution proceeding or investigation against any of the **Insureds** which was pending on or prior to the Prior or Pending Date set forth in the Management Liability Declarations or the same or essentially the same fact, circumstance, situation, transaction or event underlying or alleged in such proceeding or investigation;

**4. Prior Wrongful Acts of Subsidiaries**

for:

- a. any actual or alleged **Wrongful Act** by **Insured Persons** of any **Subsidiary**, or by such **Subsidiary**, occurring before the date such entity became a **Subsidiary**, or
- b. any other actual or alleged **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** described in a. above, would constitute **Interrelated Wrongful Acts**;

**5. Pollutants**

based upon or arising out of:

- a. any nuclear reaction, radiation or contamination, or any actual, alleged or threatened discharge, release, escape, or disposal of, or exposure to, **Pollutants**;

- b. any request, direction or order that any of the **Insureds** test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to or assess the effect of **Pollutants** or nuclear reaction, radiation or contamination, or any voluntary decision to do so;
- c. any actual or alleged **Property Damage**, bodily injury, sickness, disease or death of any person, or financial loss.

#### 6. Violation of Law

- a. for any actual or alleged violation of:
  - i. **ERISA or any Similar Act**, or any other federal, state or local statutory law or common law anywhere in the world governing any employee benefit program, policy, plan or arrangement of any type, including but not limited to laws governing retirement or pension benefit programs, welfare plans, insurance plans, employee stock options, employee stock ownership or employee stock purchase plans or deferred compensation programs;
  - ii. the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), as amended or any other similar federal, state or local statutory or regulatory law or common law anywhere in the world;
  - iii. any law governing workers' compensation, unemployment insurance, social security, disability benefits or any other similar federal, state or local statutory or regulatory law or common law anywhere in the world;
  - iv. the Occupational Safety and Health Act of 1970 (OSHA), as amended, or any other federal, state or local statutory or regulatory law or common law anywhere in the world governing workplace safety and health;
  - v. the Workers' Adjustment and Retraining Notification Act, Public Law 100-379 (1988), as amended, or any other federal, state or local statutory or regulatory law or common law anywhere in the world governing an employer's obligation to notify or bargain with others in advance of any facility closing or mass layoff;
  - vi. the National Labor Relations Act, as amended, or any other federal, state or local statutory or regulatory law or common law anywhere in the world governing employees' rights and the employers duties with respect to unions, bargaining, strikes, boycotts, picketing, lockouts or collective activities; and,
- b. based upon or arising out of any actual or alleged violation of: the Fair Labor Standards Act (except the Equal Pay Act), as amended, or any other federal, state or local statutory law or common law anywhere in the world governing wage, hour and payroll policies.

However, exclusions 5. and 6. do not apply to any **Claim** alleging retaliation (including any **Claim** alleging retaliation in violation of Section 510 of ERISA) or wrongful dismissal or discharge or termination of employment whether actual or constructive, because of:

- a. with respect to exclusion 5., a claimant's actual or threatened disclosure of the matters described in the Pollutants Exclusion; and
- b. with respect to exclusion 6., a claimant's exercise of a right pursuant to any such laws.

#### B. Exclusions Applicable To Loss Other than Defense Costs

The Insurer shall not be liable under this **Coverage Part** to pay that portion of **Loss**, other than **Defense Costs**, which constitutes:

##### 1. Cost of Accommodations

the costs associated with providing any reasonable accommodations required by, made as a result of, or to conform with the requirements of the Americans With Disabilities Act and any amendments thereto or any similar federal, state or local statute, regulation, or common laws;

##### 2. Non-monetary Relief



the cost of any non-monetary relief, including without limitation any costs associated with compliance with any injunctive relief of any kind or nature imposed by any judgment or settlement.

**III. RISK MITIGATION**

- A.** The Insurer will reduce the **Insured Entity's** retention for a **Claim** by 50%, up to \$10,000, whichever is less, if the **Insured Entity**, involved in such **Claim**, demonstrates, to the Insurer's reasonable satisfaction, the existence of the following four (4) conditions:
1. proof of legal review and sign-off of in-force employment practices policies and procedures for harassment, discrimination and employee grievance by outside counsel who specializes in employment practices law;
  2. proof of distribution of employment practices policies and procedures on harassment, discrimination and employee grievance, to all employees;
  3. proof that all directors, officers and managers of the **Insured Entity** have attended outside training and education programs on sexual harassment within the last 24 months prior to the filing of a **Claim**; and,
  4. a copy of the **Insured Entity's** written policy on email or other electronic communications.
- B.** In the event that one **Claim** is eligible for both this Risk Mitigation Credit Section and the Mediation provision found in the General Terms and Conditions, Section **XXI. DEFENSE/SETTLEMENT/MEDIATION/PRE-CLAIM ASSISTANCE** Paragraph B.2 Mediation, then the **Insured Entity** shall receive only the benefit of one retention credit, but not both. In no way shall either section be construed to afford any more than a total of 50% or \$10,000 credit toward any one retention for any one **Claim**.