

## EMPLOYMENT PRACTICES LIABILITY COVERAGE PART

**THIS IS A CLAIMS MADE COVERAGE PART WITH DEFENSE EXPENSES INCLUDED IN THE LIMIT OF LIABILITY. PLEASE READ AND REVIEW THE POLICY CAREFULLY.**

In consideration of the payment of the premium, and in reliance on all statements made and information furnished to the Company identified in the Declarations (hereinafter the Insurer) including the Application, and subject to all of the terms, conditions and limitations of all of the provisions of this Policy, the Insurer and the Insureds agree as follows:

### I. INSURING AGREEMENT

The Insurer shall pay on behalf of the **Insureds Loss** resulting from **Claims** first made against the **Insureds** during the **Policy Period** or, if applicable, the Optional Extension Period, for **Wrongful Acts**.

### II. DEFINITIONS

- (A) “**Claim**,” as defined in GENERAL DEFINITIONS (B), shall be deemed to include, for purposes of this Coverage Part, an administrative or regulatory investigation when conducted by the Equal Employment Opportunity Commission (“EEOC”) or similar, state, local or foreign agency, which is commenced by the filing of a notice of charges, service of a complaint or similar document of which notice has been given to the **Insured**. A **Claim** will not include any labor or grievance arbitration or other proceeding which is subject to a collective bargaining agreement.
- (B) “**Company**” means the **Named Insured** and any **Subsidiary** created or acquired on or before the Inception Date set forth in ITEM 2 of the Declarations or, subject to CONDITION (A) of this Coverage Part, during the **Policy Period**.
- (C) “**Insured**” means the **Insured Persons** and the **Company**.
- (D) “**Insured Person**” means:
- (1) any past, present or future director, officer, partner, principal, member, trustee or employee of the **Company**, including any part-time, seasonal, or temporary employee; and
  - (2) any leased employee or independent contractor so long as he or she is working solely for the **Company** and only for conduct within his or her duties as such, but only if the **Company** provides indemnification to such individual in the same manner as is provided to the **Company’s** employees; and
- (E) “**Loss**,” as defined in GENERAL DEFINITIONS (G), shall be deemed to include, for purposes of this Coverage Part, damages (including back pay and front pay) and judgments (including pre-judgment and post judgment interest). **Loss** will not include any costs associated with the modification of any building or property in order to provide 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 law.
- (F) “**Wrongful Act**” means any actual or alleged:
- (1) wrongful termination of employment whether actual or constructive;

- (2) employment discrimination of any kind including violation of any federal, state or local law involving employment or discrimination in employment which would deprive or potentially deprive any person of employment opportunities or otherwise adversely affect his or her status as an employee, because of such person's race, color, religion, age, gender, national origin, disability, sexual preference, pregnancy, or other protected status;
- (3) unwelcome sexual advances, requests for sexual favors, or other verbal, visual or physical conduct of a sexual nature or other harassment in the workplace;
- (4) wrongful deprivation of career opportunity, failure to grant tenure, employment related misrepresentations, retaliatory treatment against an employee of the **Company**, failure to promote, demotion, wrongful discipline or evaluation, or refusal to hire; and
- (5) employment related libel, slander, humiliation, defamation, or invasion of privacy;

by the **Company** or by any **Insured Person** in his or her capacity as such.

### III. EXCLUSIONS

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

(A) brought about or contributed to in fact by:

- (1) any intentionally dishonest, fraudulent or criminal act or omission; or
- (2) profit or remuneration gained by any **Insured** to which such is not legally entitled;

as determined by a final adjudication in the underlying action or in a separate action or proceeding. Each **Insured** agrees that, if the Insurer has no liability to an **Insured** for **Loss** as a result of a **Claim** by reason of this EXCLUSION (A), such **Insured** will repay the Insurer upon demand all **Loss** paid on behalf of such **Insured** in connection with such **Claim**;

- (B) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or **Wrongful Act** which, before the Inception Date of this Policy, was the subject of any notice given under any other policy of insurance;
- (C) for any actual or alleged bodily injury, sickness, disease or death of any person, or damage or destruction of any tangible property including loss of use thereof; however, this EXCLUSION (C) will not apply to any allegations of emotional distress, loss of reputation, mental anguish, or humiliation;
- (D) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or **Wrongful Act** underlying or alleged in any prior and/or pending litigation or administrative or regulatory proceeding which incepted prior to the Pending And Prior Proceeding Date set forth in ITEM 6(f) of the Declarations;
- (E) arising out of any actual or alleged liability of the **Company** under any express contract or agreement; however, this EXCLUSION (E) will not apply to the extent that an **Insured** would have been liable in the absence of such express contract or agreement. With respect to this EXCLUSION (E), an "express contract or agreement" is defined as an actual agreement of the parties, the terms of which are openly set forth or declared at the time of making in clear or distinct language;
- (F) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged violation of the Employee Retirement Income Security Act of 1974 (ERISA) as amended or any regulation promulgated thereunder or any similar, federal, state or local law or regulation;

- (G) for actual or alleged violation of the Occupational Safety and Health Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the National Labor Relations Act or other similar provisions of any federal, state or local statutory or common law or any rules or regulations promulgated under any of the foregoing;

provided that EXCLUSIONS (F) and (G) above will not apply to actual or alleged retaliation against an **Insured Person** for exercising his or her rights under any such law(s);

- (H) seeking only injunctive or non-monetary relief, regardless of whether a prevailing claimant may be entitled to recover attorney's fees and costs; however, this EXCLUSION (H) shall not apply to **Defense Expenses** incurred in the defense of any such **Claim**;
- (I) for any liability arising out of a lockout, strike, picket line, hiring of replacement workers, or other similar actions in connection with labor disputes or labor negotiations.

No conduct of any **Insured Person** will be imputed to any other **Insured Person** to determine the application of any of the above EXCLUSIONS.

#### IV. CONDITIONS

(A) MERGERS AND ACQUISITIONS (CHANGES IN EXPOSURE OR CONTROL):

- (1) If, during the **Policy Period**, the **Company** acquires any assets, acquires a **Subsidiary**, or acquires any entity by merger (each an "Acquired Entity") such that the **Company** is the surviving entity (a "Transaction"):
- (a) there will be coverage available under this Coverage Part for any **Claim** made against the Acquired Entity and its directors, officers, partners, principals, members, trustees or employees for any **Wrongful Act** committed or allegedly committed after the effective date of the Transaction for a period of ninety (90) days after the effective date of the Transaction (not to exceed the Policy Expiration Date);
  - (b) there will be no coverage available under this Coverage Part for any **Claim** made against the Acquired Entity or any of its directors, officers, partners, principals, members, trustees or employees for any **Wrongful Act** committed or allegedly committed after the effective date of the Transaction beyond the ninety (90) day period, unless:
    - (i) any of the gross annual fees, assets under management or assets of the Acquired Entity are less than thirty-five percent (35%) of the gross annual fees, assets under management or assets, respectively, of the **Company** at the time immediately preceding the Transaction; and
    - (ii) the **Named Insured** gives the Insurer written notice, with full details, of the Transaction within the ninety (90) day period;
  - (c) there will be no coverage available under this Coverage Part for any **Claim** made against the Acquired Entity or any of its directors, officers, partners, principals, members, trustees or employees for any **Wrongful Acts** committed or allegedly committed before the effective date of the Transaction.
- (2) If, during the **Policy Period**, any of the following events occurs:
- (a) the merger or acquisition of an **Company**, or of all or substantially all of its assets by another entity such that that the **Company** is not the surviving entity;

- (b) the acquisition by any person, entity or affiliated group of persons or entities of the right to vote for, select or appoint more than fifty percent (50%) of the directors, trustees, or members of the Board of Managers of the **Company**; or
- (c) the appointment of a Receiver, Conservator, Liquidator, Trustee, Rehabilitator, or any comparable authority, with respect to the **Company**;

coverage under this Coverage Part will continue in full force and effect with respect to **Claims** for **Wrongful Acts** committed before such event, but coverage will cease with respect to any **Claims** for **Wrongful Acts** committed after such event. Immediately upon the consummation of any such event the entire premium for this Coverage Part will be deemed fully earned.

- (3) If, during the **Policy Period**, any entity ceases to be a **Subsidiary**, the coverage provided under this Coverage Part shall continue to apply to the **Insureds** that were covered under this Policy but only with respect to a **Claim** for a **Wrongful Act** that occurred or allegedly occurred prior to the time such **Subsidiary** ceased to be a **Subsidiary** of the **Named Insured**.