



BEAZLEY WORKPLACE PROTECT - 2017

DECLARATIONS

NOTICE: THIS POLICY IS A CLAIMS MADE AND REPORTED POLICY. SUBJECT TO ITS TERMS, IT APPLIES ONLY TO ANY CLAIM FIRST MADE DURING THE POLICY PERIOD AND REPORTED IN WRITING TO UNDERWRITERS IN ACCORDANCE WITH THE TERMS OF THIS POLICY. AMOUNTS INCURRED AS DEFENSE COSTS SHALL REDUCE AND MAY EXHAUST THE APPLICABLE LIMITS OF LIABILITY AND ARE SUBJECT TO THE APPLICABLE RETENTIONS. UNDERWRITERS HAVE NO OBLIGATION TO PAY DEFENSE COSTS OR ANY SETTLEMENTS OR JUDGMENTS ONCE THE APPLICABLE LIMIT OF LIABILITY IS EXHAUSTED. PLEASE READ THIS POLICY CAREFULLY.

These Declarations along with the **Application** and the Policy with endorsements shall constitute the contract between the **Insureds** and Underwriters.

Policy Number:

Item 1. **Named Insured:**

Principal Address:

Item 2. **Policy Period:** From: _____ To: _____

Both dates at 12:01 a.m. Local Time at the Principal Address stated in Item 1.

Item 3. **Limit(s) of Liability:**

Aggregate Limit of Liability for
the **Policy Period**

- (a) Employment Practices Liability
- (b) Third Party Wrongful Acts
- (c) Privacy Violations
- (d) Employment Event Sublimit
- (e) Immigration Practices Sublimit
- (f) OSHA Coverage Sublimit

- (g) Wage and Hour Practices Liability

- (h) Aggregate Limit of Liability
for all Coverage Sections

(i) Additional Defense Limit of Liability
(Employment Practices Liability
Coverage Section only)

Item 4. **Retention(s):**

Retention each **Claim**

Employment Practices Liability
Coverage Section

Wage and Hour Practices Coverage Section

No Retention shall apply under Insuring Clause I.D. or Insuring Clause I.F. of the Employment
Practices Liability Coverage Section

Item 5. **Premium:**

Item 6. **Optional Extension Period:**

(a) Premium for **Optional Extension
Period:** % of the total annual premium
for the Policy

(b) Length of **Optional Extension Period:** Months

Item 7. **Predetermined Run-Off Period:**

(a) Premium for **Predetermined Run-Off
Period:** % of the total annual premium
for the Policy

(b) Length of **Predetermined Run-Off
Period:** Months

Item 8. **Notification Under This Policy:**

(a) Notification pursuant to Clause VII. of the Policy Terms and Conditions shall be given to: (b) All other notices under this Policy shall be given to:

Item 9. **Pending or Prior Litigation Date:**

Item 10. **Wage and Hour Retroactive Date:**

Item 11. **Service of Suit:**

Item 12. **Choice of Law:**

**BEAZLEY WORKPLACE PROTECT - 2017
EMPLOYMENT PRACTICES LIABILITY AND
WAGE AND HOUR PRACTICES LIABILITY INSURANCE**

POLICY TERMS AND CONDITIONS

In consideration of the payment of the premium, in reliance on all statements made in the **Application**, and subject to all of the provisions of this Policy, Underwriters and the **Named Insured**, on behalf of all **Insureds**, agree as follows:

I. DEFINITIONS

The following terms whenever used in this Policy in boldface type shall have the meanings indicated. Definitions not defined below but appearing in bold face type shall have the meanings indicated in the applicable Coverage Section.

- A. **“Application”** means the completed and signed application, including all attachments and other materials submitted therewith or incorporated therein, and any other written documents or information submitted in connection with the underwriting of this Policy, including any endorsement or other part thereof.
- B. **“Change of Control”** means:
1. the acquisition by any person or entity of more than 50% of the outstanding securities or equity interest of the **Named Insured** representing the present right to vote for the election of directors or **Managers**; or
 2. the merger of the **Named Insured** into another entity such that the **Named Insured** is not the surviving entity.

Change of Control shall not be considered to have occurred in the event of **Financial Impairment**.

- C. **“Defense Costs”** means reasonable and necessary 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.
- D. **“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**.

- E. **“Executive Officer”** means any member of the in-house counsel or human resources department, any risk manager or any executive officer of the **Insured Organization**.
- F. **“Financial Impairment”** means the appointment by any state or federal official, agency or court of any receiver, trustee, examiner, conservator, liquidator, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Insured Organization**.
- G. **“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**.
- H. **“Insureds”** means the **Insured Persons** and the **Insured Organization**.
- I. **“Insured Persons”** means:
1. any person who was, now is, or shall be directors, officers, trustees, in-house general counsel, **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.
- J. **“Insured Organization”** means:
1. the **Named Insured**;
 2. any **Subsidiary**;
 3. the **Named Insured** or any **Subsidiary** as a debtor in possession within the meaning of the United States Bankruptcy Code or similar legal status under foreign law; and
 4. any foundation, charitable trust or political action committee totally funded or controlled by the **Named Insured** or any **Subsidiary**.
- K. **“Interrelated Wrongful Acts”** means any and all **Wrongful Acts** which have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally or logically connected facts, circumstances, situations, events, transactions or causes.

L. **“Loss”** means amounts which an **Insured** is legally obligated to pay as a result of a **Claim** including:

1. 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 settlement or judgment against an **Insured**;
2. **Defense Costs**; and
3. punitive, exemplary and multiple damages where insurable.

If the Employment Practices Liability Coverage Section is purchased, **Loss** shall include:

- a) 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 of this Policy 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 of this Policy;
- b) solely for the purpose of coverage afforded under Insuring Clause I.D. of the Employment Practices Liability Coverage Section, any **Employment Event Loss**, subject to the applicable sublimit as shown in Item 3.(d) of the Declarations;
- c) solely for the purpose of coverage afforded under Insuring Clause I.E. of the Employment Practices Liability Coverage Section, any **Defense Costs** resulting from any **Immigration Practices Claim**, subject to the applicable sublimit as shown in Item 3.(e) of the Declarations; and
- d) solely for the purpose of coverage afforded under Insuring Clause I.F. of the Employment Practices Liability Coverage Section, any **Assistance Costs** and **OSHA Defense Costs**, subject to the applicable sublimit as shown in Item 3.(f) of the Declarations.

Such sublimit amounts shall be part of, and not in addition to, the aggregate Limit of Liability of this Policy.

If the Wage and Hour Practices Liability Coverage Section is purchased, **Loss** shall include:

- a) remedies imposed by the Department of Labor or commensurate state or local government agencies such as wages and liquidated damages; and
- b) civil penalties where insurable.

With respect to coverage for any such **Loss** above:

1. any applicable law most favorable to the insurability of **Loss**; or
2. the laws of England and Wales,

shall apply. If the **Insureds** demonstrate in good faith (including presenting a written legal opinion) that **Loss** is insurable under such 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.

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

- i) the cost of providing non-monetary or injunctive relief (this provision does not apply to **Defense Costs** where non-monetary or injunctive relief is sought);
- ii) civil or criminal fines (other than civil fines imposed under the Health Insurance Portability and Accountability Act if the Employment Practices Liability Coverage Section is purchased), penalties (except as stated in b) above applicable to the Wage and Hour Practices Liability Coverage Section), sanctions, 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 Policy is construed;
- iii) liquidated damages (other than liquidated damages otherwise covered under the Wage and Hour Practices Liability Coverage Section if purchased or recoverable under the Age Discrimination in Employment Act or the Equal Pay Act if the Employment Practices Liability Coverage Section is purchased);
- iv) amounts recoverable under **Immigration Practices Laws**;
- v) severance pay, commissions, bonuses, profit sharing or benefits including but not limited to medical benefits, stock options, vacation and holiday, and/or sick pay;
- vi) future salary, wages, bonus, commissions and/or benefits resulting from a settlement, judgment, order or award that results from the rehiring, promotion or reinstatement of an **Employee**;
- vii) awards, costs, judgments, or orders resulting from contempt of court or violation of a court order or administrative decree; or
- viii) costs of returning goods shipped in interstate commerce produced in violation of the Fair Labor Standards Act.

M. **"Management Control"** means:

1. owning interest representing more than 50% of the voting, appointment or designation power for the selection of a majority of the board of directors of a corporation, the members of the management board of a limited liability corporation, the management committee members of a joint venture or with respect to entities operating or organized outside the United States of America, persons serving in a functionally equivalent role; or
2. having the right, pursuant to written contract or the bylaws, charter, operating agreement or similar documents of the **Insured Organization** to elect, appoint or

designate a majority of the board of directors of a corporation, the management board of a limited liability corporation, the management committee members of a joint venture or with respect to entities operating or organized outside of the United States of America, persons serving in a functionally equivalent role.

- N. **“Managers”** means all persons who were, now are, or shall be managers, managing members, principals, members of the board of managers, managing partners, general partners of a limited partnership (including the board of directors of any such general partner that is a corporation) or equivalent executives of any **Insured Organization**.
- O. **“Named Insured”** means the entity designated in Item 1. of the Declarations.
- P. **“Optional Extension Period”** means the period described in Clause X.A. of the Policy Terms and Conditions.
- Q. **“Policy Period”** means the period from the effective date and hour of this Policy to the Policy expiration date and hour as set forth in Item 2. of the Declarations, or its earlier termination, if any.
- R. **“Predetermined Run-Off Period”** means the period described in Clause X.B. of the Policy Terms and Conditions.
- S. **“Retired and Resigned Insured Persons Extension Period”** means the period described in Clause X.C. of the Policy Terms and Conditions.
- T. **“Subsidiary”** means any entity, including but not limited to any limited liability company, over which the **Named Insured** directly or indirectly had or has **Management Control**, if the **Named Insured** had or has **Management Control** of such entity prior to or on the inception date of this Policy; provided, that this Policy only provides coverage for any **Wrongful Act** committed while the **Named Insured** had or has **Management Control** of such entity.
- U. **“Wrongful Act”** means:
 - 1. any **Employment Wrongful Act** (if the Employment Practices Liability Coverage Section is purchased); or
 - 2. any **Wage and Hour Wrongful Act** (if the Wage and Hour Practices Liability Coverage Section is purchased).

II. EXCLUSIONS APPLICABLE TO ALL COVERAGE SECTIONS

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** under the Employment Practices Liability Coverage Section (if purchased) 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. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:
1. any written demand, suit, or other proceeding pending, or order, decree or judgment entered, against any **Insured** on or prior to the applicable Pending or Prior Litigation Date set forth in Item 9. of the Declarations, or any **Wrongful Act**, fact, circumstance or situation underlying or alleged therein;
 2. any **Wrongful Act** or any fact, circumstance, transaction or situation which has been the subject of any notice of a **Claim** or notice of circumstance or a potential **Claim** given prior to the **Policy Period** under any other policy; or
 3. any other **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** which has been the subject of such notice, would constitute **Interrelated Wrongful Acts**;
- C. 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.F. of the Employment Practices Liability Coverage Section, if purchased), or the National Labor Relations Act, including any similar federal, state or local law, regulations promulgated thereunder, or any amendments thereto, or any other law based on the same violations; or
 3. any **Immigration Practices Law** (except the Equal Pay Act or under Insuring Clause I.E. of the Employment Practices Liability Coverage Section, if purchased),
- provided, however, this exclusion shall not apply to a **Claim** under the Employment Practices Liability Coverage Section (if purchased) for **Retaliation**;
- D. 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** under the Employment Practices Liability Coverage Section (if purchased) for **Retaliation**; or
- 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,

For the purpose of determining the applicability of any of the Exclusions above, any Exclusions contained in any Coverage Section which attaches to this Policy or any Exclusions which are added by endorsement to this Policy, no **Wrongful Act** shall be imputed to any other natural person, and only the **Wrongful Acts** of any **Executive Officer** of the **Named Insured** shall be imputed to the **Insured Organization**.

III. LIMITS OF LIABILITY AND RETENTIONS

A. Limit(s) of Liability

1. The amount shown in Item 3.(a) in the Declarations is the most we will pay for **Claims** first made or brought during the **Policy Period** for **Loss** that results from any **Employment Wrongful Act** regardless of the number of **Claims**.
2. The amount shown in Item 3.(b) in the Declarations is the most we will pay for **Claims** first made or brought during the **Policy Period** for **Loss** that results from any **Third Party Wrongful Act**, regardless of the number of **Claims**.
3. The amount shown in Item 3.(c) in the Declarations is the most we will pay for **Claims** first made or brought during the **Policy Period** for **Loss** that results from any **Privacy Violation**, regardless of the number of **Claims**.
4. The amount shown in Item 3.(d) in the Declarations is the most we will pay for **Employment Event Loss** arising from **Employment Events** first occurring during the **Policy Period**.
5. The amount shown in Item 3.(e) in the Declarations is the most we will pay for **Immigration Practice Claims** first made or brought during the **Policy Period** for **Defense Costs**, regardless of the number of **Immigration Practice Claims**.
6. The amount shown in Item 3.(f) in the Declarations is the most we will pay for **Assistance Costs** and **OSHA Defense Costs** under this Policy.
7. The amount shown in Item 3.(g) in the Declarations is the most we will pay for **Claims** first made or brought during the **Policy Period** for **Loss** that results from any **Wage and Hour Wrongful Act**, regardless of the number of **Claims**.
8. The amount shown in Item 3.(h) in the Declarations is the most we will pay for all **Loss** under this Policy.

B. Additional Defense Limit of Liability

If purchased as indicated in Item 3.(i) of the Declarations, the applicable amount shown in Item 3.(i) shall be the Additional Defense Limit of Liability applicable only to **Defense Costs** under the Employment Practices Liability Coverage Section which Limit shall be separate and in addition to any other limit shown in Item 3. of the Declarations. Payment of **Defense Costs** shall erode the Additional Defense Limit of Liability first and will not erode any other limit shown in Item 3. until the Additional Defense Limit of Liability is exhausted.

C. Retentions

Underwriters shall be liable for only that part of **Loss** arising from a **Claim** which is excess of the applicable Retention set forth in Item 4. of the Declarations. The Retention shall not apply

to any of the **Insured Persons**, if indemnification of such **Insured Persons** by the **Insured Organization** is not permitted by law or if the **Insured Organization** is not able to indemnify such **Insured Persons** solely by reason of its **Financial Impairment**. The **Insured Organization** is presumed to indemnify the **Insured Persons** to the fullest extent permitted by law or pursuant to the by-laws or other organizational documents of the **Insured Organization**.

- D. The payment of **Defense Costs** by Underwriters reduces and may totally exhaust the applicable Limit(s) of Liability.
- E. More than one **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim** and shall be deemed to have been made at the earliest of the following times:
 - 1. the time at which the earliest **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** is first made; or
 - 2. the time at which the **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to have been made pursuant to Clause VII.C. of the Policy Terms and Conditions.
- F. If the aggregate Limit of Liability under Item 3. of the Declarations are exhausted, Underwriters' obligations under this Policy shall be completely fulfilled and extinguished.
- G. In the event more than one of the Coverage Sections purchased are applicable to a **Claim**, the Retentions set forth in Item 4. of the Declarations shall be applied separately to that part of the **Loss** resulting from such **Claim** covered by each Coverage Section. The sum of the Retentions so applied shall constitute the Retention applicable to such **Claim**. The total Retention as finally determined shall in no event exceed the largest of the applicable Retentions. **Loss** resulting from such **Claim** shall be subject to the applicable aggregate Limits of Liability for each applicable Coverage Section. The total aggregate Limit of Liability for such **Claim** as finally determined shall in no event exceed the largest of the applicable Limits of Liability. The **Insureds** and Underwriters agree to use their best efforts to fairly and reasonably allocate such **Loss** between such Coverage Sections.

IV. DEFENSE, COOPERATION, SETTLEMENT AND SUBROGATION

- A. Subject always to Clause V. Allocation of the Policy Terms and Conditions, Clause III. Exclusion C. of Employment Practices Liability Coverage Section and Clause III. Exclusion D. of the Wage and Hour Practices Liability Coverage Section, Underwriters shall have the right and duty to defend any **Claim**, including the right to select defense counsel, even if any of the allegations are groundless, false or fraudulent; provided, however, that Underwriters shall not be obligated to defend or to continue to defend any **Claim** after the applicable Limit of Liability set forth in Item 3. of the Declarations has been exhausted.
- B. The **Insureds** agree to:
 - 1. provide Underwriters with such information, assistance and cooperation as Underwriters or their counsel may reasonably request,
 - 2. assist Underwriters in the investigation, settlement and defense of **Claims**,

3. enforce all rights of contribution or indemnity against any person or entity which may be liable to the **Insureds**, and
4. attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

The **Insureds** further agree that, after a **Claim** has been made, they shall not take any action which in any way increases Underwriters' exposure under this Policy. The failure of any **Insured Persons** to comply with the foregoing shall not impair the rights of any other **Insured Person** under this Policy.

- C. The **Insureds** shall not settle any **Claim**, select any defense counsel, incur any **Defense Costs**, admit or assume any liability, stipulate to any judgment or otherwise assume any contractual obligation without Underwriters' prior written consent, which shall not be unreasonably withheld. Underwriters shall not be liable for any settlement, **Defense Costs**, assumed obligation, admission or stipulated judgment to which they have not consented or for which the **Insureds** are not legally obligated as a result of a **Claim** for a **Wrongful Act**. Notwithstanding the foregoing, if all **Insureds** are able to fully and finally dispose of, with prejudice, all **Claims** that are subject to one Retention for an amount not exceeding such Retention, including **Defense Costs**, then Underwriters' consent shall not be required for such disposition.
- D. In the event of any payment under this Policy, Underwriters shall be subrogated to the **Insureds'** rights of recovery against any person or entity. The **Insureds** shall execute all papers required and shall do everything that may be necessary to secure and preserve such rights including the execution of such documents as are necessary to enable Underwriters effectively to bring suit in their name, and shall provide all other assistance and cooperation which Underwriters may reasonably require.

V. ALLOCATION

- A. In the event that both the Employment Practices Liability Coverage Section and the Wage and Hour Practices Liability Coverage Section are purchased, and **Loss** covered by this Policy and non-covered loss are incurred, either because the **Claim** made against the **Insured** includes both covered and non-covered matters, or because a **Claim** is made against both the **Insured** and others not insured under this Policy, then such covered **Loss** and non-covered loss shall be allocated as follows:
 1. one hundred percent (100%) of **Defense Costs** shall be allocated to covered **Loss**; and
 2. settlements, judgments, verdicts and awards shall be allocated between covered **Loss** and non-covered loss based upon the relative legal and financial exposures of, and the relative benefits obtained in connection with the resolution of the **Claim** as between the **Insureds'** or non-Insureds' exposure to non-covered loss, and the **Insureds'** exposure to covered **Loss**. In making such allocation determination, the **Insureds** and Underwriters agree to use their best efforts to determine a fair and proper allocation. In the event that an allocation cannot be agreed to, then Underwriters shall make an interim payment of the amount of **Loss** that the parties agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of applicable law.
- B. In the event that either one of the Employment Practices Liability Coverage Section or the Wage and Hour Practices Liability Coverage Section is not purchased, the **Insureds** and Underwriters

agree to use their best efforts to determine a fair and proper allocation of all covered **Loss** and non-covered loss. In the event that an allocation cannot be agreed to, then Underwriters shall make an interim payment of the amount of **Loss** that the parties agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of applicable law.

VI. 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 ninety (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 ninety (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.

VII. NOTIFICATION

- A. In the event any **Executive Officer** becomes aware that a **Claim** has been made against any of the **Insureds**, the **Insureds** shall, as a condition precedent to their rights to payment under this Policy, give to Underwriters notice in writing of such **Claim** as soon as practicable but in no event later than forty-five (45) days after the **Executive Officer** becomes aware of such **Claim**.
- B. In the event the Employment Practices Liability Coverage Section is purchased and 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.D., give to Underwriters notice in writing of such **Employment Event** as soon as practicable but in no event later than forty-five (45) days after the **Executive Officer** becomes aware of such **Employment Event**.
- C. If the **Insureds** first become aware of a specific fact, circumstance or situation which could reasonably give rise to a **Claim** and if the **Insureds** during the **Policy Period** give written notice to Underwriters of:
 - 1. the specific fact, circumstance or situation;
 - 2. the consequences which have resulted or may result therefrom; and
 - 3. the manner by which the **Insureds** first became aware thereof,

then any **Claim** made subsequently arising out of such fact, circumstance or situation shall be deemed for the purposes of this Policy to have been made at the time such notice was first given.

Underwriters shall have no obligation to cover any amounts, including any legal fees or expenses, incurred prior to the time such circumstances result in a **Claim**.

- D. Notice to Underwriters provided for in Clause VII.A., B. and C. of the Policy Terms and Conditions shall be sent to the address shown in Item 8.(a) of the Declarations. All other notices to Underwriters under this Policy shall be sent to the address shown in Item 8.(b) of the Declarations.
- E. In the event Insuring Clause I.F. - OSHA Coverage of the Employment Practices Liability Coverage Section is purchased, notice to Underwriters of any **Work Related Fatality** or **Serious Work-Related Incident** as described in Insuring Clause I.F. shall be given in writing to the following firm.

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

or

osha@lehrmiddlebrooks.com

- F. All notices under any provision of this Policy must be made in writing and delivered by electronic mail, prepaid express courier, certified mail or fax. Notices given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee.

VIII. GENERAL CONDITIONS

A. Representations

By acceptance of this Policy, the **Insureds** agree:

1. that the statements in the **Application** are their representations, and that this Policy is issued in reliance upon the truth of such representations;
2. that in the event that the **Application** contains misrepresentations made with the actual intent to deceive, or contains misrepresentations which materially affect either the acceptance of the risk or the hazard assumed by Underwriters under this Policy, this Policy shall not afford any coverage with respect to:
 - a) those **Insured Persons** who made or had knowledge as at the inception date of this Policy of such misrepresentations; and
 - b) the **Insured Organization** if such misrepresentations were made by any **Executive Officer** of the **Named Insured**.

Notwithstanding the above, the **Application** shall be construed as a separate application for coverage by each of the **Insured Persons** and no knowledge possessed by any **Insured Persons** shall be imputed to any other **Insured Person**.

Under no circumstances shall Part 2 of the UK Insurance Act 2015, the duty of fair presentation, apply to this Policy or the placement of any risk hereunder.

B. Run-Off

1. In the event any entity ceases to be a **Subsidiary** as defined herein after the inception date of this Policy, or of any policy issued by Underwriters of which this Policy is a renewal or replacement, this Policy, subject to its terms, shall continue to apply to any of the **Insured Persons** who were covered under this Policy because of their service with such entity and to such **Subsidiary**.
2. Except if a **Predetermined Run-Off Period** is purchased in accordance with Clause X.B. of the Policy Terms and Conditions, in the event of a **Change of Control** after the inception date of this Policy or of any policy issued by Underwriters of which this Policy is a renewal or replacement, this Policy, subject to its terms, shall continue to apply to the **Insureds** but only with respect to any **Wrongful Act** committed or allegedly committed prior to the **Change of Control**.

C. Cancellation/Nonrenewal

1. By acceptance of this Policy, the **Insureds** hereby confer the exclusive power and authority to cancel this Policy on their behalf to the **Named Insured**. Such entity may cancel this Policy by surrender thereof to Underwriters, or by mailing to Underwriters written notice stating when thereafter such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice shall be equivalent to mailing.
2. Underwriters may cancel this Policy only for nonpayment of premium by mailing to the **Named Insured** written notice stating when, not less than ten (10) days thereafter, such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice by Underwriters shall be equivalent to mailing.
3. If this Policy is cancelled pursuant to 1. hereinabove, Underwriters shall retain the customary short rate proportion of the premium hereon. If this Policy is cancelled pursuant to 2. hereinabove, Underwriters shall retain the pro rata proportion of the premium hereon. Payment or tender of any unearned premium by Underwriters shall not be a condition precedent to the effectiveness of cancellation.
4. Underwriters may nonrenew this Policy by mailing to the **Named Insured** written notice of nonrenewal not less than sixty (60) days before the end of the **Policy Period**. The mailing of such notice shall be sufficient notice. Delivery of such written notice by Underwriters shall be equivalent to mailing.

IX. OTHER INSURANCE

This Policy shall apply as primary insurance, except with respect to:

- A. any **Claim** which include allegations covered under both a fiduciary liability policy and this Policy;

- B. any **Claim** brought by or on behalf of an **Independent Contractor** or leased or temporary **Employee**;
- C. any **Claim** for a **Third Party Wrongful Act**; or
- D. any **Claim** for a **Privacy Violation**;

in which case this Policy shall apply in excess of any other existing valid and collectible policy including any self insured retention or deductible portion thereof, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other policy is written only as specific excess insurance over the Limits of Liability of this Policy.

X. EXTENSIONS TO THE POLICY PERIOD

A. Optional Extension Period

If this Policy is cancelled by the **Named Insured** or if the **Named Insured** or Underwriters nonrenew this Policy, then the **Named Insured** shall have the right, upon payment of an additional premium calculated at that percentage shown in Item 6.(a) of the Declarations of the total annual premium for this Policy, to an extension of the coverage granted by this Policy with respect to any **Claim** first made during the period of time set forth in Item 6.(b) of the Declarations after the end of the **Policy Period**, but only with respect to any **Wrongful Act** committed before the effective date of cancellation or nonrenewal.

B. Predetermined Run-Off Period

In the event of a **Change of Control**, the **Named Insured** shall have the right, upon payment of an additional premium calculated at that applicable percentage shown in Item 7.(a) of the Declarations of the total annual premium for this Policy (less any unearned premium calculated at pro rata for the period from the date of such **Change of Control**), to an extension of the coverage granted by this Policy with respect to any **Claim** first made during the period of time set forth in Item 7.(b) of the Declarations after the end of the **Policy Period**, but only with respect to any **Wrongful Act** committed before the effective date of such **Change of Control**.

C. Retired and Resigned Insured Persons Extension Period

If this Policy is cancelled by the **Named Insured** or if the **Named Insured** or Underwriters nonrenew this Policy, then any of the **Insured Persons** who have retired or resigned prior to or during the **Policy Period** shall have an automatic extension of the coverage granted by this Policy with respect to any **Claim** first made during the 72-month period following the end of the **Policy Period**, but only with respect to any **Wrongful Act** committed before the effective date of cancellation or nonrenewal.

The above automatic extension of coverage shall not apply in the event the **Named Insured** has purchased other insurance to replace, in whole or in part, the insurance provided under this Policy.

D. Extension Conditions

1. As a condition precedent to the right to purchase the **Optional Extension Period** or **Predetermined Run-Off Period** or exercise the **Retired and Resigned Insured**

Persons Extension Period, the total premium for this Policy must have been paid. The right to purchase the **Optional Extension Period** or **Predetermined Run-Off Period** shall terminate unless written notice together with full payment of the premium for the **Optional Extension Period** or **Predetermined Run-Off Period** is given to Underwriters within 30 days after the effective date of cancellation, nonrenewal or **Change of Control**. If such notice and premium payment is not so given to Underwriters, there shall be no right to purchase the **Optional Extension Period** or **Predetermined Run-Off Period**.

2. In the event of the purchase of the **Optional Extension Period** or **Predetermined Run-Off Period**, the entire premium for the **Optional Extension Period** or **Predetermined Run-Off Period** shall be deemed earned at its commencement.
3. The exercise of the **Optional Extension Period**, **Predetermined Run-Off Period** or the **Retired and Resigned Insured Persons Extension Period** shall not in any way increase the Limit(s) of Liability of Underwriters.
4. In the event the **Optional Extension Period** or **Predetermined Run-Off Period** is purchased or the **Retired and Resigned Insured Persons Extension Period** is exercised, and the law in any foreign country imposes a requirement for a minimum extension period, then the applicable period of time under this Policy shall be extended in order to comply with any such minimum extension period but solely with respect to any **Claim** first brought and maintained in such country.

XI. ACTION AGAINST UNDERWRITERS

No action shall lie against Underwriters unless, as a condition precedent thereto, the **Insureds** shall have fully complied with all of the terms of this Policy, and the amount of the **Insureds'** obligation to pay shall have been fully and finally determined either by judgment against them or by written agreement between them, the claimant and Underwriters. Nothing contained herein shall give any person or organization any right to join Underwriters as a party to any **Claim** against the **Insureds** to determine their liability, nor shall Underwriters be impleaded by the **Insureds** or their legal representative in any **Claim**.

XII. ENTIRE AGREEMENT

By acceptance of this Policy, the **Insureds** agree that this Policy embodies all agreements existing between them and Underwriters or any of their agents relating to this insurance. Notice to any agent or knowledge possessed by any agent or other person acting on behalf of Underwriters shall not effect a waiver or a change in any part of this Policy or estop Underwriters from asserting any right under the terms of this Policy, nor shall the terms be waived or changed except by written endorsement or rider issued by Underwriters to form a part of this Policy.

XIII. TERRITORY

- A. The Employment Practices Liability Coverage Section of this Policy (if purchased) shall apply to **Claims** made against the **Insureds** and **Employment Wrongful Acts** committed anywhere in the world.
- B. The Wage and Hour Practices Liability Coverage Section of this Policy (if purchased) shall apply to **Claims** made against the **Insureds** and **Wage and Hour Wrongful Acts** committed anywhere in the United States of America, its territories or possessions.

XIV. VALUATION AND CURRENCY

All premiums, limits, retentions, and **Loss** under this Policy are expressed in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of **Loss** under this Policy is stated in a currency other than United States dollars or if **Defense Costs** are due in a currency other than United States dollars, payment under this Policy shall be made, at the **Insureds** election, either:

- A. in United States dollars; or
- B. in the foreign jurisdiction at issue and in the foreign currency at issue, to the extent legally permissible.

The rate of exchange published in the Wall Street Journal on the date the judgment becomes final or payment of the settlement or other element of **Loss** is due or the date **Defense Costs** are due shall be used to calculate erosion of the Limits of Liability and Retentions of this Policy.

XV. BANKRUPTCY

Bankruptcy or insolvency of the **Insureds** shall not relieve Underwriters of their obligations nor deprive Underwriters of their rights or defenses under this Policy.

If a liquidation or reorganization proceeding is commenced by the **Insured Organization** (whether voluntarily or involuntarily) under Title 11 of the United States Code (as amended), or any similar state, local or foreign law, then, in regard to a covered **Claim** under this Policy, Underwriters and the **Insureds** hereby agree not to oppose or object to any efforts by Underwriters or any of the **Insureds** to obtain relief from any stay or injunction applicable to the proceeds of this Policy as a result of the commencement of such liquidation or reorganization proceeding.

XVI. RECOVERY CLAUSE

In the event Underwriters recover amounts they have paid under this Policy, Underwriters will reinstate the Limit(s) of Liability of this Policy to the extent of such recovery, less their costs incurred in administering and obtaining such recovery. Underwriters assume no duty to seek a recovery of any amounts paid under this Policy.

XVII. AUTHORIZATION

By acceptance of this Policy, the **Named Insured** agrees to act on behalf of the **Insureds** with respect to the giving and receiving of any notice provided for in this Policy, the payment of premiums and the receipt of any return premiums that may become due under this Policy, and the agreement to and acceptance of endorsements, and the **Insureds** agree that the **Named Insured** shall act on their behalf.

XVIII. HEADINGS

The descriptions in the headings and subheadings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

XIX. SERVICE OF SUIT

It is agreed that in the event Underwriters fail to pay any amount claimed to be due hereunder, Underwriters, at the request of the **Insured**, will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Nothing in this Condition constitutes or should be understood to constitute a waiver of our rights to commence an action in any Court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another Court as permitted by the laws of the United States or of any State in the United States. It is further agreed that service of process in such suit may be made upon the individual or entity shown under Item 11. of the Declarations and that in any suit instituted against Underwriters upon this policy, Underwriters will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

The individual or entity shown under Item 11. of the Declarations is authorized and directed to accept service of process on Underwriters' behalf in any such suit and/or upon the request of the **Insured** to give a written undertaking to the **Insured** that they will enter a general appearance upon Underwriters' behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefor, Underwriters hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the **Insured** or any beneficiary hereunder arising out of this policy, and hereby designate the individual or entity shown under Item 11. of the Declarations as the person to whom the said officer is authorized to mail such process or a true copy thereof.

XX. CHOICE OF LAW

Except with respect to the insurability of Loss under Clause I.L. of the Policy Terms and Conditions, any dispute involving this Policy shall be resolved by applying the law of the state designated in Item 12. of the Declarations.

**BEAZLEY WORKPLACE PROTECT - 2017
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** and reported in writing to Underwriters in accordance with Clause VII.A. of the Policy Terms and Conditions for an **Employment 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** and reported in writing to Underwriters in accordance with Clause VII.A. of the Policy Terms and Conditions for an **Employment Wrongful Act** committed while serving in an **Outside Executive Position**.

Notwithstanding Clause IX. of the Policy 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 3. of the Declarations, Underwriters shall pay on behalf of the **Insureds** all **Loss** resulting from any **Claim** first made against any **Insured** during the **Policy Period** and reported in writing to Underwriters in accordance with Clause VII.A. of the Policy Terms and Conditions for a **Third Party Wrongful Act**.

If a sublimit applicable to **Third Party Wrongful Acts** is indicated in Item 3. of the Declarations, then such amount shall be part of and not in addition to the Aggregate Limit of Liability of this Policy.

D. **Employment Event** Coverage

If purchased as indicated in Item 3. 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** and reported in writing to Underwriters in accordance with Clause VII.B. of the Policy Terms and Conditions, provided that the payment of **Employment Event Loss** shall not waive Underwriters' rights under this Policy or at law.

Coverage under this Insuring Clause I.D. 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**.

E. Immigration Practices Coverage

If purchased as indicated in Item 3. of the Declarations, Underwriters shall pay on behalf of the **Insureds Defense Costs** 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** and reported in writing to Underwriters in accordance with Clause VII.A. of the Policy Terms and Conditions. Coverage under this Insuring Clause I.E. shall not apply to **Loss**, other than **Defense Costs**.

F. OSHA Coverage

If purchased as indicated in Item 3. 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 24 hours of such **Work-Related Fatality** in accordance with Clause VII.E. of the Policy Terms and Conditions; 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 VII.E. of the Policy Terms and Conditions ; 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 VII.E. of the Policy Terms and Conditions.

The coverages provided under Insuring Clauses I.D., I.E. and I.F. are subject to the respective sublimits of liability indicated in Item 3. of the Declarations, such sublimits shall be part of, and not in addition to, the Aggregate Limit of Liability of this Policy.

II. DEFINITIONS

Wherever used in this Coverage Section in bold face type, the following definitions shall apply in place of, or where applicable in conjunction with, the definitions used in the Policy Terms and Conditions. Definitions not defined below, but appearing in bold face type in this Coverage Section shall have the meanings indicated in the Policy Terms and Conditions or, where applicable, the Wage and Hour Practices Liability Coverage Section.

- 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 against any of the **Insureds** by the Office of Federal Contract Compliance Programs, a Notice of Violation or Order to Show Cause;
 4. an arbitration or 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.F., an **OSHA Citation**.
- However, **Claim** does not include any labor or grievance arbitration or other proceeding pursuant to a collective bargaining agreement.
- D. "**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.
- E. "**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.
- F. "**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** (if the Third Party coverage is purchased);
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.

G. **"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 F.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 3. of the Declarations has been exhausted.

H. **"Employment Wrongful Act"** means:

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

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

If purchased as indicated in Item 3. of the Declarations, **Employment Wrongful Act** shall also include a **Third Party Wrongful Act**.

Employment 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.

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

- I. **“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.

- J. **“Inappropriate Employment Conduct”** means any actual or alleged:
 - 1. termination of an employment relationship, including constructive termination, in a manner which is alleged to have been against the law or wrongful;
 - 2. wrongful demotion, evaluation, deprivation of a career opportunity, or discipline;
 - 3. breach of an express written employment agreement;
 - 4. violation of the Family and Medical Leave Act;
 - 5. misrepresentation, false imprisonment, detention or malicious prosecution in connection with an employment decision;
 - 6. libel, slander, defamation of character or any invasion of right of privacy in connection with an employment decision;
 - 7. 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. **Privacy Violation**, subject to the applicable limit as shown in Item 3. of the Declarations. Such limit amount shall be part of, and not in addition to, the aggregate Limit of Liability of this Policy.

- 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. **“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 Policy.
- N. **“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**.
- O. **“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.
- P. **“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.
- Q. **“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**.
- R. **“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**.
- S. **“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**.
- T. "**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.
- U. "**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.
- V. "**Third Party Wrongful Act**" means any actual or alleged 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**.
- W. "**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.

III. EXCLUSIONS APPLICABLE TO THIS COVERAGE SECTION

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

- A. 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 Policy; 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;
- B. 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, that this Exclusion shall not apply to **Defense Costs** incurred in connection with such **Claim**;

- C. for a **Wage and Hour Wrongful Act**; provided, that in the event such **Claim** also alleges an **Employment Wrongful Act** otherwise covered by this Coverage Section and where the Wage and Hour Practices Liability Coverage Section is not purchased, then 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 **Employment Wrongful Act**;
- D. under Insuring Clause I.E., 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
- E. under Insuring Clause I.F., 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. SETTLEMENT AND DEFENSE

Underwriters may, with the consent of the **Insureds**, settle or compromise any **Claim** as they deem expedient. If the **Insureds** withhold consent to a settlement or compromise acceptable to the claimant and Underwriters, then Underwriters' liability for such **Claim** shall not exceed:

- A. the amount for which the **Claim** could have settled or compromised and the **Defense Costs** incurred as of the date such settlement or compromise was proposed to the **Insureds**; plus
- B. 80% of any **Loss** incurred after the date such settlement or compromise was proposed to the **Insureds**, with the remaining 20% of such **Loss** to be borne by the **Insureds** at their own risk and uninsured or the applicable Limit of Liability whichever is less.

**BEAZLEY WORKPLACE PROTECT - 2017
WAGE AND HOUR PRACTICES LIABILITY COVERAGE SECTION**

I. INSURING CLAUSES

Underwriters shall pay on behalf of the **Insureds** all **Loss** resulting from any **Claim** first made against any **Insured** during the **Policy Period** and reported in writing to Underwriters in accordance with Clause VII.A. of the Policy Terms and Conditions for a **Wage and Hour Wrongful Act**.

II. DEFINITIONS

Wherever used in this Coverage Section in bold face type, the following definitions shall apply in place of, or where applicable in conjunction with, the definitions used in the Policy Terms and Conditions. Definitions not defined below, but appearing in bold face type in this Coverage Section shall have the meanings indicated in the Policy Terms and Conditions or, where applicable, the Employment Practices Liability Coverage Section.

A. **“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 or arbitration proceeding initiated against any of the **Insureds**, commenced by the service of a complaint or similar pleading; or
3. an administrative proceeding initiated against any of the **Insureds** by or before any agency with authority over the **Insured Organization’s** wage and hour practices, including any proceeding by the U.S. Department of Labor or any similar federal, state or local governmental body.

However, **Claim** does not include notice by the U.S. Department of Labor or any similar federal, state or local governmental body of the intention to conduct an audit of the **Insured**.

B. **“Prior Claim”** means any **Claim** for a **Wage and Hour Wrongful Act** first made before the effective date of this Policy and/or any **Claim** identified on the **Application**.

C. **“Wage and Hour Wrongful Act”** means any actual or alleged violation of the Fair Labor Standards Act (except the Equal Pay Act or similar state or local pay equity laws or regulations) or any other federal, state or local law governing or relating to employee pay or classification practices, including payment of overtime, on-call time, minimum wage, information provided on pay stubs, tip credit issues, meal and break period laws, off-the clock work including donning and doffing claims or classification of workers, as well as other statutory violations such as violation of the Private Attorney Generals Act or unfair business practices statutes and common law violations, as long as such other statutory or common law violations are wholly derived from the same conduct underlying such violations.

III. EXCLUSIONS APPLICABLE TO THIS COVERAGE SECTION

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

- A. for failure to fund or perform any fiduciary obligation as respects any pension benefit plan, welfare benefit plan, health or other welfare benefit plan;
- B. for breach of, or payment under, any independent contractor agreement, or any type of employment contract or agreement;
- C. for deductions from an **Employee's** pay, or failure to reimburse or indemnify for loans to an **Employee**, mileage reimbursement, the furnishing of tools and equipment, the purchasing of uniforms and payment for maintenance and cleaning of uniforms, the employment of additional personnel or for any other business related expenses;
- D. for an **Employment Wrongful Act**; provided, that in the event such **Claim** also alleges a **Wage and Hour Wrongful Act** otherwise covered by this Coverage Section and where the Employment Practices Liability Coverage Section is not purchased, 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 **Wage and Hour Wrongful Act**;
- E. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any adjudicated fraudulent or criminal act on the part of any **Insured**;
- F. for actual or alleged violations of §212 of the Fair Labor Standards Act, which governs child labor; or
- G. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:
 1. any **Wage and Hour Wrongful Act** that happened or commenced prior to the Wage and Hour Retroactive Date set forth in Item 10. of the Declarations; and/or
 2. any **Wage and Hour Wrongful Act** that happened or commenced on or subsequent to the Wage and Hour Retroactive Date set forth in Item 10. of the Declarations and have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally or logically connected facts, circumstances, situations, events, transactions or causes as any **Wage and Hour Wrongful Act** that happened or commenced prior to the Wage and Hour Retroactive Date set forth in Item 10. of the Declarations.

IV. SETTLEMENT AND DEFENSE

Underwriters may, with the consent of the **Insureds**, settle or compromise any **Claim** as they deem expedient. If the **Insureds** withhold consent to a settlement or compromise acceptable to the claimant and Underwriters, then Underwriters' liability for such **Claim** shall not exceed:

- A. the amount for which the **Claim** could have settled or compromised and the **Defense Costs** incurred as of the date such settlement or compromise was proposed to the **Insureds**; plus
- B. 25% of any **Loss** incurred after the date such settlement or compromise was proposed to the **Insureds**, with the remaining 75% of such **Loss** to be borne by the **Insureds** at their own risk and uninsured or the applicable Limit of Liability whichever is less.

V. INTERRELATED WRONGFUL ACT COVERAGE

Clause II. **EXCLUSIONS APPLICABLE TO ALL COVERAGE SECTIONS** B.3. of the Policy Terms and Conditions, Clause III. **LIMITS OF LIABILITY AND RETENTIONS** E. of the Policy Terms and Conditions and Clause III. **EXCLUSIONS APPLICABLE TO THIS COVERAGE SECTION** G.2. of this Coverage Section shall not apply to any **Claim** first made against any **Insured** during the **Policy Period** for a **Wage and Hour Wrongful Act**, if such **Claim** involves the same **Wrongful Act** or **Interrelated Wrongful Acts** as those alleged in a **Prior Claim**, provided always that:

- A. the **Prior Claim** has been fully adjudicated to a final non-appealable resolution or settled prior to the effective date of this Policy and it was not reasonably expected by any **Executive Officer** that a subsequent **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** was likely to be made;
- B. the **Prior Claim** did not include allegations of a systemic **Wage and Hour Wrongful Act** and it was not reasonably expected by any **Executive Officer** that the **Prior Claim** would later result in a subsequent **Claim** alleging a systemic **Wage and Hour Wrongful Act**; or
- C. the **Prior Claim** was based upon the **Insured Organization's** pay practices that were later amended and the new pay practices form the basis of the **Claim** first made against any **Insured** during the **Policy Period**.