

Employment Practices Liability Insurance ("EPL Coverage Part")

Notice: Pursuant to Section I. of the General Terms and Conditions, the General Terms and Conditions are incorporated by reference into, and made part of, and are expressly applicable to this EPL Coverage Part, unless expressly stated to the contrary in either the General Terms and Conditions or in this EPL Coverage Part.

In consideration of the payment of the premium, in reliance on all statements in the **Application** and all other information provided to the **Insurer**, and subject to all provisions of this policy the **Insurer** and **Insureds** agree as follows:

I. INSURING AGREEMENT

The **Insurer** shall pay, on behalf of the **Insureds**, **Loss**:

- (1) which the **Insureds** are legally obligated to pay resulting from any **Claim** first made against the **Insureds** during the **Policy Period** or the Extended Reporting Period (if applicable) and reported to the **Insurer** pursuant to the terms of this policy, for any actual or alleged **Employment Practices Wrongful Act**; or
- (2) which the **Insureds** are legally obligated to pay resulting from any **Claim** first made against the **Insureds** during the **Policy Period** or the Extended Reporting Period (if applicable) and reported to the **Insurer** pursuant to the terms of this policy, for any actual or alleged **Third Party Wrongful Act**.

II. DEFINITIONS

Whenever printed in boldface type, and whether in the singular or plural form in this policy, the following terms shall have the meanings indicated below.

A. "Administrative Claim" means an investigation:

- (1) by the Equal Employment Opportunity Commission (or any similar state, local or foreign authority charged with oversight over the same or similar responsibilities); or
- (2) of a violation of the Uniformed Services Employment and Reemployment Rights Act, when such investigation is conducted by the United States Department of Labor, Veterans Employment and Training Service, Justice Department or Office of Special Counsel;

which, in either case, is commenced by the filing of a formal order of investigation or similar document of which notice has been given to any **Insured**.

B. "Claim" means:

- (1) a written demand for monetary, non-monetary or injunctive relief, including any demand for mediation, arbitration, or any other alternative dispute resolution process;
- (2) a proceeding for monetary, non-monetary, or injunctive relief which is commenced by:
 - a. service of a complaint or similar pleading or equivalent document in a **Foreign Jurisdiction**;
 - b. return of an indictment, information or similar document or equivalent document in a **Foreign Jurisdiction** (in the case of a criminal proceeding); or
 - c. receipt or filing of a notice of charges;
- (3) an **Administrative Claim**;

- (4) a written request to toll or waive the statute of limitations relating to any of the above.

The term **Claim** shall not include any grievance or arbitration subject to a collective bargaining agreement.

Further, a **Claim** shall be deemed to have been first made at the time notice of the **Claim** is first received by any **Insured**.

- C. **"Defense Costs"** mean the reasonable and necessary fees, costs and expenses (including costs of electronic discovery and premiums for any appeal bond, attachment bond or similar bond, but without any obligation to apply for or furnish any such bond) consented to by the **Insurer** and resulting solely from the investigation, adjustment, defense and appeal of a **Claim** against an **Insured**, but excluding wages, salaries, fees or any other compensation of officers or **Employees** of the **Company**.
- D. **"Employee"** means any past, present or future employee or officer of the **Company** while acting solely in his or her capacity as such, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any part-time, seasonal and temporary employee or volunteer of the **Company** but only for **Wrongful Acts** committed or attempted or allegedly committed or attempted while employed by the **Company**. **Employee** also means an independent contractor, but only of and to the extent that the **Company** provides indemnification to such independent contractor, and only while such independent contractor is performing work for or on behalf of the **Company** pursuant to a written contract.
- E. **"Employment Practices Wrongful Act"** means:
- (1) wrongful dismissal, discharge or termination of employment, including but not limited to dismissal, discharge or termination resulting from a breach of an implied contract relating to employment, whether actual or constructive;
 - (2) harassment (which includes workplace bullying, cyber bullying, unwelcome sexual or non-sexual advances, requests for sexual or non-sexual favors or other verbal or physical conduct of a sexual or non-sexual nature that: (i) explicitly or implicitly are made a condition of employment; (ii) are used as a basis for employment decisions; or (3) create a work environment that interferes with job performance;
 - (3) employment discrimination of any protected status established under federal, state or local law, ordinance or public policy;
 - (4) employment-related misrepresentation;
 - (5) wrongful failure to employ or promote, wrongful deprivation of career opportunity, wrongful demotion, wrongful discipline, failure to grant tenure;
 - (6) negligent hiring or retention, negligent employee evaluation, including the giving of negative or defamatory statements in connection with an employee reference, or negligent supervision;
 - (7) failure to provide or enforce adequate or consistent corporate policies and procedures relating to any **Employment Practices Wrongful Act**;
 - (8) **Retaliation**;
 - (9) violation of the Uniformed Services Employment and Reemployment Rights Act or the Family and Medical Leave Act;
 - (10) violation of an individual's civil rights if such conduct relates to matters described in paragraph 1 - 9, including, but not limited to, any violation of the Civil Rights Act of 1866 or 42 U.S.C. Section 1983; or

- (11) libel, slander, defamation, infliction of emotional distress or mental anguish, humiliation, false or wrongful imprisonment, invasion of privacy and other personal injury allegations if such conduct relates to matters described in paragraphs 1-9,

committed or attempted against an **Employee** or applicant for employment with the **Company**.

F. “**Insured**” means **Insured Person(s)** and the **Company**.

G. “**Insured Person**” means:

- (1) any **Executive** including any **Executive**;
- (2) any past, present or future **Employee** of the **Company**;
- (3) in the event of the death, incapacity or bankruptcy of an **Insured Person**, the estate, heirs, legal representatives or assigns of such **Insured Person**;
- (4) the lawful spouse or domestic partner (whether such status is derived by reason of statutory law, common law or otherwise of any applicable domestic or **Foreign Jurisdiction**) of an **Insured Person** for a **Claim** arising solely out of his or her status as the spouse or domestic partner of an **Insured Person**, including a **Claim** that seeks damages recoverable from marital community property, property jointly held by the **Insured Person** and the spouse or domestic partner, or property transferred from the **Insured Person** to the spouse or domestic partner; *provided, however*, that this extension shall not afford coverage for any **Claim** for any act, error or omission of the spouse or domestic partner, but shall apply only to **Claims** arising out of any **Wrongful Act** of an **Insured Person**.
- (5) **Insured Person** shall include an **Insured Person** in his or her **Outside Entity Position**, provided however, that **Loss** under this policy shall be specifically excess to any indemnification from the **Outside Entity** and any insurance coverage afforded to the **Outside Entity**.

Coverage will automatically apply to all new **Insured Persons** after the policy inception date.

H. (1) “**Loss**” means damages, judgments (including any award of pre-judgment and post-judgment interest), settlements and **Defense Costs**.

Loss shall specifically include punitive, exemplary and multiple damages. Solely for the purpose of resolving any dispute between the **Insurer** and the **Insured** regarding whether punitive, exemplary or multiplied damages are insurable under this policy, the law of the jurisdiction most favorable to the insurability of those damages shall control, provided that such jurisdiction is where:

- a. the damages were awarded or imposed, or
- b. any **Wrongful Act** occurred for which such damages were awarded or imposed, or
- c. the **Insured** resides, is incorporated or has its principal place of business, or
- d. the **Insurer** is incorporated or has its principal place of business.

(2) “**Loss**” (other than **Defense Costs**) shall not include:

- a. taxes;
- b. civil or criminal fines or penalties,
- c. employment related benefits, stock options, perquisites, deferred compensation or any other type of compensation other than salary, wages or bonus compensation;
- d. any liability or costs incurred by any **Insured** to modify any building or property in order to make said building or property more accessible or accommodating to any disabled person or any liability or costs incurred in connection with any educational, sensitivity or other **Company** program policy or seminar;
- e. any amount for which an **Insured** is not financially liable or which are without legal recourse to an **Insured**; or

- f. matters which are uninsurable under the law pursuant to which this policy is construed.
- I. **"Retaliation"** means a retaliatory act of an **Insured** alleged to be in response to the actual or attempted exercise by an **Employee** of the **Company** or an **Outside Entity** of any right that such **Employee** has under law, including, without limitation, any of the following activities: (1) the disclosure or threat of disclosure by an **Employee** of the **Company** or an **Outside Entity** to a superior or to any governmental agency of any act by an **Insured** which act is alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder; (2) the exercise of rights under worker's compensation laws, the Family and Medical Leave Act, the Americans with Disabilities Act or any other law relating to employee rights; (3) the filing of any claim under the Federal False Claims Act or any other federal, state, local or foreign "whistle-blower" law; or (4) strikes by any **Employee** of the **Company** or an **Outside Entity**.
- J. **"Third Party Wrongful Act"** means any actual or alleged harassment or unlawful discrimination, as described in subparagraphs (2) and (3) of the definition of **Employment Practices Wrongful Act**, or the violation of the civil rights of an individual relating to such harassment or discrimination, when such acts are alleged to be committed by an **Employee** against any individual other than an **Insured Person** or applicant for employment with the **Company** or with an **Outside Entity**, including, but not limited to, students, patients, members, customers, vendors and suppliers.
- K. **"Wrongful Act"** means any actual or alleged
 - (1) **Employment Practices Wrongful Act**; or
 - (2) **Third Party Wrongful Act**.

III. EXCLUSIONS

The **Insurer** shall not be liable to make payment for that portion of **Loss** in connection with any **Claim** made against any **Insured**:

- A. based upon, arising out of, or attributable to any deliberate criminal or deliberate fraudulent act if established by any final and non-appealable adjudication in the underlying action adverse to an **Insured**. Imposition of criminal fines, penalties, or sanctions pursuant to the law of a **Foreign Jurisdiction** shall not constitute, by itself, proof that an **Insured** has committed a deliberate criminal act or deliberate fraudulent act.
- B. based upon, arising out of, or attributable to, as of the applicable **Prior or Pending Date**:
 - (1) any prior or pending **Claim**, litigation, administrative or arbitration proceeding, or investigation; or
 - (2) any **Wrongful Act** or **Related Wrongful Act**, fact, circumstance, situation, transaction or event underlying or alleged in such prior or pending **Claim**, litigation, administrative or arbitration proceeding, or investigation;
- C. based upon, arising out of, or attributable to, or in any way involving:
 - (1) any **Wrongful Act** alleged in any matter which has been reported, or in any circumstance of which notice has been given, prior to the **Policy Period**, under any other policy of which this **EPL Coverage Part** is a renewal or replacement of, in whole or in part, or which it may succeed in time.
 - (2) any other **Wrongful Act** whenever occurring, which together with a **Wrongful Act** which has been the subject of such claim or notice in C.(1), would constitute **Related Wrongful Acts**;

- D. for:
- (1) physical injury to or destruction of any tangible property, including the loss of use thereof; or
 - (2) bodily injury, sickness, disease, and death of any person, injury from libel, slander, defamation or disparagement, or a violation of a person's right of privacy; provided, however, this exclusion shall not apply to damages or causes of action for emotional distress, mental anguish, defamation, invasion of privacy or humiliation, alleged in a **Claim** for an **Employment Practices Wrongful Act**.
- E. based upon, arising out of, or attributable to any **Wrongful Act** of an **Insured Person** serving in their capacity as director, officer, trustee, governor of any other entity other than the **Company** or an **Outside Entity**, or by reason of their status as director, officer, employee, trustee or governor of such other entity;
- F. (1) for:
- a. **ERISA**
 - b. any actual or alleged violations of responsibilities, obligations or duties imposed by the Fair Labor Standards Act (except the Equal Pay Act), Worker's Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act, the National Labor Relations Act, including amendments thereto, or any similar provisions of any federal, state, local or foreign statutory or common law or regulations promulgated pursuant to such Acts; or
- (2) based upon, arising out of, or attributable to:
- any actual or alleged unpaid wages (including overtime pay), benefits, obligations under any workers' compensation, social security, disability benefits, or unemployment compensation law, including amendments thereto, or any similar state, local or foreign law or regulation, improper payroll deductions, improper employee classification, failure to maintain accurate time records, or failure to grant meal and rest periods;
- provided, however*, that this exclusion shall not apply (a) to any back or front pay allegedly due as the result of discrimination or that allocable portion of any such **Claim** alleging **Retaliation**.
- G. based upon, arising out of, or attributable to any actual or alleged contractual liability of the **Company** under any express contract or agreement; provided, however, this exclusion shall not apply to liability that would attach in the absence of such express contract or agreement and further provided that this exclusion shall not apply to **Defense Costs**;
- H. based upon, arising out of, or attributable to the actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants** or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**; provided, however, this exclusion shall not apply to **Claims** for **Retaliation**;

For the purpose of determining the applicability of any Exclusion, other than exclusions **III.B.** and **III.C.**, the **Wrongful Acts** of, facts pertaining to, and knowledge possessed by any **Insured Person** shall not be imputed to any other **Insured Person**; only the **Wrongful Acts** of, facts pertaining to, and knowledge possessed by any past, present, or future Chief Executive Officer or Chief Financial Officer (or equivalent position) of the **Company** shall be imputed to the **Company**.

IV. RETENTION

Section III, LIMIT OF LIABILITY AND RETENTION, of the General Terms and Conditions, shall be amended to add the following provisions:

The **Insurer** shall only be liable for the amount of **Loss** arising from a **Claim** which is in excess of the Retention set forth in the Declarations as applicable to the **EPL Coverage Part**. Such Retention amount shall be borne by the **Insured** with regard to all **Loss**.

No Retention amount shall apply to **Loss** of an **Insured Person** in the event the **Company** is permitted or required to indemnify the **Insured Person** but the **Company** is financially or legally unable to pay such **Loss** by reason of **Insolvency**.

If the **Company** fails or refuses in writing to advance, pay or indemnify **Loss** of an **Insured Person** within the applicable Retention for any reason (including but not limited to **Insolvency**) or if an **Insured Person** submits a written request to the **Company** for advancement, payment or indemnification of **Loss** incurred and the **Company** fails to provide, agree or acknowledge an obligation to provide such advancement, payment or indemnification within 90 days, then the **Insurer** shall advance such amounts on behalf of the **Insured Person** until such Retention is either satisfied or the **Company** provides such advancement, payment or indemnification.

If the **Insurer** pays any indemnification or advancement owed to an **Insured Person** by the **Company** within the applicable Retention, such amounts shall become due and owing as an obligation of the **Company** to the **Insurer** and the **Company** shall reimburse the **Insurer** for such amounts.

Any advancement or payment by the **Insurer** within the applicable Retention shall apply toward exhaustion of the applicable Limit of Liability.

The certificate of incorporation, by-laws and shareholder and board of director resolutions of any **Company** or **Outside Entity** shall be deemed to provide indemnification to the **Insured Person(s)** to the fullest extent permitted by law.

V. Defense, Cooperation, and Settlement

A. The **Insurer** does not assume any duty to defend or investigate. The **Insureds** shall defend and contest any **Claim** made against them. The **Insured** shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment, or incur any **Defense Costs** without the prior written consent of the **Insurer**, such consent not to be unreasonably withheld. If all **Insured** defendants are able to dispose of all **Claims** which are subject to one Retention, inclusive of **Defense Costs**, for an amount not exceeding the Retention, then the **Insurer's** consent shall not be required for such disposition.

B. Notwithstanding the foregoing, the **Insureds** shall have the right to tender the defense of any **Claim** under this **EPL Coverage Part** to the **Insurer**, which right shall be exercised in writing by the **Company** on behalf of all **Insureds**. This right shall terminate if not exercised within thirty (30) days of the date the **Claim** is first made against an **Insured**. Further, from the date the **Claim** is first made against the **Insureds** to the date when the **Insurer** accepts the tender of the defense of such **Claim**, the **Insureds** shall take no action, or fail to take any required action, that prejudices the rights of the **Insureds** or the **Insurer** with respect to such **Claim**. Provided that the **Insureds** have complied with the foregoing, the **Insurer** shall be obligated to assume the defense of the **Claim**, even if such **Claim** is groundless, false or fraudulent. The assumption of the defense of the **Claim** shall be effective upon written confirmation sent thereof by the **Insurer** to the **Company**.

In the event the **Insurer** assumes the defense of any **Claim**, the **Insurer** shall have the right to investigate and direct the defense (including but not limited to the selection of counsel to represent the **Insured**), conduct negotiations and, with consent of the **Insured**, settle any **Claim**. If the **Insured** refuses to consent to any settlement recommended by the **Insurer** and acceptable to the claimant(s) then, subject to the applicable Limit of Liability, the **Insurer's** liability for such **Claim** will not exceed:

- (1) the amount for which the **Claim** could have been settled plus **Defense Costs** up to the date the **Insured** refused to settle such **Claim** (Recommended Settlement"); plus
- (2) Ninety percent (90%) of any **Loss** in excess of the Recommended Settlement incurred in connection with the **Claim**. The remaining ten percent (10%) shall be borne by the **Insured**.

In no event shall the **Insurer** be liable to defend any **Claim** after the applicable Limit of Liability has been exhausted.

- C. In the event that the **Insurer** has not assumed the defense of a **Claim** pursuant to Section IV. B. above, at the written request of the **Insured**, the **Insurer** shall advance, excess of any applicable Retention, covered **Defense Costs** on a current basis prior to the final disposition of a **Claim**. Such advance payments by the **Insurer** shall be repaid to the **Insurer** by the **Insured**, severally according to their respective interests, in the event and to the extent that the **Insured** shall not be entitled under the terms and conditions of this policy to payment of such **Loss**.
- D. Each **Company** and **Insured Person** shall provide the **Insurer** with full cooperation and such information as the **Insurer** may reasonably require. The **Insurer** shall have the right, but not the obligation, to effectively associate in the defense of any **Claim** that involves or appears reasonably likely to involve the policy, including but not limited to the negotiating of any settlement. The failure of any **Insured Person** to give the **Insurer** cooperation and information as required herein shall not impair the rights of any other **Insured Person** under this policy.
- E. If both **Loss** covered by this policy and **Loss** not covered by this policy are incurred, either because a **Claim** is made against both **Insureds** and others or because a **Claim** includes both covered and uncovered matters, the **Insureds** and the **Insurer** agree to use their best efforts to determine a fair and proper allocation of amounts between covered and uncovered loss taking into account the relative legal and financial exposure of the **Insureds**. In the event that a determination as to the amount of **Defense Costs** to be advanced under this policy cannot be agreed to, then the **Insurer** shall advance such **Defense Costs** which the **Insurer** states to be fair and proper until a different amount shall be agreed upon or determined pursuant to the provisions of this policy and applicable law.

In witness whereof, the **Insurer** has caused this policy to be signed by its President and Secretary, but this policy shall not be valid unless countersigned on the Declarations Page by a duly authorized representative of the **Insurer**.



President



Secretary