

# Carolina Casualty Insurance Company

A Stock Insurance Company

**NonProfit**  **ExecShield®**

**Management Liability Insurance Policy**

Policy Jacket

This Policy consists of:

- Declarations Page
- Policy Form
- Endorsements

In Witness Whereof, we have caused this policy to be executed and attested, and, if required by state law, this policy shall not be valid unless countersigned by our authorized representative.



President



Secretary

Service Office

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Berkley Select, on behalf of Carolina Casualty Insurance Company  
550 W. Jackson Boulevard, Suite 500  
Chicago, IL 60661  
Toll Free: (844) 465-6256 Fax: (312) 207-1933  
Email: [newclaim@berkleysselect.com](mailto:newclaim@berkleysselect.com)



Administrative Office

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Carolina Casualty Insurance Company

5011 Gate Parkway, Building 200, Suite 200,  
Jacksonville FL 32256

## **Have a complaint or need help?**

If you have a problem with a claim or your premium, call your insurance company or HMO first. If you can't work out the issue, the Texas Department of Insurance may be able to help.

Even if you file a complaint with the Texas Department of Insurance, you should also file a complaint or appeal through your insurance company or HMO. If you don't, you may lose your right to appeal.

### **Carolina Casualty Insurance Company**

To get information or file a complaint with your insurance company or HMO:

**Call: Berkley Select at (844) 465-6256**

Email: [regulatory@berkleysselect.com](mailto:regulatory@berkleysselect.com)

Mail: 11201 Douglas Ave., Urbandale, IA 50322

### **The Texas Department of Insurance**

To get help with an insurance question or file a complaint with the state:

**Call: 1-800-252-3439**

Online: [www.tdi.texas.gov](http://www.tdi.texas.gov)

Email: [ConsumerProtection@tdi.texas.gov](mailto:ConsumerProtection@tdi.texas.gov)

Mail: MC 111-1A, P.O. Box 149091, Austin, TX 78714-9091

# NonProfit ExecShield®

## Management Liability Insurance Policy

NOTICE: THIS POLICY PROVIDES COVERAGE ON A CLAIMS MADE AND REPORTED BASIS SUBJECT TO ITS TERMS. THIS POLICY APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE INSURED AND REPORTED TO THE INSURER DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD THAT MAY APPLY.

PLEASE READ THE POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.

IF INDICATED IN ITEM 4. A. BELOW, THE LIMIT OF LIABILITY AVAILABLE TO PAY DAMAGES OR SETTLEMENTS SHALL BE REDUCED AND MAY BE COMPLETELY EXHAUSTED BY AMOUNTS INCURRED AS LEGAL DEFENSE COSTS. THE INSURER SHALL NOT BE LIABLE FOR LEGAL COSTS OF DEFENSE OR FOR THE AMOUNT OF ANY JUDGMENT OR SETTLEMENT AFTER EXHAUSTION OF THE LIMIT OF LIABILITY.

Whenever printed in this Declarations Page, the boldface type terms shall have the same meanings as indicated in the **Policy**.

**Item 1. Name and Address of Named Insured:** **Policy Number: DCP-1746207-P4**  
Texas Association of Health Underwriters  
1201 North Watson Road, Suite 287  
Arlington, TX 76006

**Item 2. Policy Period:** From May 1, 2022 (inception date) to May 1, 2023 (expiration date)  
*(Both dates at 12:01 a.m. Standard Time at the address of the **Named Insured**)*

**Item 3. Purchased Coverage Sections:**

i. Directors, Officers and Organization Liability Insurance Coverage Section:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
ii. Employment Practices Liability Insurance Coverage Section:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Third Party Wrongful Act</b> Liability Coverage included:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
iii. Fiduciary Liability Insurance Coverage Section:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

**Item 4. Cost of Defense for the Policy Period:**

A. **Costs of Defense** Reduce the Limit of Liability in Item 5. below

B. **Costs of Defense** in Addition the Limit of Liability in Item 5. below

**Item 5. Limits of Liability for the Policy Period:**

A. Shared Policy Aggregate Limit of Liability for all **Coverage Sections** purchased as indicated above. Not Applicable

OR

B. Separate Aggregate Limit of Liability for each **Coverage Sections:**

1. Directors, Officers and Organization Liability Insurance Coverage Section:	\$1,000,000
2. Employment Practices Liability Insurance Coverage Section:	\$1,000,000
3. Fiduciary Liability Insurance Coverage Section:	Not Applicable

**Item 6. Applicable Deductibles:**

- i. Directors, Officers and Organization Liability Insurance Coverage Section:
  - A. **Insured Person** Non-Indemnifiable: \$0
  - B. **Insured Person** Indemnifiable: \$0
  - C. **Insured Entity** Liability: \$2,500
- ii. Employment Practices Liability Insurance Coverage Section: \$2,500
- iii. Fiduciary Liability Insurance Coverage Section: Not Applicable

**Item 7. Premium:**

\$1,023

Terrorism coverage is included for \$0

**Item 8. Prior Acts Dates:**

- i. Directors, Officers and Organization Liability Insurance Coverage Section Prior Acts Date: Not Applicable
- ii. Employment Practices Liability Insurance Coverage Section Prior Acts Date: Not Applicable
- iii. Fiduciary Liability Insurance Coverage Section Prior Acts Date: Not Purchased

**Item 9. Forms and Endorsements attached at inception:**

Policy Form: NP 23300- rev0417 / CT 22330- rev0417; EPL 23300- rev0417

1	265-	0220	Policyholder Disclosure – Notice of Terrorism Insurance Coverage
2	266-	0220	Cap on Losses from Certified Acts of Terrorism
3	701-CR-	0419	CLAIM REPORTING PROCEDURES
4	CT 230903-	rev0417	Identity Theft Expense Supplemental Coverage
5	CT 230910-	rev0417	Crisis Management Emergency Response Expense Supplemental Coverage
6	CT 230911-	rev0417	Workplace Violence Counseling Expense Supplemental Coverage
7	CT 230914-	rev0417	Violent Act Event and Employee Death Benefit Supplemental Coverage
8	EPL 233026-	rev0417	Costs of Defense Sub-Limit for Immigration Reform Control Act (IRCA) Investigations
9	EPL 233102-	rev0318	Privacy Violation Coverage
10	NP 234354-	rev0417	Professional Services Exclusion
11	NP 234390-	rev0417	Anti-Trust Exclusion
12	NP 234400-	rev0417	Intellectual Property Exclusion
13	NP-TX-	0417	Texas Amendatory Endorsement

The Nonprofit Management Liability Insurance **Policy** shall constitute the contract between the **Insureds** and the **Insurer**.

## POLICYHOLDER DISCLOSURE NOTICE OF TERRORISM INSURANCE COVERAGE

Coverage for acts of terrorism, as defined in the Terrorism Risk Insurance Act, as amended, (the "Act"), is included in your policy. As defined in Section 102(1) of the Act: The term "act of terrorism" means any act that is certified by the Secretary of the Treasury—in consultation with the Secretary of Homeland Security, and the Attorney General of the United States—to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion. Under your coverage, any losses resulting from certified acts of terrorism may be partially reimbursed by the United States Government under a formula established by the Act. However, your policy may contain other exclusions which might affect your coverage, such as an exclusion for nuclear events. Under the formula, the United States Government generally reimburses 80% beginning on January 1, 2020, of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage. The Act contains a \$100 billion cap that limits U.S. Government reimbursement as well as insurers' liability for losses resulting from certified acts of terrorism when the amount of such losses exceeds \$100 billion in any one calendar year. If the aggregate insured losses for all insurers exceed \$100 billion, your coverage may be reduced.

The portion of your annual premium that is attributable to coverage for acts of terrorism as defined in the Act is \$0, and does not include any charges for the portion of losses covered by the United States government under the Act.

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

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## CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM

This endorsement modifies insurance provided under the following:

DIRECTORS, OFFICERS AND CORPORATE LIABILITY INSURANCE COVERAGE SECTION  
DIRECTORS, OFFICERS AND ORGANIZATION LIABILITY INSURANCE COVERAGE SECTION  
FIDUCIARY LIABILITY INSURANCE COVERAGE SECTION  
EXCESS INSURANCE POLICY  
GENERAL LIABILITY COVERAGE PART  
COMMUNITY ASSOCIATION LEADERS PROFESSIONAL LIABILITY INSURANCE POLICY – DIRECTORS AND OFFICERS LIABILITY COVERAGE  
EMERGENCY MEDICAL SERVICES GENERAL LIABILITY COVERAGE PART

In consideration of the premium paid for this Policy, it is amended as follows:

If aggregate insured losses attributable to terrorist acts certified under the federal Terrorism Risk Insurance Act exceed \$100 billion in a calendar year and the insurer has met its insurer deductible under the Terrorism Risk Insurance Act, the Insurer shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

"Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in consultation with the Secretary of Homeland Security and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

1. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for any loss that is otherwise excluded under this Policy.

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Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

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## BERKLEY SELECT

### CLAIM REPORTING PROCEDURES

In the event of an incident which may result in a claim, an actual claim or your receipt of suit papers, please follow the procedures outlined below:

#### NOTICE OF EACH INCIDENT, CLAIM OR SUIT SHOULD IMMEDIATELY BE REPORTED TO:

**BERKLEY SELECT CLAIMS DEPARTMENT**  
on behalf of Carolina Casualty Insurance Company  
550 W. Jackson Blvd., Suite 500  
Chicago, IL 60661  
Fax: (312) 207-1933  
E-mail: [newclaim@berkleyselect.com](mailto:newclaim@berkleyselect.com)  
Online: [www.berkleyselect.com/claims/report-claim](http://www.berkleyselect.com/claims/report-claim)

**TO ENABLE US TO RESPOND MORE QUICKLY AND EFFICIENTLY**, please fax or email any pertinent details of the claim directly to our attention.

#### PLEASE BE SURE TO INCLUDE:

- **Your Name, Address and Phone Number;**
- **Your Policy Number and the Policy Period;**
- **A written narrative of the circumstances surrounding the claim or potential claim;**
- **Names and addresses of the claimant;**
- **Details of the any underlying claim, including current status and the amount in controversy or relief demanded.**
- **If you are submitting the report by mail or fax, please also include any letters of demand or any legal papers which you have received regarding the claim.**

**Please provide your professional liability insurance agent a copy of all claim notices and correspondence sent to Berkley Select.**

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

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## Identity Theft Expense Supplemental Coverage

In consideration of the premium paid for this **Policy**, it is amended by the addition of the following:

1. **Identity Theft Expense Coverage**

The **Insurer** shall reimburse any present director, trustee or officer of the **Named Insured** up to a maximum aggregate limit of \$10,000 per **Policy Period**, for **Identity Theft Expense** incurred in specific response to an **Identity Theft** first discovered and reported to the **Insurer** during the **Policy Period** pursuant to paragraph 4. below, provided; however, that the **Identity Theft** began to occur after the inception date of the first Nonprofit Management Liability Insurance Policy issued by the **Insurer** to the **Named Insured**.

No Deductible shall apply to this coverage and any payments made hereunder shall not reduce the Limits of Liability stated in Item 5. of the Declarations.

2. Solely for purpose of the coverage provided by this endorsement for **Identity Theft Expense**, section III. Definitions of the Common Policy Terms and Conditions Section of this Policy is amended by the addition of the following:

**Identity Theft** means the act of knowingly transferring or using, without lawful authority, personally identifiable information of a present director, trustee or officer (or spouse thereof) of the **Named Insured** with the intent to commit, aid, or abet any unlawful activity that constitutes a violation of federal law or a felony under any applicable state or local law.

**Identity Theft Expense** means:

1. the expenses incurred to notarize affidavits or similar documents attesting to fraud required by financial institutions or similar credit grantors or credit agencies, or
2. the expenses incurred for certified mail to law enforcement agencies, credit agencies, financial institutions or similar credit grantors, or
3. loan application fees for re-applying for a loan or loans when the original application is rejected solely because the lender received incorrect credit information.

3. Solely for purpose of the coverage provided by this endorsement for **Identity Theft Expense**, section V. Limits of Liability and Deductibles of the Common Policy Terms and Conditions Section of this Policy is amended by the addition of the following:

V. If any **Identity Theft Expense** is covered under this endorsement and under any other **Coverage Section** or endorsement to this **Policy**, the largest applicable limit shall apply. In no event shall multiple limits apply to coverage which may be duplicated within this **Policy**. Additionally, if this **Policy** and any other policy or coverage issued by the **Insurer** or any affiliate of the **Insurer**, apply to the same occurrence, offense, wrongful act, accident or loss, the maximum limit of liability or coverage under all such policies and coverage combined shall not exceed the highest applicable limit under any one policy or coverage.

V. The coverage provided by this endorsement shall be excess of, and shall not contribute with, any other valid and collectible insurance policy (other than a policy that is issued specifically as excess of the insurance afforded by this coverage section); regardless of whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise. The coverage provided by this **Policy** shall be excess over any other policy under which another insurer has a duty to defend a claim for which this **Policy** may be obligated to pay as a result of loss.

4. As a condition precedent to their rights to coverage under this endorsement for **Identity Theft Expense**, the Insured shall give the **Insurer** written notice of any **Identity Theft** first discovered by the **Insureds** during the **Policy Period**, as soon as practicable, but in no event later than 30 days after the discovery of the **Identity Theft**. Further, the **Insured** shall furnish to the **Insurer** proof of loss, duly sworn to, with full particulars, no later than 90 days after discovery of such **Identity Theft**.

5. The coverage provided by this endorsement for **Identity Theft Expense** does not include any claim adjustment costs incurred by any Insured, including any fees incurred by retaining counsel, a public adjuster or appraiser.

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

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## Crisis Management Emergency Response Expense Supplemental Coverage

In consideration of the premium paid for this **Policy**, it is amended by the addition of the following:

**1. Crisis Management Emergency Response Expense Coverage**

The **Insurer** shall reimburse the **Named Insured** up to a maximum aggregate limit of \$25,000 per **Policy Period** for **Crisis Management Emergency Response Expense** incurred by the **Named Insured** as a direct result of a **Crisis Event** that occurs during the **Policy Period** and is reported to the **Insurer** pursuant to paragraph 5. below.

Any payments made hereunder shall not reduce the Limits of Liability stated in Item 5. of the Declarations.

**2. Solely for purpose of the coverage provided by this endorsement for any **Crisis Management Emergency Response Expense**, section III. Definitions of the Common Policy Terms and Conditions Section of this **Policy** is amended by the addition of the following:**

**Crisis Event** means the public announcement that:

1. an accident or other event resulting in the death or **Serious Bodily Injury** to 3 or more persons, or
  2. the accidental discharge of pollutants;
- occurred on the **Named Insured's** premises or at an event sponsored by the **Named Insured**.

**Crisis Management Advisor** means any service provider hired by the **Named Insured** and approved in writing by the **Insurer**. The **Insurer's** consent shall not be unreasonably withheld.

**Crisis Management Emergency Response Expense** means expenses for services provided by a **Crisis Management Advisor** and incurred by the **Named Insured** during the **Policy Period**, provided, however, that **Crisis Management Emergency Response Expenses** shall not include:

1. compensation, fees, benefits, overhead, charges or expenses of any **Insured**, and/or
2. any expenses that are covered or reimbursable to the **Named Insured** under any other valid and collectible insurance.

**Serious Bodily Injury** means any injury to a person that creates a substantial risk of death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

**3. Solely for the purpose of the coverage provided by this endorsement for any **Crisis Management Emergency Response Expense**, section V. D. Deductibles of the Common Policy Terms and Conditions Section of this **Policy** is amended by the addition of the following:**

V. D. The **Insurer** shall only be liable for the amount of **Crisis Management Emergency Response Expense** arising from a covered **Crisis Event** and which is in excess of the Deductible amount of \$2,500. Such Deductible amount shall be borne by the **Insured** with regard to all **Crisis Management Emergency Response Expense** arising thereunder.

**4. Solely for purpose of the coverage provided by this endorsement for any **Crisis Management Emergency Response Expense**, section V. Limits of Liability and Deductibles of the Common Policy Terms and Conditions Section of this **Policy** is amended by the addition of the following:**

V. If any **Crisis Management Emergency Response Expense** is covered under this endorsement and under any other **Coverage Section** or endorsement to this **Policy**, the largest applicable limit shall apply. In no event shall multiple limits apply to coverage which may be duplicated within this **Policy**. Additionally, if this **Policy** and any other policy or coverage issued by the **Insurer** or any affiliate of the **Insurer**, apply to the same occurrence, offense, wrongful act, accident or loss, the maximum limit of liability or coverage under all such policies and coverage combined shall not exceed the highest applicable limit under any one policy or coverage.

V. The coverage provided by this endorsement shall be excess of, and shall not contribute with, any other valid and collectible insurance policy (other than a policy that is issued specifically as excess of the insurance afforded by this

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coverage section); regardless of whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise. The coverage provided by this **Policy** shall be excess over any other policy under which another insurer has a duty to defend a claim for which this **Policy** may be obligated to pay as a result of loss.

5. As a condition precedent to their rights to coverage under this endorsement for any **Crisis Management Emergency Response Expense**, the **Insured** shall give the **Insurer** written notice of any **Crisis Event** that occurs during the **Policy Period**, as soon as practicable, but in no event later than 30 days after the occurrence of the **Crisis Event**. Further, the **Insured** shall furnish to the **Insurer** proof of loss, duly sworn to, with full particulars, no later than 90 days after the occurrence of such **Crisis Event**.
6. The coverage provided by this endorsement for any **Crisis Management Emergency Response Expense** does not include any claim adjustment costs incurred by any **Insured**, including any fees incurred by retaining counsel, a public adjuster or appraiser.

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

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## Workplace Violence Counseling Expense Supplemental Coverage

In consideration of the premium paid for this **Policy**, it is amended by the addition of the following:

1. **Workplace Violence Counseling Coverage**

The **Insurer** shall reimburse the **Insured Entity** up to a maximum aggregate limit of \$25,000 per **Policy Period** for **Workplace Violence Counseling Expense** incurred by the **Insured Entity** as a direct result of a **Workplace Violence Event** that occurs during the **Policy Period** at any of the **Insured's** premises and is reported to the **Insurer** pursuant to paragraph 4. below.

No Deductible shall apply to this coverage and any payments made hereunder shall not reduce the Limits of Liability stated in Item 5. of the Declarations.

2. Solely for purpose of the coverage provided by this endorsement for any **Workplace Violence Counseling Expense**, the following defined terms are added to section III. Definitions of the Common Policy Terms and Conditions Section of this **Policy**:

**Workplace Violence Counseling Expense** means the cost of emotional counseling incurred as a direct result of any director, trustee, officer, or employee of an **Insured Entity** resulting from **Workplace Violence**.

**Workplace Violence Event** means any intentional use of bodily force by any natural person with intent to cause harm and which directly results in injury or death of a person while on the **Insured Entity's** premises.

3. Solely for purpose of the coverage provided by this endorsement for any **Workplace Violence Counseling Expense**, section V. Limits of Liability and Deductibles of the Common Policy Terms and Conditions Section of this **Policy** is amended by the addition of the following:

V. If any **Workplace Violence Counseling Expense** is covered under this endorsement and under any other **Coverage Section** or endorsement to this **Policy**, the largest applicable limit shall apply. In no event shall multiple limits apply to coverage which may be duplicated within this **Policy**. Additionally, if this **Policy** and any other policy or coverage issued by the **Insurer** or any affiliate of the **Insurer**, apply to the same occurrence, offense, wrongful act, accident or loss, the maximum limit of liability or coverage under all such policies and coverage combined shall not exceed the highest applicable limit under any one policy or coverage.

V. The coverage provided by this endorsement shall be excess of, and shall not contribute with, any other valid and collectible insurance policy (other than a policy that is issued specifically as excess of the insurance afforded by this coverage section); regardless of whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise. The coverage provided by this **Policy** shall be excess over any other policy under which another insurer has a duty to defend a claim for which this **Policy** may be obligated to pay as a result of loss.

4. As a condition precedent to their rights to coverage under this endorsement for any **Workplace Violence Counseling Expense**, the **Insured** shall give the **Insurer** written notice of any **Workplace Violence Counseling Expense** incurred during the **Policy Period**, as soon as practicable, but in no event later than 30 days after the **Workplace Violence Event**. Further, the **Insured** shall furnish to the **Insurer** proof of loss, duly sworn to, with full particulars, no later than 90 days after the occurrence of such **Workplace Violence Event**.

5. The coverage provided by this endorsement for **Workplace Violence Counseling Expense** does not include any claim adjustment costs incurred by any **Insured**, including any fees incurred by retaining counsel, a public adjuster or appraiser.

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

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## Violent Act Event and Employee Death Benefit Supplemental Coverage

In consideration of the premium paid for this **Policy**, it is amended by the addition of the following:

1. **Violent Act Event Coverage**

The **Insurer** shall reimburse the **Insureds** for **Loss** that the **Insureds** are legally obligated to pay arising from a **Claim** first made against the **Insureds** during the **Policy Period** and reported to the **Insurer** pursuant to paragraph 8. below for a **Violent Act Event** that occurs during the **Policy Period**.

2. **Employee Death Benefit Coverage**

The **Insurer** shall pay the **Named Insured** up to a maximum limit of \$10,000 per **Policy Period** for a death benefit to the estate of an **Employee** who dies while acting within the course and scope of their employment with the **Insured Entity** as a result of a **Violent Act Event** that occurs during the **Policy Period**.

This coverage shall not apply if the **Employee** committed or instigated the **Violent Act Event** that caused the **Employee's** death.

No Deductible shall apply to either of the above coverages.

3. Solely for purposes of the coverage provided by this endorsement for a **Violent Act Event** and/or Employee Death Benefit Coverage, the defined terms **Claim** and **Loss** of section III. Definitions of the Common Policy Terms and Conditions Section of this **Policy** are deleted and replaced with the following:

**Claim** means a written demand for monetary or non-monetary relief brought by or on behalf of a current or former **Employee**; provided, however, the term **Claim** shall not include any grievance or arbitration subject to a collective bargaining agreement. A **Claim** shall be deemed to have been first made at the time notice of the **Claim** is first received by any **Insured**.

**Loss** means compensatory damages, monetary damages, statutory damages, multiplied or punitive damages (where permitted by law), judgments, settlements, statutory attorney's fees and **Costs of Defense** arising out of a **Claim** alleging a **Violent Act Event**.

4. Solely with respect to the coverage provided by this endorsement for a **Violent Act Event** and/or Employee Death Benefit Coverage, the following defined terms are added to section III. Definitions of the Common Policy Terms and Conditions Section of this **Policy**:

**Employee** means:

1. an individual whose labor or service is engaged by and directed by an **Insured Entity**, including part-time, leased, seasonal and temporary individuals, or
2. an individual who is a volunteer, intern, committee or staff member or independent contractor for the **Insured Entity**.

An individual's employment status shall be determined as of the date of the **Violent Act Event**.

**Violent Act Event** means the intentional use of force by any natural person with intent to cause harm and which directly results in injury or death of a person while on the **Insured Entity's** premises.

5. Solely for purpose of the coverage provided by this endorsement for a **Violent Act Event** and/or Employee Death Benefit Coverage, section IV. Exclusions of the Common Policy Terms and Conditions Section of this **Policy** is amended by the addition of the following:

- IV. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged violation of any state or federal antitrust law or anti-racketeering or organized crime law, including, but not limited to, the Racketeer Influenced and Corrupt Organizations Act, 18. U.S.C. 1961, including amendments thereto;
- IV. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged transmission of, or infection caused by the transmission of Acquired Immune Deficiency Syndrome (AIDS) or any AIDS-related virus to any person, however caused;
- IV. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged willful violation of a penal statute or ordinance committed by an **Insured** or with an **Insured's** consent; provided, however, the **Insurer** will defend such **Claims** against an **Insured** until it is judicially determined that the

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- Insured** willfully violated the penal statute or ordinance;
- IV. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged criminal proceedings of any kind arising out of a **Violent Act Event**;
  - IV. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged a **Violent Act Event** that involves, is based upon or arises out of bodily injury caused by any medical care or treatment performed by an **Insured**;
  - IV. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged ransom, monetary or non-monetary demands, costs or expenses arising from actual, alleged or threatened kidnapping, hostage taking, or extortion;
  - IV. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged **Violent Act Event** that occurs before the inception date of the first **Violence Act Event** and Employee Death Benefit Supplemental Coverage Endorsement that was issued by the **Insurer** to the **Named Insured**.
6. Solely for purpose of the coverage provided by this endorsement for a **Violent Act Event** and/or Employee Death Benefit, Coverage section V. Limits of Liability and Deductibles of the Common Policy Terms and Conditions Section of this **Policy** is amended by the addition of the following:
- V. If a **Violent Act Event** and/or Employee Death Benefit is covered under this endorsement and under any other **Coverage Section** or endorsement to this **Policy**, the largest applicable limit shall apply. In no event shall multiple limits apply to coverage which may be duplicated within this **Policy**. Additionally, if this **Policy** and any other policy or coverage issued by the **Insurer** or any affiliate of the **Insurer**, apply to the same occurrence, offense, wrongful act, accident or loss, the maximum limit of liability or coverage under all such policies and coverage combined shall not exceed the highest applicable limit under any one policy or coverage.
  - V. The coverage provided by this endorsement shall be excess of, and shall not contribute with, any other valid and collectible insurance policy (other than a policy that is issued specifically as excess of the insurance afforded by this coverage section); regardless of whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise. The coverage provided by this **Policy** shall be excess over any other policy under which another insurer has a duty to defend a claim for which this **Policy** may be obligated to pay as a result of loss.
7. Solely for the purpose of the coverage provided by this endorsement for a **Violent Act Event** and/or Employee Death Benefit Coverage, section V. A. Limits of Liability of the Common Policy Terms and Conditions Section of this **Policy** is amended by the addition of the following:
- V. A. The **Insurer** shall pay the **Named Insured** up to a maximum limit of \$50,000 per **Policy Period** for all **Loss** and **Employee Death Benefit** coverage provided by this endorsement, which amount shall be part of and not in addition to the Limits of Liability stated in Item 5. of the Declarations.
8. As a condition precedent to their rights to coverage under this endorsement for a **Violent Act Event** and/or Employee Death Benefit Coverage, the **Insured** shall give the **Insurer** written notice of any **Violent Act Event** that occurs during the **Policy Period**, as soon as practicable, but in no event later than 30 days after the **Violent Act Event**. Further, the **Insured** shall furnish to the **Insurer** proof of loss, duly sworn to, with full particulars, no later than 90 days after the occurrence of such **Violent Act Event**.

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

Insured Texas Association of Health Underwriters	Policy Number DCP-1746207-P4
Effective Date of This Endorsement 05/01/2022	Authorized Representative

## Costs of Defense Sub-Limit for Immigration Reform Control Act (IRCA) Investigations

In consideration of the premium paid for this **Policy**:

1. Section I. Insuring Agreements of the Employment Practices Liability Insurance Coverage Section of this **Policy** is amended by the addition of the following:

**I. Costs of Defense for IRCA Investigations**

This **Policy** shall pay on behalf of the **Insureds** the **Costs of Defense** up to the maximum sub-limit of liability of \$25,000 arising from any **IRCA Investigation** request first received by the **Insureds** during the **Policy Period** and reported to the **Insurer** in accordance with section VII. of the Common Policy Terms and Conditions Section of this **Policy**, for any actual or alleged **IRCA Wrongful Act** committed subsequent to the **Prior Acts Date**.

Such sub-limit shall be part of, and not in addition to, the Limit of Liability applicable to the Employment Practices Liability Coverage Section.

With respect to an **IRCA Investigation**, the **Insurer** shall not be liable for any **Loss** other than **Costs of Defense**.

2. Solely with respect to the coverage provided by this endorsement for **Costs of Defense for IRCA Investigations**, the defined terms **Claim**, **Loss** and **Wrongful Act** of section III. Definitions of the Employment Practices Liability Insurance Coverage Section of this **Policy** are replaced with the following:

**Claim** means an **IRCA Investigation**.

**Loss** means **Costs of Defense**.

**Wrongful Act** means an **IRCA Wrongful Act**.

3. Solely with respect to the coverage provided by this endorsement for **Costs of Defense for IRCA Investigations**, the following defined terms are added to section III. Definitions of the Employment Practices Liability Insurance Coverage Section this **Policy**:

**Immigration Reform Control Act Investigation (IRCA Investigation)** means

1. an investigation of an **Insured Entity** by any governmental agency, arising from an **IRCA Wrongful Act**; or
2. an administrative or regulatory proceeding brought or initiated by or before a federal, state, local or foreign agency, arising from an **IRCA Wrongful Act**; or
3. a civil proceeding brought before a federal, state or local court, which is brought or maintained by the Attorney General, or similar government agency, against an **Insured**, arising from an **IRCA Wrongful Act**;

provided, however, the term **IRCA Investigation** shall not include any grievance or arbitration based upon, arising out of, directly or indirectly resulting from, or in consequence of, or in any way involving a collective bargaining agreement.

**Immigration Reform Control Act Wrongful Act (IRCA Wrongful Act)** means an actual or alleged violation of the Immigration Reform Control Act (IRCA) committed by an **Insured**, including but not limited to, allegedly hiring or harboring illegal aliens.

4. Solely for purpose of the coverage provided by this endorsement for **Costs of Defense for IRCA Investigations**, section V. Limits of Liability and Deductibles of the Common Policy Terms and Conditions Section of this **Policy** is amended by the addition of the following:

- V. If any **IRCA Wrongful Act** covered under this endorsement is covered in whole or in part under any other valid insurance coverage, then subject to the Limit of Liability of this endorsement, the **Insurer** shall not be liable for a greater proportion of the **Costs of Defense** from such **Claim** than the Limit of Liability under this endorsement bears to the total applicable Limit of Liability of all such valid coverage.

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

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## Privacy Violation Coverage

In consideration of the premium paid for this **Policy** it is amended as follows:

- Section I. Insuring Agreement of the Employment Practices Liability Insurance Coverage Section of this **Policy** is amended by the addition of the following:

- Employee Privacy Violation Coverage**

This **Policy** shall pay on behalf of the **Insureds** all **Loss** up to the maximum sub-limit of liability of \$25,000 arising from any **Privacy Violation Claim** that occurs during the **Policy Period** and is reported to the **Insurer** in accordance with section VII. of the Common Policy Terms and Conditions Section of this **Policy**, for any actual or alleged **Privacy Violation Wrongful Act** committed subsequent to the **Prior Acts Date**.

Such sub-limit shall be part of, and not in addition to, the Limit of Liability applicable to the Employment Practices Liability Coverage Section.

- Solely with respect to the coverage provided by this endorsement, the defined terms **Claim** and **Wrongful Act** of section III. Definitions of the Employment Practices Liability Insurance Coverage Section of this **Policy** are replaced with the following:

**Claim** means a **Privacy Violation Claim**.

**Wrongful Act** means a **Privacy Violation Wrongful Act**.

- Solely with respect to the coverage provided by this endorsement, section III. Definitions of the Employment Practices Liability Insurance Coverage Section of this **Policy** is amended by the addition of the following:

**Personal Information** means an **Employee** or applicant's name in combination with one or more of the following:

- information concerning that individual that constitutes "non-public personal information" as defined in the Gramm-Leach-Bliley Act of 1999, including amendments thereto; or
- medical or health care information concerning that individual, including "protected health information" as defined in the Health Insurance Portability and Accountability Act of 1996, including amendments thereto, or
- that individual's social security number, driver's license or state identification number, credit, debit or other financial account numbers and associated security codes, access codes, passwords or personal identification numbers; or
- that individual's biometric data, identifiers and/or information, including but not limited to, any unique biological, genetic, behavioral or physiological traits or characteristics by which that individual can be identified.

**Privacy Policy** means the internal or publicly accessible written documents that set forth the **Insured Entity's** policies, standards and procedures for collection, use, disclosure, sharing, dissemination and correction or supplementation of, and access to, **Personal Information**.

**Privacy Violation Claim** means:

- a written demand for monetary or non-monetary relief, brought and maintained by or on behalf of a **Claimant** against an **Insured**, arising from a **Privacy Violation Wrongful Act**; or
- an administrative or regulatory investigation or proceeding brought or initiated by or before a federal, state, local or foreign agency, which is brought and maintained by or on behalf of a **Claimant** against an **Insured**, arising from a **Privacy Violation Wrongful Act**; or
- a written request made by a **Claimant** to the **Named Insured** to toll or waive the statute of limitations for any **Privacy Violation Wrongful Act**; or
- a civil proceeding brought before a federal, state or local court, which is brought or maintained by or on behalf of a **Claimant** against an **Insured** arising from a **Privacy Violation Wrongful Act**;

provided, however, the term **Privacy Violation Claim** shall not include any grievance or arbitration based upon, arising out of, directly or indirectly resulting from, or in consequence of, or in any way involving a collective bargaining agreement.

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

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**Privacy Violation Wrongful Act** means:

1. an **Insured's** failure to prevent theft of **Personal Information** that is in the care, custody or control of the **Insured Entity**, or an independent contractor that is holding or processing such information on behalf of the **Insured Entity**;
2. the **Insured Entity's** failure to timely disclose an incident or event triggering a violation of any Breach Notice Law requiring notice to **Employees** or applicants whose **Personal Information** was accessed or may reasonably have been accessed by an unauthorized person; or
3. failure by an **Insured** to comply with that part of a **Privacy Policy** that specifically:
  - a. prohibits or restricts the **Insured Entity's** disclosure, sharing or selling of **Personal Information**;
  - b. requires the **Insured Entity** to provide access to **Personal Information** or to correct incomplete or inaccurate **Personal Information** after a request is made by an **Employee** or applicant; or
  - c. mandates procedures and requirements to prevent the loss of **Personal Information**.
4. Solely for the purpose of coverage provided by this endorsement, section V. Other Insurance of the Employment Practices Liability Insurance Coverage Section of this **Policy** is amended by the addition of the following:
  - V. a **Privacy Violation Claim** shall be excess of, and shall not contribute with, any other valid and collectible insurance policy (other than a policy that is issued specifically as excess of the insurance afforded by this coverage section), regardless of whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise.

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

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## Professional Services Exclusion

In consideration of the premium paid for this **Policy**, section IV. Exclusions of the Directors, Officers and Organization Liability Insurance Coverage Section of this **Policy** is amended by the addition of the following:

- IV. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving the performance of any professional services for others, and caused by any act, error or omission.

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

Insured Texas Association of Health Underwriters	Policy Number DCP-1746207-P4
Effective Date of This Endorsement 05/01/2022	Authorized Representative

## Anti-Trust Exclusion

In consideration of the premium paid for this **Policy**, section IV. Exclusions of the Directors, Officers and Organization Liability Insurance Coverage Section of this **Policy** is amended by the addition of the following:

- IV. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged violation of any federal or state statutes enacted to protect trade or commerce from unlawful restraints and/or monopolies, or any combination thereof, or the violation of any common law rule or law which prohibits unlawful restraints and/or monopolies in trade or commerce.

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

Insured Texas Association of Health Underwriters	Policy Number DCP-1746207-P4
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## Intellectual Property Exclusion

In consideration of the premium paid for this **Policy** it is amended as follows:

1. Section IV. Exclusions of the Directors, Officers and Organization Liability Insurance Coverage Section of this **Policy** is amended by the addition of the following:
  - IV. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged:
    1. plagiarism or piracy;
    2. infringement of copyright, patent, title or slogan;
    3. idea misappropriation; and/or
    4. intellectual property rights.
2. The defined term **Personal Injury** in Section III. Definitions of the Directors, Officers and Organization Liability Insurance Coverage Section of this **Policy** is deleted in its entirety and replaced with the following:

**Personal Injury** means any actual or alleged defamation, invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, or malicious prosecution.

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

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## Texas Amendatory Endorsement

This **Policy**, including any **Application**, is hereby amended to the extent necessary to incorporate Texas Insurance Code Chapter 705.004, the provision of which shall supersede anything to the contrary.

- (a) An insurance policy provision that states that false statements made in the application for the policy or in the policy make the policy void or voidable:
  - (1) has no effect; and
  - (2) is not a defense in a suit brought on the policy.
- (b) Subsection (a) does not apply if it is shown at trial that the matter misrepresented:
  - (1) was material to the risk; or
  - (2) contributed to the contingency or event on which the policy became due and payable.
- (c) It is a question of fact whether a misrepresentation made in the application for the policy or in the policy itself was material to the risk or contributed to the contingency or event on which the policy became due and payable.

In consideration of the premium paid for this **Policy**, the Common Policy Terms and Conditions Section of this **Policy** is amended to the extent necessary and supersedes anything to the contrary:

1. Section II. A. Optional Extended Reporting Period sub-paragraph 7. is amended by deleting the phrase “and any deductible obligations met by the **Insureds**.”
2. Section IV. Exclusions is amended by the addition of the following:
  - IV. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any **Wrongful Act**, fact, circumstances or situation involving any **Insured** which, prior to the inception date of the first policy issued by the **Insurer** (or its subsidiary or affiliated insurers) to the **Named Insured** of which this **Policy** is a direct renewal or replacement, an **Insured** had knowledge and from which the **Insured** could reasonably expect to result in a **Claim** or **Loss**.
3. Solely with respect to **Loss** covered under the Directors, Officers and Organization Liability Insurance Coverage Section of this **Policy**, section IV. Exclusions B. of the Common Policy Terms and Conditions Section of this **Policy** is deleted in its entirety and replaced with the following:
  - IV. B. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged seepage, pollution or contamination of any kind; provided, however, this exclusion shall not apply to any **Claim** brought against any **Insured Person** for **Loss** otherwise covered by this **Policy** pursuant to a derivative action;
4. Section V. D. Deductibles 2. is amended by deleting the sentence “If the **Insurer** brings suit to collect the Deductible, then the **Insured** responsible to pay the applicable Deductible also shall pay the legal fees, costs and expenses incurred by the **Insurer** to collect the Deductible.”
 

Section VI. D. Settlements is amended by the addition of the following:

  - VI. D. An **Insurer** shall notify the **Named Insured** in writing of:
    1. any initial offer to compromise or settle a **Claim** against the **Insured** not later than ten (10) days after the offer is made, or
    2. any settlement of a **Claim** against the **Insured** not later than the thirtieth (30<sup>th</sup>) day after the date of settlement.
2. Section VII. A. Notice of Claims is amended by replacing the words “, but in no event later than sixty (60) days after such claim is made” with “but in no event later than ninety (90) days after such claim is made”
5. Section VIII. 1. Cancellation and 2. Nonrenewal are amended by the addition of the following:
 

The **Insurer** may not cancel or refuse to renew this **Policy** solely based on the fact that any of the **Insureds** is an elected official.

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

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6. Section VIII. A. 1. Cancellation is amended by the addition of the following:
- VIII. A. 1. e. The notice shall include the reason for such cancellation.
7. Section VIII. A. 2. Nonrenewal is amended by the addition of the following:
- VIII. A. 2. If the **Insurer** does not provide written notice to the **Named Insured** at least sixty (60) days prior to the end of the **Policy Period**, then the **Policy** shall remain in effect until the sixty-first (61<sup>st</sup>) day after the date on which the notice is delivered or mailed to the **Named Insured**. Earned premium for any period of coverage that extends beyond the **Policy** expiration date shall be computed pro rata based on the full annual premium.
8. Section VIII. B. Application is deleted and replaced with the following:
1. The **Application** is the basis of this **Policy** and is incorporated in and constitutes a part of this **Policy**. Any material submitted with the **Application(s)** shall be maintained on file with the **Insurer** and shall be deemed to be attached hereto as if physically attached. It is agreed by the **Insureds** that the statements in the **Application** are their representations and that this **Policy** is issued in reliance upon the truth of such representations. With respect to such statements and representations, no knowledge or information possessed by any **Insureds** shall be imputed to any other **Insureds**.
  2. If any person or persons knew as of the **Policy** inception date that such declarations and statements contained in the **Application(s)** were untrue, inaccurate or incomplete, then this **Policy** shall not apply to that person or persons.
  3. However, if the signer of the **Application** knew as of the **Policy** inception date that such representations and statements contained in the **Application(s)** were untrue, inaccurate or incomplete, then this **Policy** shall not apply to that person or persons and the **Insured Entity**.
  4. Sub paragraphs 2 and 3 above do not apply and are not a defense in a suit brought on the Policy unless it is shown at trial that the matter misrepresented by any **Insured**: (a) was material to the risk; or (b) contributed to the contingency or event on which the Policy became due and payable. It is a question of fact whether a misrepresentation made in the **Application** for the Policy or in the **Policy** itself was material to the risk or contributed to the contingency or event on which the Policy became due and payable.
9. Solely with respect to the Director, Officers and Corporate Liability Coverage Sections of this **Policy**, if purchased, section IV. Exclusions D. is amended by replacing the phrase "any **Insured**" with "the **Insured**".
10. Section VII. A Notice of Claim is amended as follows, only if coverage is included in this Policy by endorsement for: **Identity Theft Expense, Business Travel Accidental Death Benefit, Key Executive Replacement Expense, Kidnap Expense, Employment Event Expense, Emergency Travel Expense, Emergency Real Estate Consulting Fee, Crisis Management Emergency Response Expense, Workplace Violence Counseling Expense, Temporary Meeting Space Expense, Failed Donation Claim, Violent Act Event and/or Employee Death Benefit Coverage, or Reputation Restoration Expense**, then
- a. Within 15 days after receipt of written notice of such event, the **Insurer** will:
    - (1) Acknowledge receipt of the event. If the **Insurer** does not acknowledge receipt of the event in writing, the **Insurer** will keep a record of the date, method and content of the acknowledgment;
    - (2) Begin any investigation of the event; and
    - (3) Request a signed, sworn proof of loss, specify the required information and supply the necessary forms. The **Insurer** may request more information at a later date, if during the investigation of the event such additional information is necessary.
  - b. The **Insurer** will notify **Insured** in writing as to whether:
    - (1) The loss or part of the loss will be paid;
    - (2) The loss or part of the loss has been denied, including the reasons for denial;
    - (3) More information is necessary; or
    - (4) We the **Insurer** needs additional time to reach a decision, including the reasons for such need.

The notification, as described in b.(1) through b.(4) above, within:

    - (1) fifteen (15) business days after the signed, sworn proof of loss and all information requested is received; or
    - (2) thirty (30) days after the signed, sworn proof of loss and all information requested is received, if the **Insurer** has reason to believe the loss resulted from arson.

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

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If the **Insurer** has notified the **Insured** that additional time is needed to reach a decision, then approval or denial the loss within 45 days of such notice will be provided.

- c. The **Insurer** will pay for covered loss or damage within five business days after:
- (1) The **Insurer** has notified the **Insured** that payment of the loss or part of the loss will be made and has reached agreement with the **Insured** on the amount of loss; or
  - (2) An appraisal award has been made.

However, if payment of the loss or part of the loss is conditioned on any of the **Insureds** compliance with any of the terms of this **Policy**, the **Insurer** will make payment within five (5) business days after the date the **Insureds** have complied with such terms.

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

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# NonProfit ExecShield®

## Common Policy Terms and Conditions Section

### CLAIMS MADE NOTICE FOR POLICY

**NOTICE: THIS POLICY PROVIDES COVERAGE ON A CLAIMS MADE AND REPORTED BASIS. SUBJECT TO ITS TERMS, THIS POLICY APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE INSURED AND REPORTED TO THE INSURER DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD THAT MAY APPLY.**

**PLEASE READ THE POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.**

In consideration of the payment of the premium, in reliance on all statements in the **Application** and all other information provided to the **Insurer**, and subject to all provisions of this **Policy**, the **Insurer** and **Insureds** agree as follows:

#### I. Common Policy Terms and Conditions Section

The Common Policy Terms and Conditions Section of this **Policy** shall apply to all **Coverage Sections** and endorsements. Unless stated to the contrary in any **Coverage Section** or endorsement, the terms and conditions of each **Coverage Section** of this **Policy** shall apply only to that **Coverage Section** and shall not apply to any other **Coverage Section** of this **Policy**. If any provision in the Common Policy Terms and Conditions Section is inconsistent or in conflict with the terms and conditions of any **Coverage Section** or endorsement, the terms and conditions of such **Coverage Section** or endorsement shall control for the purposes of that **Coverage Section** or endorsement. Any defined term referenced in this Common Policy Terms and Conditions Section and also defined in a **Coverage Section** or endorsement shall, for the purposes of coverage under that **Coverage Section** or endorsement, have the meaning set forth in that **Coverage Section** or endorsement.

#### II. Extended Reporting Periods

##### A. Optional Extended Reporting Period

1. If this **Policy** is cancelled or non-renewed by the **Insurer** for reason other than non-payment of premium, or if the **Named Insured** elects to cancel or non-renew this **Policy**, then the **Named Insured** shall have the right, upon payment of the additional premium described in sub-paragraph 5. below, to purchase an extension of the reporting period of this **Policy** for any **Claim** that is first made against the **Insured** during such period but only with respect to any **Wrongful Act** fully occurring prior to the end of the **Policy Period** and which is otherwise covered by this **Policy**. Such period of time shall be referred to as the Optional Extended Reporting Period.
2. The right to purchase the Optional Extended Reporting Period must be exercised by the **Named Insured** within thirty (30) days of the end of the **Policy Period** by providing written notice to the **Insurer** along with the additional premium.
3. If purchased, the Optional Extended Reporting Period shall begin on the date the **Policy Period** ends.
4. As a condition precedent to the right to purchase the Optional Extended Reporting Period, the total premium for the **Policy** must have been paid and any deductible obligations met by the **Insureds**.
5. The additional premium for the Optional Extended Reporting Period shall be based upon the annual premium for the **Policy** in effect on the date this **Policy** was issued or last renewed and shall be: fifty percent (50%) of such annual premium for one (1) year; seventy five percent (75%) of such annual premium for two (2) years; or one hundred percent (100%) of such annual premium for three (3) years.
6. In the event of a Transaction described in Section VIII. D. of the Common Policy Terms and Conditions Section, the **Named Insured** has the right to purchase a Run-off Period pursuant to the terms of Section II. C. below.
7. The entire premium for the Optional Extended Reporting Period shall be deemed fully earned at its commencement.
8. The Limit of Liability for the Optional Extended Reporting Period shall be part of, and not in addition to, the Limits of Liability stated in Item 5. of the Declarations for this **Policy**.

##### B. Automatic Extended Reporting Period

1. If the **Named Insured** cancels or if the **Insurer** or the **Named Insured** refuses to renew this **Policy** and the **Named Insured** has not purchased any similar insurance policy(ies) there shall be a sixty (60) day automatic extension of the reporting period of this **Policy** for any **Claim** first made against an **Insured** and reported during such sixty (60) day period after the date upon which the **Policy Period** ends, but only with respect to any **Wrongful Act** fully occurring prior to the end of the **Policy Period** and otherwise covered by this **Policy**. This sixty (60) day period shall be referred to as the Automatic Extended Reporting Period. There shall be no additional premium for the Automatic Extended Reporting Period.
2. The Limit of Liability for the Automatic Extended Reporting Period shall be part of, and not in addition to, the Limits of Liability stated in Item 5. of the Declarations for this **Policy**.

**C. Run-Off Period in the Event of a Transaction**

1. In the event of a Transaction described in section VIII. D. of the Common Policy Terms and Conditions Section, the **Named Insured** shall have the right, upon payment of the additional premium described in sub-paragraph 5. below, to purchase an extension of the reporting period of this **Policy** for any **Claim** that is first made against the **Insured** during such period but only with respect to any **Wrongful Act** fully occurring prior to the end of the **Policy Period** and which is otherwise covered by this **Policy**. Such period of time shall be referred to as the Run-off Period.
2. The right to purchase the Run-Off Period must be exercised by the **Named Insured** within sixty (60) days of the end of the **Policy Period** by providing written notice to the **Insurer** along with the additional premium.
3. If purchased, the Run-Off Period shall begin on the date the **Policy Period** ends.
4. As a condition precedent to the right to purchase the Run-Off Period, the total premium for the **Policy** must have been paid and any deductible obligations met by the **Insureds**.
5. The additional premium for the Run-Off Period shall be based upon the annual rates for the **Policy** in effect on the date this **Policy** was issued or last renewed and shall be: seventy five percent (75%) of such annual premium for one (1) year; one hundred percent (100%) of such annual premium for two (2) years; one hundred twenty five percent (125%) of such annual premium for three (3) years; or two hundred twenty five percent (225%) of such annual premium for six (6) years.
6. The entire premium for the Run-Off Period shall be deemed fully earned at its commencement.
7. The Limit of Liability for the Run-off Period shall be part of, and not in addition to, the Limits of Liability stated in Item 5. of the Declarations for this **Policy**.

**III. Definitions**

Whenever printed in boldface type and whether in the singular or plural form in this **Policy**, the following terms shall have the meanings indicated below.

**Application** means the Application Form(s) and any material submitted therewith.

**Claim** shall have the meaning set forth in each applicable **Coverage Section** or any applicable endorsement attached to this **Policy**.

**Costs of Defense** shall have the meaning set forth in each applicable **Coverage Section** or any applicable endorsement attached to this **Policy**.

**Coverage Section** means, individually or collectively, the purchased **Coverage Sections** listed in Item 3. of the Declarations and attached to this **Policy**.

**Damages** shall have the meaning set forth in each applicable **Coverage Section** or any applicable endorsement attached to this **Policy**.

Where insurable, **Damages** also means: liquidated, punitive, or exemplary damages, or any multiplied damages award in excess of the amount so multiplied. Such coverage for liquidated, punitive, exemplary or multiplied damages is part of and not in addition to the Limit of Liability, and any payment of such **Damages** shall serve to reduce the Limit of Liability. Only for the purpose of resolving any dispute between the **Insurer** and the **Insured** regarding whether such liquidated, punitive, exemplary or multiplied damages are insurable under this **Policy**, the law of the jurisdiction most favorable to the insurability of those damages shall control, provided that such jurisdiction is where:

1. those damages were awarded or imposed; or
2. any **Wrongful Act** occurred for which such damages were awarded or imposed; or
3. the **Insured** resides, is incorporated or has its principal place of business; or
4. the **Insurer** is incorporated or has its principal place of business.

**Domestic Partner** means any person who qualifies as a **Domestic Partner** under the provisions of any federal, state or local statute or regulation (whether such status is derived by reason of statutory law, common law or otherwise, of any applicable jurisdiction in the world), or under the terms and provisions of any employee benefit or other program established by the **Named Insured**.

**Insured** means:

1. any duly elected or appointed director, trustee or officer of an **Insured Entity**, or
2. any **Insured Entity**;

unless modified by an applicable **Coverage Section** or any applicable endorsement attached to this **Policy**.

**Insured Entity** means the **Named Insured** and any **Subsidiary**.

**Insured Person** shall have the meaning set forth in each applicable **Coverage Section** or any applicable endorsement attached to this **Policy**.

This **Policy** shall cover **Costs of Defense** and **Damages** arising from a **Claim** made against:



1. the heirs, executors, administrators, and legal representatives of an **Insured Person** in the event of death, incapacity or bankruptcy, but solely with respect to the liability of an **Insured Person** as otherwise covered by this **Policy**; or
2. the lawful spouse or **Domestic Partner** of an **Insured Person** for a **Claim** arising solely out of his or her status as the spouse or **Domestic Partner** of an **Insured Person**, including a **Claim** that seeks damages recoverable from marital community property, property jointly held by the **Insured Person** and the spouse or **Domestic Partner**, or property transferred from the **Insured Person** to the spouse or **Domestic Partner**. As used herein, spouse shall include a person that is party to a civil union with the **Insured Person** if they establish such civil union under the licensing process established by the applicable jurisdiction. However, this extension shall not afford coverage for any **Claim** for any **Wrongful Act** of the spouse or **Domestic Partner**, but shall apply only to **Claims** arising out of any **Wrongful Act** of an **Insured Person**.

**Insurer** means the entity issuing this **Policy** as listed on the Declarations Page.

**Loss** means **Damages** and **Costs of Defense**.

**Named Insured** means the entity designated in Item 1. of the Declarations.

**Policy** means, collectively, the Declarations, the Common Policy Terms and Conditions Section, the **Coverage Sections**, and the **Application**.

**Policy Period** means the period of time from the inception date shown in Item 2. of the Declarations to the earlier of the expiration date shown in Item 2. of the Declarations or the effective date of cancellation of this **Policy**.

**Related Wrongful Acts** means **Wrongful Acts** which are the same as, related or continuous or that are logically or causally connected by reason of any common fact, circumstance, situation, transaction, casualty, event or decision.

**Subsidiary** means an entity which qualifies as a nonprofit organization under Section 501(c)(3), (c)(4), (c)(6), (c)(7), (c)(8), (c)(10), or (c)(13) of the Internal Revenue Code of 1986, including amendments thereto and which the **Named Insured** has or controls the right to elect or appoint more than 50 percent of the Board of Directors (or other governing body) on or before the inception of the **Policy Period**.

The term **Subsidiary** shall not mean any political committee organized pursuant to Section 432 of the Federal Election Campaign Act of 1971, including amendments thereto.

In all events, coverage as is afforded with respect to a **Claim** made against a **Subsidiary** shall only apply for **Wrongful Acts** committed or allegedly committed after the effective time that such **Subsidiary** became a **Subsidiary** and prior to the time that such **Subsidiary** ceased to be a **Subsidiary**.

An entity ceases to be a **Subsidiary** when the **Named Insured** ceases to control the right to elect or appoint more than 50 percent of the Board of Directors (or other governing body), or ceases to continue as an ongoing entity.

If during the **Policy Period** the **Insured Entity** forms or acquires a **Subsidiary**, this **Policy** shall apply:

1. Automatically for a **Subsidiary**, whose assets are less than thirty five percent (35%) of the total consolidated assets of the **Insured Entity** as of the **Policy** inception date; or
2. If the assets of such **Subsidiary** are equal to or greater than thirty five percent (35%) of the total consolidated assets of the **Insured Entity** as of the **Policy** inception date, then only upon the condition that within ninety (90) days of it becoming a **Subsidiary**, the **Named Insured** provides the **Insurer** in writing with full particulars of the new **Subsidiary** and agrees to any additional premium and/or amendment of the provisions of this **Policy** required by the **Insurer** related to such new **Subsidiary**. Further, coverage as shall be afforded to the new **Subsidiary** is conditioned upon the **Named Insured** paying when due any additional premium required by the **Insurer** relating to such new **Subsidiary**.

**Wrongful Act** shall have the meaning set forth in each applicable **Coverage Section** or any applicable endorsement attached to this **Policy**.

## IV. Exclusions

The **Insurer** shall not be liable to make any payment for **Loss** in connection with a **Claim** made against any **Insured**:

- A. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged nuclear reaction, radiation or contamination, regardless of cause;
- B. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged seepage, pollution or contamination of any kind;
- C. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:
  1. any **Wrongful Act** alleged in any claim which has been reported, or in any circumstance of which notice has been given, prior to the **Policy Period** under any other policy; or
  2. any other **Wrongful Act** whenever occurring, which together with a **Wrongful Act** which has been the subject of such claim or notice, would constitute **Related Wrongful Acts**.

## V. Limits of Liability and Deductibles

### A. Limits of Liability

#### 1. Costs of Defense Reduce the Limit of Liability

If **Costs of Defense** Reduce the Limit of Liability is purchased, as stated in Item 4. A. of the Declarations, then **Costs of Defense** are part of **Loss** and payment thereof will reduce the Limit of Liability available to pay **Damages**. **Costs of Defense** are not payable by the **Insurer** in addition to any applicable Limit of Liability stated in Item 5. of the Declarations. The **Insurer's** liability for all **Loss** arising out of all **Claims** first made against the **Insureds** during the **Policy Period** and reported to the **Insurer** in accordance with section VII. Notice of Claims of this **Policy** shall not exceed the amount(s) stated in Item 5. of the Declarations for the purchased **Coverage Section(s)**.

#### 2. Costs of Defense in Addition to the Limit of Liability

If **Costs of Defense** in Addition to the Limit of Liability is purchased, as stated in Item 4. B. of the Declarations, **Costs of Defense** shall be separate and in addition to the applicable Limits of Liability stated in Item 5. of the Declarations. Payment of **Costs of Defense** shall not reduce the applicable Limits of Liability stated in Item 5. of the Declarations.

The **Insurer's** liability for all **Damages** arising out of all **Claims** first made against the **Insureds** during the **Policy Period** and reported to the **Insurer** in accordance with section VII. Notice of Claims of this **Policy** shall not exceed the amount(s) stated in Item 5. of the Declarations for the purchased **Coverage Section(s)**.

In the event the applicable Limit(s) of Liability stated in Item 5. of the Declarations is exhausted by payment of **Damages**, or has been tendered to or on behalf of the **Insured**, then any and all obligations of the **Insurer** hereunder shall be deemed to be completely fulfilled and extinguished.

#### 3. Shared Policy Limit of Liability

If Shared Policy Limit of Liability for all **Coverage Sections** is purchased, as stated in Item 5. A. of the Declarations, then the **Insurer's** liability for all **Claims** covered by the **Coverage Sections** purchased shall not exceed the Aggregate Limit of Liability stated in Item 5. A. of the Declarations.

#### 4. Separate Limit of Liability

If Separate Limit of Liability for each **Coverage Section** is purchased, as stated in Item 5. B. of the Declarations, then the **Insurer's** liability for all **Claims** covered by each **Coverage Section** purchased shall not exceed the Separate Aggregate Limit of Liability stated in Item 5. B. of the Declarations.

### B. Exhaustion of Limit of Liability

1. In the event the applicable Limit of Liability stated in Item 5. of the Declarations, or any applicable sub-limit stated in this **Policy**, is exhausted by payment of **Costs of Defense** and/or **Damages**, or has been offered or tendered to, or on behalf of, the **Insured**, or to a court of competent jurisdiction, then any and all obligations of the **Insurer** hereunder shall be deemed to be completely fulfilled and extinguished.
2. Unless otherwise stated, all Limits of Liability for this **Policy**, including any sub-limit(s), will apply in the aggregate to all covered **Claims**. In no event shall the **Insurer** be liable to make any payment for **Costs of Defense** and/or **Damages** in excess of the Limit(s) of Liability stated in Item 5. of the Declarations or any applicable sub-limit stated in this **Policy**.
3. The **Insurer** is not obligated to investigate, defend, pay or settle, or continue to investigate, defend, pay or settle a **Claim** after the applicable limit of the **Insurer's** liability has been exhausted by payment of **Damages** or **Costs of Defense** or by any combination thereof or after the **Insurer** has deposited the remaining available Limit of Liability into a court of competent jurisdiction. In such case, the **Insurer** shall have the right to withdraw from the further investigation, defense, payment or settlement of such **Claim** by tendering control of said investigation, defense or settlement of the **Claim** to the **Insured**.

### C. Multiple Coverage Sections or Endorsements

In the event a **Claim** is covered under more than one **Coverage Section** or endorsement and such **Coverage Sections** or endorsements are not subject to a Shared Policy Limit of Liability, the **Insurer** shall pay covered **Damages** based on the terms of each applicable **Coverage Section** or endorsement and allocated to each applicable **Coverage Section** or endorsement on the basis of the relative legal and financial exposures of the parties pursuant to the applicable **Coverage Sections** or endorsements, as determined by the **Insurer**. The **Insurer** shall pay covered **Costs of Defense** based on the terms of each applicable **Coverage Section** or endorsement, to be distributed equally against all applicable **Coverage Sections** or endorsements. Any **Costs of Defense** and/or **Damages** paid shall reduce the applicable sub-limit or Limit of Liability of such **Coverage Sections** or endorsements. In no event shall the **Insurer** be liable to pay **Costs of Defense** and/or **Damages** for such **Claim** in excess of the largest Limit of Liability available under the **Coverage Sections** or endorsements applicable to such **Claim**.

## D. Deductibles

1. The **Insurer** shall only be liable for the amount of **Loss** arising from a **Claim** which is in excess of the applicable Deductible amount stated in Item 6. of the Declarations. Such Deductible amount shall be borne by the **Named Insured** and shall apply to each and every **Claim**. In the event a **Claim** is covered under more than one **Coverage Section** or endorsement, the largest applicable Deductible shall apply. If the **Named Insured** fails to pay the Deductible, then all **Insureds** shall be jointly and severally obligated to pay the Deductible.
2. If the **Insurer** advances any **Loss** within the applicable Deductible, the **Named Insured** shall, upon written demand, reimburse the **Insurer** for such amounts within thirty (30) days. Any funds so advanced by the **Insurer** at its option, shall serve to reduce the Limit of Liability to the extent that they are not repaid to the **Insurer**. If the **Insurer** brings suit to collect the Deductible, then the **Insured** responsible to pay the applicable Deductible also shall pay the legal fees, costs and expenses incurred by the **Insurer** to collect the Deductible.

## VI. Defense, Cooperation and Settlements

### A. Consent

No **Insured** shall admit or assume liability, enter into any settlement agreement, make any offer of settlement or compromise, stipulate to any judgment, agree to arbitration, or incur **Costs of Defense** without the **Insurer's** prior written consent. The **Insurer's** consent shall not be unreasonably withheld, provided that the **Insurer** shall be entitled to full information and all particulars it may request in order to reach a decision regarding such consent. Any **Costs of Defense** and/or **Damages** incurred and settlements agreed to prior to the **Insurer** giving its consent shall not be covered hereunder.

### B. Defense of Claims

1. The **Insurer** shall have the right and the duty to defend any **Claims** which are covered by this **Policy**. The **Insurer** shall have the right to select defense counsel. The **Insurer** has no obligation to provide **Costs of Defense** for any **Claim** not covered by this **Policy**.
2. The **Insurer** has no obligation to pay any amounts incurred by any **Insured** in any way involving the interpretation or applicability of the terms and conditions of this **Policy**.

### C. Cooperation

Each **Insured** shall cooperate with the **Insurer** in the defense and settlement of any **Claim**, and in enforcing any right of contribution or indemnity against any person or organization that may be liable to the **Insured**, at no cost to the **Insurer**. Upon the request of the **Insurer**, the **Insured** shall submit to examination and interrogation, under oath if required by a representative of the **Insurer**, and shall attend hearings, depositions and trials, assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses, as well as giving written statements to the **Insurer's** representatives, and meeting with such representatives for purposes of investigation or defense, all without charge to the **Insurer**.

### D. Settlements

The **Insurer** shall not settle any **Claim** without the **Named Insured's** consent. If, however, the **Named Insured** shall refuse to consent to any settlement recommended by the **Insurer**, which is acceptable to the claimant, and shall elect to contest the **Claim**, or continue any civil, criminal, administrative, or arbitration proceedings in connection with such **Claim**, then the **Insurer's** liability for the **Claim** shall be the amount for which the **Claim** could have been settled, including **Costs of Defense** incurred up to the date of such refusal, and eighty percent (80%) of such **Loss** excess of the amount for which the **Claim** could have been settled. It is a condition of this insurance that the remaining twenty percent (20%) of such **Loss** shall be borne by the **Insureds** at their own risk. Such amounts are subject to the provisions of section V. of the Common Policy Terms and Conditions Section of this **Policy**.

### E. Allocation

If a **Claim** made against an **Insured** pursuant to any **Coverage Sections** contains both covered and uncovered matters, then the **Named Insured** and the **Insurer** will allocate any amount incurred with respect to such **Claim** as follows:

1. one hundred percent (100%) of **Costs of Defense** incurred will constitute covered **Loss**; and
2. **Damages** will be allocated on the basis of the relative legal and financial exposures of the parties as to covered and uncovered matters pursuant to the applicable **Coverage Sections**.

If a **Claim** made against an **Insured** pursuant to any **Coverage Sections** contains both covered and uncovered parties, then the **Named Insured** and the **Insurer** will allocate any amounts incurred on behalf of any uncovered parties with respect to such **Claim** on the basis of the relative legal and financial exposures of the parties of such covered and uncovered parties pursuant to the applicable **Coverage Sections**.

The **Insurer** shall not be liable under this **Policy** for the portion of such amount allocated to non-covered **Loss**. In the event that the parties cannot reach a mutually agreeable allocation, the **Insurer** will determine the appropriate allocation at its discretion.

## VII. Notice of Claims

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### A. Notice of Claim

As a condition precedent to their rights under this **Policy**, an **Insured** shall give the **Insurer** written notice of any **Claim** first made against the **Insureds** during the **Policy Period**, as soon as practicable, but in no event later than sixty (60) days after such **Claim** is first made.

### B. Notice of Circumstance

If during the **Policy Period** or any Extended Reporting Period or Run-off Period that may apply, the **Insureds** become aware of any fact, circumstance or situation which may reasonably be expected to give rise to a **Claim** being made against any **Insured** and the **Insured** gives written notice to the **Insurer**, as soon as practicable (but prior to the expiration of or cancellation of the **Policy**), of:

1. the specific fact, circumstance or situation, with full details as to dates, persons, and entities involved; and
2. the injury or damages which may result therefrom; and
3. the circumstances by which the **Insured** first became aware thereof;

then any **Claim** subsequently made arising out of such fact, circumstance or situation shall be deemed to have been made when notice was first given to the **Insurer**.

### C. Related Wrongful Acts

All **Claims** based upon or arising out of the same **Wrongful Act** or any **Related Wrongful Acts**, or one or more in a series of any similar, repeated or continuous **Wrongful Acts** or **Related Wrongful Acts**, shall be considered a single **Claim**. Each **Claim** shall be deemed to be first made at the earliest of the following times:

1. when the earliest **Claim** arising out of such **Wrongful Act** or **Related Wrongful Acts** is first made, or
2. when notice pursuant to section VII. B. above of a fact, circumstance or situation giving rise to such **Claim** is given.

### D. Information and Cooperation

In addition to furnishing the notice as provided in sections VII. A. and VII. B. above, the **Insureds** shall give the **Insurer** such information and cooperation as it may reasonably require and shall, as soon as practicable, furnish the **Insurer** with copies of reports, investigations, pleadings and other papers in connection therewith.

## VIII. General Conditions

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### A. Cancellation or Non-Renewal of Policy

#### 1. Cancellation

- a. The **Named Insured** may cancel this **Policy** at any time by sending written notice to the **Insurer**.
- b. The **Insurer** may not cancel this **Policy** except for non-payment of any premium when due.
- c. The **Insurer** shall provide at least twenty (20) days written notice to the **Named Insured** prior to any cancellation for non-payment of any premium and such cancellation shall not be effective less than twenty (20) days after such notice is mailed.
- d. If this **Policy** is cancelled by the **Named Insured**, the **Insurer** shall retain the customary short rate proportion of the premium herein. Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.

#### 2. Nonrenewal

If the **Insurer** decides not to renew this **Policy**, the **Insurer** shall provide written notice to the **Named Insured** at least sixty (60) days prior to the end of the **Policy Period**. The notice shall include the reason for such non-renewal.

#### 3. Notice

The **Insurer** shall send all notices required under this Section VIII.A. by first-class mail to the **Named Insured** at the address last known to the **Insurer**. Proof of mailing of such notice by the United States Postal Service certificate of mailing shall be sufficient proof of notice.

### B. Application

The **Application** is the basis of this **Policy** and is incorporated in and constitutes a part of this **Policy**. Any material submitted with the **Application(s)** shall be maintained on file with the **Insurer** and shall be deemed to be attached hereto as if physically attached. It is agreed by the **Insureds** that the statements in the **Application** are their representations, that they are material and that this **Policy** is issued in reliance upon the truth of such representations. With respect to such statements and representations, no knowledge or information possessed by any **Insureds** shall be imputed to any other **Insureds**.

If any person or persons knew as of the **Policy** inception date that such declarations and statements contained in the **Application(s)** were untrue, inaccurate or incomplete, then this **Policy** shall not apply to that person or persons.

However, if the signer of the **Application** knew as of the **Policy** inception date that such representations and statements contained in the **Application(s)** were untrue, inaccurate or incomplete, then this **Policy** shall not apply to that person or persons and the **Insured Entity**.

## C. Action Against the Insurer

No action shall lie against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this **Policy**, and the amount of the **Insureds'** obligation to pay shall have been finally determined either by judgment against the **Insureds** after actual trial or by written agreement of the **Insureds**, the claimant and the **Insurer**.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this **Policy** to the extent of the insurance afforded by this **Policy**. No person or organization shall have any right under this **Policy** to join the **Insurer** as party to any action against the **Insureds** to determine the **Insureds'** liability, nor shall the **Insurer** be impleaded by the **Insureds** or their legal representatives.

## D. Change in Control of the Named Insured

1. If during this **Policy Period** the **Named Insured**:
  - a. ceases to continue as an ongoing entity; or
  - b. sells all or substantially all of its assets, or consolidates, or merges with or into any other person, group, entity or organization; who then controls the right to elect or appoint more than 50 percent of the Board of Directors or other governing body of the **Named Insured**;

(either of the above events herein referred to as "Transaction")

then, this **Policy** shall continue in full force and effect as to any **Wrongful Acts** fully occurring prior to the Transaction, but there shall be no coverage afforded by any provision of this **Policy** for any actual or alleged **Wrongful Acts** occurring after the Transaction.

2. This **Policy** may not be cancelled following a Transaction and the entire premium for this **Policy** shall be deemed fully earned as of the effective date of the Transaction.
3. The **Named Insured** shall give the **Insurer** written notice of the Transaction as soon as practicable but not later than sixty (60) days after the Transaction and prior to the expiration of the **Policy Period**. In the event of a Transaction, the **Named Insured** shall have the right to purchase the Run-Off Period described in section II. C. of this Common Policy Terms and Conditions Section.

## E. Subrogation

In the event of any payment under this **Policy**, the **Insurer** shall be subrogated to the extent of such payment to all the **Insureds'** rights of recovery thereof, and the **Insureds** shall execute all papers required and shall do everything that may be necessary to secure such rights including the execution of such documents necessary to enable the **Insurer** to effectively bring suit in the name of the **Insureds**. In no event, however, shall the **Insurer** exercise its rights of subrogation against an **Insured** under this **Policy** unless such **Insured** has been convicted of a criminal act, or been judicially determined to have committed a deliberate fraudulent act, or obtained any profit or advantage to which such **Insured** was not legally entitled.

## F. Assignment

This **Policy** and any and all rights hereunder are not assignable without the written consent of the **Insurer**.

## G. Entire Agreement

By acceptance of this **Policy**, the **Insureds** and the **Insurer** agree that this **Policy** and any written endorsements attached hereto constitute the entire agreement between the parties.

## H. Representation by Named Insured

It is agreed that the **Named Insured** shall act on behalf of its **Subsidiaries** and all **Insureds** with respect to the giving and receiving of notices, the payment of premiums and the receiving of any return premiums that may become due under this **Policy**, the receipt and acceptance of any endorsements issued to form a part of this **Policy** and the exercising or declining to exercise any right to an Extended Reporting Period or Run-off Period.

## I. Coverage Territory

This **Policy** applies to any **Wrongful Act** taking place anywhere in the world. In the event that the **Insured Entity** operates outside the United States, then the term **Insured Person** also means those titles, positions or capacities in such foreign **Insured Entity** which is equivalent to the position of **Insured Person** in an entity incorporated and/or formed within the United States.



### J. Bankruptcy

Bankruptcy or insolvency of the **Insureds** or of their estates shall not relieve the **Insurer** of any of its obligations hereunder. In the event a liquidation or reorganization proceeding is commenced by or against the **Insured Entity** pursuant to the United States Bankruptcy Code, including amendments thereto, or any similar state or local law. The **Insured Entity** and the **Insured Persons** hereby: (1) agree to waive and release any automatic stay or injunction which may apply in such proceeding to this **Policy** or its proceeds under such Bankruptcy Code or law; and (2) agree not to oppose or object to any efforts by the **Insurer**, the **Insured Entity** or any **Insured Persons** to obtain relief from any such stay or injunction.

### K. Trade and Economic Sanctions

This **Policy** does not provide coverage for **Insureds**, transactions or that part of **Damages** or **Costs of Defense** that is uninsurable under the laws or regulations of the United States concerning trade or economic sanctions.

# NonProfit ExecShield®

## Directors, Officers and Organization Liability Insurance Coverage Section

### CLAIMS MADE NOTICE FOR POLICY

**NOTICE: THIS POLICY PROVIDES COVERAGE ON A CLAIMS MADE AND REPORTED BASIS. SUBJECT TO ITS TERMS, THIS POLICY APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE INSUREDS AND REPORTED TO THE INSURER DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD THAT MAY APPLY.**

**PLEASE READ THE POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.**

In consideration of the payment of the premium, in reliance on all statements in the **Application** and all other information provided to the **Insurer**, and subject to all provisions of this **Policy**, the **Insurer** and **Insureds** agree as follows:

#### I. Insuring Agreements

##### Directors, Officers and Organization Liability Coverage

- A. This **Policy** shall pay on behalf of the **Insureds** all **Costs of Defense** and/or **Damages** up to the Limit of Liability applicable to this coverage section arising from any **Claim** first made against the **Insureds** during the **Policy Period** and reported to the **Insurer** in accordance with section VII. of the Common Policy Terms and Conditions Section of this **Policy**, for any actual or alleged **Wrongful Act** committed subsequent to the **Prior Acts Date**; except and to the extent that the **Insured Entity** has indemnified the **Insured Persons**.
- B. This **Policy** shall pay on behalf of the **Insured Entity** all **Costs of Defense** and/or **Damages** up to the Limit of Liability applicable to this coverage section arising from any **Claim** that is first made against the **Insured Persons** during the **Policy Period** and reported to the **Insurer** in accordance with section VII. of the Common Policy Terms and Conditions Section of this **Policy**, for any actual or alleged **Wrongful Act** committed subsequent to the **Prior Acts Date**; but only to the extent that the **Insured Entity** has indemnified the **Insured Persons** for such **Costs of Defense** and/or **Damages** as permitted by law.
- C. This **Policy** shall pay on behalf of the **Insured Entity** all **Costs of Defense** and/or **Damages** up to the Limit of Liability applicable to this coverage section arising from any **Claim** that is first made against the **Insured Entity** during the **Policy Period** and reported to the **Insurer** in accordance with section VII. of the Common Policy Terms and Conditions Section of this **Policy**, for any actual or alleged **Wrongful Act** committed subsequent to the **Prior Acts Date**.

#### II. Priority of Payments

In the event of **Costs of Defense** and/or **Damages** arising from any **Claim** for which payment is due under the provisions of this coverage section, then the **Insurer** shall:

1. first, pay such non-indemnifiable **Costs of Defense** and/or **Damages** for which coverage is provided under Insuring Agreement I. A. of this coverage section; and
2. then, with respect to whatever remaining amount of the applicable Limit of Liability stated in Item 5. of the Declarations is available after payment of such non-indemnifiable **Costs of Defense** and/or **Damages**, at the written request of the Chief Executive Officer of the **Named Insured**, either pay or withhold payment of such other **Costs of Defense** and/or **Damages** for which coverage is provided under this coverage section.

In the event the **Insurer** withholds payment pursuant to sub-paragraph 2. above, then the **Insurer** shall at such time and in such manner as shall be set forth in written instructions of the Chief Executive Officer of the **Named Insured**, remit such payment to the **Named Insured** or directly to the **Insured Persons**.

#### III. Definitions

In addition to the Definitions listed in section III. of the Common Policy Terms and Conditions Section, whenever printed in boldface type, and whether in the singular or plural form, in this coverage section the following terms shall have the meanings indicated below.

**Claim** means:

1. a written demand for monetary or non-monetary relief including, but not limited to, a civil, criminal, administrative, or arbitration proceeding arising from a **Wrongful Act**;
2. a civil, criminal, administrative, or arbitration proceeding for monetary or non-monetary relief filed against an **Insured** arising from a **Wrongful Act** which is commenced by: (a) service of a complaint or similar pleading; (b) return of an indictment, information or similar document; or (c) receipt or filing of a notice of charges; or

3. a written request made by a claimant to the **Named Insured** to toll or waive the statute of limitations for any **Wrongful Act**;

provided, however, the term **Claim** shall not include any grievance or arbitration subject to a collective bargaining agreement with respect to Insuring Agreement I. C. of this coverage section. A **Claim** shall be deemed to have been first made at the time notice of the **Claim** is first received by any **Insured**.

**Costs of Defense** means reasonable and necessary fees, costs and expenses (including premiums for any appeal bond, attachment bond or similar bond, but without any obligation to apply for or furnish any such bond) resulting solely from the investigation, adjustment, defense and appeal of a covered **Claim** against the **Insureds**, but excluding salaries, wages, overhead or benefit expenses associated with any **Insured**, or any amount covered by the duty to defend obligation of any other insurer.

**Damages** means:

1. a monetary judgment, award or settlement; or
2. pre-judgment interest and post-judgment interest;

provided, however, **Damages** shall not include:

- a. taxes, civil or criminal fines, sanctions or penalties imposed by law; or
- b. costs incurred by any **Insured** to make any building or property more accessible or accommodating to any disabled person; or
- c. commissions, bonuses, deferred compensation, profit sharing or severance payments; or
- d. disgorgement or restitution payment by or on behalf of any **Insured**, including disgorgement or restitution of amounts retained, obtained, or acquired by an **Insured** and any settlement payment arising from any actual or alleged amount that an **Insured** improperly retained, obtained, or acquired; or
- e. any matter deemed uninsurable under the law pursuant to which this **Policy** shall be construed.

**Insured Person** means any past, present or future duly elected or appointed directors, trustees, officers, employees (including part time, seasonal and temporary individuals), volunteers, or committee or staff members of the **Insured Entity**. An independent contractor is not an **Insured Person** under this coverage section.

**Insured** means any **Insured Person** or any **Insured Entity**.

**Loss** means **Damages** and **Costs of Defense**.

**Outside Entity** means:

1. a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code of 1986, including amendments thereto; or
2. any other entity organized for a religious or charitable purpose under any nonprofit organization act or statute; or
3. any other entity, partnership, joint venture or other organization listed by endorsement to this **Policy**.

**Personal Injury** means any actual or alleged defamation, invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, infringement of copyright or trademark, unauthorized use of title, plagiarism, or misappropriation of ideas.

**Prior Acts Date** means the date stated in Item 8. i. of the Declarations.

**Wrongful Act** means any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act, including **Personal Injury**, by:

1. any **Insured Person** in their respective capacities as such, or any matter claimed against them by reason of their status as **Insured Persons** with the **Insured Entity**;
2. any **Insured Person** arising out of their serving as a director, officer, trustee, or governor of an **Outside Entity** in such capacity, but only if such service is at the specific request or direction of the **Insured Entity**; or
3. the **Insured Entity**.

## IV. Exclusions

In addition to the Exclusions listed in section IV. of the Common Policy Terms and Conditions Section, the **Insurer** shall not be liable to make any payment for **Loss** in connection with a **Claim** made against any **Insured**:

- A. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving the actual or alleged gaining of any profit or advantage to which an **Insured** was not legally entitled; provided, however, this exclusion shall not apply unless a judgment or other final adjudication adverse to any of the **Insureds** in such **Claim** shall establish that such **Insureds** gained such profit or advantage to which an **Insured** was not legally entitled;
- B. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged criminal or deliberate fraudulent act; provided, however, this exclusion shall not apply unless a judgment or other final adjudication adverse to any of the **Insureds** in such **Claim** shall establish that such **Insureds** committed such criminal or deliberate fraudulent act;



- C. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged payments to an **Insured** of any remuneration without the previous approval of the governing bodies of the **Insured Entity**, which payment without such previous approval shall be held to have been illegal; provided, however, this exclusion shall not apply unless a judgment or other final adjudication adverse to any of the **Insureds** in such **Claim** shall establish that such **Insureds** received such payments;

Solely with respect to Exclusions A., B., and C. of this coverage section, the **Insurer** will provide a defense for any such **Claims**, without any liability by the **Insurer** to pay such sums that any **Insured** shall become legally obligated to pay as **Damages**.

- D. for:
1. physical damage to or destruction of any tangible property, including the loss of use thereof; or
  2. bodily injury, sickness, disease, death, assault or battery of any person;
- E. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged violation of the Employee Retirement Income Security Act of 1974, including amendments thereto;
- F. by, on behalf of, or in the right of any **Insured** in any capacity; provided, however, this exclusion does not apply to:
1. any **Claim** that is a derivative action brought or maintained on behalf of the **Insured Entity**, and only if such **Claim** is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or participation of, or intervention of any **Insured**; or
  2. any **Claim** by any **Insured Person** pursuant to any federal or state whistleblower protection statute or any regulation promulgated thereunder; provided, however, this exception does not apply to any **Claim** arising from any actual or potential employment relationship with the **Insured Entity**;
- G. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any **Wrongful Act** of an **Insured Person** serving in the capacity as a director, officers, trustee, employee, member or governor of any other entity other than an **Insured Entity** or an **Outside Entity**, or by reason of their status as a director, officer, trustee, employee, member or governor of such other entity;
- H. for any **Wrongful Act** arising out of an **Insured** serving as a director, officer, trustee, employee, member or governor of an **Outside Entity**:
1. if such **Claim** is brought by the **Outside Entity** or any of its directors or officers, or by any security holder of the **Outside Entity**, whether directly or derivatively, unless such security holder's **Claim** is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or participation of, or intervention of the **Outside Entity**, any of its directors or officers, or any **Insured**; or
  2. if such **Wrongful Act** occurred prior to the inception date of the first Nonprofit Directors, Officers and Organization Liability Insurance Policy issued by the **Insurer** to the **Named Insured**, which has been continuously renewed and maintained in effect prior to the inception of this **Policy Period**; or
  3. to the extent such **Insured** is indemnified for such **Costs of Defense** and **Damages** by the **Outside Entity**, and/or to the extent that there is coverage in whole or in part under any policy issued to or for the benefit of any **Outside Entity** or its directors or officers, then this **Policy** shall apply only to **Loss** excess over such indemnification and insurance(if applicable);
- I. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged employment-related torts, including but not limited to: failure to hire; wrongful dismissal; wrongful discharge; wrongful termination; retaliation; harassment; discrimination; violation of civil rights; or violation of any federal, state, local or foreign laws, whether statutory or common law, concerning discrimination or harassment;
- J. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any federal, state, local or foreign wage and hour laws, whether statutory or common law, including, without limitation, the Fair Labor Standards Act;
- K. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged breach of any oral or written contract or agreement; provided, however, this exclusion shall not apply to the extent that an **Insured Entity** would have been liable in the absence of the contract or agreement.

The **Wrongful Act** of an **Insured** shall not be imputed to any other **Insured** for the purpose of determining the applicability of the Exclusions.

## V. Other Insurance

Unless specifically stated otherwise, the coverage afforded under this coverage section shall apply only as excess over any other valid and collectible insurance, unless such other insurance is specifically written as excess insurance over the Separate Limit of Liability or Shared Limit of Liability applicable to this coverage section. This coverage section shall be excess of any other valid and collectible insurance pursuant to which any other insurer has a duty to defend a **Claim** for which this coverage section may be obligated to pay **Costs of Defense** and/or **Damages**.

# NonProfit ExecShield®

## Employment Practices Liability Insurance Coverage Section

### CLAIMS MADE NOTICE FOR POLICY

**NOTICE: THIS POLICY PROVIDES COVERAGE ON A CLAIMS MADE AND REPORTED BASIS. SUBJECT TO ITS TERMS, THIS POLICY APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE INSUREDS AND REPORTED TO THE INSURER DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD THAT MAY APPLY.**

**PLEASE READ THE POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.**

In consideration of the payment of the premium, in reliance on all statements in the **Application** and all other information provided to the **Insurer**, and subject to all provisions of this **Policy**, the **Insurer** and **Insureds** agree as follows:

### I. Insuring Agreements

#### A. Wrongful Employment Acts Coverage

This **Policy** shall pay on behalf of the **Insureds** all **Costs of Defense** and/or **Damages** up to the Limit of Liability applicable to this coverage section arising from any **Employment Claim** first made against the **Insureds** during the **Policy Period** and reported to the **Insurer** in accordance with section VII. of the Common Policy Terms and Conditions Section of this **Policy**, for any actual or alleged **Wrongful Employment Act** committed subsequent to the **Prior Acts Date**.

#### B. Third Party Wrongful Acts Coverage

If purchased as indicated in Item 3. ii. of the Declarations, this **Policy** shall pay on behalf of the **Insureds** all **Costs of Defense** and/or **Damages** up to the Limit of Liability applicable to this coverage section arising from any **Third Party Claim** that is first made against the **Insureds** during the **Policy Period** and reported to the **Insurer** in accordance with section VII. of the Common Policy Terms and Conditions Section of this **Policy**, for any actual or alleged **Third Party Wrongful Act** committed subsequent to the **Prior Acts Date**.

### II. Automatic Extended Reporting Period for Former Directors or Officers

In addition to section II. Extended Reporting Periods of the Common Policy Terms and Conditions Section, the following shall apply:

1. If the **Named Insured** cancels or refuses to renew this coverage section and the **Named Insured** has not purchased any similar insurance policy(ies), Optional Extended Reporting Period or Run-Off Period from the **Insurer** or any other insurance carrier, there shall be a three (3) year automatic extension of the reporting period for this coverage section for any **Claim** that is first made against any **Former Director or Officer** during such three (3) year period but only with respect to any **Wrongful Act** of any **Former Director or Officer** fully occurring prior to the end of the **Policy Period** and which is otherwise covered by this coverage section. Such three (3) year period of time shall be referred to as the Automatic Extended Reporting Period for Former Directors and Officers. There shall be no additional premium for the Automatic Extended Reporting Period for Former Directors and Officers.
2. The Limit of Liability for the Automatic Extended Reporting Period for Former Directors and Officers shall be part of, and not in addition to, the Limit of Liability stated in Item 5. of the Declarations for this coverage section.

### III. Definitions

In addition to the Definitions listed in section III. of the Common Policy Terms and Conditions Section, whenever printed in boldface type, and whether in the singular or plural form, in this coverage section the following terms shall have the meanings indicated below.

**Claim** means:

1. an **Employment Claim**; or
2. if purchased as indicated in Item 3. ii. of the Declarations, a **Third Party Claim**.

A **Claim** shall be deemed to have been first made at the time notice of the **Claim** is first received by any **Insured**.

**Claimant** means:

1. a past or present **Employee** of, or applicant for employment with, an **Insured Entity**; or
2. a governmental entity or agency, including the Equal Employment Opportunity Commission or similar federal, state or local or foreign agency, when acting on behalf of or for the benefit of a past or present **Employee** or applicant for employment with an **Insured Entity**.

**Costs of Defense** means reasonable and necessary fees, costs and expenses (including premiums for any appeal bond, attachment bond or similar bond, but without any obligation to apply for or furnish any such bond) resulting solely from the investigation, adjustment, defense and appeal of a covered **Claim** against the **Insureds**, but excluding salaries, wages, overhead or benefit expenses associated with any **Insured**, or any amount covered by the duty to defend obligation of any other insurer.

**Damages** means:

1. a monetary judgment, award or settlement, including front pay, back pay, emotional distress; or
2. pre-judgment interest and post-judgment interest;

provided, however, **Damages** shall not include:

- a. taxes (provided, however, that the **Insurer** will reimburse an **Insured Entity** for any employer share of payroll taxes on any portion of damages or settlements which constitute back pay otherwise considered **Damages**), civil or criminal fines, or penalties imposed by law; or
- b. payment of insurance, disability, pension, health or other plan benefits claimed by or on behalf of any former or current **Employee**, or that an **Employee** would have been entitled to as an **Employee** had the **Insured Entity** provided the **Employee** with a continuation of insurance; or
- c. costs incurred by any **Insured** to make any building or property more accessible or accommodating to any disabled person; or
- d. commissions, bonuses, profit sharing or severance payments, unpaid wages, or amounts due pursuant to any federal, state, local or foreign wage and hour laws whether statutory or common law, including without limitation, the Fair Labor Standards Act, including any amendments thereto, and/or any payroll policies, practices and procedures, including the reimbursement of claimed business expenses; or
- e. future wages or benefits of any reinstated **Employee** or wages or benefits associated with the continued employment of an **Employee**; or
- f. any matter deemed uninsurable under the law pursuant to which this **Policy** is construed.

**Employee** means an individual whose labor or service is engaged by and directed by an **Insured Entity**, including any: part-time, volunteer, intern, leased, seasonal or temporary individual; or committee or staff member. An independent contractor is not an **Employee**. An individual's employment status shall be determined as of the date of the **Wrongful Act**.

**Employment Claim** means:

1. a written demand for monetary or non-monetary relief, including but not limited to, any demand for mediation, arbitration or any other alternative dispute resolution process, brought by or on behalf of a **Claimant**, arising from a **Wrongful Employment Act**;
2. a civil, administrative, regulatory investigation or arbitration proceeding brought by or on behalf of a **Claimant**, arising from a **Wrongful Employment Act**; or
3. a written request made by a **Claimant** to an **Insured** to toll or waive the statute of limitations for any **Wrongful Employment Act**;

provided, however, the term **Employment Claim** shall not include any grievance or arbitration based upon, arising out of, directly or indirectly resulting from, or in consequence of, or in any way involving a collective bargaining agreement.

**Former Director or Officer** means any duly elected or appointed director, trustee or officer of an **Insured Entity** solely while acting within such capacity for an **Insured Entity**; who did not serve as a duly elected or appointed director or officer at the time of the cancellation or non-renewal of this **Policy**.

**Harassment** means 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 that:

1. are explicitly or implicitly made a condition of employment;
2. are used as a basis for employment decisions; or
3. create a work environment that interferes with performance.

**Harassment** also means assault or battery, but only if related to a charge of sexual harassment.

**Insured** means any **Insured Person** or any **Insured Entity**.

**Insured Person** means:

1. any past, present or future duly elected or appointed director, trustee or officer of an **Insured Entity** while acting solely within the course and scope of employment with an **Insured Entity**;
2. an **Employee** while acting solely within the course and scope of employment with an **Insured Entity**; or
3. an independent contractor for an **Insured Entity**, but only if the **Insured Entity** provides indemnification to such individual in the same manner as that provided to the **Insured Entity's** employees.

**Loss** means **Damages** and **Costs of Defense**.

**Prior Acts Date** means the date stated in Item 8. ii. of the Declarations.

**Retaliation** means any actual or alleged retaliatory act of an **Insured** alleged to be in response to the actual or attempted exercise by an **Employee** or applicant for employment with the **Insured Entity**, of any right that such **Employee** or applicant has under law, including without limitation, any of the following activities:

1. the disclosure or threat of disclosure by an **Employee** to a superior or to any governmental agency of any act by an **Insured** which act is alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder;
2. the exercise of rights under workers' compensation laws, the Family and Medical Leave Act, the Americans with Disabilities Act or any other law relating to employee rights;
3. the filing of any claim under the Federal False Claims Act or any other federal, state, local or foreign whistle-blower law;
4. strikes of an **Employee** or applicant, or any legally-protected work stoppage or slowdown; or
5. assisting, cooperating or testifying in any proceeding or investigation into whether an **Insured** violated any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder.

**Third Party Claim** means:

1. a written demand for monetary or non-monetary relief, including but not limited to, any demand for mediation, arbitration or any other alternative dispute resolution process; arising from a **Third Party Wrongful Act**, which is solely brought and maintained by or on behalf of a **Third Party Claimant** against an **Insured**;
2. a civil proceeding which is: (a) brought against an **Insured**; and (b) arising from a **Third Party Wrongful Act**; and (c) which is solely brought and maintained by or on behalf of a **Third Party Claimant** against whom a **Third Party Wrongful Act** is alleged to have been committed; or
3. a written request made by or on behalf of a **Third Party Claimant** to an **Insured** to toll or waive the statute of limitations for any **Third Party Wrongful Act**.

**Third Party Claimant** means any natural person(s) who is a client, customer, vendor, service provider or other business invitee of any **Insured Entity**, other than an **Employee** or applicant for employment with the **Insured Entity**.

**Third Party Wrongful Act** means any actual or alleged:

1. discrimination prohibited by applicable law;
2. harassment on the basis of race, color, religion, age, gender, disability, pregnancy, national origin, sexual orientation, gender identity or expression, or marital status; or
3. harassment in the form of unwelcome sexual advances, requests for sexual favors or other verbal, visual or physical conduct of a sexual nature;

committed by an **Insured**.

**Workplace Bullying** means verbal, written or visual intimidation, harassment or threats by an **Insured** while acting solely within the course and scope of employment with an **Insured Entity**, including but not limited to, an **Insured's** use of social media to intimidate, harass or threaten.

**Wrongful Act** means:

1. a **Wrongful Employment Act**;
2. if purchased as indicated in Item 3. ii. of the Declarations, a **Third Party Wrongful Act**.

**Wrongful Employment Act** means any actual or alleged:

1. wrongful dismissal, discharge or termination of employment (either actual or constructive), including breach of an implied agreement to employ;
2. **Harassment**;
3. harassment on the basis of race, color, religion, age, gender, disability, pregnancy, national origin, sexual orientation, gender identity or expression, or marital status (including but not limited to: **Workplace Bullying**);
4. discrimination (including, but not limited to, discrimination based upon age, gender, gender identity or expression, race, color, national origin, religion, sexual orientation or preference, genetic information, pregnancy, marital status, military status or disability or any other basis prohibited by law);
5. **Retaliation**;
6. employment-related misrepresentation;
7. employment-related libel, slander, humiliation or defamation or invasion of privacy;
8. false arrest or false imprisonment;
9. wrongful failure to employ or promote;
10. wrongful deprivation of career opportunity, wrongful demotion or negligent evaluation, including the giving of negative or defamatory statements in connection with an employee reference;

11. wrongful discipline;
  12. failure to grant tenure; or
  13. negligent hiring, retention, training or supervision, infliction of emotional distress or mental anguish, failure to provide or enforce adequate or consistent employment-related corporate policies and procedures, or violation of an individual's civil rights;
- committed by an **Insured**.

## IV. Exclusions

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In addition to the Exclusions listed in section IV. of the Common Policy Terms and Conditions Section, the **Insurer** shall not be liable to make any payment for **Loss** in connection with a **Claim** made against any **Insured**:

- A. for:
  1. damage to or destruction of any tangible property, including the loss of use thereof, or
  2. bodily injury, sickness, disease, and death; provided, however, solely with respect to a **Claim** for a **Wrongful Employment Act**, this exclusion shall not apply to: emotional distress, mental anguish, defamation, invasion of privacy or humiliation;
- B. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged violation of the Employee Retirement Income Security Act of 1974, including amendments thereto; or any similar provisions of state statutory law or common law;
- C. for any actual or alleged breach of any oral or written contract or agreement; or for any amounts owed pursuant to an oral or written contract or agreement; whether brought as breach of contract, misrepresentation or otherwise;
- D. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged violation of the Worker's Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act, the National Labor Relations Act, or the Health Insurance Portability and Accountability Act of 1996, including amendments thereto, or any similar provisions of any federal, state, local or foreign statutory or common law; provided, however, this exclusion shall not apply to any **Claim** for any actual or alleged retaliatory treatment of an **Employee** by the **Insured** on account of the **Employee's** exercise of rights pursuant to any such law;
- E. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged obligations under any workers' compensation, social security, disability benefits, or unemployment compensation law, including amendments thereto, or any similar provisions of any federal, state, local or foreign statutory or common law; provided, however, this exclusion shall not apply to any **Claim** for any actual or alleged retaliatory treatment of an **Employee** by the **Insured** on account of the **Employee's** exercise of rights pursuant to any such law;
- F. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged violations of any federal, state, local or foreign wage and hour laws, whether statutory or common law, including, without limitation, the Fair Labor Standards Act including any amendments thereto; provided, however, this exclusion shall not apply to any **Claim** for any amounts owed under the Equal Pay Act of 1963, or any similar provisions of any federal, state, local or foreign law prohibiting pay discrimination or for any actual or alleged retaliatory treatment of an **Employee** by the **Insured** on account of the **Employee's** exercise of rights pursuant to any such law or amounts owed under the Equal Pay Act of 1963.

## V. General Conditions

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### Other Insurance

Unless specifically stated otherwise, the coverage afforded under this coverage section for:

1. an **Employment Claim** shall be primary to any other valid and collectible insurance policy (including coverage afforded by any other **Coverage Section**), provided that with respect to that portion of an **Employment Claim** made against any leased or temporary employee or independent contractor, **Costs of Defense** and/or **Damages** payable on behalf of such leased or temporary employee or independent contractor under this coverage section shall be excess of, and shall not contribute with, any other valid and collectible policy (other than a policy that is issued specifically as excess of the insurance afforded by this coverage section), regardless of whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise; and
2. a **Third Party Claim** shall be excess of, and shall not contribute with, any other valid and collectible insurance policy (other than a policy that is issued specifically as excess of the insurance afforded by this coverage section); regardless of whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise.