In consideration of the payment of the premium and upon all statements made and information furnished to the **Company**, including the statements made in the **Application**, the **Company** and the **Insured**, subject to the Declarations, General Terms and Conditions and all of the terms, conditions and limitations of this Coverage Section, agree as follows**:**

# INSURING AGREEMENT

## COVERAGES

### Employment Practices Liability

The **Company** will pay on behalf of an **Insured** those sums in excess of the Retention and up to the applicable Limits of Liability specified in the Declarations that an **Insured** becomes legally obligated to pay as **Loss** from an **Employment Claim** first made against the **Insured** during the **Policy Period**, or theOptional Extended Reporting Period if applicable, for an **Employment Practices Wrongful Act**, and reported as set forth in Section IV. of the General Terms and Conditions Section of this **Policy**.

### Third Party Liability

The **Company** will pay on behalf of an **Insured** those sums in excess of the Retention and up to the applicable Limits of Liability specified in the Declarations that an **Insured** becomes legally obligated to pay as **Loss** from a **Third Party Claim** first made against the **Insured** during the **Policy Period**, or the Optional Extended Reporting Period if applicable, for a **Third Party Wrongful Act**, and reported as set forth in Section IV. of the General Terms and Conditions Section of this **Policy**.

## Defense

The **Company** has the right and the duty to defend a covered **Claim** against an **Insured**, regardless of whether the allegations of the **Claim** are meritless, false, or fraudulent. The **Company** has the right to select counsel to defend the **Insured**.

# DEFINITIONS

Some bold-faced words may be defined in other parts of the **Policy**.

1. **Claim** means:
	1. any **Employment Claim** and
	2. any **Third Party Claim**.
2. **Claim Expenses** means reasonable and necessary costs, charges, fees and expenses incurred in the investigation, negotiation, arbitration, mediation, settlement and defense of **Claims**, including fees charged by attorneys selected by the **Company** to defend an **Insured** and the cost of appeal bonds or bonds to release attachments (but only for bond amounts within the applicable Limits of Liability). The **Company** will not apply for or furnish these bonds.

**Claim Expenses** do not include:

1. salary, wages or expenses of the **Company’s** regular employees;
2. loss of earnings or profit by any **Insured**; or
3. salaries, wages, fees, or other compensation payable to any **Insured**.
4. **Employee** means the following natural persons, but only for **Wrongful Acts** committed while acting within the scope of their duties for the **Insured Entity**:
	1. full-time, part-time, seasonal, leased and temporary employees, volunteers or interns; and
	2. independent contractors, provided that such independent contractors are directly supervised by the **Insured**, and only if the **Insured** provides indemnification to such person:
		1. pursuant to a written agreement executed prior to the Inception Date of the **Policy** or the date such person first rendered such labor or services to the **Insured**, whichever is later; and
		2. to the same extent and in the same manner as the **Insured** provides indemnification to its other employees.
5. **Employment Claim** means any:
	1. written notice or demand for monetary, non-monetary, or injunctive relief;
	2. written request to toll or waive the statute of limitations;
	3. civil proceeding in a court of law;
	4. criminal proceeding in a court of law;
	5. administrative or regulatory proceeding, commenced by the filing of a notice of charges, formal investigative order or similar document;
	6. notice of any suit; or
	7. arbitration or mediation proceeding;

which seeks to hold an **Insured** responsible for an **Employment Practices Wrongful Act**.

1. **Employment Practices Wrongful Act** means any of the following, when alleged against an **Insured** by any past or present **Employee** of the **Insured Entity**, or by any applicant for employment with the **Insured Entity**, in connection with that person’s actual or proposed employment relationship with the **Insured Entity**, wrongful dismissal, discharge or termination of employment:
2. breach of employment contract;
3. harassment, including sexual harassment whether “quid pro quo”, hostile work environment or otherwise;
4. discrimination based upon age, gender, race, color, national origin, mental status, genetic information, HIV status, religion, sexual orientation or preference, pregnancy or disability, veteran status, or any basis prohibited by foreign, federal, state or local statutory laws or common laws;
5. breach of any manual of employment policies or procedures issued by the **Insured Entity**;
6. **Workplace Tort**; or
7. retaliatory action in response to that **Employee’s**:
8. disclosure or threat of disclosure of any act by an **Insured** alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder;
9. actual or attempted exercise of any right that **Employee** has under law; or
10. filing of any claim under the Federal False Claims Act or any other federal, state, local or foreign “whistle-blower” law.
11. **Insured** means the **Insured Persons** and the **Insured Entity.**
12. **Insured Person** means any:
13. past present or future director, officer or manager of the **Insured Entity**, but only with respect to the performance of his or her duties as such on behalf of the **Insured Entity**;
14. past, present or future principal if the **Insured Entity** is a sole proprietorship, or past, present or future partner if the **Insured Entity** is a partnership, but only with respect to the performance of his or her duties as such on behalf of the **Insured Entity**; and
15. **Employee**.
16. **Loss** means:
	1. **Claim Expenses**;
	2. amounts which an **Insured** is legally obligated to pay as a result of a covered judgment, award or settlement;
	3. costs assessed against an **Insured** in any covered **Claim** unless such costs are assessed as a sanction for an **Insured's** delay or misconduct in the litigation process;
	4. pre-judgment interest and post-judgment interest assessed before the **Company** has paid, offered to pay or deposited in court the part of any judgment that is covered by this **Policy** and that is within the applicable Limits of Liability; and
	5. punitive, exemplary or multiple damages, where insurable by law. The insurability of punitive, exemplary or multiple damages will be determined under the laws of the jurisdiction most favorable to the insurability of such damages, provided that such jurisdiction is where either the **Company** or an **Insured Entity** is incorporated or has its principal place of business, where the act giving rise to such damages occurred, the location of the court which awarded such damages, or the jurisdiction in which the damages are awarded.

**Loss** does not include:

1. taxes, criminal or civil fines or penalties imposed by law;
2. fines, fees or penalties charged by a licensing organization; disgorgement of an **Insured's** profits; costs of complying with injunctive or similar relief; or disputed fees, charges, or commissions for goods or services;
3. salaries, wages, fees or other compensation, overhead, or benefit expenses of any **Insured**;
4. premiums, return premiums, commissions;
5. past, present or future medical insurance, retirement or stock based benefits or the commensurate value of such benefits to which an **Employee** is entitled or allegedly entitled;
6. any amount owed pursuant to an express or implied employment contract;
7. cost of complying with any non-monetary relief;
8. any fees or expenses, other than **Claim Expenses**, for or otherwise associated with: any accommodation required pursuant to the American with Disabilities Act, the Civil Rights Act of 1964, rules or regulations promulgated thereunder, amendments thereto, or similar or related federal, state or local law or common law;
9. any fees or expenses incurred for any educational, sensitivity or corporate training, program, policy, seminar or monitoring consequent to or in connection with an **Employment Practices Wrongful Act**; or
10. any amount for which an **Insured** is legally or financially absolved from payment.
11. **Personal Injury** means injury arising out of one or more of the following offenses:
12. false arrest, detention or imprisonment;
13. malicious prosecution;
14. wrongful entry or wrongful eviction;
15. invasion of right of private occupancy;
16. oral or written publication of material that slanders or libels a person or organization or defames or disparages a person or organization’s goods, products or services; or
17. oral or written publication of material that violates a person’s right of privacy.

**Personal Injury** will not mean **Workplace Tort**.

1. **Third Party** means any natural person who is an active or current customer, supplier, vendor, business invitee, or other client of the **Insured Entity**.
2. **Third Party Claim** means any:
3. written notice or demand for monetary, non-monetary, or injunctive relief;
4. written request to toll or waive the statute of limitations;
5. civil proceeding in a court of law;
6. criminal proceeding in a court of law;
7. administrative or regulatory proceeding, commenced by the filing of a notice of charges, formal investigative order or similar document;
8. notice of any suit; or
9. arbitration or mediation proceeding;

which seeks to hold an **Insured** responsible for a **Third Party Wrongful Act**.

1. **Third Party Wrongful Act** means:
	1. harassment, including sexual harassment whether “quid pro quo”, hostile work environment or otherwise against a **Third Party**; or
	2. discrimination against a **Third Party** based upon such **Third Party’s** age, gender, race, color, national origin, mental status, genetic information, HIV status, religion, sexual orientation or preference, pregnancy or disability, veteran status, or any basis prohibited by foreign, federal, state or local statutory laws or common laws, committed, attempted, or allegedly committed or attempted by any **Insured Entity** or by any **Insured Person** while acting in his or her capacity as such.
2. **Workplace Tort** means misrepresentation, libel, slander, humiliation, defamation, invasion of privacy, wrongful failure to employ or promote, wrongful deprivation of tenure or other career opportunity, wrongful demotion, wrongful evaluation or wrongful discipline.
3. **Wrongful Act** means any **Employment Practices Wrongful Act** or **Third Party Wrongful Act**.

# EXCLUSIONS

1. The **Company** is not liable for **Loss**, other than **Claim Expenses**, in connection with any **Claim**:
	1. against any **Insured** brought about or contributed to by any dishonest, fraudulent, or malicious act or omission or any willful violation of any statute, rule or law by such **Insured**.

Provided, however, this exclusion will not apply:

* + 1. unless there is an admission or final adjudication in any proceeding establishing that such conduct occurred; or
		2. to any natural person **Insured** who did not actually commit, or have prior knowledge of, or participate in the concealment of such conduct.

None of the above acts, errors or omissions of any **Insured** **Person** will be imputed to any other **Insured Person**; however, the above acts, errors or omissions of any past, present or future Chief Executive Officer, Chief Financial Officer, President or Chief Operating Officer will be imputed to the **Insured Entity**.

* 1. for breach of, or amounts owed pursuant to an employment contract.
1. The **Company** is not liable for **Loss**, including **Claim Expenses**, in connection with any **Claim**:
	1. for breach of contract, other than an employment contract, or liability assumed under any contract or agreement; however, this exclusion will not apply to **Claims Expenses** from **Claims** brought against **Insured Persons**;
	2. for any actual or alleged violation of any provision of the Fair Labor Standards Act, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Conciliation Act of 1985, the Occupational Safety and Health Act, any workers’ compensation, unemployment insurance, social security, or disability benefits law and any amendments thereto, or any other similar provisions of any federal, state or local statutory or common law or any rules regulations promulgated under any of the foregoing, including but not limited to, any actual or alleged improper payroll practices; however, this exclusion will not apply to the extent that any **Claim** alleges retaliatory action by an **Insured** in response to an **Employee’s** exercise of rights under such statute or law; or
	3. for bodily injury (other than mental anguish or emotional distress), humiliation, sickness, disease or death of any person or damage to, loss of use or destruction of any tangible property.
2. The **Company** is not liable for **Loss**, including **Claim Expenses**, in connection with any **Claim** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged:
	1. **Personal Injury**;
	2. violation of the responsibilities, duties or obligations, imposed by any federal, state or local wage and hour law, statute, rule or regulation, including without limitation, the Fair Labor Standards Act (other than the Equal Pay Act), and including, but not limited to: any refusal, failure or inability of any **Insured** to pay wages, overtime, or vacation pay or to reimburse expenses; any improper payroll practices; any failure to classify, improper classification or mislabeling of an **Employee** or purported **Employee**; or any failure to provide rest, break or meal periods;
	3. exposure to, or generation, storage, transportation, discharge, emission, release, dispersal, seepage, migration, release, growth, infestation, spread, escape, treatment, removal or disposal of, any **Pollutant** or any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any **Pollutant**, or any action taken in contemplation or anticipation of any such regulation, order, direction or request; including any dispute over the existence or absence of, or particular terms, conditions, or amounts of, insurance coverage for any matter described in this exclusion; however, this exclusion will not apply to any **Employment Claim** for retaliation;
	4. fact, circumstance, situation, transaction, event or **Wrongful Act**:
		1. underlying or alleged in any prior and/or pending litigation, administrative or regulatory proceeding, or arbitration proceeding, involving any **Insured,** and of which any **Insured** had received written notice before the applicable date shown in Item 11.B. of the Declarations; or
		2. that, before the Effective Date in Item 2. of the Declarations, was the subject of any notice given by or behalf of any **Insured** under any other Employment Practices or similar policy of insurance to which this Coverage Section is in whole or in part, a renewal, replacement or successor in time, whether or not such other policy affords coverage for any resulting **Loss**, in whole or in part, as a result of such notice;
	5. lockout, strike, picket line, hiring of replacement workers, or other similar actions in connection with labor disputes or labor negotiations; or
	6. **Wrongful Act** of a **Subsidiary** or any of its **Insured Persons** occurring subsequent to the date the **First Named Insured** ceased to have **Management Control** of such **Subsidiary**.

# LIMITS OF LIABILITY AND RETENTIONS

## Limits of Liability

1. All Limits of Liability will apply in excess of the Retention. All **Claim Expenses** are part of and will erode the applicable Aggregate Limits of Insurance.
2. Regardless of the number of **Claims**, the number of persons or entities included within the definition of **Insured**, or the number of claimants who make a **Claim** against the **Insured**, the **Company’s** liability under this **Policy** is limited as follows:
	1. The amount stated in Item 3.B.1. of the Declarations will be the aggregate Limit of Liability of the **Company** for all **Loss**, including **Claim Expenses**, from all **Claims** under INSURING AGREEMENT A.1.
	2. The amount stated in Item 3.B.2. of the Declarations will be the aggregate Limit of Liability of the **Company** for all **Loss**, including **Claim Expenses**, from all **Claims** under INSURING AGREEMENT A.2.
3. The **Company**’s duty to defend will cease after the applicable Policy Aggregate Limit of Liability has been exhausted by payment of **Loss**, including **Claim Expenses**, and in such event the **Company** will have the right to withdraw from the further defense of any **Claim**.
4. If the **Company**’s maximum Policy Aggregate Limit of Liability, as set forth in Item 5. of the Declarations, is exhausted by the payment of **Loss**, including **Claim Expenses**, the entire premium will be deemed fully earned.

## Retentions

The **Company**’s obligation to pay **Loss** applies only to sums in excess of the applicable Retention specified in Item 4.B. of the Declarations. The application of the Retention will not erode the Limits of Liability or any applicable sublimit. After the Retention has been met, the **Company**, will upon written request, pay on a current basis **Claim Expenses** for which this **Policy** provides coverage. Otherwise the **Company** will pay **Loss** only upon the final disposition of a **Claim**.

If the total of **Loss** for any **Claim** is within the Retention, the **Company** will have no duty to pay such **Loss** for the **Claim**.

If, at the **Company**’s option, the **Company** has paid part or all of any Retention, the **Insured** will be obligated to reimburse such amounts to the **Company** upon demand.

# CONDITIONS

## Settlement

The **Company** will have the right to settle all **Claims**, subject to the consent of the **First Named Insured**. The **Company** will not settle any **Claim** without the consent of such **First Named Insured**, which consent will not be unreasonably withheld. However, if the **First Named Insured** refuses to consent to any settlement recommended by the **Company** and acceptable to the claimant, then, subject to the applicable Limit of Liability, the **Company’s** liability for **Claim Expenses** and **Loss** will not exceed the amount for which the **Claim** could have been settled by the **Company**, plus all **Claim Expenses** incurred up to the date the **Insured** refused to settle such **Claim**; plus eighty percent (80%) of the total of any **Loss** and/or **Claim Expenses** in excess thereof. The remaining **Loss** and/or **Claim Expenses** will be borne by the I**nsured** at its own risk and will be uninsured. The failure of the **Insured** to express consent to a settlement recommended by the **Company** will be deemed refusal to consent to the settlement.

## Allocation

If both **Loss** covered by this **Policy** and **Loss** not covered by this **Policy** are incurred either because a **Claim** includes both covered and uncovered matters, or because a **Claim** is made against both an **Insured Person** and/or the **Insured Entity**, and others, the **Insured** and the **Company** will use their best efforts to agree upon a fair and proper allocation of such amount between covered **Loss** and uncovered **Loss**. Any such allocation will be based upon the relative legal exposures of the parties to covered and uncovered matters.

The **Company** will not seek to allocate with respect to **Claim Expenses** incurred with such **Claim** and will pay one hundred percent (100%) of such **Claim Expenses,** provided that the foregoing shall not apply with respect to any **Insured** for whom coverage is excluded under the General Terms and Conditions, XII. REPRESENTATIONS AND SEVERABILITY.