

EMPLOYMENT PRACTICES LIABILITY COVERAGE PART

**THIS IS A CLAIMS-MADE POLICY
WITH COSTS OF DEFENSE INCLUDED IN THE LIMIT OF LIABILITY.
PLEASE READ THE ENTIRE POLICY CAREFULLY.**

In consideration of the payment of the premium and in reliance upon all statements made and information furnished to the insurance company shown in the Declarations (the "Insurer"), including the statements made in the **Proposal Form**, and subject to all terms, conditions and limitations of this Policy, the **Insureds** and the Insurer agree:

Section I. Insuring Agreement

The Insurer will pay to or on behalf of the **Insureds** all **Loss** which the **Insureds** are legally obligated to pay as a result of a **Claim** first made against the **Insureds** during the **Policy Period** or the Discovery Period, if purchased, for a **Wrongful Act** by an **Insured** in his, her or its capacity as such.

Section II. Definitions

- A.** For purposes of this Coverage Part, the term "**Claim**" will include a formal administrative or regulatory proceeding by or before the Equal Employment Opportunity Commission or any similar federal, state or other governmental agency which is commenced by the receipt by an **Insured** of a notice of charges, formal investigative order or similar document and an audit conducted by the Office of Federal Contract Compliance Programs which is commenced by the receipt by an **Insured** of a notice of violation, order to show cause or written demand for monetary or injunctive relief, but **Claim** will not include any labor or grievance arbitration or other proceeding which is subject to a collective bargaining agreement.
- B.** "**Employee**" will mean:
1. any individual whom the **Company** compensates by wages, salary and/or commissions and whose labor or service is directed by the **Company**, whether such individual performs such labor or service on a full-time, part-time, seasonal or temporary basis;
 2. any individual who performs labor or services for the **Company** as a volunteer;
 3. any individual who is leased or loaned to the **Company** to perform labor or service for the **Company**, but only if the **Company** provides indemnification to such individual in the same manner and to the same extent as to its other **Employees**; and
 4. any individual contracted to perform work for the **Company** or who is an independent contractor for the **Company**, but only if, prior to any **Claim** against such individual, the **Company** shall have agreed in writing to provide indemnification to such individual for matters within the scope of coverage of this Coverage Part, and the **Company** shall have paid any additional premium required by the Insurer in connection with such individual.
- C.** For purposes of this Coverage Part, the term "**Insured**" will mean the **Company** and all **Insured Persons**.
- D.** For purposes of this Coverage Part, the term "**Insured Person**" will mean:
1. any duly elected or appointed principal, partner, director, officer, trustee, in-house general counsel, risk manager or member of the board of managers or management committee of the **Company**;

2. any executive of the **Company** located outside of the United States of America who holds a position with respect to the **Company** equivalent to any position described in Sections II.D.1 above; or
3. any **Employee**.

E. For purposes of this Coverage Part, the term "**Loss**" will include awards of front pay and back pay and liquidated damages awarded pursuant to the Age Discrimination in Employment Act or the Equal Pay Act, but **Loss** will not include:

1. any costs associated with the modification of any building or property to provide any reasonable accommodations required by or made as a result of or to conform with the requirements of the Americans with Disabilities Act, the Civil Rights Act of 1964 or any similar federal, state or local law; or
2. any compensation, including benefits, for any person hired, promoted or reinstated pursuant to a judgment settlement, order or other resolution of a Claim.

F. "**Third Party Wrongful Act**" will mean any actual or alleged:

1. discrimination against any natural person, other than an **Employee** or applicant for employment with the **Company**, who is a customer, vendor, service provider or other business invitee of the **Company**, based on such person's age, gender, race, color, national origin, religion, creed, marital status, sexual orientation or preference, pregnancy, disability, HIV or other health status, Vietnam Era veteran or other military status, or other protected status or characteristic under federal, state or local law; or
2. sexual harassment, including unwelcome sexual advances, requests for sexual favors or other offensive conduct of a sexual nature, against any natural person, other than an **Employee** or applicant for employment with the **Company**, who is a customer, vendor, service provider or other business invitee of the **Company**.

G. For purposes of this Coverage Part, the term "**Wrongful Act**" will mean:

1. any actual or alleged:
 - a. wrongful dismissal, discharge or termination (whether actual, constructive or retaliatory) of employment, wrongful failure or refusal to hire or promote, wrongful discipline or demotion, wrongful deprivation of career opportunity, negligent employment evaluation or failure to grant tenure;
 - b. sexual or other workplace harassment, including quid pro quo and hostile work environment;
 - c. unlawful employment discrimination, including discrimination based on a person's age, gender, race, color, national origin, religion, creed, marital status, sexual orientation or preference, pregnancy, disability, HIV or other health status, Vietnam Era veteran or other military status, or other protected status or characteristic under federal, state or local law, including but not limited to:
 - Title VII of the Civil Rights Act of 1964;
 - the Equal Pay Act of 1963;
 - the Age Discrimination Act of 1967;
 - Sections 501 and 502 of the Rehabilitation Act of 1973;
 - the Uniformed Services Employment and Reemployment Rights Act; and
 - Titles I and IV of the Americans with Disabilities Act of 1990;
 - d. employment-related invasion of privacy, defamation (including libel and slander) or negligent or intentional infliction of emotional distress;

- e. failure of the **Company** to create, provide for or enforce adequate or consistent employment-related policies;
 - f. retaliatory treatment on account of an **Employee's** exercise or attempted exercise of his or her employment-related rights under law, including but not limited to Sections 806 and 1107 of the Sarbanes-Oxley Act of 2002;
 - g. violation of employment-related civil rights relating to any of the above; or
 - h. violation of the Family and Medical Leave Act of 1993;
- committed or attempted, or allegedly committed or attempted, with respect to an **Employee** or an applicant for employment with the **Company**; and
- 2. if it is stated in ITEM 4 of the Declarations that the Optional Third Party Coverage under this Coverage Part has been purchased, any **Third Party Wrongful Act**.

Section III. Exclusions

- A. The Insurer will not be liable under this Coverage Part to make any payment of **Loss**, including **Costs of Defense**, in connection with any **Claim** made against any **Insured**:
 - 1. brought about or contributed to by:
 - a. the gaining by any **Insured** of any profit, advantage or remuneration to which such **Insured** was not legally entitled; or
 - b. the deliberately fraudulent or criminal acts of any **Insured**;

provided, however, this exclusion will apply only if it is finally adjudicated that such conduct in fact occurred;
 - 2. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any **Wrongful Act** or **Related Wrongful Act** or any fact, circumstance or situation which has been the subject of any notice given under any other policy of which this Coverage Part is a renewal or replacement;
 - 3. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any prior and/or pending civil, criminal, administrative or investigative proceeding or Office of Federal Contract Compliance Programs audit involving any **Insured** as of the Prior and Pending Date stated in ITEM 7 of the Declarations, or any fact, circumstance or situation underlying or alleged in any such proceeding or audit;
 - 4. for any actual or alleged:
 - a. bodily injury, sickness, disease or death of any person (other than employment-related mental anguish, emotional distress or humiliation), invasion of privacy, trespass, nuisance, wrongful entry or eviction, assault, battery, loss of consortium, false arrest, false imprisonment, malicious prosecution or abuse of process; or
 - b. damage to or destruction of any tangible property, including the loss of use thereof;
 - 5. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any **Insured Person's** activities as an employee, director, officer, trustee, regent, governor or equivalent executive of any employee trust, charitable or other organization, corporation, company or business other than the **Company**;

6. for recovery of any amounts owing under, or assumed by any **Insured** pursuant to, any contract with an independent contractor, express contract of employment or any express obligation to make payments in the event of a termination of employment; provided, that this exclusion will not apply to liability which an **Insured** would have had in the absence of such express contract or obligation;
 7. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any stock, stock options or stock appreciation rights, whether vested or unvested, including without limitation restricted stock, to which any claimant is or is alleged to be entitled pursuant to a plan or agreement with the **Company**;
 8. for compensation earned by any claimant in the course of employment but not paid for any reason by the **Company**, including any unpaid salary, wages, bonuses, overtime, severance pay, retirement benefits, prerequisites, fringe benefits, vacation days, sick days and medical benefits or insurance to which a claimant is or is alleged to be entitled had the **Company** provided the claimant with a continuation or conversion of such benefits or insurance (or the equivalent value of any such compensation or benefits allegedly earned but not paid);
 9. Based upon, arising out of, or attributable to directly or indirectly, in connection with, related to or in any way involving any Claims alleging violations of any federal, state or local wage and hour law;
 10. for any actual or alleged violation of the responsibilities, obligations or duties imposed on any **Insured** by any workers' compensation, unemployment compensation, disability, retirement, social security or other employment benefit statute, rule or law, including but not limited to the Employee Retirement Income Security Act of 1974, the Worker Adjustment and Retraining Notification Act, the Fair Labor Standards Act (except the Equal Pay Act of 1963), the Occupational Safety and Health Act or the Consolidated Omnibus Budget Reconciliation Act of 1985 or any similar state laws; provided, that this exclusion will not apply to any allegation of any retaliatory treatment on account of an **Employee's** exercise or attempted exercise of his or her employment-related rights under any of the foregoing;
 11. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged seepage, pollution, radiation, emission or contamination of any kind; provided, however, that this exclusion will not apply to any allegation of any retaliatory treatment on account of an **Employee's** exercise or attempted exercise of his or her employment-related rights;
 12. for any **Wrongful Act** of any **Subsidiary** or the **Insured Persons** of such **Subsidiary** or any entity that merges with the **Company** or the **Insured Persons** of such entity that merges with the **Company** occurring:
 - a. prior to the date such entity became a **Subsidiary** or was merged with the **Company**;
 - b. subsequent to the date such entity became a **Subsidiary** or was merged with the **Company** which, together with a **Wrongful Act** occurring prior to the date such entity became a **Subsidiary** or was merged with the **Company**, would constitute **Related Wrongful Acts**; or
 - c. subsequent to the date the **Corporation** ceased to own, directly or indirectly, more than fifty percent (50%) of the voting stock of such **Subsidiary**;
- B.** The Insurer will not be liable under the Optional Third Party Coverage under this Coverage Part, if purchased, to make any payment of **Loss**, including **Costs of Defense**, in connection with any **Claim** made against any **Insured** for any **Third Party Wrongful Act** based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged price fixing, restraint of trade, monopolization, unfair trade practices or violation of the Federal Trade

Commission Act, the Sherman Anti-Trust Act, the Clayton Act, or any other statute or law regulating anti-trust, monopoly, price fixing, price discrimination, predatory pricing or activities in restraint of trade.

- C. For the purpose of determining the applicability of the foregoing exclusions, no **Wrongful Act** of any **Insured Person** shall be imputed to any other **Insured Person**. The **Wrongful Acts** of any past, present or future chairman of the board, president, chief executive officer, chief operating officer or chief financial officer of the **Company** shall be imputed to the **Company**.

Section IV. Coordination of Coverage

- A. If a **Claim** made against the **Insureds** is covered under this Coverage Part and under any other Coverage Part forming a part of this Policy, the Insurer will first pay **Loss**, including **Costs of Defense**, in connection with such **Claim** under this Coverage Part, and then, with respect to whatever amount of the Insurer's limit of liability under this Policy remains after the payment of **Loss**, including **Costs of Defense**, covered under this Coverage Part, the Insurer will pay such **Loss**, including **Costs of Defense**, which is covered under any other Coverage Part forming a part of this Policy.
- B. If notice of a **Claim** has been given under any other Coverage Part forming a part of this Policy and the Insurer determines that such **Claim** would be covered under this Coverage Part had notice been given hereunder, the **Insureds** will be deemed to have given notice of such **Claim** under this Coverage Part at the same time that notice of such **Claim** was given under such other Coverage Part.

Section V. Waiver of Retention under Certain Circumstances

No retention will apply under this Coverage Part to **Loss**, including **Costs of Defense**, incurred by the **Insured Persons** if advancement or indemnification of such **Loss** by the **Company** is neither required nor permitted under applicable law or, if advancement or indemnification of such **Loss** by the **Company** is required or permitted under applicable law, such advancement or indemnification is not made solely by reason of the **Company's Financial Insolvency**.

Section VI. Investigation and Settlement

The Insurer shall have the right but not the obligation to make any investigation it deems expedient and with the consent of the **Insureds** against whom the **Claim** has been made or the **Company** on behalf of the **Insureds**, make settlement within the available Limit of Liability applicable to this Coverage Part (whether above or below the applicable Retention). If the **Insureds**, or the **Company** on behalf of the **Insureds**, shall refuse to consent to any settlement recommended by the Insurer and shall act to contest or continue any actions or proceedings in connection with such **Claim**, then, subject to the available Limit of Liability and the applicable Retention, the Insurer's liability for all **Loss** in connection with such **Claim** shall not exceed the amount for which the **Claim** could have been settled, plus the reasonable **Costs of Defense** incurred with the Insurer's consent up to the date of refusal to consent by the **Insured** and/or the **Company**.