

EMPLOYMENT PRACTICES LIABILITY POLICY

THIS IS A CLAIMS MADE POLICY 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, 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

- (A) 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**.
- (B) The Insurer has the right and duty to defend any **Claim** against any **Insured** for a **Wrongful Act** covered under this Policy, even if such **Claim** is false, fraudulent or groundless.

II. DEFINITIONS**(A) "Application" means:**

- (1) the application attached to and forming part of this Policy, and
- (2) any materials submitted therewith, which shall be deemed to be physically attached to this Policy.

(B) "Change in Control" means:

- (1) the merger or acquisition of the **Parent Company**, or of all or substantially all of its assets, by another entity such that the **Parent Company** is not the surviving entity,
- (2) the acquisition by any person, entity or affiliated group of persons or entities of the right to vote, select or appoint more than fifty percent (50%) of the directors of the **Parent Company**, or
- (3) the appointment of a Receiver, Conservator, Liquidator, Trustee or Rehabilitator, or any comparable authority, with respect to the **Parent Company**.

(C) "Claim" means:

- (1) any written demand for monetary damages or other non-monetary relief,
- (2) any civil proceeding commenced by the service of a complaint or similar pleading,
- (3) any criminal proceeding commenced by a return of an indictment or information,
- (4) any formal administrative or regulatory proceeding, including without limitation a proceeding before the Equal Employment Opportunity Commission (EEOC) or any similar state or local agency, commenced by an **Insured's** receipt of a notice of charges, formal investigative order or similar document,
- (5) any arbitration or other alternative dispute resolution proceeding, or
- (6) any written request or agreement to toll any applicable statute of limitations;

against any **Insured**, including any appeal therefrom.

- (D) **“Company”** means the **Parent Company** and its **Subsidiaries**.
- (E) **“Defense Expenses”** means reasonable legal fees and expenses incurred in the defense of any **Claim** including the premium for an appeal bond, attachment bond or similar bond; provided, that the Insurer will have no obligation to apply for or furnish any such bond, **Defense Expenses** will not include the **Company's** overhead expenses or any salaries, wages, fees or benefits of any **Insured**.
- (F) **“Employee”** means any individual:
- (1) whom the **Company** compensates by salary, wages and/or commissions and whose labor or services are engaged by and directed by the **Company**, including leased, seasonal, temporary, contract, volunteer and part-time employees, or
 - (2) who is an independent contractor of the **Company**, but only if the **Company** is obligated to provide indemnification to such individual in the same manner as it is obligated to provide indemnification to those **Employees** identified in (F)(1) above.
- (G) **“Insured Person”** means:
- (1) any past, present or future director, officer, managing member, manager or **Employee** of the **Company**, including those persons serving in a functionally equivalent role for the **Parent Company** or any **Subsidiary** operating or incorporated outside the United States, and
 - (2) the lawful spouse or domestic partner of any person set forth in (G)(1) above, but only to the extent such spouse or partner is a party to any **Claim** solely in his or her capacity as a spouse or partner of such person and only for the purposes of any **Claim** seeking damages recoverable from marital community property, property jointly held by any person set forth in (G)(1) above and his or her spouse or partner, or property transferred from any person set forth in (G)(1) above to his or her spouse or partner.
- In the event of the death, incapacity or bankruptcy of an individual identified in (G)(1) or (2) above, any **Claim** against the estate, heirs, legal representatives or assigns of such individual will be deemed to be a **Claim** against such individual.
- (H) **“Insured”** means the **Insured Persons** and the **Company**.
- (I) **“Interrelated Wrongful Acts”** means **Wrongful Acts** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any of the same or related, or a series of related, facts, circumstances, situations, transactions or events.
- (J) **“Loss”** means **Defense Expenses** and any damages, settlements, judgments, back pay awards and front pay awards, pre- and post-judgment interest, or other amounts (including punitive or exemplary damages and the multiplied portion of any multiplied damage award, if and where insurable by law, liquidated damages awarded under the Age Discrimination in Employment Act or the Equal Pay Act, and claimants’ attorneys’ fees awarded pursuant to a court order or judgment) that an **Insured** is legally obligated to pay as a result of a **Claim** for a **Wrongful Act**. **Loss** will not include:
- (1) fines, taxes, or penalties,
 - (2) matters which are uninsurable under the law pursuant to which this Policy is construed, or
 - (3) stock options or the equivalent owed pursuant to any agreement, except and to the extent that a judgment or settlement of a **Claim** includes a monetary component measured by the value of stock options which did not vest due to the actual or alleged wrongful termination of the claimant.

Note: With respect to coverage for punitive, exemplary or multiplied damages, the law of the applicable jurisdiction most favorable to the insurability of such amounts shall control.

- (K) **“Parent Company”** means the entity named in Item 1 of the Declarations.
- (L) **“Policy Period”** means the period from the Inception Date to the Expiration Date set forth in Item 2 of the Declarations or to any earlier cancellation date.
- (M) **“Subsidiary”** means any entity during any time in which:
- (1) the **Parent Company** owns or owned, directly or through one or more **Subsidiary(ies)**, more than fifty percent (50%) of the outstanding securities representing the right to vote for the election of such entity's directors, or
 - (2) such entity is or was controlled, directly or indirectly, in any combination, by the **Parent Company** or one or more **Subsidiary(ies)**.
- (N) **“Third Party”** means any person, other than an **Insured Person**, with whom an **Insured** interacts.
- (O) **“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, sex, 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**.
- (P) **“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** 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 6 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 (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 (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) compensation earned by a claimant in the course of employment but not paid by the **Company**, including any unpaid salary, bonus, wages, severance pay, retirement benefits, vacation days or sick days; provided, that this exclusion shall not apply to any back pay or front pay; or
- (4) 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 Person** to determine the application of any of the above EXCLUSIONS.

IV. GENERAL CONDITIONS

(A) LIMIT OF LIABILITY AND RETENTIONS

- (1) The Insurer's maximum liability for each **Claim** shall be the Limit of Liability for each **Claim** set forth in Item 3 of the Declarations. The Insurer's maximum aggregate liability for all **Loss** on account of all **Claims** first made during the same **Policy Period** shall be the Limit of Liability for each **Policy Period** set forth in Item 2 of the Declarations.
- (2) The Insurer's liability for **Loss** on account of each **Claim** shall apply only to that part of such **Loss** which is excess of the applicable Retention Amount set forth in Item 4 of the Declarations and such Retention Amount shall be borne by the **Insureds** uninsured and at their own risk. The Retention Amount set forth in Item 4 of the Declarations shall not apply to **Loss** incurred by **Insured Persons** for which the **Company** is neither permitted nor required by common or statutory law to indemnify or for which the **Company** fails to indemnify by reason of its financial insolvency.
- (3) **Defense Expenses** are part of and not in addition to the Limits of Liability set forth in Item 3 of the Declarations, and the payment by the Insurer of **Defense Expenses** reduces such Limits of Liability.

(B) DEFENSE, ALLOCATION OF LOSS AND SETTLEMENT

- (1) The Insurer's right and duty to defend includes, without limitation, the right and duty to select defense counsel. The Insurer's duty to defend any **Claim** or to pay **Loss** for such **Claim** ends when the Limit of Liability applicable to such **Claim** or to the **Policy Period** in which such **Claim** is first made has been exhausted.
- (2) If both **Loss** covered by this Policy and loss not covered by this Policy are incurred, either because a **Claim** made against an **Insured** contains both covered and uncovered matters, or because a **Claim** is made against both an **Insured** and others not insured under this Policy, the **Insureds** and the Insurer will use their best efforts to determine a fair and appropriate allocation between that portion of such loss that constitutes **Loss** covered under this Policy and that portion of such loss that is not covered under this Policy. The **Insureds** and the Insurer agree that, in determining such a fair and appropriate allocation, the parties will take into account the relative legal and financial exposures of, and relative benefits obtained by, the **Insureds** and others in connection with the defense and/or settlement of the **Claim**.

- (3) The **Insureds** agree not to settle any **Claim**, incur any **Defense Expenses** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the Insurer's written consent. The Insurer shall not be liable for any settlement, **Defense Expenses**, assumed obligation or admission to which it has not consented. The Insurer may make any investigation it deems necessary.
- (4) The Insurer and the **Insureds** shall not unreasonably withhold any consent referenced in this subsection (B).

(C) INTERRELATED CLAIMS

All **Claims** arising from **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim** and shall be deemed to have been made when the earliest such **Claim** was made or deemed to have been made pursuant to Section D below, whether before or during the **Policy Period**.

(D) NOTICE

- (1) As a condition precedent to any right to payment under this Policy with respect to any **Claim** made against an **Insured** for a **Wrongful Act**, the **Insureds** shall give written notice to the Insurer of such **Claim** as soon as practicable but in no event later than ninety (90) days after expiration of the **Policy Period** or, if exercised, the Optional Extension Period.
- (2) If, during the **Policy Period**, an **Insured** becomes aware of a specific **Wrongful Act** and if, during the **Policy Period**, the **Insureds**:
 - (a) provide the Insurer with written notice of the specific **Wrongful Act**, the consequences which have resulted or may result therefrom (including but not limited to actual or potential damages), the identities of the potential claimants, and the circumstances by which the **Insureds** first became aware of such **Wrongful Act**, and
 - (b) request coverage under this Policy for any subsequently resulting **Claim** for such **Wrongful Act**;then any **Claim** subsequently made arising out of such **Wrongful Act** will be treated as if it had been first made during the **Policy Period**.
- (3) All notices under this subsection (D) must be sent by first class U.S. mail or the equivalent to the address set forth in Item 7 of the Declarations: ATTENTION CLAIMS DEPARTMENT.

(E) REPRESENTATIONS AND SEVERABILITY

The **Insureds** represent that the particulars and statements contained in the **Application** are true, accurate and complete and are deemed material to the acceptance of the risk assumed by the Insurer under this Policy. This Policy is issued in reliance upon the truth of such representations. For purposes of this subsection (E), no knowledge or information possessed by any **Insured** will be imputed to any other **Insured Person**. If any of the particulars or statements in the **Application** is untrue, this Policy will provide no coverage with respect to any **Insured** who knew of such untruth.

(F) CHANGES IN EXPOSURE

- (1) If, during the **Policy Period**, the **Company** acquires any assets, acquires or creates a **Subsidiary**, or acquires any entity by merger, consolidation or otherwise, or assumes any liability of another entity, coverage shall be provided for any **Loss** resulting from a **Claim** for a **Wrongful Act** of such **Subsidiary** or entity, or of any **Insured Person** of any such **Subsidiary** or entity, occurring after the consummation of such transaction.

- (2) If, however, any such entity, assets, **Subsidiary** or liabilities so acquired or so assumed shall exceed thirty five percent (35%) of the total assets or liabilities of the **Company**, as represented in the **Company's** most recent audited consolidated financial statements, coverage under this Policy for any **Loss** resulting from a **Claim** for a **Wrongful Act** of such **Subsidiary** or entity, or of any **Insured Person** of any such **Subsidiary** or entity, shall be provided only for a period of ninety (90) days after the consummation of such transaction or until the end of the **Policy Period**, whichever is earlier, unless:
- (a) the Insurer receives written notice containing full details of the transaction(s); and
 - (b) the Insurer, in its sole discretion, agrees to provide such additional coverage upon such terms, conditions, limitations, and additional premium that it deems appropriate.
- (3) With respect to the acquisition, assumption, merger, consolidation or otherwise of any entity, asset, **Subsidiary** or liability, there will be no coverage available under this Policy for **Claims** made against the acquired, assumed, merged, or consolidated entity, asset, **Subsidiary** or liability, or any **Insured Person** of any such **Subsidiary** or entity, for a **Wrongful Act** committed any time during which such entity, asset, liability or **Subsidiary** is or was not an **Insured**.
- (4) If, during the **Policy Period**, any entity ceases to be a **Subsidiary**, the coverage provided under this Policy shall continue to apply to **Insured Persons** who, because of their service with such **Subsidiary**, were covered under this Policy, but only with respect to **Claims** for **Wrongful Acts** that occurred or allegedly occurred prior to the time such **Subsidiary** ceased to be a **Subsidiary** of the **Company**.
- (5) If, during the **Policy Period**, there is a **Change In Control**, the coverage provided under this Policy shall continue to apply until the end of the **Policy Period**, but only with respect to **Claims** for **Wrongful Acts** committed or allegedly committed before the **Change In Control**; and
- (a) coverage will cease with respect to **Claims** for **Wrongful Acts** committed after the **Change in Control**, and
 - (b) the entire premium for the Policy will be deemed to be fully earned immediately upon the consummation of a **Change in Control**.

(G) OPTIONAL EXTENSION PERIOD

- (1) If either the **Parent Company** or the Insurer does not renew this Policy, the **Parent Company** shall have the right, upon payment of the additional premium set forth in ITEM 5 of the Declarations, to an extension of the coverage provided by this Policy, but only with respect to **Claims** first made during the period of time set forth in ITEM 5 of the Declarations after the Policy Expiration Date for **Wrongful Acts** occurring before the end of the **Policy Period**.
- (2) As a condition precedent to the right to purchase the Optional Extension Period, the total premium for this Policy must have been paid in full. The right of the **Parent Company** to purchase the Optional Extension Period will be immediately terminated if the Insurer does not receive written notice from the **Parent Company** advising it wishes to purchase the Optional Extension Period together with full payment of the premium for the Optional Extension Period within thirty (30) days after the end of the **Policy Period**.
- (3) If the **Parent Company** elects to purchase the Optional Extension Period as set forth in (G)(1) and (2) above, the entire premium for the Optional Extension Period will be deemed to be fully earned as of the inception of the Optional Extension Period.

- (4) The purchase of the Optional Extension Period will not in any way increase the Limits of Liability set forth in ITEM 3 of the Declarations, and the Limits of Liability with respect to **Loss** resulting from **Claims** made during the Optional Extension Period shall be part of and not in addition to the Limits of Liability for all **Loss** resulting from all **Claims** under this Policy.

(H) CANCELLATION AND RENEWAL OF COVERAGE

- (1) Except for the nonpayment of premium, as set forth in (H)(2) below, the **Parent Company** has the exclusive right to cancel this Policy. Cancellation may be effected by mailing to the Insurer written notice stating when, not later than the Expiration Date set forth in ITEM 2 of the Declarations, such cancellation shall be effective. In such event, the Insurer shall retain the customary short rate portion of the earned premium. Return or tender of the unearned premium is not a condition of cancellation.
- (2) The Insurer may cancel this Policy only for nonpayment of premium. The Insurer will provide not less than twenty (20) days' written notice stating the reason for cancellation and when the Policy will be canceled. Notice of cancellation will be sent to the **Parent Company** and the agent of record for the **Insureds**, if applicable.
- (3) The Insurer is under no obligation to renew this Policy upon its expiration. If the Insurer chooses to non-renew this Policy, the Insurer will deliver or mail to the **Parent Company** written notice stating such at least sixty (60) days before the Expiration Date set forth in ITEM 2 of the Declarations.

(I) ASSISTANCE, COOPERATION AND SUBROGATION

- (1) The **Insureds** agree to provide the Insurer with all information, assistance and cooperation that the Insurer may reasonably request, and further agree that they will do nothing which in any way increases the Insurer's exposure under this Policy or in any way prejudices the Insurer's potential or actual rights of recovery.
- (2) In the event of any payment under this Policy, the Insurer shall be subrogated to all of the potential or actual rights of recovery of the **Insureds**. The **Insureds** shall execute all papers required and will do everything necessary to secure such rights, including but not limited to the execution of such documents as are necessary to enable the Insurer to effectively bring suit in their name, and will provide all other assistance and cooperation which the Insurer may reasonably require.

(J) ACTION AGAINST THE INSURER, ASSIGNMENT, AND CHANGES TO THE POLICY

- (1) No action may be taken against the Insurer unless, as a condition precedent thereto:
 - (a) there has been full compliance with all of the terms and conditions of this Policy, and
 - (b) the amount of the obligation of the **Insureds** has been finally determined either by judgment against the **Insureds** after actual trial, or by written agreement of the **Insureds**, the claimant and the Insurer.
- (2) Nothing contained herein shall give any person or entity any right to join the Insurer as a party to any **Claim** against an **Insured** to determine his, her or its liability; nor may the **Insureds** implead the Insurer in any **Claim**.
- (3) Assignment of interest under this Policy shall not bind the Insurer unless its consent is endorsed hereon.
- (4) Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the Insurer will not cause a waiver or change in any part of this Policy or prevent the Insurer from asserting any right under the terms, conditions and limitations of this Policy. The terms, conditions and limitations may only be waived or changed by written endorsement.

(K) AUTHORIZATION AND NOTICES

It is understood and agreed that the **Parent Company** will act on behalf of the **Company** and the **Insured Persons** with respect to:

- (1) the payment of the premiums,
- (2) the receiving of any return premiums that may become due under this Policy,
- (3) the giving of all notices to the Insurer as provided herein, and
- (4) the receiving of all notices from the Insurer.

(L) TERRITORY AND VALUATION

Coverage under this Policy shall extend to **Claims** made and **Wrongful Acts** occurring anywhere in the world.

(M) OTHER INSURANCE

Unless expressly written to be excess over other applicable insurance, this Policy is intended to provide primary insurance.

(N) ENTIRE AGREEMENT

The **Insureds** agree that this Policy, including the Declarations, any endorsements, attachments and the Application, shall constitute the entire agreement between the Insurer and any of its agents and the **Insureds** relating to this insurance.

SPECIMEN