

**<INSURANCE POLICY>
EMPLOYMENT PRACTICES LIABILITY CLAUSE FOR PROFESSIONAL FIRMS**

I. INSURING CLAUSES

- A. Underwriters shall pay on behalf of the **Insureds** all **Loss** resulting from any **Claim** first made against any **Insured** during the **Policy Period** for a **Wrongful Act**.
- B. Underwriters shall pay on behalf of the **Insured Persons** all **Loss** resulting from any **Claim** first made against the **Insured Persons** during the **Policy Period** for a **Wrongful Act** committed while serving in an **Outside Executive Position**.

The coverage afforded by this Insuring Clause shall be specifically excess of any indemnification and insurance available to such **Insured Persons** from the **Outside Entity**.

- C. If indicated in Item 3. of the Declarations, Underwriters shall pay on behalf of the **Insureds** all **Loss** resulting from any **Claim** first made against any of the **Insureds** during the **Policy Period** for a **Third Party Wrongful Act**.

If a sublimit applicable to **Third Party Wrongful Acts** is indicated in Item 4. of the Declarations, then such amount shall be part of and not in addition to the aggregate limit of liability applicable to the Employment Practices Liability Clause For Professional Firms.

II. DEFINITIONS

The following terms whenever used in this Clause in boldface type shall have the meanings indicated. Terms not defined below, but appearing in boldface type shall have the meanings indicated in the Policy Terms and Conditions.

- A. **“Application”** means all applications, including all attachments and other materials submitted therewith or incorporated therein, and any other documents or information submitted in connection with the underwriting of this Policy, including any endorsement or other part thereof, or any other employment practices liability policies issued by the Underwriter of which this Policy is a renewal, replacement or which it succeeds in time.
- B. **“Claim”** means:
 - 1. a written demand or request for monetary damages or non-monetary relief against any of the **Insureds**, or to toll or waive a statute of limitations;
 - 2. a civil, criminal, administrative, investigative or regulatory proceeding initiated against any of the **Insureds**, including any proceeding before the Equal Employment Opportunity Commission or any similar federal, state or local governmental body, commenced by:
 - a. the service of a complaint or similar pleading;
 - b. the filing of a notice of charges, investigative order or similar document;

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- c. written notice or subpoena from an investigatory authority identifying such **Insured** as an entity or person against whom a formal proceeding may be commenced;
 3. in the context of an audit conducted by the Office of Federal Contract Compliance Programs, a Notice of Violation or Order to Show Cause; or
 4. an arbitration or mediation or other alternative dispute resolution proceeding if the **Insured Organization** is obligated to participate in such proceeding or if the **Insured Organization** agrees to participate in such proceeding with Underwriters' prior written consent, such consent not to be unreasonably withheld.

However, **Claim** does not include any labor or grievance arbitration or other proceeding pursuant to a collective bargaining agreement.

- C. "**Defense Costs**" means reasonable and necessary legal fees and expenses to which Underwriters consent in advance and which are incurred by or on behalf of the **Insureds** in defending, settling, appealing or investigating any **Claim** and the cost of appeal, supersedeas, injunction, attachment or similar bonds (provided, however, Underwriters shall have no obligation to apply for or furnish any bond for appeal, supersedeas, injunction, attachment or any similar purpose), but shall not include salaries, regular or overtime wages, fees or benefit expenses associated with **Insured Persons** or the **Insured Organization's** overhead expenses.
- D. "**Discrimination**" means any actual or alleged termination of the employment relationship, demotion, failure or refusal to hire or promote, denial of an employment benefit or the taking of any adverse or differential employment action because of race, color, religion, age, sex, disability, pregnancy, sexual orientation, national origin, or any other basis which is or is alleged to be prohibited by federal, state or local law.
- E. "**Employee**" means all persons whose labor or service is currently or has formerly been engaged by and directed by the **Insured Organization**. This includes applicants for employment, partners, associates, employees, volunteers, part time, seasonal, leased and temporary employees as well as any individual employed in a supervisory or managerial position and **Independent Contractors** but does not include employees who are leased to another employer.
- F. "**Executive Officer**" means the firm administrator, member of the management committee, chairperson, chief executive officer, chief operating officer, president, **Manager**, chief financial officer, managing partner, risk manager, human resources staff or an individual acting in a similar capacity with the **Insured Organization**.
- G. "**Harassment**" means actual or alleged unwelcome sexual advances, requests for sexual favors or other verbal, visual or physical conduct of a sexual or non-sexual nature, where such harassment is based on an **Insured Person's** race, color, religion, age, sex, disability, pregnancy, sexual orientation, national origin, or any other basis protected by federal, state or local law and is explicitly or implicitly made a condition of employment, used as a basis for employment decisions or performance, or creates a hostile, intimidating or offensive work environment or that interferes with performance.

- H. **“Inappropriate Employment Conduct”** means any of the following:
1. actual or constructive termination of an employment relationship in a manner which is alleged to have been against the law or wrongful;
 2. actual or alleged wrongful demotion, evaluation, deprivation of a career opportunity, or discipline;
 3. actual or alleged negligent hiring, retention or supervision;
 4. actual or alleged breach of an express written employment agreement other than a **Partnership Agreement**;
 5. actual or alleged violation of the Family and Medical Leave Act;
 6. actual or alleged misrepresentation, false imprisonment, detention or malicious prosecution in connection with an employment decision;
 7. actual or alleged libel, slander, defamation of character or any invasion of right of privacy in connection with an employment decision;
 8. actual or alleged failure to employ or promote, train, create or enforce adequate workplace or employment policies and procedures, or grant tenure or seniority; or
 9. actual or alleged failure to make partner.
- I. **“Independent Contractor”** means any natural person independent contractor who performs labor or service for the **Insured Organization** on a full-time basis pursuant to a written contract or agreement, where such labor or service is under the exclusive direction of the **Insured Organization**. The status of an individual as an **Independent Contractor** shall be determined as of the date of an alleged **Wrongful Act**.
- J. **“Insureds”** means the **Insured Persons** and the **Insured Organization**.
- K. **“Insured Person”** means any person who was, now is, or shall be an **Employee** or duly elected or appointed directors, officers, trustees or **Managers** of the **Insured Organization** including all persons outside the United States serving in a functionally equivalent role for the **Insured Organization** including their estates, heirs, legal representatives or assigns in the event of their death, incapacity or bankruptcy.
- L. **“Loss”** means money which an **Insured** is legally obligated to pay as a result of a **Claim** including compensatory damages, judgments (including prejudgment and post judgment interest awarded against an **Insured** on that part of any judgment paid by Underwriters), back pay, front pay, settlements, statutory attorney fees, **Defense Costs** and punitive, exemplary and multiple damages where insurable by law in the applicable jurisdiction most favoring coverage for punitive, exemplary or multiple damages. However, **Loss** shall not include any of the following:
1. the cost of providing non-monetary relief (this provision does not apply to **Defense Costs** where non-monetary relief is sought);

2. civil or criminal fines (other than civil fines imposed under the Health Insurance Portability and Accountability Act), penalties, sanctions, liquidated damages (other than those awarded under the Age Discrimination in Employment Act or the Equal Pay Act); payroll or other taxes or other matters that may be deemed uninsurable according to the law under which this policy is construed;
 3. amounts owed under **Wage and Hour Laws**;
 4. severance pay, commissions, bonuses, profit sharing or benefits including but not limited to medical, stock options, vacation, holiday, and/or sick pay;
 5. future salary, wages, bonus, commissions and/or benefits resulting from a settlement of a **Claim**, judgment, order or award that results in the rehiring, promotion or reinstatement of an **Insured Person**;
 6. awards, costs, judgments, or orders resulting from contempt of court or violation of a court order or administrative decree; or
 7. any amounts incurred in defense of any **Claim** for which any other insurer has a duty to defend.
- M. **“Outside Entity”** means:
1. any non-profit corporation, community chest, fund or foundation that is not included in the definition of the **Insured Organization** and that is exempt from federal income tax; or
 2. any other entity, if specified in an endorsement to this Policy.
- N. **“Outside Executive Position”** means the position of director, officer, trustee or other equivalent executive position held by any of the **Insured Persons** in an **Outside Entity** if service in such position is at the specific request of the **Insured Organization**.
- O. **“Retaliation”** means any actual or alleged **Discrimination, Harassment**, and/or **Inappropriate Employment Conduct** against an **Insured Person** on account of such **Insured Person’s** exercise or attempted exercise of rights protected by law, refusal to violate any law, disclosure or threat to disclose to a superior or to any governmental agency alleged violations of the law, or on account of the **Insured Person** having assisted or testified in or cooperated with a proceeding or investigation regarding alleged violations of law.
- P. **“Third Party Wrongful Act”** means any actual or alleged discrimination, including discriminatory or sexual harassment, by any of the **Insureds** against any natural person who is not an **Insured Person** or an applicant for employment of the **Insured Organization**.
- Q. **“Wage and Hour Law”** means any federal, state or local law governing or relating to the payment of wages including the payment of overtime, on-call time, rest periods, minimum wages or the classification of Insured Persons for the purpose of determining Insured Persons’ eligibility for compensation or other benefits under such law(s) including any statutory or common law premised on such law.

- R. **“Wrongful Act”** means **Inappropriate Employment Conduct, Discrimination, Harassment, and/or Retaliation** by any of the **Insureds** against an **Insured Person** or an applicant for employment of the **Insured Organization**. If indicated in Item 3. of the Declarations, **Wrongful Act** shall also include a **Third Party Wrongful Act**.
- S. **“Partnership Agreement”** means any written agreement defining the relationship between the **Insured Organization** and its partner attorneys.

III. EXCLUSIONS

The Underwriters shall not be liable to make any payment for **Loss** in connection with or resulting from any **Claim**:

- A. for actual or alleged bodily injury, sickness, disease, death, assault, battery, mental anguish, emotional distress, invasion of privacy, or damage to or destruction of tangible property (including loss of use thereof); provided, however, this exclusion shall not apply to that portion of a **Claim** for a **Wrongful Act** seeking **Loss** for mental anguish, emotional distress or humiliation;
- B. for any actual or alleged violation(s) of any of the responsibilities, obligations or duties imposed by any law concerning workers' compensation, disability benefits, unemployment compensation law, social security or other employment benefits law, the Fair Labor Standards Act (except the Equal Pay Act), the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, including any similar federal, state or local law, regulations promulgated thereunder, or any amendments thereto, or any other law based on the same violations; provided, however, this exclusion shall not apply to a **Claim** for **Retaliation**;
- C. for actual or alleged violation(s) of the Insured Person Retirement Income Security Act of 1974 (“ERISA”), or any violation of any federal, state, local or foreign statutory law or common law that governs the same topic or subject and any rules, regulations and amendments thereto or for an **Insured’s** failure or refusal to establish, contribute to, pay for, insure, maintain, provide benefits pursuant to, or enroll or maintain the enrollment of an **Insured Person** or dependent in, any employee benefit plan, fund or program, including contracts or agreements which are not subject to the provisions of ERISA; provided, however, this exclusion shall not apply to a **Claim** for **Retaliation**;
- D. against any of the **Insured Persons** serving in an **Outside Executive Position**:
1. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any **Wrongful Act** occurring prior to the date such **Insured Persons** began serving in an **Outside Executive Position** if any of the **Insured Persons**, as of such date, knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim** under this Policy; or
 2. by, on behalf of, or for the benefit of the **Outside Entity**, or one or more of the **Outside Entity’s** directors, officers, trustees or equivalent executives;
- E. based upon, arising out of, directly or indirectly in connection with, related to, or in any way involving lockout, strike, picket line, hiring of replacement workers or other similar action in connection with any labor dispute or labor negotiation or for or arising out of any alleged

violation or responsibilities, duties or obligations imposed on an **Insured** under the National Labor Relations Act or amendments thereto or regulations promulgated thereunder, or any similar or related federal, state or local law or regulation;

- F. based upon, arising out of, directly or indirectly in connection with, related to, or in any way involving the liability of others assumed by an **Insured** under any contract or agreement, oral or written, except to the extent that the **Insured** would have been liable in the absence of such contract or agreement;
- G. for an alleged violation of the responsibilities, duties or obligations imposed on an **Insured** under any **Wage and Hour Law**; provided, however, that in the event such **Claim** also alleges a **Wrongful Act** otherwise covered by this Policy and notwithstanding the provisions of Clause V. **Settlement and Defense** of the Policy Terms and Conditions and subject to all other terms, conditions and exclusions contained in this Policy, this exclusion does not apply to **Loss** solely applicable to that portion of the **Claim** alleging such **Wrongful Act**;
- H. for breach of an express written employment agreement other than a **Partnership Agreement**, or under any policy or procedure providing for payment in the event of separation from employment unless such liability would have attached in the absence of such contract or agreement; provided, that this Exclusion shall not apply to **Defense Costs** incurred in connection with such **Claim**;
- I. based upon, arising out of, directly or indirectly in connection with, related to, or in any way involving the actual or alleged breach of a **Partnership Agreement**; or
- J. based upon, arising out of, directly or indirectly in connection with, related to, or in any way involving any **Claim** alleging any act, error or omission in the performance of or failure to perform services as a lawyer.

IV. ALLOCATION

Notwithstanding Clause VII. **Allocation** of the Policy Terms and Conditions Clause, the **Insureds** and Underwriters agree to use their best efforts to determine a fair and proper allocation of all covered **Defense Costs** and non-covered defense costs associated with the defense of **Claims** alleging a violation of the responsibilities, duties, or obligations imposed under any **Wage and Hour Law**. In the event that an allocation cannot be agreed to, then Underwriters shall make an interim payment of the amount of **Defense Costs** that the parties agree is not in dispute until a final amount is agreed upon or determined by applicable law.

V. ADJUSTMENT

This Policy is issued and the premium computed on the basis of the information submitted to Underwriters as part of the **Application**. In the event the **Named Insured**, after the inception date of this Policy:

- a. merges with another entity such that the **Named Insured** is the surviving entity, or
- b. acquires assets of another entity or creates or acquires a **Subsidiary** whose employees exceed 25% of the total number of employees of the **Insured Organization** at the time of acquisition,

coverage shall be afforded for a period of ninety (90) days for any **Loss** in any way involving the assets acquired or the assets, liabilities, directors, officers or employees of the entity acquired or merged with, or such **Subsidiary**. Coverage beyond such ninety (90) day period shall only be available if written notice of such transaction or event is given to Underwriters by the **Named Insured**; the **Named Insured** provides Underwriters with such information in connection therewith as Underwriters may deem necessary; the **Insureds** accept any special terms, conditions, exclusions or additional premium charge as may be required by Underwriters; and Underwriters, at their sole discretion, agree to provide such coverage.

VI. OTHER INSURANCE

Notwithstanding Clause X.D. **Other Insurance** of the Policy Terms and Conditions, solely in respect of **Claims** for **Wrongful Act** other than a **Third Party Wrongful Act**, this Policy shall apply as primary insurance, except with respect to:

- a. **Claims** which include allegations covered under both a fiduciary liability policy and this Policy;
or
- b. **Claims** brought by or on behalf of an **Independent Contractor** or leased or temporary **Employee**

in which case the provisions of Clause X.D. **Other Insurance** of the Common Terms and Conditions shall apply.