



I. INSURING AGREEMENT

The **Company** agrees to indemnify the **Insured** for all sums in excess of the retention that the **Insured** shall become legally obligated to pay as **Damages** and **Claim Expenses** because of a **Claim** that is both first made against the **Insured** and reported to the **Company** during the **Policy Period** or the **Extended Reporting Period**, if applicable for a **Wrongful Employment Practice**, provided that the **Insured** did not give notice of any **Wrongful Employment Practice** or **Interrelated Wrongful Act** under any policy of which this Policy is a direct or indirect renewal or replacement;

II. DEFINITIONS

For purposes of the coverage under this **Coverage Part**:

Claim means:

- A. a written demand for monetary or non-monetary relief;
- B. a civil proceeding in a court of law or equity or an arbitration seeking monetary or non-monetary relief; or
- C. an administrative or regulatory proceeding including an investigation by a regulatory or administrative agency, such as the Equal Employment Opportunity Commission or its state or local equivalent;

against an **Insured** by or on behalf of a natural person:

1. who is an **Employee** or applicant for employment for a **Wrongful Employment Practice**;
2. a third party, but only with respect to a **Third Party Wrongful Employment Practice**, including any appeal therefrom;

However, **Claim** does not include any labor or grievance arbitration or other proceeding pursuant to a collective bargaining agreement.

Such **Claim** shall be deemed made:

- a. in the case of a written demand, on the earlier of the receipt by the **Insured** or the **Company** of such demand;
- b. in the case of a civil proceeding or arbitration, on the date of service upon or other receipt by any **Insured** of a complaint against the **Insured** in such proceeding or arbitration;
- c. in the case of an administrative or regulatory proceeding on the earliest of the date of service upon or other receipt by the **Insured** of a complaint or similar document against the **Insured**, a notice of charges against the **Insured** or a written notice or subpoena from the regulatory authority identifying such **Insured** as an individual against whom a regulatory proceeding may be commenced.

Damages means judgments, awards (including any award of pre-judgment or post-judgment interest) and settlements, provided any settlement is negotiated with the assistance and approval of the **Company**. **Damages** include front pay and back pay. **Damages** shall also include liquidated damages awarded pursuant to the Age Discrimination in Employment Act or the Equal Pay Act, punitive, exemplary or multiple damages, if insurable to the fullest extent permitted by any applicable law. Where the **Insureds** reasonably determine that punitive, exemplary or multiple damages are insurable under any applicable law, the **Company** shall not challenge that determination of insurability.

However, **Damages** do not include:

- A. civil or criminal fines, penalties, taxes, sanctions or forfeitures, imposed on an **Insured** whether pursuant to law, statute, regulation or court rule;
- B. the multiplied portion of multiplied awards except for multiplied damages under the Age Discrimination in Employment Act of 1967 (ADEA) or the Equal Pay Act;



- C. compensation earned by the claimant in the course of employment but unpaid by the **Insured**, including salary, wages, commissions, bonus or incentive compensation;
- D. any amounts for which an **Insured** is liable due to breach of any written contract of employment;
- E. amounts representing medical or insurance premiums or benefit claim payments;
- F. except as provided above with respect to punitive, exemplary, liquidated or the multiple portion of any multiplied damages, matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed;
- G. any amount for which an **Insured** is absolved from payment by reason of any covenant, agreement or court order;
- H. future salary, wages or commissions of a claimant who is hired, promoted or reinstated to employment pursuant to a settlement of, order in, or other resolution of any **Claim**; or
- I. **Employment Related Benefits.**

Employee means former, present and future salaried, part-time, seasonal and temporary employees, of the **Named Insured** and employees leased to the **Named Insured**, and includes independent contractors. It also includes former, present and future shareholders, partners, members and of counsels of the **Named Insured**.

Employment Related Benefits means perquisites, fringe benefits, deferred compensation or payments (including insurance premiums) in connection with an employee benefit plan and any other payment to or for the benefit of an **Employee** arising out of the employment relationship. **Employment Related Benefits** shall not include salary, wages, commissions or non-deferred cash incentive compensation.

ERISA or any Similar Act means the Employee Retirement Income Security Act of 1974, as amended, or any similar common or statutory law of the United States, Canada or their states, territories or provinces or any other jurisdiction anywhere in the world.

Insured means the **Named Insured** and the persons or entities described below:

- A. **Insured Persons**; or
- B. any partnership, professional corporation, professional association limited liability corporation or limited liability partnership who is an **Employee** of the **Named Insured** but only with respect to the conduct of the **Named Insured's** business;

Insured Person means any natural person who is an **Employee**, officer, director, shareholder, associate or manager of the **Named Insured** but only with respect to the conduct of the **Named Insured's** business.

Third Party Wrongful Employment Practice means any **Wrongful Employment Practice** constituting or relating to discrimination or harassment (including sexual harassment) of any vendor, supplier or customer of the **Named Insured**.

III. EXCLUSIONS

This **Coverage Part** does not apply to any **Claim**:

- A. Bodily Injury/Property Damage

for any actual or alleged bodily injury (including death), sickness, disease of any person, or damage to or destruction of any tangible property including loss of use except that this exclusion shall not apply to allegations of emotional distress, humiliation or mental anguish;
- B. Assumed Liability

based on or arising out of an **Insured's** assumption of the liability of others in any oral or written contract or agreement, unless such liability would have attached to the **Insured** in the absence of such agreement;



C. Violation of Law

based on or arising out of any actual or alleged violation of:

1. (i) **ERISA or any Similar Act**, (ii) or any law governing workers' compensation, unemployment insurance, social security, disability or similar law, (iii) the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), as amended, or (iv) of any other federal, state or local statutory law or common law anywhere in the world governing any employee benefit program, policy, plan or arrangement of any type, including but not limited to laws governing retirement or pension benefit programs, welfare plans, insurance plan, employee stock option ownership or employee stock purchase plans or deferred compensation programs;
2. any law governing workers' compensation, unemployment insurance, social security, disability or any other similar federal, state or local statutory or regulatory law or common law anywhere in the world;
3. the Occupational Safety and Health Act of 1970 (OSHA), as amended, or any other federal state or local statutory or regulatory law or common law anywhere in the world governing workplace safety and health;
4. the Fair Labor Standards Act (except the Equal Pay Act), as amended, or any other federal, state or local statutory law or common law anywhere in the world governing wage, hour and payroll policies;
5. the Workers' Adjustment and Retraining Notification Act, Public Law 100-379 (1988), as amended, or any other federal, state or local statutory or regulatory law or common law anywhere in the world governing an employer's obligation to notify or bargain with others in advance of any facility closing or mass layoff;
6. the National Labor Relations Act, as amended, or any other federal, state or local statutory or regulatory law or common law anywhere in the world governing employees' rights and the employers duties with respect to unions, bargaining, strikes, boycotts, picketing, lockouts or collective activities.

However, this exclusion shall not apply to any **Claim** alleging retaliation or wrongful dismissal or discharge or termination of employment whether actual or constructive, because of a claimant's exercise of a right pursuant to any such laws;

D. Pollution

based on or arising out of: any nuclear reaction, radiation or contamination, or any actual, alleged or threatened discharge, release, escape, or disposal of, or exposure to, **Pollutants**; any request, direction or order that any of the **Insureds** test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to or assess the effect of **Pollutants** or nuclear reaction, radiation or contamination, or any voluntary decision to do so; or any actual or alleged property damage, or bodily injury, sickness, disease or death of any person resulting from any of the aforementioned matters. However, this exclusion shall not apply to any **Claim** alleging retaliation or wrongful dismissal or discharge or termination of employment whether actual or constructive, because of a claimant's exercise of a right pursuant to any such laws;

E. Non-monetary relief:

for:

1. the cost of any non-monetary relief, including without limitation any costs associated with compliance with any injunctive relief of any kind or nature imposed by any judgment or settlement;
2. the costs associated with providing any reasonable accommodations required by, 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 laws.

However, we shall pay **Claim Expenses** in connection with such **Claims**.