



ALLIED WORLD ASSURANCE COMPANY (U.S.) INC.

RESOLUTE PORTFOLIOSM

For Private Companies

Employment Practices Liability Coverage Section

In consideration of the payment of the premium and in reliance upon the **Application**, which shall be deemed to be attached to, incorporated into, and made a part of this policy, and subject to the General Terms & Conditions Section and this Coverage Section, if purchased by the **Insured** as indicated in Item 3 of the Declarations, ALLIED WORLD ASSURANCE COMPANY (U.S.) INC. (the “**Insurer**”) and the **Parent Company**, on behalf of all **Insureds**, agree as follows:

1. INSURING AGREEMENTS

A. Employment Practices Liability Coverage

The **Insurer** shall pay on behalf of any **Insured** the **Loss** arising from a **Claim** first made during the **Policy Period** (or Discovery Period, if applicable) against such **Insured** for any **Wrongful Act**, and reported to the **Insurer** in accordance with the terms of this policy.

B. Third-Party Liability Coverage (Optional)

The **Insurer** shall pay on behalf of any **Insured** the **Loss** arising from a **Third-Party Claim** first made during the **Policy Period** (or Discovery Period, if applicable) against such **Insured** for any **Third-Party Wrongful Act**, and reported to the **Insurer** in accordance with the terms of this policy. This Insuring Agreement B. shall apply only if purchased by the **Insured** as indicated in Item 3 of the Declarations and is subject to the Sublimit of Liability set forth in Item 4 of the Declarations which is the **Insurer’s** maximum limit of liability under this Insuring Agreement B. for all Loss arising from all **Third-Party Claims**. The Sublimit of Liability for **Third-Party Claims** shall be part of, and not in addition to, the Limit of Liability applicable to this Coverage Section.

2. DEFINITIONS

- (a) “**Benefits**” means perquisites, fringe benefits, deferred compensation or payments (including insurance premiums) in connection with any employee-related plan. **Benefits** shall not include salary, wages, bonuses or non-deferred cash incentive compensation.
- (b) “**Claim**” means any:
 - (1) written demand for monetary, non-monetary or injunctive relief made against an **Insured**;
 - (2) judicial, administrative or regulatory proceeding, whether civil or criminal, for monetary, non-monetary or injunctive relief commenced against an **Insured**, including any appeal therefrom, which is commenced by:

- (i) service of a complaint or similar pleading;
 - (ii) return of an indictment, information or similar document (in the case of a criminal proceeding); or
 - (iii) receipt or filing of a notice of charges;
- (3) arbitration proceeding commenced against an **Insured** by service of a demand for arbitration;
 - (4) notification of an investigation of an **Insured** by the Equal Employment Opportunity Commission (“EEOC”) or similar governmental agency commenced by the filing of a notice of charges, formal investigative order or similar document;
 - (5) audit of an **Insured** conducted by the United States of America Office of Federal Contract Compliance Programs (“OFCCP”), but only if commenced by the receipt of a notice of violation, order to show cause, or a written demand for monetary or non-monetary or injunctive relief;
 - (6) written request to toll or waive the applicable statute of limitations relating to a potential **Claim** against an **Insured** for a **Wrongful Act**; or
 - (7) **Third-Party Claim**, solely under Insuring Agreement B. if purchased by the **Insured**.

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

- (c) **“Discrimination”** means any violation of employment discrimination laws, including but not limited to 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 or segregation of any **Employee** or applicant for employment by the **Company** in any way that would deprive any person of employment opportunities based on such person's race, color, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, veteran status or any other status that is protected pursuant to any foreign, federal, state, or local statutory law or common law.
- (d) **“Employee”** means any:
 - (1) person who was, now is, or shall become a full-time, part-time, seasonal, or temporary employee of the **Company**, but only while that person is acting in the capacity as such;
 - (2) person leased to the **Company** or any **Independent Contractor** so long as this person is working solely for the **Company** and only for conduct within his or her duties as such, but only if the **Company** indemnifies such leased person or **Independent Contractor** in the same manner as the **Company’s** employees; and
 - (3) volunteer whose labor and service is engaged and directed by the **Company**, but only while that person is acting in the capacity as such.
- (e) **“Executive”** means:
 - (1) any past, present or future duly elected or appointed director, officer, trustee, governor, management committee member or member of the board of managers, but only while that person is acting in the capacity as such; or

- (2) any past, present or future person in a duly elected or appointed position in an entity which is organized and operated in a foreign jurisdiction that is equivalent to an executive position listed in (1) above, but only while that person is acting in the capacity as such.
- (f) **“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 **Company** or **Outside Entity**; 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 **Company** or **Outside Entity**.
- (g) **“Independent Contractor”** means any natural person working in the capacity of an independent contractor pursuant to a written contract or agreement between the **Independent Contractor** and the **Company** which specifies the terms of the **Company’s** engagement of the **Independent Contractor**.
- (h) **“Insured(s)”** means the **Company** and any **Insured Person**.
- (i) **“Insured Person(s)”** means any:
- (1) **Executive**;
 - (2) **Employee**; or
 - (3) **Outside Entity Insured Person**.
- (j) **“Loss”** means:
- (1) damages (including back pay and front pay), settlements or judgments;
 - (2) pre-judgment or post-judgment interest;
 - (3) costs or fees awarded in favor of the claimant;
 - (4) punitive, exemplary and multiplied damages (including the multiple or liquidated damages awarded pursuant to the Age Discrimination in Employment Act or Equal Pay Act), but only to the extent such damages are insurable under the applicable law most favorable to the insurability of such damages; and
 - (5) **Defense Costs**.
- “Loss”** does not include:
- (i) any amounts for which the **Insureds** are not legally liable;
 - (ii) any amounts which are without legal recourse to the **Insureds**;
 - (iii) taxes;

- (iv) fines and penalties, except as provided for in Definition (j) (4) above;
- (v) matters which may be deemed uninsurable under applicable law;
- (vi) any costs or liability incurred by any **Insured** to modify any building or property to make it more accessible or accommodating to any disabled person, or in connection with any educational, sensitivity or other corporate program, policy or seminar;
- (vii) **Stock Benefits** due or to become due or the equivalent value of such **Stock Benefits**; or
- (viii) any future compensation, including any **Benefits**, for any person hired, promoted or reinstated pursuant to a judgment, settlement, order or other resolution of a **Claim**.

However, this policy shall provide coverage for **Defense Costs** incurred in a **Claim** involving items (i) through (viii) above, subject to all other terms, conditions and exclusions of this policy.

- (k) **“Outside Entity”** means: (1) any not-for-profit entity which is exempt from taxation under Section 501(c)(3), (4) or (10) of the IRS Code, as amended, or any rule or regulation promulgated thereunder; or (2) any other entity listed as such by endorsement to this policy, for which an **Executive** acts as a director, officer, trustee or governor (or the equivalent thereof) at the specific request of the **Company**. Any such **Executive** shall be referred to herein as an **“Outside Entity Insured Person”**, but only while that person is acting in the capacity as a director, officer, trustee or governor (or the equivalent thereof) of an **Outside Entity**.
- (l) **“Retaliation”** means retaliatory treatment of an **Employee** or an employee of an **Outside Entity** alleged to be on account of such individual:
 - (1) exercising his or her rights under law, including rights under worker’s compensation laws, the Family and Medical Leave Act, the Americans with Disabilities Act or any other law relating to employee rights;
 - (2) refusing to violate any law or opposing any unlawful practice;
 - (3) having assisted or testified in or cooperated with any legal proceeding or formal governmental investigation regarding alleged violations of law by any **Insured**;
 - (4) disclosing or expressing an intent to disclose to a superior or to any governmental agency any alleged violations of law; or
 - (5) filing or expressing an intent to file any claim against the **Company** or **Outside Entity** under the Federal False Claims Act or any other similar foreign, federal, state, or local “whistle blower” law.
- (m) **“Stock Benefits”** means any offering, plan or agreement between the **Company** and any **Insured Person** thereof, which grants stock or stock options or stock appreciation rights 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.

(n) **“Subsidiary”** means any privately-held for-profit entity (except a partnership) of which the **Parent Company**:

- (1) has **Management Control** (“Controlled Entity”) before the inception of the **Policy Period**, either directly or indirectly through one or more other Controlled Entities;
- (2) first acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other Controlled Entities, if such entity’s employee count totals less than 25% of the consolidated employee count of the **Parent Company**; or
- (3) first acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other Controlled Entities, if such entity’s employee count totals 25% or more of the consolidated employee count of the **Parent Company**, but only if the **Parent Company** provides the **Insurer** with full particulars of the new **Subsidiary** within ninety (90) days after its creation or acquisition and pays any additional premium with respect to such entity within thirty (30) days after being requested to do so by the **Insurer**;

provided, however, that **Subsidiary** as defined in items (2) and (3) above shall not include any entity which is a financial institution, such as a bank, insurance company, insurance agent/broker, securities broker/dealer, investment advisor, mutual fund or hedge fund, unless such entity is included in the definition of **Subsidiary** by specific written endorsement attached to this policy.

“Subsidiary” also means any not-for-profit entity which is under the exclusive control of the **Company**.

With respect to a **Claim** made against any **Subsidiary** or any **Insured Person** thereof, this policy shall only apply to **Wrongful Acts** committed or allegedly committed after the effective time such entity becomes a **Subsidiary** and prior to the effective time that such entity ceases to be a **Subsidiary**.

(o) **“Third-Party”** means any natural person who is a customer, vendor, service provider or other business invitee of the **Company**. **Third-Party** shall not include an **Insured Person**.

(p) **“Third-Party Claim”** means a **Claim** for any **Third-Party Wrongful Act**.

(q) **“Third-Party Wrongful Act”** means any actual or alleged:

- (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, veteran status or any other status that is protected pursuant to any foreign, federal, state, or local statutory law or common law; or
- (2) sexual harassment, including unwelcome sexual advances, requests for sexual favors or other conduct of a sexual nature against a **Third-Party**.

(r) **“Workplace Tort”** means any employment-related:

- (1) misrepresentation, defamation (including libel and slander), false arrest, detention, imprisonment, invasion of privacy, negligent evaluation, wrongful discipline or wrongful deprivation of a career opportunity; or

- (2) negligent retention, supervision, hiring or training, 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 a **Claim** for actual or alleged **Wrongful Employment Decision, Discrimination, Harassment, or Retaliation**.

- (s) **“Wrongful Act(s)”** means any actual or alleged **Discrimination, Harassment, Retaliation, Workplace Tort** or **Wrongful Employment Decision** committed by the **Insured** but only if such act relates to an **Employee** or an applicant for employment with the **Company** or an **Outside Entity**.
- (t) **“Wrongful Employment Decision”** means any actual or alleged: (1) wrongful termination, dismissal, or discharge of employment, demotion, denial of tenure, or failure or refusal to hire or promote; or (2) breach of any implied employment contract or obligation, including but not limited to any such obligation arising out of any personnel manual, employee handbook or policy statement.

3. EXCLUSIONS

This policy shall not cover any **Loss** in connection with any **Claim**:

- (a) alleging, arising out of, based upon or attributable to any deliberate criminal or deliberate fraudulent act by an **Insured** if a final judgment or adjudication establishes that such criminal or fraudulent act occurred;

In determining the applicability of Exclusion (a), the facts pertaining to, the knowledge possessed by, or any **Wrongful Act** committed by, any **Insured** shall not be imputed to any other **Insured**; however, the facts pertaining to, the knowledge possessed by, or any **Wrongful Act** committed by, an **Insured Person** who is a past or current chairman of the board, chief executive officer, president or chief financial officer of the **Company** shall be imputed to the **Company**.

- (b) alleging, arising out of, based upon or attributable to any actual or alleged liability of the **Insured** under any express contract or agreement, except to the extent that the **Insured** would have been liable in the absence of such contract or agreement; provided, however, that this exclusion shall not apply to any **Claim** brought against an **Insured Person**;
- (c) alleging, arising out of, based upon or attributable to, as of the Pending or Prior Date set forth in Item 6 of the Declarations as respects this Coverage Section, any pending or prior: (i) litigation; or (ii) administrative or regulatory proceeding or investigation of which an **Insured** had notice, including any **Claim** alleging or derived from the same or essentially the same facts, or the same or related **Wrongful Act(s)**, as alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation;
- (d) alleging, arising out of, based upon or attributable to the same facts or essentially the same facts alleged, or to the same or related **Wrongful Act(s)** alleged or contained in any **Claim** which has been reported, or in any circumstances of which notice has been given, before the inception date of this policy as set forth in Item 2 of the Declarations, under any policy, whether excess or underlying, of which this policy is a renewal or replacement or which it may succeed in time;
- (e) for any **Wrongful Act** arising out of any **Insured Person** serving as a director, officer,

trustee or governor of an **Outside Entity** if such **Claim** is brought by the **Outside Entity** or by any director, officer, trustee or governor thereof;

- (f) for bodily injury (except emotional distress or mental anguish when associated with a **Wrongful Act**), sickness, disease or death of any person, or damage to or destruction of any tangible property, including the loss of use thereof;
- (g) alleging, arising out of, based upon, attributable to or in any way relating to the refusal, failure or inability of any **Insured** to pay wages or overtime pay for services rendered (exclusive of tort-based front pay or back pay), improper classification of any **Employee(s)**, improper payroll deductions taken by any **Insured** from any **Employee** or purported **Employee**, or failure to provide or enforce legally required meal or rest break periods; provided, however, that this exclusion shall not apply to any **Claim** for **Retaliation**;
- (h) alleging, arising out of, based upon or attributable to any actual or alleged violation of the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act (except the Equal Pay Act), the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, any rules or regulations of the foregoing promulgated thereunder, and any amendments thereto, or any similar foreign, federal, state or statutory law or common law; provided, however, that this exclusion shall not apply to any **Claim** for **Retaliation**;
- (i) alleging, arising out of, based upon or attributable to any obligation pursuant to any worker's compensation, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law; provided, however, that this exclusion shall not apply to any **Claim** for **Retaliation**;
- (j) alleging, arising out of, based upon or attributable to any lockout, strike, picket line, hiring of replacement workers, or other similar actions in connection with labor disputes or labor negotiations; provided, however, that this exclusion shall not apply to any **Claim** for **Retaliation**;
- (k) alleging, arising out of, based upon or attributable to any **Claim** brought by a securities holder of a **Company** or an **Outside Entity** in their capacity as such;
- (l) alleging, arising out of, based upon or attributable to any actual or alleged act or omission of an **Insured Person** serving in any capacity, other than as an **Insured Person**.