



**BEAZLEY EXECUGUARD - MANAGEMENT LIABILITY INSURANCE POLICY
EMPLOYMENT PRACTICES LIABILITY COVERAGE SECTION**

I. INSURING CLAUSES

A. Employment Practices Liability

Underwriters shall pay on behalf of the **Insureds** all **Loss** resulting from any **Claim** first made against any **Insured** during the **Policy Period** or **Optional Extension Period**, if applicable, and reported in writing to Underwriters in accordance with Clause VIII.A. of the General Terms and Conditions for a **Wrongful Act**.

B. Employment Practices Liability - Outside Positions Coverage

Underwriters shall pay on behalf of the **Insured Persons** all **Loss** resulting from any **Claim** first made against the **Insured Persons** during the **Policy Period** or **Optional Extension Period**, if applicable, and reported in writing to Underwriters in accordance with Clause VIII.A. of the General Terms and Conditions for a **Wrongful Act** committed while serving in an **Outside Executive Position**.

Notwithstanding Clause IX.D. of the General Terms and Conditions, the coverage afforded by this Insuring Clause shall be specifically excess of any indemnification and valid and collectible insurance available to such **Insured Persons** from the **Outside Entity**.

C. Employment Practices Liability - Third Party Coverage

If purchased as indicated in Item 4. of the Declarations, Underwriters shall pay on behalf of the **Insureds** all **Loss** resulting from any **Claim** first made against any of the **Insureds** during the **Policy Period** or **Optional Extension Period**, if applicable, and reported in writing to Underwriters in accordance with Clause VIII.A. of the General Terms and Conditions for a **Third Party Wrongful Act**.

If a sublimit applicable to **Third Party Wrongful Acts** is indicated in Item 4. of the Declarations, then such amount shall be part of and not in addition to the aggregate limit of liability applicable to the Employment Practices Liability Coverage Section.

D. Wage and Hour Defense Costs Coverage

If purchased as indicated in Item 4. of the Declarations, Underwriters shall pay on behalf of the **Insureds** **Defense Costs** only resulting from any **Wage and Hour Claim** first made against any **Insured** during the **Policy Period** or **Optional Extension Period**, if applicable, and reported in writing to Underwriters in accordance with Clause VIII.A. of the General Terms and Conditions. Coverage under this Insuring Clause I.D. shall not apply to **Loss**, other than **Defense Costs**.

In the event a **Claim** under this Insuring Cause also contain allegations of otherwise covered **Wrongful Acts**, the sublimit applicable to this Insuring Clause shall apply to those **Defense Costs** attributable to that portion of the **Claim** alleging violations of any **Wage and Hour Law**.

E. **Employment Event Coverage**

If purchased as indicated in Item 4. of the Declarations, Underwriters shall pay **Employment Event Loss** incurred by the **Insured Organization** solely with respect to an **Employment Event** first occurring during the **Policy Period** or **Optional Extension Period**, if applicable, and reported in writing to Underwriters in accordance with Clause IV. of this Coverage Section, provided that the payment of **Employment Event Loss** shall not waive the Underwriters' rights under this Coverage Section or at law.

Coverage under this Insuring Clause I.E. shall apply regardless of whether a **Claim** is ever made against an **Insured** arising from such **Employment Event** and, in the case where a **Claim** is made, regardless of whether the **Employment Event Loss** is incurred prior to or subsequent to the making of the **Claim**.

F. **Immigration Practices Coverage**

If purchased as indicated in Item 4. of the Declarations, Underwriters shall pay on behalf of the **Insureds Defense Costs** only that any of the **Insureds**, other than an **Employee** alleged to be employed in violation of any **Immigration Practices Law**, becomes obligated to pay as a result of an **Immigration Practices Claim** first made against any such **Insured** during the **Policy Period** or **Optional Extension Period**, if applicable and reported in writing to Underwriters in accordance with Clause VIII.A. of the General Terms and Conditions. Coverage under this Insuring Clause I.F. shall not apply to **Loss**, other than **Defense Costs**.

G. **OSHA Coverage**

If purchased as indicated in Item 4. of the Declarations, Underwriters shall pay on behalf of the **Insureds**:

1. **Assistance Costs** only resulting from:
 - a) any **Work-Related Fatality** which happens during the **Policy Period** provided that, as a condition precedent to their right to payment under this Insuring Clause, such **Work-Related Fatality** is reported by the **Insureds** in writing to the Occupational Safety and Health Administration in accordance with their reporting requirements and to Underwriters within twenty-four (24) hours of such **Work-Related Fatality** in accordance with Clause V. of this Coverage Section; or
 - b) any **Serious Work-Related Incident** which happens during the **Policy Period** provided that, as a condition precedent to their right to payment under this Insuring Clause, such **Serious Work-**

Related Incident is reported by the **Insureds** in writing to the Occupational Safety and Health Administration in accordance with their reporting requirements and to Underwriters within 48 hours of such **Serious Work-Related Incident** in accordance with Clause V. of this Coverage Section; or

2. **OSHA Defense Costs** only resulting from any **OSHA Citation** first made against any **Insured** during the **Policy Period**, provided that, as a condition precedent to their right to payment under this Insuring Clause, such **OSHA Citation** is reported by the **Insureds** in writing to Underwriters within 5 days after any **Executive Officer** or any safety officer of the **Insured Organization** becomes aware of such **OSHA Citation** in accordance with Clause V. of this Coverage Section.

The coverages provided under Insuring Clauses I.D., I.E., I.F. and I.G. are subject to the respective sublimits of liability indicated in Item 4. of the Declarations, such sublimits shall be part of, and not in addition to, the aggregate limit of liability applicable to the Employment Practices Liability Coverage Section.

II. DEFINITIONS

The following terms whenever used in this Coverage Section in boldface type shall have the meanings indicated. Terms not defined below, but appearing in boldface type shall have the meanings indicated in the General Terms and Conditions.

- A. **“Assistance Costs”** means reasonable and necessary legal fees and expenses charged to the **Insureds** by Lehr Middlebrooks Vreeland & Thompson, P.C., to which Underwriters consent in advance, in assisting the **Insureds** in investigating or mitigating any **Work-Related Fatality** or **Serious Work-Related Incident**, but shall not include:
 1. any fees or expenses incurred in defending, settling, appealing or investigating any **Claim** brought by or on behalf of any **Employee** or any spouse (or person living together as spouse), child, parent, brother, sister or dependent of such **Employee** who suffered such **Work-Related Fatality** or such **Serious Work-Related Incident** or brought by or on behalf of any other third party; or
 2. salaries, regular or overtime wages, fees or benefit expenses associated with **Employees** or the **Insured Organization’s** overhead expenses.
- B. **“Breach Notice Law”** means any state, federal or foreign statute or regulation that requires notice to persons whose **Personally Identifiable Non-Public Information** was accessed or may reasonably have been accessed by an unauthorized person.

C. **“Claim”** means:

1. a written demand or request for monetary damages or non-monetary or injunctive relief against any of the **Insureds**, or to toll or waive a statute of limitations;
2. a civil, criminal, administrative, investigative or regulatory proceeding initiated against any of the **Insureds**, including any proceeding before the Equal Employment Opportunity Commission or any similar federal, state or local governmental body;
3. in the context of an audit conducted by the Office of Federal Contract Compliance Programs, a Notice of Violation or Order to Show Cause;
4. an arbitration, mediation or other alternative dispute resolution proceeding against any of the **Insureds**; or
5. solely for the purpose of coverage afforded under Insuring Clause I.G., an **OSHA Citation**;

However, **Claim** does not include any labor or grievance arbitration or other proceeding pursuant to a collective bargaining agreement.

D. **“Defense Costs”** means reasonable and necessary legal fees and expenses including reasonable and necessary expert fees to which Underwriters consent in advance and which are incurred by or on behalf of the **Insureds** in defending, settling, appealing or investigating any **Claim** and the cost of appeal, supersedeas, injunction, attachment or similar bonds (provided, however, Underwriters shall have no obligation to apply for or furnish any bond for appeal, supersedeas, injunction, attachment or any similar purpose), but shall not include salaries, regular or overtime wages, fees or benefit expenses associated with **Employees** or the **Insured Organization’s** overhead expenses.

E. **“Discrimination”** means any actual or alleged termination of the employment relationship, demotion, failure or refusal to hire or promote, denial of an employment benefit or the taking of any adverse or differential employment action because of race, color, religion, age, sex, disability, pregnancy, sexual orientation or identity, national origin, citizenship or immigration status, genetic information, military status or any other basis which is or is alleged to be prohibited by federal, state or local law.

F. **“Employee”** means all persons whose labor or service is currently, has formerly been or will be engaged by and directed by the **Insured Organization**, but only while that person is acting in such capacity. This includes applicants for employment, employees, volunteers, interns, part time, seasonal, leased and temporary employees as well as any individual employed in a supervisory, managerial or confidential position and **Independent Contractors**. Leased employees are **Employees**, but only to the extent that such leased employee brings a **Claim** against an **Insured**. Employees who are leased to another employer are not **Employees**.

- G. **“Employment Advisor”** means any public relations firm, security firm or mental health professional selected by the **Insured Organization** with Underwriters’ consent, such consent not to be unreasonably withheld.
- H. **“Employment Event”** means any of the following events, which shall be deemed to commence (i) when an **Executive Officer** first believes in good faith that it is more likely than not that such event will occur within the next 60 days, or (ii) with respect to 5. below, when the event occurs, whichever is earlier:
1. layoff/termination of 20% or greater of the **Insured Organization’s** workforce;
 2. acquisition of an organization which necessitates a material change in employment status or terms of employment of 20% or greater of the **Insured Organization** workforce;
 3. the public announcement of allegations of discrimination or harassment implicating an **Executive Officer**; or a **Claim** alleging a **Third Party Wrongful Act**;
 4. receipt by the **Insured Organization** of notice that a civil rights organization, public interest group or similar organization is investigating the **Insured Organization** for violations of state or federal employment laws or is distributing literature which accuses the **Insured Organization** of violations of state or federal employment laws; or
 5. a workplace disaster resulting in loss of life or the imminent threat of or actual use of a lethal weapon which occurs on the **Insured Organization’s** premises, including without limitation, flood, fire, or workplace violence.
- I. **“Employment Event Loss”** means reasonable fees and expenses charged by an **Employment Advisor** in connection with:
1. advising the **Insured Organization** with respect to minimizing potential loss or liability on account of an **Employment Event**;
 2. retaining an independent security consultant or for independent security guard services with respect to an **Employment Event** described in Definition H.1., 2. or 5.;
 3. managing or administering disclosures to clients, customers, suppliers, investors or the public regarding an **Employment Event**; or
 4. providing counseling to any **Employee** on account of an **Employment Event**,

provided, that **Employment Event Loss** shall not include salaries, regular or overtime wages, fees or benefit expenses associated with **Employees** or the **Insured Organization’s** overhead expenses.

An **Employment Event** shall conclude 90 days after it first commences or when the **Employment Event** sublimit as shown in Item 4. of the Declarations has been exhausted.

- J. **“Harassment”** means actual or alleged unwelcome sexual or non-sexual advances, requests for sexual or non-sexual favors or other verbal, visual or physical conduct of a sexual or non-sexual nature including workplace bullying, where such harassment is based on an employee’s race, color, religion, age, sex, disability, pregnancy, sexual orientation or identity, national origin, or any other basis protected by federal, state or local law and is explicitly or implicitly made a condition of employment, used as a basis for employment decisions or performance, or creates a hostile, intimidating or offensive work environment or that interferes with performance.
- K. **“Immigration Practices Claim”** means any **Claim** solely alleging violations of any **Immigration Practices Law**.
- L. **“Immigration Practices Law”** means the Immigration Reform Control Act of 1986 or any other similar federal or state laws or regulations.
- M. **“Inappropriate Employment Conduct”** means any of the following:
1. actual or constructive termination of an employment relationship in a manner which is alleged to have been against the law or wrongful;
 2. actual or alleged wrongful demotion, evaluation, deprivation of a career opportunity, or discipline;
 3. actual or alleged breach of an express written employment agreement;
 4. actual or alleged violation of the Family and Medical Leave Act;
 5. actual or alleged misrepresentation, false imprisonment, detention or malicious prosecution in connection with an employment decision;
 6. actual or alleged libel, slander, defamation of character or any invasion of right of privacy in connection with an employment decision;
 7. actual or alleged negligent hiring, retention or supervision, or failure to employ or promote, train, create or enforce adequate workplace or employment policies and procedures, or grant tenure or seniority, as long as alleged in connection with an act described in 1. through to 6. above; or
 8. actual or alleged **Privacy Violation**, subject to the applicable limit as shown in Item 4. of the Declarations. Such limit amount shall be part of, and not in addition to, the aggregate Limit of Liability applicable to the Employment Practices Liability Coverage Section.
- N. **“Independent Contractor”** means any natural person independent contractor who performs labor or service for the **Insured Organization** on a full-time or part

time basis pursuant to a 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 an alleged **Wrongful Act**.

O. **“Insureds”** means the **Insured Persons** and the **Insured Organization**.

P. **“Insured Persons”** means:

1. any person who was, now is, or shall be directors, officers, trustees, **Managers** or **Employees** of the **Insured Organization** including all persons outside the United States of America serving in a functionally equivalent role for the **Insured Organization**; and
2. the lawful spouse or domestic partner of any of the persons set forth in the above provisions of this definition, but only to the extent the spouse or domestic partner is a party to any **Claim** solely because of his or her status as the spouse or domestic partner of any such persons and only for the purposes of any **Claim** seeking damages recoverable from marital community property, property jointly held by any such person and the spouse or domestic partner, or property transferred from any such person to the spouse or domestic partner,

including their estates, heirs, legal representatives, trusts, estate planning vehicles or assigns in the event of their death, incapacity or bankruptcy.

Q. **“Loss”** means:

1. amounts which an **Insured** is legally obligated to pay as a result of a **Claim** including compensatory damages, judgments (including prejudgment and post judgment interest awarded against an **Insured** on that part of any judgment paid by Underwriters), back pay, front pay, settlements, verdicts, awards, statutory attorney fees pursuant to a covered judgment against an **Insured**, **Defense Costs** and punitive, exemplary and multiple damages where insurable by law in the applicable jurisdiction most favoring coverage for punitive, exemplary or multiple damages;
2. the cost of training, re-education and awareness development programs which the **Insureds** become obligated to institute by reason of a judgment, arbitration or settlement, subject to a maximum sublimit of 10% of the Limit of Liability applicable to the Employment Practices Liability Coverage Section or USD 1,000,000 (whichever amount is less) for all such costs, such sublimit shall be part of, and not in addition to, the Limit of Liability applicable to the Employment Practices Liability Coverage Section;
3. solely for the purpose of coverage afforded under Insuring Clause I.D., any **Defense Costs** resulting from any **Wage and Hour Claim**, subject to the applicable sublimit as shown in Item 4. of the Declarations;

4. solely for the purpose of coverage afforded under Insuring Clause I.E., any **Employment Event Loss**, subject to the applicable sublimit as shown in Item 4. of the Declarations;
5. solely for the purpose of coverage afforded under Insuring Clause I.F., any **Defense Costs** resulting from any **Immigration Practices Claim**, subject to the applicable sublimit as shown in Item 4. of the Declarations; and
6. solely for the purpose of coverage afforded under Insuring Clause I.G., any **Assistance Costs** and **OSHA Defense Costs**, subject to the applicable sublimit as shown in Item 4. of the Declarations.

Such sublimit amounts shall be part of, and not in addition to, the aggregate Limit of Liability applicable to the Employment Practices Liability Coverage Section.

However, **Loss** does not include any of the following:

- a) the cost of providing non-monetary or injunctive relief (this provision does not apply to **Defense Costs** where non-monetary relief or injunctive is sought);
- b) civil or criminal fines (other than civil fines imposed under the Health Insurance Portability and Accountability Act), penalties, sanctions, liquidated damages (other than those awarded under the Age Discrimination in Employment Act or the Equal Pay Act); payroll or other taxes, statutory damages that are predicted upon a finding of willfulness or other amounts or matters that may be deemed uninsurable according to the law under which this Coverage Section is construed;
- c) amounts recoverable under **Wage and Hour Laws** or **Immigration Practices Laws**;
- d) severance pay, commissions, bonuses, profit sharing or benefits including but not limited to medical benefits, stock options and vacation, holiday, and/or sick pay;
- e) future salary, wages, bonus, commissions and/or benefits resulting from a settlement, judgment, order or award that results in the rehiring, promotion or reinstatement of an **Employee**; or
- f) awards, costs, judgments, or orders resulting from contempt of court or violation of a court order or administrative decree.

With respect to the coverage for punitive, exemplary or multiple damages, and the insurability of fines or amounts or matters under exception b) above, any applicable law most favourable to the insurability of such damages, fines, amounts or matters shall apply, and where the **Insureds** are able to demonstrate in good faith (including presenting a written legal opinion) that such damages, fines, amounts or matters are insurable under any applicable law, Underwriters shall not challenge that interpretation of insurability. For purposes of this

provision, “any applicable law” shall include but not be limited to the law: a) where the **Claim** seeking such damages was brought, b) where the **Wrongful Acts** giving rise to the **Claim** seeking such damages took place, c) where the **Insureds** are incorporated, have their principal place of business or reside, and d) where Underwriters are incorporated or have their principal place of business.

R. “**Outside Entity**” means:

1. any non-profit corporation, community chest, fund or foundation that is not included in the definition of the **Insured Organization**; or
2. any other entity, if specified in an endorsement to this Coverage Section.

S. “**Outside Executive Position**” means the position of director, officer, trustee or other equivalent executive position held by any of the **Insured Person** in an **Outside Entity** if service in such position is with the knowledge and consent of the **Insured Organization**.

T. “**OSHA Citation**” means any citation brought by:

1. the Occupational Safety and Health Administration; or
2. any safety and health plan of any state approved and monitored by the Occupational Safety and Health Administration under 29 U.S.C. § 667,

solely alleging any violation of the Occupational Safety and Health Act or alleging any violation of a state-specific occupational safety and health standard which addresses standards or hazards above and beyond those addressed by the Occupational Safety and Health Act.

U. “**OSHA Defense Costs**” means reasonable and necessary legal fees and expenses charged to the **Insureds** by Lehr Middlebrooks Vreeland & Thompson, P.C., to which Underwriters consent in advance, in defending, settling, appealing or investigating any **OSHA Citation** and the cost of appeal, supersedeas, injunction, attachment or similar bonds (provided, however, Underwriters shall have no obligation to apply for or furnish any bond for appeal, supersedeas, injunction, attachment or any similar purpose), but shall not include salaries, regular or overtime wages, fees or benefit expenses associated with **Employees** or the **Insured Organization’s** overhead expenses.

V. “**Personally Identifiable Non-Public Information**” means information about an **Employee** obtained by the **Insured Organization** solely in its capacity as the employer of such individual. **Personally Identifiable Non-Public Information** does not include any information obtained by the **Insured Organization** in any other capacity including without limitation information obtained as the result of the **Employee** being a customer of the **Insured Organization**.

W. “**Privacy Policy**” means the internal or publicly accessible written documents that set forth the **Insured Organization’s** policies, standards and procedures for collection, use, disclosure, sharing, dissemination and correction or

supplementation of, and access to, **Personally Identifiable Non-Public Information**.

- X. **“Privacy Violation”** means:
1. theft of **Personally Identifiable Non-Public Information** that is in the care, custody or control of the **Insured Organization**, or an independent contractor that is holding or processing such information on behalf of the **Insured Organization**;
 2. the **Insured Organization’s** failure to timely disclose an incident or event triggering a violation of any **Breach Notice Law**; or
 3. failure by the **Insured Organization** to comply with that part of a **Privacy Policy** that specifically:
 - a) prohibits or restricts the **Insured Organization’s** disclosure, sharing or selling of an **Employee’s Personally Identifiable Non-Public Information**;
 - b) requires the **Insured Organization** to provide access to **Personally Identifiable Non-Public Information** or to correct incomplete or inaccurate **Personally Identifiable Non-Public Information** after a request is made by an **Employee**; or
 - c) mandates procedures and requirements to prevent the loss of **Personally Identifiable Non-Public Information**.
- Y. **“Retaliation”** means any actual or alleged **Discrimination, Harassment**, and/or **Inappropriate Employment Conduct** against an **Employee** on account of such **Employee’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 **Employee** having assisted or testified in or cooperated with a proceeding or investigation regarding alleged violations of law.
- Z. **“Serious Work-Related Incident”** means inpatient hospitalization of, amputation suffered by, or loss of an eye to an **Employee** which happens in the course of performing their duties in relation to the **Insured Organization’s** business.
- AA. **“Third Party Wrongful Act”** means any actual or alleged harassment or discrimination, including discriminatory or sexual harassment, by any of the **Insureds** against any natural person who is not an **Insured Person** or an applicant for employment of the **Insured Organization**.
- BB. **“Wage and Hour Claim”** shall mean any **Claim** alleging violations of any **Wage and Hour Law**.
- CC. **“Wage and Hour Law”** means the Fair Labor Standards Act or any other federal, state, or local law or regulation relating to any pay practices, including, but not

limited to, any failure to provide rest or meal periods; failure to provide or pay for vacation, off-the-clock work, sick time, holidays or other paid time off; failure to reimburse expenses or charges improperly allocated to an actual or alleged **Employee**; improper classification of **Employees** as exempt or non-exempt; failure to timely pay wages; failure to pay overtime or required wages; failure to pay minimum wage or other underpayment of wages, improper deductions from pay; improper credit for food, lodging or transportation; failure to document or properly record hours, pay, tips, commissions, wages, expenses, or any other sum allegedly due any worker; and any allegation related to the foregoing for conversion, unjust enrichment or unfair business practices.

DD. “**Work-Related Fatality**” means the fatality of an **Employee** which happens in the course of performing their duties in relation to the **Insured Organization's** business.

EE. “**Wrongful Act**” means:

1. **Inappropriate Employment Conduct;**
2. **Discrimination;**
3. **Harassment;** and/or
4. **Retaliation,**

by any of the **Insureds** against an **Insured Person** or an applicant for employment of the **Insured Organization**.

If purchased as indicated in Item 4. of the Declarations, **Wrongful Act** shall also include a **Third Party Wrongful Act**.

Wrongful Act shall include any such acts of **Inappropriate Employment Conduct, Discrimination, Harassment, and/or Retaliation** or any **Third Party Wrongful Act** (if purchased) by any **Employee** by means of the internet, including, but not limited to, social networking activities, regardless of whether such internet activity is during or after work hours or on or off the work premises.

Wrongful Act shall not include any actual or alleged violations of any **Immigration Practices Law** or any **Wage and Hour Law**.

III. EXCLUSIONS

Underwriters shall not be liable to make any payment for **Loss** in connection with or resulting from that portion of any **Claim**:

- A. for actual or alleged bodily injury, sickness, disease, death, assault, battery, mental anguish, emotional distress, invasion of privacy, or damage to or destruction of tangible property (including loss of use thereof); provided, however, this exclusion shall not apply to:

1. that portion of a **Claim** for a **Wrongful Act** seeking **Loss** for mental anguish, emotional distress or humiliation; or
 2. that portion of a **Claim** for a **Privacy Violation**;
- B. for any actual or alleged violation(s) of any of the responsibilities, obligations or duties imposed by:
1. any workers' compensation law, disability benefits law, unemployment compensation law, social security or other employment benefits law;
 2. the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act (except under Insuring Clause I.G.), the National Labor Relations Act, or any similar federal, state or local law, regulations promulgated thereunder, or any amendments thereto, or any other law based on the same violations;
 3. any **Wage and Hour Law** (except the Equal Pay Act or under Insuring Clause I.D.); or
 4. any **Immigration Practices Law** (except the Equal Pay Act or under Insuring Clause I.F.),

provided, however, this exclusion shall not apply to a **Claim** for **Retaliation**;

- C. for actual or alleged violation(s) of the Employee Retirement Income Security Act of 1974 ("ERISA"), or any violation of any federal, state, local or foreign statutory law or common law that governs the same topic or subject and any rules, regulations and amendments thereto 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 **Insured Person** or dependent in, any employee benefit plan, fund or program, including contracts or agreements which are not subject to the provisions of ERISA; provided, however, this exclusion shall not apply to a **Claim** for **Retaliation**;
- D. against any of the **Insured Persons** serving in an **Outside Executive Position**:
1. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any **Wrongful Act** occurring prior to the date such **Insured Person** began serving in an **Outside Executive Position** if any of the **Insured Persons**, as of such date, knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim** under this Coverage Section; or
 2. by, on behalf of, or for the benefit of the **Outside Entity**, or one or more of the **Outside Entity's** directors, officers, trustees or equivalent executives;
- E. based upon, arising out of, directly or indirectly in connection with, related to, or in any way involving the liability of others assumed by an **Insured** under any

contract or agreement, oral or written, except to the extent that the **Insured** would have been liable in the absence of such contract or agreement;

- F. for breach of an express written employment agreement, or under any policy or procedure providing for payment in the event of separation from employment unless such liability would have attached in the absence of such contract or agreement; provided, however, that this exclusion shall not apply to **Defense Costs** incurred in connection with such **Claim**;
- G. for an alleged violation of the responsibilities, duties or obligations imposed on an **Insured** under any **Wage and Hour Law**; provided, however, that:
 - 1. this exclusion shall not apply to the coverage afforded under Insuring Clause I.D.; and
 - 2. in the event such **Claim** also alleges a **Wrongful Act** otherwise covered by this Coverage Section and notwithstanding the provisions of Clause VI. of the General Terms and Conditions and subject to all other terms, conditions and exclusions contained in this Policy, this exclusion does not apply to **Loss** solely applicable to that portion of the **Claim** alleging such otherwise covered **Wrongful Act**;
- H. under Insuring Clause I.D., alleges violations of any **Wage and Hour Law** if any **Executive Officer** was made aware of such alleged violations of the **Wage and Hour Law** prior to the inception date of the Policy;
- I. under Insuring Clause I.F., that alleges violations of any **Immigration Practices Law**:
 - 1. if any **Executive Officer** was aware of such alleged violations of or non-compliance with such **Immigration Practices Law** prior to the inception date of this Policy; or
 - 2. upon a judgment, final adjudication or admission of a violation of any **Immigration Practices Law**; or
- J. under Insuring Clause I.G., that alleges any violation of the Occupational Safety and Health Act or a state-specific occupational safety and health law or regulation if any **Executive Officer** was aware of such alleged violations of or non-compliance with the Occupational Safety and Health Act or a state-specific occupational safety and health law or regulation prior to the inception date of this Policy.

IV. NOTICE OF AN EMPLOYMENT EVENT

In the event any **Executive Officer** becomes aware of an **Employment Event** first occurring during the **Policy Period**, the **Insureds** shall, as a condition precedent to their rights to payment under Insuring Clause I.E., give to Underwriters notice in writing of such **Employment Event** as soon as practicable but in no event later than 60 days after the end of the **Policy Period** or the last day of the **Optional Extension Period**, if purchased.

V. NOTICE OF A WORK-RELATED FATALITY, SERIOUS WORK-RELATED INCIDENT AND AN OSHA CITATION

Notice to Underwriters as described in Insuring Clause I.G. shall be given in writing to the following firm. Notice shall be deemed to be received and effective upon actual receipt thereof by the addressee.

Lehr Middlebrooks Vreeland & Thompson, P.C.
2021 Third Avenue North
Birmingham
Alabama 35203

or

osha@lehrmiddlebrooks.com

VI. ALLOCATION

Notwithstanding Clause VII. of the General Terms and Conditions, and where the Wage and Hour Defense Coverage is not purchased or in the event the sublimit in respect of the Wage and Hour Defense Coverage is exhausted, the **Insureds** and Underwriters agree to use their best efforts to determine a fair and proper allocation of all covered **Defense Costs** and non-covered defense costs associated with the defense of **Claims** alleging a violation of the responsibilities, duties, or obligations imposed under any **Wage and Hour Law**. In the event that an allocation cannot be agreed to, then Underwriters shall make an interim payment of the amount of **Defense Costs** that the parties agree is not in dispute until a final amount is agreed upon or determined by applicable law.

VII. ADJUSTMENT

This Policy is issued and the premium computed on the basis of the information submitted to Underwriters as part of the **Application**. In the event the **Named Insured**, after the inception date of this Policy:

- A. merges with another entity such that the **Named Insured** is the surviving entity;
or
- B. acquires assets of another entity or acquires a **Subsidiary** whose employees exceed 25% of the total number of employees of the **Insured Organization** at the time of acquisition,

coverage shall be afforded for a period of 90 days for any **Loss** in any way involving the assets acquired or the assets, liabilities, directors, officers or employees of the entity acquired or merged with, or such **Subsidiary**. Coverage beyond such 90 day period shall only be available if written notice of such transaction or event is given to Underwriters by the **Named Insured**; the **Named Insured** provides Underwriters with such information in connection therewith as Underwriters may deem necessary; the **Insureds** accept any special terms, conditions, exclusions or additional premium charge as may be required by Underwriters; and Underwriters, at their sole discretion, agree to provide such coverage.