

## EMPLOYMENT PRACTICES LIABILITY COVERAGE PART

THIS COVERAGE PART PROVIDES CLAIMS MADE COVERAGE 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 Insurer 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, the Insured Persons and the Company agree as follows:

### I. INSURING AGREEMENT

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

### II. DEFINITIONS

- A. "**Back Pay**" means unearned wages and/or compensation for wrongful termination or discrimination. **Back Pay** shall not include compensation of any kind earned in the course of employment but not paid by the **Company**.
- B. "**Claim**," as defined in the GENERAL DEFINITIONS C., shall 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.
- C. "**Insured**" means the **Insured Persons** and the **Company**.
- D. "**Insured Person**" means:
1. any past, present or future executive officer, director, in-house general counsel, member of the Board of Managers or member of a management committee of the **Company**, any natural person who was or is a general partner of any partnership included within the definition of "**Company**," and any person serving in functionally equivalent roles of the **Company** operating or incorporated outside the United States; and
  2. any past, present or future employee of the **Company**; and
  3. any leased employee, volunteer, intern, seasonal or temporary employee; and
  4. any natural person independent contractor acting for or on behalf of the **Company**, but only for conduct within his or her duties as such.
- E. "**Loss**," as defined in the GENERAL DEFINITIONS I., shall include, for purposes of this Coverage Part,
1. damages (including **Back Pay** and front pay) and judgments (including pre-judgment and post judgment interest); and
  2. liquidated damages awarded pursuant to the Age Discrimination in Employment Act, the Equal Pay Act or the Family Medical Leave Act, as well as the multiplied portion of any multiple damage award; and
  3. an award of attorney's fees under any applicable federal, state or local law involving employment or discrimination in employment that an **Insured** is obligated to pay as a result of a **Claim** for **Wrongful Acts**.

**Loss** shall not include damages, settlement or judgments that constitute compensation of any kind earned by a claimant in the course of employment but not paid by the **Company**, including but not limited to, any unpaid salary, bonus, wages, severance pay, retirement benefits, vacation days or sick days.

- F. “**Third Party**” means any person(s), other than an **Insured Person**, with whom an **Insured** interacts within the scope of the **Company’s** business.
- G. “**Third Party Wrongful Act**” means any actual or alleged:
1. discrimination by an **Insured** in his, her or its capacity as such against a **Third Party** based on such **Third Party’s** race, color, religion, age, gender, national origin, disability, pregnancy, sexual orientation or preference, or other status that is protected pursuant to any applicable federal, state or local statute or ordinance, or
  2. sexual or other harassment by an **Insured** in his, her or its capacity as such against a **Third Party**.
- H. “**Wrongful Act**” means:
1. any of the following actually or allegedly occurring in the connection with the claimant’s employment or application for employment with the **Company**:
    - a. discrimination,
    - b. retaliation,
    - c. sexual or any other type of harassment,
    - d. wrongful termination whether actual or constructive,
    - e. wrongful discipline,
    - f. wrongful deprivation of career opportunity,
    - g. wrongful demotion or change in employment status,
    - h. wrongful evaluation,
    - i. negligent hiring, discipline, supervision or retention,
    - j. failure to promote,
    - k. failure to grant tenure,
    - l. employment related misrepresentation,
    - m. failure to adopt or comply with adequate workplace or employment policies or procedures,
    - n. failure to train,
    - o. breach of any oral, written, or implied employment contract,
    - p. invasion of privacy,
    - q. defamation, including but not limited to libel and slander,
    - r. false imprisonment,
    - s. infliction of emotional distress,
    - t. failure or refusal to provide equal treatment or opportunities, or
    - u. any other employment-related tort; and
  2. any **Third Party Wrongful Act** by an **Insured** in his, her or its capacity as such.

## III. EXCLUSIONS

- A. The Insurer shall not be liable to make any payment for **Loss**, and shall have no duty to defend or pay **Defense Expenses**, in connection with any **Claim** made against any **Insured**:
1. for any actual or alleged bodily injury (other than mental anguish, humiliation or emotional distress), sickness, disease or death of any person, or damage to or destruction of any tangible property, including loss of use thereof;
  2. 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, administrative or regulatory proceeding or arbitration or other alternative dispute resolution proceeding which was brought before the Pending or Prior Proceeding Date set forth in ITEM 7.(B) of the Declarations;
  3. 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 employment practices liability policy or similar policy; or
  4. for any actual or alleged violation of any of the responsibilities, obligations or duties imposed by any provision of a) any law governing workers' compensation, unemployment insurance, social security, disability benefits or similar law; b) the Employee Retirement Income Security Act of 1974 ("ERISA") (except Section 510 thereof); c) the Fair Labor Standards Act (except the Equal Pay Act); d) the National Labor Relations Act; e) the Worker Adjustment and Retraining Notification Act; f) the Consolidated Omnibus Budget Reconciliation Act of 1985; g) the Occupational Safety and Health Act; h) any other federal, state or local statute or law similar to any statute or law described in (a) through (g) of this exclusion, or any provision of any federal, state or local statute, regulation or common law that is similar to any provision of any statute or law described in (a) through (g) of this exclusion; or i) rules or regulations promulgated under any of such statutes or laws; provided, that this exclusion shall not apply to any **Claim** for any actual or alleged retaliatory treatment of a claimant by an **Insured** on account of the claimant's exercise of rights pursuant to any such statute, law, rule or regulation.
- B. The Insurer shall not be liable for that part of **Loss**, other than **Defense Expenses**, in connection with any **Claim** made against an **Insured** which constitutes:
1. amounts owing under or assumed by an **Insured** pursuant to any express written contract or agreement with the **Insured**; provided, that this exclusion shall not apply to the extent an **Insured** would be liable for such **Loss** in the absence of such contract or agreement;
  2. the costs associated with providing any reasonable accommodations required by, or 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, or the costs associated with providing any reasonable accommodations to any person with a disability or other protected characteristic;
  3. medical or insurance benefits (or the equivalent value thereof) to which a claimant allegedly was entitled or would have been entitled had the **Company** provided the claimant with a continuation or conversion of such benefits or insurance.

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