

I. INSURING AGREEMENT

The Insurer shall pay on behalf of **ABC Corp.**, any **Subsidiary** or any **Insured Person** **Loss** resulting from any **Claim** first made against the **ABC Corp. Insureds** during the **Policy Period** or the Extended Reporting Period, if applicable, by or on behalf of a past, present or prospective **Employee** for a **Wrongful Employment Practice**.

II. DEFINITIONS

For purposes of coverage under this Coverage Part B:

1. **Claim** means:
 - a. a written demand for monetary damages,
 - b. a civil or criminal adjudicatory proceeding or arbitration,
 - c. a formal administrative or regulatory adjudicatory proceeding, or
 - d. a formal civil, criminal, administrative or regulatory investigation, against any **ABC Corp. Insured**, including any appeal therefrom.
2. **EEOC Proceeding** means an investigative proceeding before the Equal Employment Opportunity Commission or an adjudicatory or investigative proceeding before any similar federal, state or local government body whose purpose is to address **Wrongful Employment Practices**.
3. **Employees** means all past, present or future full-time or part-time employees of **ABC Corp.** or any **Subsidiary**.
4. **Insured Persons** means all past, present or future duly elected or appointed directors and/or officers and all **Employees** of **ABC Corp.** or any **Subsidiary**.
5. **Loss** means damages (including back pay and front pay), settlements, judgments (including any award of pre-judgment and post-judgment interest) and **Defense Costs** for which **ABC Corp.**, any **Subsidiary** or any **Insured Person** is legally obligated to pay on account of a covered **Claim**. **Loss** shall not include: (i) criminal or civil fines or penalties imposed by law; (ii) taxes; (iii) any amounts for which there is no legal recourse against **ABC Corp.**, any **Subsidiary** or the **Insured Persons**; or (iv) matters which are uninsurable under the law pursuant to which this Policy shall be construed. **Loss** shall include punitive, exemplary or multiple damages, if insurable, to the fullest extent permitted by any applicable law. Where the **ABC Corp. Insureds** reasonably determine that punitive, exemplary or multiple damages are insurable under any applicable law, the Insurer shall not challenge that determination of insurability.
6. **Wrongful Act** means any actual or alleged error, misstatement, misleading statement, act, omission, neglect or breach of duty committed or attempted by the **Insured Persons** in their capacity as such or by **ABC Corp.** or any **Subsidiary**.
7. **Wrongful Employment Practice** means any **Wrongful Act** constituting or relating to:
 - a. wrongful dismissal or discharge or termination of employment, whether actual or constructive;
 - b. employment-related misrepresentation;

- c. violation of any federal, state or local laws (whether common-law or statutory) concerning employment or discrimination in employment, including the Americans with Disabilities Act of 1992, the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967, Title VII of the Civil Rights Act of 1964 and the Civil Rights Act of 1866;
- d. sexual harassment or other unlawful harassment in the work place;
- e. wrongful deprivation of career opportunity or failure to employ or promote;
- f. wrongful discipline of employees;
- g. retaliation against employees for the exercise of any legally protected right or for engaging in any legally protected activity;
- h. negligent evaluation of employees;
- i. failure to adopt adequate workplace or employment policies and procedures;
- j. employment-related defamation or invasion of privacy; or
- k. employment-related wrongful infliction of emotional distress.

III. EXCLUSIONS

1. Exclusions Applicable to All Loss

The Insurer shall not be liable to pay any **Loss** under this Coverage Part B in connection with any **Claim** made against **ABC Corp.**, any **Subsidiary** or **Insured Persons**:

- a. for any actual or alleged bodily injury (other than emotional distress or mental anguish), sickness, disease or death of any person, or damage to or destruction of any tangible property including loss of use;
- b. based upon, directly or indirectly arising out of, or in any way involving:
 - (1) any **Wrongful Act** or any matter, fact, circumstance, situation, transaction, or event which has been the subject of any notice given under any prior policy, regardless of whether such prior policy affords coverage for such proceeding or arbitration; or
 - (2) any other **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** described in (1) above, would constitute **Interrelated Wrongful Acts**;
- c. based upon, directly or indirectly arising out of, in any way involving or constituting any civil, criminal, administrative or regulatory proceeding (including an **EEOC Proceeding**), investigation or arbitration against any of the **ABC Corp. Insureds**:
 - (1) pending prior to or on the Prior or Pending Date set forth in the Coverage Schedule of the Declarations; or
 - (2) which has been the subject of any notice given under any prior policy, regardless whether such prior policy affords coverage for such proceeding, investigation, or arbitration;or any fact, circumstance, situation, transaction or event underlying or alleged in such proceeding, investigation or arbitration; provided however, if such prior proceeding is an **EEOC Proceeding**, this exclusion shall not apply to any **Claim** by **Employees** who did not bring such prior **EEOC Proceeding**;
- d. based upon, directly or indirectly arising out of, or in any way involving: any nuclear reaction, radiation or contamination, or any actual, alleged or threatened discharge,

release, escape, or disposal of, or exposure to, **Pollutants**; any request, direction or order that any of the **ABC Corp. Insureds** test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to or assess the effect of **Pollutants** or nuclear reaction, radiation or contamination, or any voluntary decision to do so; or any actual or alleged property damage, or bodily injury, sickness, disease or death of any person, or financial loss to **ABC Corp.** or any **Subsidiary**, their security holders, or their creditors resulting from any of the aforementioned matters; provided however, this exclusion shall not apply to any **Claim** for retaliatory treatment of the claimant by the **ABC Corp. Insureds** on account of the claimant's actual or threatened disclosure of the matters described in this exclusion;

- e. where it is established in a final adjudication by the judge, jury or arbitrator in such **Claim** that such **ABC Corp. Insured** in fact gained any profit, remuneration or pecuniary advantage to which they were not legally entitled. For purposes of determining the applicability of this exclusion, the **Wrongful Act** of any **Insured Person** shall not be imputed to any other **Insured Person**, and only the **Wrongful Act** of any **Executive Officer** shall be imputed to **ABC Corp.** and any **Subsidiary**;
 - f. where it is established in a final adjudication by the judge, jury or arbitrator in such **Claim** that such **ABC Corp. Insured** committed any fraudulent or criminal **Wrongful Act** with actual knowledge of its wrongful nature or with intent to cause damage. For purposes of determining the applicability of this exclusion, the **Wrongful Act** of any **Insured Person** shall not be imputed to any other **Insured Person**, and only the **Wrongful Act** of any **Executive Officer** shall be imputed to **ABC Corp.** and any **Subsidiary**;
 - g. based upon, directly or indirectly arising out of, or in any way involving a lockout, strike, picket line, replacement or other similar actions resulting from labor disputes or labor negotiations, or the Workers' Adjustment and Retraining Notification Act, Public Law 100-379 (1988), or any amendment thereto, or any similar federal, state, local or common law;
 - h. based upon, directly or indirectly arising out of, or in any way involving any actual or alleged violation of (i) **ERISA or any Similar Act**, (ii) any law governing workers' compensation, unemployment insurance, social security, disability or similar law, (iii) the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), (iv) the Fair Labor Standards Act (except the Equal Pay Act), (v) the National Labor Relations Act, (vi) the Occupational Safety and Health Act of 1970 (OSHA), or (vii) any similar federal, state or local law. However, this exclusion shall not apply to any **Claim** for a **Wrongful Employment Practice** based upon a claimant's exercise of a right pursuant to any such laws; or
 - i. for:
 - (1) any **Wrongful Act** by **Insured Persons** of any **Subsidiary**, or by such **Subsidiary**, occurring before the date such entity became a **Subsidiary**, or
 - (2) any other **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** described in (1) above, would constitute **Interrelated Wrongful Acts**.
2. Exclusions Applicable to a Portion of Loss

The Insurer shall not be liable under this Coverage Part B to pay that portion of **Loss**, other than **Defense Costs**, which constitutes:

- a. the cost of any non-monetary relief, including without limitation any costs associated with compliance with any injunctive relief of any kind or nature imposed by any judgment or settlement;

- b. the costs associated with providing any reasonable accommodations required by, made as a result of, or to conform with the requirements of, the Americans With Disabilities Act and any amendments thereto or any similar federal, state or local statute, regulation, or common laws;
- c. compensation earned by the claimant in the course of employment but not paid by **ABC Corp.** or any **Subsidiary**, including any unpaid salary, bonus, hourly pay, overtime pay, severance pay, retirement benefits, vacation days or sick days. However, this exclusion shall not apply to any back pay or front pay or additional compensation allegedly due as a result of discriminatory employment practices;
- d. damages determined to be owing under an express written contract with or express written severance obligation of **ABC Corp.** or any **Subsidiary**. However, this exclusion shall not apply if and to the extent that liability would have attached to the **ABC Corp. Insureds** in the absence of the written contract with or obligation of **ABC Corp.** or any **Subsidiary**; or
- e. medical or insurance benefits to which the claimant allegedly was entitled or would have been entitled had **ABC Corp.** or any **Subsidiary** provided the claimant with a continuation or conversion of insurance.