

EMPLOYMENT PRACTICES LIABILITY COVERAGE SECTION (NOT-FOR-PROFIT)

In consideration of payment of the premium and subject to the Declarations, the General Terms and Conditions Section, and the limitations, conditions, provisions and other terms of this Coverage Section, the Company and the "insureds" agree as follows:

A. Insuring Clauses

Employment Practices Liability Coverage Insuring Clause 1

1. The Company shall pay on behalf of the "insureds", "loss" on account of any "employment practices wrongful act" claim first made against such "insureds", during the "policy period", or, if exercised, during the Extended Reporting Period, for "employment practices wrongful acts", but only if such "claim" is reported to the Company in writing in the manner and within the time period provided in this Policy. However, the Company will have no duty to defend the "insured" against any "claim" because of a "wrongful act" to which this insurance does not apply.

Third Party Liability Coverage Insuring Clause 2 (if purchased)

2. If "third party wrongful act" coverage is purchased as set forth in Item 5 of the Declarations for this Coverage Section, the Company shall pay, on behalf of the "insureds", "loss" on account of any "third party claim" first made against such "insureds" during the "policy period" or, if exercised, during the Extended Reporting Period, for "third party wrongful acts", but only if such "third party claim" is reported to the Company in writing in the manner and within the time provided in this Policy and only with respect to any natural person who is a customer, vendor, service provider or other business invitee of the "organization". However, the Company will have no duty to defend the "insured" against any "claim" because of a "third party wrongful act" to which this insurance does not apply.

B. Definitions

When used in this Coverage Section:

1. "Benefit" means prerequisites, fringe benefits, deferred compensation or payments (including insurance premiums) in connection with an employee benefit plan and other payment to or for the benefit of an "employee" arising out of the employment relationship. "Benefits" shall not include salary, wages, commissions, or non-deferred cash incentive compensation.
2. "Claim" means: a "suit" or written demand for a monetary or non-monetary relief made by or for a current, former or prospective "employee" for damages because of an alleged "wrongful act".
3. "Defense Costs": means reasonable cost, charges, fees (including but not limited to attorney fees and experts fees) and expenses (other than regular or overtime wages, salaries, fees or "benefits" of the directors, officers, trustee or any duly constituted committee member or "employees" of the "organization") incurred in defending any "claim" and the premium for appeal, attachment or similar bonds.

The salaries and expenses of the Company's employees are not included in "defense costs".

4. "Employee" means any natural person whose labor or service is engaged by and directed by the "organization", including any part-time, seasonal, leased or temporary "employees" or volunteers. "Employee" shall not include any independent contractor.
5. "Insured Person" means: any natural person who was, now is or shall become:
 - (a) a full-time, part-time, temporary, leased or seasonal "employee" or volunteer of the "organization" but only while acting in his or her capacity as such;
 - (b) a duly elected or appointed director, officer, trustee or duly constituted committee member of any "organization" but only while acting in his or her capacity as such.

6. "Insured(s)" means: the "organization" and any "insured person".
7. "Interrelated Wrongful Acts" means: any "wrongful acts" casually connected by reason of any common fact, circumstance, situation, event or transaction.
8. "Loss" means the amount which an "insured" becomes legally obligated to pay on account of any covered "claim", including, but not limited to damages (including punitive and exemplary damages, liquidated damages awarded pursuant to the Age Discrimination Act or the Equal Pay Act, or the multiple portion of any multiplied damage award, if and to the extent such punitive, exemplary, liquidated or multiple damages are insurable under the law), back pay, front pay, claimant's attorney fees awarded by a court against an "insured" or agreed to by the Company in connection with a settlement (but only if such claimant's attorney fees are agreed to in writing by the Company at the time of or after a final settlement), judgments, pre-judgment and post-judgment interest, and "defense costs".

"Loss" does not include:

- (a) any amount not indemnified by the "organization" for which an "insured" is absolved from payment by reason of any agreement or court order;
- (b) the future salary, wages, commission or "benefits" of a claimant who has been or shall be hired, promoted or reinstated to employment pursuant to a settlement of, order in or other resolution of any "claim";
- (c) taxes, fines, or penalties, except as provided above with respect to punitive, exemplary, liquidated or the multiple portion of any multiplied damages;
- (d) any amount not insurable under the law pursuant to which this Coverage Section is construed, except as provided above with respect to punitive, exemplary, liquidated or the multiple portion of any multiplied damages;
- (e) any salary, wages, commission, "benefits" or other monetary payments which constitute severance payments or payments pursuant to a notice period;

- (f) any amount incurred by an "insured" in the defense or investigation of any action, proceeding or demand that is not then a "claim" even if:
 - (i) such amount also benefits the defense of a covered "claim", or
 - (ii) such action, proceeding or demand subsequently gives rise to a "claim"; or
 - (g) any amount allocated to non-covered "loss" pursuant to Subsection G of this Coverage Section.
9. "Retaliation" means retaliatory treatment against an "employee" or volunteer of the "organization" on account of such individual:
 - (a) exercising his or her rights under the law;
 - (b) refusing to violate any law;
 - (c) opposing any unlawful practice;
 - (d) disclosing or threatening to disclose to a superior or to any governmental agency any alleged violations of law; or
 - (e) having assisted or testified in or cooperated with a proceeding or investigation regarding alleged violations of law by the "insured".
 10. "Sexual Behavior" means any behavior, conduct, act, communication or expression that involves:
 - (a) sexual contact;
 - (b) physical or verbal sexual abuse;
 - (c) lewdness;
 - (d) physical or verbal sexual intimidation; or
 - (e) physical or verbal sexual molestation.
 11. "Suit" means: a civil proceeding in which damages because of a "wrongful act" to which this insurance applies is alleged, including:
 - (a) an arbitration proceeding in which such damages are claimed and to which the "insured" must submit or does submit with the Company's consent;
 - (b) any other alternative dispute resolution proceeding in which such damages are claimed and to which the "insured" submits with the Company's consent; or
 - (c) any administrative proceeding or hearing, including but not limited to any such proceeding brought by or in association with the Equal Employment Opportunity Commission, conducted by a governmental agency (federal, state or local) having the proper legal authority over the matter in which such damages are claimed.

However, the term "suit" does not include any labor or grievance arbitration or other proceeding subject to a collective bargaining agreement.

12. "Third Party Claim" means:

(a) a "suit" or demand for any of the following:

- (i)** a written demand for monetary relief or non-monetary relief; a civil proceeding commenced by the service of a complaint, summons, notice of application, writ, claim form or similar pleading;
- (ii)** an arbitration proceeding commenced by receipt of a demand for arbitration or similar document; or
- (iii)** an administrative, regulatory or tribunal proceeding commenced by the issuance of a notice of charge, formal investigative order or similar document,

which is brought and maintained by or on behalf of any natural person who is a customer, vendor, service provider or other business invitee of the "organization" against any "insured" for a "third party wrongful act", including any appeal therefrom; or

(b) a written request received by an "insured" to toll or waive a statute of limitations relating to a "third party claim" as described in paragraph (a) above.

13. "Third Party Wrongful Act", with respect to any natural person who is a customer, vendor, service provider or other business invitee of the "organization". An act committed, attempted, or allegedly committed or attempted by an "insured" for:

- (a)** discrimination against a third party based upon such third party's race, color, religion, creed, age, sex, national origin, disability, pregnancy, HIV status, marital status, sexual orientation or preference, military status or other status that is protected pursuant to any applicable federal, state, or local statutory law or common law; or
- (b)** sexual harassment, including unwelcome sexual advances, requests for sexual favors or other conduct of a sexual nature against a third party.

14. "Wrongful Act" shall mean "employment practices wrongful act" which means:

Any of the following, actual or alleged acts, directed against any "employee", former "employee" or applicant for employment by an "insured" and caused by the employment or potential employment relationship:

- (a)** wrongful dismissal, discharge or termination of employment; or
- (b)** wrongful employment decision; or
- (c)** breach of a written or oral employment contract or implied employment contract; or
- (d)** employment related misrepresentation; or
- (e)** wrongful failure to promote; or
- (f)** violation of employment discrimination laws (including harassment); or
- (g)** wrongful deprivation of a career opportunity; or
- (h)** employment related wrongful discipline; or
- (i)** negligent "employee" evaluation; or
- (j)** employment related invasion of privacy; or
- (k)** employment related defamation (including libel and slander); or
- (l)** sexual or workplace harassment of any kind; or
- (m)** constructive discharge of employment; or
- (n)** employment related retaliation; or
- (o)** employment related humiliation; or
- (p)** wrongful demotion; or
- (q)** negligent reassignment; or
- (r)** negligent supervision in providing consistent enforcement of employment-related corporate policies and procedures; or
- (s)** violation of any federal, state or local civil rights laws; and

committed or attempted or allegedly committed or attempted by an "insured".

C. Exclusions

Applicable to All Insurance Clauses

This insurance does not apply to "losses", "claims" or obligations of the "insured" arising out of, imposed by or with respect to any one or more of the following:

1. the Company shall not be liable for "loss", other than "defense costs", resulting from any "claim" based upon, arising from, or in consequence of any actual or alleged breach of any employment contract or agreement; provided that this exclusion shall not apply to the extent an "insured" would have been liable for such "loss" in the absence of such employment contract or agreement.
2. based upon, arising from, or in consequence of the liability of others assumed by any "insured" under any written or oral contract or agreement; provided that this Exclusion shall not apply to the extent that an "insured" would have been liable in the absence of such contract or agreement.
3. made against any "insured" based upon, arising from, or in consequence of the committing of any deliberately fraudulent act or omission or any willful violation of any statute or regulation by such "insured", as evidenced by a final and non-appealable judgment or adjudication, or, in a criminal proceeding, as evidenced by any plea of guilty, nolo contendere or no contest, or any similar plea.
4. the intentional failure to comply with any governmental, legislative, judicial or administrative law, order or regulation by the "insured" or with the "insured's" consent.
5. for any harassment or personal injury, other than that included in the definition of "employment practices wrongful act".
6. based upon, arising from, or in consequence of damages from the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of any "pollutants" into or upon the land, atmosphere, watercourse or any body of water or for any loss, cost or expense arising out of any environmental liability statutes or regulations, governmental or any other request, demand or order, including but not limited to testing, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing any "pollutants".
7. based upon, arising from, or in consequence of any fact, circumstance, situation, transaction, event or "wrongful act" that, before the inception date set forth in Item 2(A) of the Declarations for the General Terms and Conditions, was the subject of any notice given under any policy or coverage section of which this Coverage Section is a direct or indirect renewal or replacement.
8. based upon, arising from, or in consequence of:
 - (a) any:
 - (i) written demand seeking monetary relief;
 - (ii) written demand alleging an "employment practices wrongful act" and seeking reinstatement, re-employment or re-engagement;
 - (iii) written demand alleging a "third party wrongful act" and seeking non-monetary relief;
 - (iv) civil proceeding seeking monetary or non-monetary relief;
 - (v) administrative, regulatory or tribunal proceeding commenced by the issuance of a notice of charge or complaint of discrimination by the Equal Employment Opportunity Commission or any other federal, state or local governmental agency authorized to investigate or adjudicate an actual or alleged "employment practices wrongful act" or "third party wrongful act";
 - (vi) Notice of Violation or Order to Show Cause resulting from an audit conducted by the Office of Federal Contract Compliance Programs; or
 - (vii) arbitration proceeding;

which was pending against any "insured" on or prior to the applicable Pending or Prior Date set forth in Item 4 of the Declarations for this Coverage Section, or any of the same or substantially similar facts or situations underlying or alleged therein, including but not limited to any such "claim" which is brought by or on behalf of the original claimant in any matter set forth in subparagraphs (i)-(vii) above or any other claimant; or
 - (b) any order, decree or judgment which was entered for or against any "insured" on or prior to the applicable Pending or Prior Date set forth in Item 4 of the Declarations for this Coverage Section, or any of the same or substantially similar facts or situations underlying any such order, decree or judgment.
9. for any injury arising out of sexual abuse or physical abuse or molestation.

10. for any actual or alleged violation of the responsibilities, obligations or duties imposed by any federal, state, or local statutory law or common law (including but not limited to the National Labor Relations Act) or any amendments to or regulations promulgated under any such law that governs:

- (a)** the rights of "employees" to engage in, or to refrain from engaging in, union or other collective activities, including but not limited to union organizing, union elections and other union activities;
- (b)** the duty or obligation of an employer to meet, discuss, notify or bargain with any "employee" or employee representative, collectively or otherwise;
- (c)** the enforcement of any collective bargaining agreement, including but not limited to grievance and arbitration proceedings;
- (d)** strikes, work stoppages, boycotts, picketing and lockouts; or
- (e)** any similar rights or duties (Labor Management Relations Laws).

11. for a violation of the "insured's" responsibilities or duties required by any other federal, state or local statutes, rules or regulations, and any rules or regulations promulgated therefore or amendments thereto, except for the following: Title VII of the Civil Rights Act of 1964 and amendments thereto, the Americans With Disabilities Act, the Age Discrimination in Employment Act, the Equal Pay Act, the Pregnancy Discrimination Act of 1978, the Immigration Reform and Control Act of 1986 and the Family and Medical Leave Act of 1993 or any other similar state or local statutes, rules or regulations to the extent that they prescribe responsibilities or duties concerning the same acts or omissions.

However, this insurance does not apply to a "wrongful act" arising out of the "insured's" failure to comply with any of the accommodations for the disabled required of the "insured" by, or any expenses incurred as the result of physical modifications made to accommodate any person pursuant to, the Americans With Disabilities Act, or any amendments thereto, or any similar state or local statutes, rules or regulations to the extent that they prescribe responsibilities or duties concerning the same acts or omissions.

This Exclusion does not apply to any "claim" for retaliatory treatment by an "insured" against any person making a "claim" pursuant to such person's rights under any statutes, rules or regulations.

12. for any actual or alleged obligation of any "insured" pursuant to any workers' compensation, unemployment insurance, social security, disability benefits or any similar federal, state or local statutory law or common law; provided that this exclusion shall not apply to any "claim" for "retaliation".

13. for any actual or alleged violation of the responsibilities, obligations or duties imposed by any federal, state, local statutory law or common law (including but not limited to the Employee Retirement Income Security Act of 1974 (except section 510 thereof) and the Consolidated Omnibus Budget Reconciliation Act of 1985) or amendments to or regulations promulgated under that governs any employee benefit arrangement, program, policy, plan or scheme of any type (whether or not legally required or whether provided during or subsequent to employment with an "organization") (Employee Benefits Program Laws), including but not limited to any:

- (a)** retirement income or pension benefit program;
- (b)** employee stock purchase or employee stock ownership plan;
- (c)** profit sharing plan;
- (d)** deferred compensation plan;
- (e)** vacation, maternity leave, personal leave, or parental leave;
- (f)** severance pay arrangement;
- (g)** supplementary unemployment compensation plan;
- (h)** apprenticeship programs;
- (i)** pre-paid legal service plan or scholarship plan;
- (j)** life insurance plan;
- (k)** health, sickness, medical, dental, disability or dependent care plan;
- (l)** welfare plan; or
- (m)** similar arrangement, program, plan or scheme;

provided that this exclusion shall not apply to any "claim" for "retaliation".

14. for any action seeking damages or other relief for the breach of an expressed or implied contractual obligation of the "insured" with regard to monetary loans, the purchase or sale of stock or the sale or acquisition of any equity interest in the "insured".
15. made against a "subsidiary" or "affiliate" or an "insured person" of such "subsidiary" or "affiliate" for any "wrongful act" committed, attempted or allegedly committed or attempted during any time when such entity was not a "subsidiary" or "affiliate".
16. for any "claim" or "suit" for actual or alleged bodily injury, mental anguish, emotional distress, humiliation, sickness, disease, including the transmission of any communicable disease or death of any person or damage to or destruction of any tangible property including loss of use thereof whether or not it is damaged or destroyed; provided that this exclusion shall not apply to mental anguish, emotional distress or humiliation resulting from any "wrongful act".
17. the Company shall not be liable for "loss" on account of any "claim" for any actual or alleged assault or battery, including any sexual assault or battery.
18. the Company shall not be liable for "loss" on account of any "claim" based upon, arising from or in consequence of any actual or alleged "sexual behavior".
19. for any actual or alleged violation of the responsibilities, obligations or duties imposed by any federal, state, or local statutory law or common law (including but not limited to the Fair Labor Standards Act) or amendments to or regulations promulgated that governs wage, hour and payroll policies and practices, except the Equal Pay Act (Wage and Hour Laws), including but not limited to:
 - (a) the calculation, timing or manner of payment of minimum wages, prevailing wage rates, overtime pay or other compensation alleged to be due and owing;
 - (b) the classification of any organization or person for wage and hour purposes;
 - (c) garnishments, withholdings or other deductions from wages;
 - (d) child labor;
 - (e) pay equity or comparable worth; or
 - (f) any similar policies or practices;provided that this exclusion shall not apply to any "claim" for "retaliation".

D. Coordination of Coverage

Any "loss" otherwise covered by both this Coverage Section and any fiduciary liability Coverage Section or policy issued by the Company or by any affiliate of the Company, first shall be covered as provided in, and shall be subject to the Limit of Liability and Retention applicable to, this Coverage Section.

E. Limit of Liability and Retention

1. The Company's maximum aggregate liability for all "loss" on account of all "claims" first made during each "policy year", whether covered under one or more Insuring Clauses, shall be the Limit of Liability set forth in Item 2(A) of the Declarations for this Coverage Section. If Third Party Liability Coverage is purchased, the Company's Maximum Aggregate liability for all "loss" on account of all "third party claims" first made during each "policy year" shall be the Sublimit set forth in Item 2(B) of the Declarations for this Coverage Section, which amount shall be part of and not in addition to the Company's maximum aggregate Limit of Liability for all "claims" first made during that "policy year" as set forth in Item 2(A) of the Declarations for this Coverage Section.
2. Solely in the event that the Defense Outside the Limits of Liability Option is purchased as indicated in Item 6 of the Declarations of this Coverage Section, "defense costs" shall be in addition to, and not part of, the applicable Limits of Liability set forth in Item 2 of the Declarations for this Coverage Section, and payment of "defense costs" by the Company shall not reduce or exhaust such applicable Limits of Liability; provided, however, that when such applicable Limits of Liability are exhausted by payment of "loss" other than "defense costs", any obligation of the Company to pay "defense costs" or to defend or continue to defend any "claim" shall cease.

If the Defense Outside the Limits of Liability Option is not purchased as indicated in Item 6 of the Declarations of this Coverage Section, "defense costs" are part of and not in addition to the Limits of Liability set forth in Item 2 of the Declarations of this Coverage Section and payment of "defense costs" by the Company shall reduce, and may exhaust, such Limits of Liability. When the Limits of Liability are exhausted by payment of "defense costs" or other "loss", any obligation of the Company to pay "defense costs" or to defend or continue to defend any "claim" shall cease.

3. The Company's liability under this Coverage Section shall apply only to that part of covered "loss" (as determined by any applicable provision in Subsection G of this Coverage Section) on account of each "claim" which is in excess of the applicable Retention set forth in Item 3 of the Declarations for this Coverage Section. Such Retention shall be depleted only by "loss" otherwise covered under this Coverage Section and shall be borne by the "insureds" uninsured and at their own risk. In the event that any "insured" is unwilling or unable to bear the Retention, it shall be the obligation of the "organization" to bear such Retention uninsured and at its own risk.
4. All "claims" arising out of the same "wrongful act" and all "interrelated wrongful acts" of any "insured" shall be deemed one "claim", regardless of the number of "claims" made, claimants, or "insureds" against whom such "claims" are made. Such "claims" shall be treated as a single "claim" first made on the date the earliest of such "claims" was first made, or on the date the earliest of such "claims" is treated as having been made in accordance with Subsection F of the General Terms and Conditions, regardless of whether such date is before or during the "policy period".
5. The Limit of Liability available during the Extended Reporting Period (if exercised) shall be part of, and not in addition to, the Company's Maximum Aggregate Limit of Liability for all "loss" on account of all "claims" first made during the immediately preceding "policy year".

F. Defense and Settlement

1. Except as provided in this Subsection, the Company shall have the right and duty to defend any "claim" covered by this Coverage Section, even if any of the allegations in such "claim" are groundless, false or fraudulent. Defense counsel shall be selected by the Company from the Company's list of approved employment defense firms. The Company's duty to defend any "claim" shall cease upon exhaustion of the applicable Limit of Liability.

2. Notwithstanding the foregoing, it shall be the duty of the "insureds" and not the duty of the Company to defend any "claim" which is in part excluded from coverage pursuant to Section C., Exclusion 11 of this Coverage Section. For such portion of such "claim" that is otherwise covered under this Coverage Section, the "insureds" shall select as defense counsel for such "claim" a law firm included in the Company's then current list of approved employment defense firms for the jurisdiction in which such "claim" is pending.
3. The Company may make any investigation it deems necessary and may, with the consent of the "insured", make any settlement of any "claim" it deems expedient.

Solely in the event that the Defense Outside the Limits of Liability Option is purchased as indicated in Item 6 of the Declarations of this Coverage Section, if an "insured" in any "claim" withholds consent to any settlement acceptable to the claimant in accordance with the Company's recommendation (a Proposed Settlement), the "insureds" will thereafter be responsible for defending such "claim" at their own expense and, subject in all events to the Company's maximum Limit of Liability, the Company's liability for "loss" with respect to any such "claim" will not exceed the amount of the Proposed Settlement plus "defense costs" incurred up to the date of the "insured's" refusal to consent to the Proposed Settlement.

If the Defense Outside the Limits of Liability Option is not purchased as indicated in Item 6 of the Declarations of this Coverage Section, in the event an "insured" in any "claim" withholds consent to a Proposed Settlement, the Company's liability with respect to such "claim" shall not exceed:

- (a) the amount of the Proposed Settlement plus "defense costs" incurred up to the date of the "insured's" refusal to consent to the Proposed Settlement; plus

- (b) seventy percent (70%) of any "loss", including "defense costs", in excess of the amount referenced in paragraph (a) above, incurred in connection with such "claim"; subject in all events to the applicable Retention and Limits of Liability for such "claim". The remaining thirty percent (30%) of "loss", including "defense costs", in excess of the amount referenced in paragraph (a) above shall be borne by the "insureds" uninsured and at their own risk, notwithstanding anything to the contrary contained in Subsection G.
4. The "insureds" agree not to settle or offer to settle any "claim", incur any "defense costs", or otherwise assume any contractual obligation or admit any liability with respect to any "claim" without the Company's prior written consent, which consent shall not be unreasonably withheld. The Company shall not be liable for any element of "loss" incurred, for any obligation assumed, or for any admission made, by any "insured" without the Company's prior written consent.
 5. The Company will have no obligation to pay "loss", including "defense costs", or to defend or continue to defend any "claim" after the maximum Limit of Liability applicable to the "policy year" in which such "claim" was first made or is deemed to have first been made has been exhausted. If the Company's Limit of Liability in any "policy year" is exhausted, the premium applicable to such "policy year" will be fully earned.
 6. If the Combined Maximum Aggregate Limit of Liability for all liability coverage sections is elected, as set forth in Item 3 of the Declarations of the Common Terms and Conditions, then the Company will have no obligation to pay "loss" including "defense costs" or to defend or continue to defend any claim after the Company's combined maximum aggregate limit applicable to the "policy year" in which such "claim" was first made or is deemed to have first been made has been exhausted. If the Company's Combined Maximum Aggregate Limit of Liability in any "policy year" is exhausted, the Policy premium applicable to such "policy year" will be fully earned.
 7. The "insureds" agree to provide the Company with all information, assistance and cooperation which the Company reasonably requires and agree that in the event of a "claim" the "insureds" will do nothing that could prejudice the Company's position or its potential or actual rights of recovery.
- G. Allocation**
- If both "loss" covered under this Coverage Section and loss not covered under this Coverage Section are incurred by the "insureds" on account of any "claim" because such "claim" against the "insureds" includes both covered and non-covered matters, then coverage under this Coverage Section with respect to such "claim" shall apply as follows:
1. "defense costs": Except as provided in 3., below, one hundred percent (100%) of reasonable and necessary "defense costs" incurred by the "insured" on account of such "claim" will be considered covered "loss"; and
 2. loss other than "defense costs": All remaining loss incurred by the "insured" on account of such "claim" shall be allocated by the Company between covered "loss" and non-covered loss based on the relative legal and financial exposures of the parties to covered and non-covered matters and, in the event of a settlement in such "claim", also based on the relative benefits to the "insureds" from such settlement.
 3. "defense costs" incurred by the "insured" on account of a "claim" which is in part excluded from coverage pursuant to C. Exclusions 11 of this Coverage Section shall be allocated between covered "defense costs" and non-covered defense costs based on the relative legal and financial exposures of the parties to covered and non-covered matters.
- H. Arbitration**
- Any dispute between any "insured" and the Company based upon, arising from, or in any way involving any actual or alleged coverage under this Coverage Section, or the validity, termination or breach of this Coverage Section, including but not limited to any dispute sounding in contract or tort, shall be submitted to binding arbitration.

The "organization", however, shall first have the option to resolve the dispute by non-binding mediation pursuant to such rules and procedures, and using such mediator, as the parties may agree. If the parties cannot so agree, the mediation shall be administered by the American Arbitration Association pursuant to its then prevailing commercial mediation rules.

If the parties cannot resolve the dispute by non-binding mediation, the parties shall submit the dispute to binding arbitration pursuant to the then prevailing commercial arbitration rules of the American Arbitration Association, except that the arbitration panel shall consist of one arbitrator selected by the "insureds", one arbitrator selected by the Company, and a third arbitrator selected by the first two arbitrators.

I. Other Insurance

Unless specifically stated otherwise, the coverage afforded under this Coverage Section:

1. for "claims", shall be primary; provided that with respect to that portion of a "claim" made against any leased "employee", temporary "employee" or seasonal "employee", "loss" and "defense costs", payable on behalf of such leased "employee", temporary "employee" or seasonal "employee" under this Coverage Section will be specifically excess of and will not contribute with other valid insurance, including but not limited to any other insurance under which there is a duty to defend, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is specifically stated to be in excess of this Coverage Section.
2. for "third party claims", will be specifically excess of and will not contribute with other valid insurance, including but not limited to general liability insurance or any other insurance under which there is a duty to defend, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is: (i) specifically stated to be in excess of this Coverage Section; or (ii) subject to Subsection D of this Coverage Section.

J. Certified Acts of Terrorism

It is hereby understood and agreed that this Coverage Section includes coverage on account of any "claim" for "wrongful acts" applicable to this Coverage Section on account of any "Certified Act of Terrorism".

"**Certified Act of Terrorism**" means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act. The federal Terrorism Risk Insurance Act sets forth the following criteria for a Certified Act of Terrorism:

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.

If aggregate insured losses attributable to terrorist acts certified under the federal Terrorism Risk Insurance Act exceed \$100 billion in a Program Year (January 1 through December 31) and the Company has met the Company's deductible under the Terrorism Risk Insurance Act, the Company shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such cases insured losses up to that amount are subject to pro rata allocation in accordance with the procedures established by the Secretary of Treasury.

The terms and limitations of any terrorism coverage provided herewith, or the inapplicability or omission of terrorism exclusion, do not serve to create coverage for any loss which would otherwise be excluded under this Coverage Section or Policy, such as losses excluded by the Nuclear Hazard Exclusion or the War and Military Action Exclusion.