



XN RISK™ EMPLOYMENT PRACTICES INSURANCE
Effected with certain Lloyd's Underwriters (hereinafter called the
"Insurer") through
XN RISK INSURANCE SERVICES INC.
BOCA RATON, FLORIDA

Attaching to and forming part of Certificate Number:

EMPLOYMENT PRACTICES COVERAGE SECTION

In consideration of the payment of premium, in reliance upon the statements in the **Application** and subject to all of the provisions of the Certificate and this Coverage Section, Underwriters and the **Assureds** agree as follows.

A. **INSURING CLAUSE**

Underwriters shall pay on behalf of the **Assureds Loss** resulting from any **Claim** made during the **Certificate Period** for a **Wrongful Act** which is reported to Underwriters pursuant to Section E. of this Coverage Section.

B. **DEFINITIONS**

The following terms, whenever used in this Coverage Section in boldface type, shall have the meanings indicated. Other terms, whenever used in this Coverage Section in boldface type, shall have the meanings indicated in Clause B, of the General Terms and Conditions section of this Certificate.

1. **Assureds** means the **Assured Organization** and any **Assured Persons**.
2. **Assured Persons** means all persons who were, now are or shall be:
 - a) the directors and officers of the **Assured Organization**,
 - b) any **Employees**, or
 - c) the functional equivalent of directors, officers and **Employees** in the event the **Assured Organization** is incorporated or domiciled outside the United States, including their estates, heirs, legal representatives or assigns in the event of their death, incapacity or bankruptcy.
3. **Benefits** means perquisites, fringe benefits, and payments in connection with an employee benefit plan and other payments, other than salary or wages, to or for the benefit of an employee arising out of the employment relationship.
4. **Claim** means:
 - a) any written or oral demand for damages or other relief against any of the **Assureds**,

- b) any judicial, administrative or arbitration proceeding against any of the **Assureds** in which they may be subjected to a binding adjudication of liability for damages or other relief, and any appeal therefrom, or
 - c) any proceeding before the Equal Employment Opportunity Commission or any similar federal, state or local governmental body,
- brought by or on behalf of an **Employee** in their capacity as such, and, if coverage for Third Party Discrimination/Sexual Harassment Coverage is granted pursuant to Item C. of the Declarations, a non-Employee natural person.
- 5. **Continuity Date** means the date set forth in Item C of the Declarations relating to this Coverage Section.
 - 6. **Costs, Charges and Expenses** means reasonable and necessary legal fees and expenses incurred by any of the **Assureds** in defense of any **Claim** and cost of attachment or similar bonds, but shall not include:
 - a) salaries, wages, overhead or benefit expenses associated with officers or employees of the **Assured Organization**, or
 - b) any amounts incurred in defense of any **Claim** for which any other insurer has a duty to defend.
 - 7. **Employees** means all persons who were, now are or shall be:
 - a) employees of the **Assured Organization**, including voluntary, seasonal and temporary employees,
 - b) any individuals applying for employment with the **Assured Organization**, or
 - c) any individuals who are leased or are contracted to perform work for the **Assured Organization**, or are independent contractors for the **Assured Organization**, but only if such individuals perform work or services solely for or on behalf of the **Assured Organization**.
 - 8. **Interrelated Wrongful Acts** means more than one **Wrongful Act** which have as a common nexus any fact, circumstance, situation, event, transaction or series of facts, circumstances, situations, events or transactions.
 - 9. **Loss** means damages, settlements, including front pay and back pay, and **Costs, Charges and Expenses** incurred by any of the **Assureds**, but shall not include:
 - a) taxes, criminal or civil fines or penalties imposed by law, or
 - b) matters deemed uninsurable under the law pursuant to which this Certificate shall be construed, or

- c) punitive or exemplary damages, except to the extent such damages are insurable under the law pursuant to which this Certificate shall be construed or the law of the jurisdiction in which such damages are awarded, whichever legal venue is most favorable for the **Assureds** in deciding the insurability of such damages, or
 - d) non-monetary relief, or
 - e) amounts owed under any employment contract, partnership, stock or other ownership agreement, or any other type of contract, or
 - f) disability, social security, workers compensation, medical insurance, retirement or pension benefits, or settlement amounts representing benefit payments, or
 - g) the costs to modify or adapt any building or property to be more accessible or accommodating to any disabled person, or
 - h) the cost of instituting or conducting any program, procedure, or training, or
 - i) the cost of instating or reinstating employment.
10. **Owners and Managers** means all principals, partners, officers, directors, trustees, or in-house counsel of the **Assured Organization**, or **Employees** of the Human Resource Department and/or Risk Management Department of the **Assured Organization**, or **Employees** of the **Assured Organization** with personnel and/or risk management responsibilities.
11. **Retaliation** means any actual or alleged response of any of the **Assureds** to:
- a) the disclosure or threat of disclosure by an **Employee** to a superior or to any governmental agency of any act by any of the **Assureds** where such act is alleged to be a violation of any federal, state, local or foreign law, whether common or statutory, or any rule or regulation promulgated thereunder, or
 - b) the actual or attempted exercise by an **Employee** of any right that such **Employee** has under law, including rights under any worker's compensation law, the Family and Medical Leave Act, the Americans with Disabilities Act or any other law relating to employee rights, or
 - c) the filing of any claim under the Federal False Claim Act or any other federal, state, local or foreign "whistleblower" law, or
 - d) any **Employee** work stoppage or slowdown.

12. **Wrongful Act** means any actual or alleged:

- a) violation of any federal, state, local or common law, prohibiting any kind of discrimination, or
- b) harassment, including any type of sexual or gender harassment as well as racial, religious, sexual orientation, pregnancy, disability, age, or national origin-based harassment and including workplace harassment by any non-employee, or
- c) abusive or hostile work environment, or
- d) wrongful discharge or termination of employment whether actual or constructive, or
- e) breach of an actual or implied employment contract, or
- f) wrongful failure or refusal to hire or promote, or wrongful demotion, or
- g) wrongful failure or refusal to provide equal treatment or opportunities, or
- h) defamation, libel, slander, disparagement, false imprisonment, malicious prosecution, or invasion of privacy, or
- i) wrongful failure or refusal to adopt or enforce adequate workplace or employment practices, policies or procedures, or
- j) wrongful, excessive or unfair discipline, or
- k) wrongful infliction or emotional distress, mental anguish, or humiliation, or
- l) **Retaliation**, or
- m) negligent hiring or negligent supervision of others in connection with a) through l) above, but only if employment related and claimed by or on behalf of any **Employee**, or
- n) misrepresentation relating to an employment decision to hire, fire, promote, demote, grant leave, maintain confidential information or the giving of a reference, or
- o) if coverage for Third Party Discrimination/Sexual Harassment Coverage is granted pursuant to Item C of the Declarations, discrimination or sexual harassment involving any natural person customer, vendor or client of the **Assured Organization**, including but not limited to any such discrimination on account of race, color, religion, age, sex, disability or national origin,

by the **Assured Organization** or the **Assured Persons**, in their capacity as such.

C. EXCLUSIONS

Underwriters shall not be liable to make any payment under this Coverage Section in connection with any **Claim**:

1. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
 - a) any **Wrongful Act** or any fact, circumstance or situation which has been the subject of any notice given prior to the **Certificate Period** under any other Employment Practices liability insurance policy or any insurance policy of which this Certificate is a renewal or replacement, or
 - b) any other **Wrongful Act**, whenever occurring, which, together with a **Wrongful Act** which has been the subject of such prior notice, would constitute **Interrelated Wrongful Acts**;
2. to the extent it is insured under any other existing valid collectible policy, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise; provided, however, this exclusion shall not apply to the amount of **Loss** which is in excess of the amount of any deductible and the limit of liability of such other policy where such **Claim** is otherwise covered by this Coverage Section;
3. to the extent such **Claim** is for any actual or alleged violation of the Employee Retirement Income Security Act of 1974, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act, all as amended, or any rules or regulations promulgated thereunder, or similar provisions of any federal, state or local statutory or common law; provided, however, this exclusion does not apply to any such **Claim** alleging violations of the Equal Pay Act, or for **Retaliation**;
4. brought about or contributed to by any dishonest, fraudulent or criminal act or omission as determined by a judgment or other final adjudication;
5. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, any actual or alleged obligation of any of the **Assureds** pursuant to any workers compensation, unemployment insurance, social security, disability benefits or similar law; provided, however, this exclusion shall not apply to any such **Claim** to the extent the **Claim** involves **Retaliation**;
6. against any **Subsidiary** or any of the **Assured Persons** of a **Subsidiary** to the extent such **Claim** is based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:

- a) any **Wrongful Act** occurring prior to the date such entity became a **Subsidiary** or subsequent to the date such entity ceased to be a **Subsidiary**, or
- b) any **Wrongful Act** occurring while such entity was a **Subsidiary** which, together with a **Wrongful Act** occurring prior to the date such entity became a **Subsidiary** would constitute **Interrelated Wrongful Acts**;
7. to the extent such **Claim** is based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, any **Wrongful Act** actually or allegedly committed subsequent to a **Takeover**;
8. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
 - a) any prior and/or pending litigation or administrative proceeding, demand letter or formal or informal governmental investigation or inquiry including any investigation by the Department of Labor or the Equal Employment Opportunity Commission as of the **Continuity Date**, or
 - b) any fact, circumstance, situation, transaction or event underlying or alleged in such litigation or administrative proceeding, demand letter or formal or informal governmental investigation or inquiry including any investigation by the Department of Labor or the Equal Employment Opportunity Commission;
9. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any **Wrongful Act** which any of the **Assured Persons** who were, now are, or shall be directors, officers, managers or supervisory employees, had knowledge of prior to the **Continuity Date** where such **Assured Persons** had reason to believe at the time that such known **Wrongful Act** could reasonably be expected to give rise to such **Claim**;
10. for that portion of **Loss** which is covered under any other Coverage Section of this Certificate; or
11. to the extent such **Claim** is based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, any actual or alleged failure to pay wages or violation of any federal, state or local wage and hour law.

No Wrongful Act of one or more **Assureds** shall be imputed to any other **Assureds** for the purpose of determining the applicability of Exclusion C.4.

D. LIMIT OF LIABILITY AND RETENTIONS

1. Underwriters shall be liable to pay the percentage of **Loss** set forth in Item C. of the Declarations relating to this Coverage Section in excess of the amount of the Retention up to the Limit of Liability under this Coverage Section, it being warranted that the remaining percentage of **Loss** shall be uninsured. In the

event a **Claim** is made against both the **Assured Organization** and any of the **Assured Persons**, the largest retention identified in Item C. of the Declarations for this Coverage Section shall apply.

2. The amount shown in Item C. of the Declarations relating to this Coverage Section shall be the maximum aggregate Limit of Liability of Underwriters under this Coverage Section.
3. More than one **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim** and shall be deemed to have been made at the earliest of the following times:
 - a) the time at which the earliest **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** is first made, or
 - b) the time at which the **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to have been made pursuant to Clause E.2., below.
4. Payments of **Loss** by Underwriters shall reduce the Limit of Liability under this Coverage Section.
5. Underwriters shall pay **Costs, Charges and Expenses** no more than once every 90 days.

E. NOTIFICATION

1. The **Assureds** shall, as a condition precedent to their rights to payment under this Coverage Section only, give to Underwriters notice in writing of any **Claim** as soon as practicable but in no event later than sixty (60) days after such **Claim** is first made.
2. The **Claim** shall be deemed made when the General Counsel, Human Resource Director, Risk Manager, a director or an officer of the **Assured Organization** first receive notice of the **Claim**.
3. If, during the **Certificate Period** or the **Optional Extension Period**, any of the **Assureds** first become aware of a specific **Wrongful Act** and if the **Assureds**, during the **Certificate Period** or the **Optional Extension Period**, if purchased, give written notice to Underwriters as soon as practicable of:
 - a) the specific **Wrongful Act**, and
 - b) the consequences which have resulted or may result therefrom, and
 - c) the circumstances by which the **Assureds** first become aware thereof,

then any **Claim** made subsequently arising out of such **Wrongful Act** shall be deemed for the purposes of this Coverage Section to have been made at the time such notice was first given to Underwriters.

4. Notice to Underwriters shall be given to the firm shown under Item H. of the Declarations for this Certificate.