

EMPLOYMENT PRACTICES LIABILITY COVERAGE PART

I. INSURING AGREEMENTS

(A) Employment Practices Liability

The Insurer shall pay **Loss** on behalf of the **Insureds** resulting from an **Employment Practices Claim** first made against the **Insureds** during the **Policy Period** or Extended Reporting Period, if applicable, for an **Employment Practices Wrongful Act** by the **Insureds**.

(B) Third Party Liability (Elective)

If Third Party Liability Coverage is included in ITEM 5 of the Declarations, the Insurer shall pay **Loss** on behalf of the **Insureds** resulting from a **Third Party Claim** first made against the **Insureds** during the **Policy Period** or the Extended Reporting Period, if applicable, for a **Third Party Wrongful Act** by the **Insureds**.

This Insuring Agreement shall be subject to the Third Party Liability Coverage Sublimit of Liability, Retention, and Prior or Pending Date in ITEM 5 of the Declarations. Such Sublimit of Liability shall be the maximum aggregate amount that the Insurer shall pay under this Insuring Agreement for all **Loss** from all **Claims** covered under this Insuring Agreement. Such Sublimit of Liability shall be subject to, part of, and not in addition to, the Limit of Liability applicable to this **Liability Coverage Part**.

II. DEFINITIONS

The following terms, whether used in the singular or plural, shall have the meanings specified below:

- (A) **“Benefits”** means perquisites, fringe benefits, deferred compensation and any other form of compensation (other than salaries, wages, or bonuses as a component of a front or back pay award).
- (B) **“Claim”** means any:
 - (1) **Employment Practices Claim**; or
 - (2) **Third Party Claim**.
- (C) **“Employment Practices Claim”** means any:
 - (1) written demand for monetary damages or other civil relief, including non-monetary relief, commenced by the receipt of such demand, including, without limitation, a written demand for employment reinstatement; or
 - (2) civil proceeding, including an arbitration or other alternative dispute resolution proceeding, commenced by the service of a complaint, filing of a demand for arbitration, or similar pleading; or
 - (3) formal administrative or regulatory proceeding, including, without limitation, a proceeding before the Equal Employment Opportunity Commission or similar governmental agency, commenced by the filing of a notice of charges, formal investigative order or similar document;

by or on behalf of an **Employee**, a natural person applicant for employment with an **Insured Entity**, or an **Independent Contractor**.

Employment Practices Claim also means an audit conducted by the United States of America Office of Federal Contract Compliance Programs commenced by the receipt of a notice of violation, order to show cause, or a written demand for monetary or injunctive relief.

Employment Practices Claim also means a written request to the **Insureds** to toll or waive a statute of limitations regarding a potential **Employment Practices Claim** as described above. Such **Claim** shall be commenced by the receipt of such request.

However, **Employment Practices Claim** shall not include any labor or grievance proceeding or arbitration that is subject to a collective bargaining agreement.

(D) “**Employment Practices Wrongful Act**” means a **Wrongful Act** involving any:

- (1) wrongful dismissal, discharge, or termination of employment (including constructive dismissal, discharge, or termination), wrongful failure or refusal to employ or promote, wrongful discipline or demotion, failure to grant tenure, negligent employment evaluation, or wrongful deprivation of career opportunity; or
- (2) sexual or other workplace harassment, including quid pro quo and hostile work environment; or
- (3) employment discrimination, including discrimination based upon age, gender, race, color, national origin, religion, creed, marital status, sexual orientation or preference, gender identity or expression, genetic makeup, or refusal to submit to genetic makeup testing, pregnancy, disability, HIV or other health status, Vietnam Era Veteran or other military status, or other protected status established under federal, state, or local law; or
- (4) **Retaliation**; or
- (5) breach of any oral, written, or implied employment contract, including, without limitation, any obligation arising from a personnel manual, employee handbook, or policy statement; or
- (6) violation of the Family and Medical Leave Act.

Employment Practices Wrongful Act shall also mean the following, but only when alleged in addition to or as part of any **Employment Practices Wrongful Act** described above:

- (i) employment-related wrongful infliction of emotional distress or mental anguish; or
- (ii) failure to create, provide for or enforce adequate or consistent employment-related policies and procedures; or
- (iii) negligent retention, supervision, hiring or training; or
- (iv) employment-related: invasion of privacy, defamation, libel, slander or misrepresentation.

(E) “**Independent Contractor**” means any natural person working in the capacity of an independent contractor pursuant to an **Independent Contractor Agreement**.

(F) “**Independent Contractor Agreement**” means any express contract or agreement between an **Independent Contractor** and an **Insured Entity** setting forth the terms of his/her service on behalf, and under the direction, of such **Insured Entity**.

(G) “**Insured Person**” means any:

(1) **Employee**; or

(2) **Manager**; or

(3) regarding Insuring Agreement (A), an **Independent Contractor** provided that within thirty (30) days of an **Employment Practices Claim** having been made against such **Independent Contractor** that the **Insured Entity** agrees in writing to indemnify such **Independent Contractor** for any **Loss** arising out of such **Claim**.

(H) “**Insureds**” means any:

(1) **Insured Entity**; or

(2) **Insured Person**.

(I) “**Loss**” means the amount that the **Insureds** are legally liable to pay solely as a result of a **Claim** covered by this **Liability Coverage Part**, including **Defense Costs**, compensatory damages, including front pay and back pay, settlement amounts, pre- and post-judgment interest, and costs awarded pursuant to judgments.

Loss also includes punitive and exemplary damages, the multiple portion of any multiplied damage award, and liquidated damages under the Age Discrimination in Employment Act.

However, **Loss** shall not include:

(1) taxes, fines or penalties imposed by law; or

(2) non-monetary relief; or

(3) **Benefits**; or

(4) future compensation for any person hired, promoted, or reinstated pursuant to a judgment, settlement, order or other resolution of a **Claim**; or

(5) **Stock Benefits**; or

(6) costs associated with providing any accommodations required by the Americans with Disabilities Act or any similar law; or

(7) any other matters uninsurable pursuant to any applicable law; provided, however, that with respect to punitive, exemplary, multiple or liquidated damages, the insurability of such damages shall be governed by the internal laws of any applicable jurisdiction that most favors coverage of such damages.

(J) “**Retaliation**” means adverse treatment of an **Employee** or **Independent Contractor** based upon such person:

- (1) exercising any rights under law, including, without limitation, rights under any workers compensation laws, the Family and Medical Leave Act, **ERISA**, or the Americans with Disabilities Act; or
 - (2) refusing to violate any law; or
 - (3) assisting, testifying, or cooperating with a proceeding or investigation regarding alleged violations of law by any **Insured**; or
 - (4) disclosing or threatening to disclose alleged violations of law to a superior or to any governmental agency; or
 - (5) filing any "whistle blower" claim against any **Insured** under the federal False Claims Act, the Sarbanes-Oxley Act of 2002, or any similar law.
- (K) "**Stock Benefits**" means any offering, plan or agreement between an **Insured Entity** and any **Employee** that grants stock, stock options or stock appreciation rights in the **Insured Entity** to such person, including, without limitation, restricted stock or any other stock grant. **Stock Benefits** shall not include employee stock ownership plans or employee stock purchase plans.
- (L) "**Third Party**" means any natural person who is a customer, vendor, patient, service provider or other business visitor or invitee of an **Insured Entity**. **Third Party** shall not include **Employees**.
- (M) "**Third Party Claim**" means any:
- (1) written demand for monetary damages or other civil relief, including non-monetary relief, commenced by the receipt of such demand; or
 - (2) civil proceeding, including an arbitration or other alternative dispute resolution proceeding, commenced by the service of a complaint, filing of a demand for arbitration, or similar pleading; or
 - (3) formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document;
- by or on behalf of a **Third Party**.
- "**Third Party Claim**" also means a written request to the **Insureds** to toll or waive a statute of limitations regarding a potential **Third Party Claim** as described above. Such **Claim** shall be commenced by the receipt of such request.
- (N) "**Third Party Wrongful Act**" means a **Wrongful Act** involving any:
- (1) discrimination against a **Third Party** based upon age, gender, race, color, national origin, religion, creed, marital status, sexual orientation or preference, pregnancy, disability, HIV or other health status, Vietnam Era Veteran or other military status, or other protected status established under federal, state or local law; or
 - (2) sexual harassment against a **Third Party**, including unwelcome sexual advances, requests for sexual favors or other conduct of a sexual nature.
- (O) "**Wrongful Act**" means any actual or alleged:

- (1) error, misstatement, misleading statement, act, omission, neglect or breach of duty; or
- (2) matter claimed against an **Insured Person** solely by reason of their serving in such capacity.

III. EXCLUSIONS APPLICABLE TO ALL INSURING AGREEMENTS

(A) The Insurer shall not pay **Loss**:

- (1) in connection with any **Claim** based upon, arising from, or in any way related to any:
 - (a) bodily injury, sickness, disease, or death of any person (other than mental anguish or emotional distress directly resulting from a covered **Employment Practices Wrongful Act**); or
 - (b) false arrest or imprisonment, abuse of process, malicious prosecution, trespass, nuisance or wrongful entry or eviction; or
 - (c) damage to or destruction of any tangible property, including loss of use or diminution of value thereof; or
 - (d) loss of consortium, loss of reputation, libel, slander, oral or written publication of defamatory or disparaging material, or invasion of privacy (other than those acts of employment-related libel, slander, defamation or invasion of privacy directly resulting from a covered **Employment Practices Wrongful Act**).
- (2) for any actual or alleged **Wrongful Act** by **Insured Persons** of any **Subsidiary** in their capacities as such, or by any **Subsidiary**, if such **Wrongful Act** actually or allegedly occurred when such entity was not a **Subsidiary**.
- (3) in connection with any **Claim** based upon, arising from, or in any way related to any:
 - (a) prior or pending demand, suit, or proceeding against any **Insured** as of; or
 - (b) audit initiated by the Office of Federal Contract Compliance Programs before

the applicable Prior or Pending Date in ITEM 5 of the Declarations, or the same or substantially similar fact, circumstance, or situation underlying or alleged in such demand, suit, proceeding, or audit.
- (4) in connection with any **Claim** based upon, arising from, or in any way related to any fact, circumstance, or situation that, before the inception date in ITEM 3 of the Declarations, was the subject of any notice given under any other employment practices liability policy, management liability policy or other insurance policy which insures **Wrongful Acts** covered under this Policy.
- (5) in connection with any **Claim** based upon, arising from, or in any way related to the liability of others assumed by an **Insured** under any contract or agreement; provided, however, this exclusion shall not apply to liability that would have been incurred in the absence of such contract or agreement.
- (6) for breach of any **Independent Contractor Agreement**.
- (7) for a lockout, strike, picket line, hiring of replacement workers or similar action in connection with any labor dispute, labor negotiation or collective bargaining

agreement.

- (8) in connection with any **Claim** based upon, arising from or in any way related to any **Provider Selection Activity**.
 - (9) in connection with any **Claim** based upon, arising from or in any way related to any actual or alleged price fixing, restraint of trade, monopolization, unfair trade practices or any violation of the Federal Trade Commission Act, Sherman Antitrust Act, Clayton Act, Robinson-Patman Act, Hart-Scott Rodino Anti-trust Improvements Act or any similar law regulating antitrust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities, regardless of whether such **Claim** includes other allegations.
- (B) The Insurer shall not pay **Loss** in connection with any **Claim** based upon, arising from, or in any way related to:
- (1) any claims for actual or alleged unpaid wages (including overtime pay), workers' compensation benefits, unemployment compensation, disability benefits, improper payroll deductions, improper employee classification, failure to maintain accurate time records, failure to grant meal and rest periods, or social security benefits; or
 - (2) any actual or alleged violation of the Fair Labor Standards Act (except for Equal Pay Act), Worker Adjustment and Retraining Notification Act, the National Labor Relations Act, the Occupational Safety and Health Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, **ERISA**, or any similar law;

Provided that this exclusion (B) shall not apply to that portion of **Loss** that represents a specific amount the **Insureds** become legally obligated to pay solely for a **Wrongful Act of Retaliation**.

IV. EXCLUSIONS APPLICABLE TO LOSS OTHER THAN DEFENSE COSTS

The Insurer shall not pay **Loss** in connection with any **Claim** based upon, arising from, or in any way related to liability incurred for breach of any oral, written, or implied employment contract; provided, however, this exclusion shall not apply to liability that would have been incurred in the absence of such contract; provided, however, that this exclusion shall not apply to the portion of **Loss** representing **Defense Costs** incurred to defend against such liability.

V. OTHER INSURANCE

- (A) The coverage provided under this Policy for any **Employment Practices Claim** shall be primary.
- (B) Notwithstanding the above, the coverage provided under this Policy for any **Employment Practices Claim** made against a temporary, leased or loaned **Employee** or an **Independent Contractor** shall be excess of the amount of any deductible, retention and limits of liability under any other policy or policies applicable to such **Claim**, whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written specifically excess of this Policy by reference in such other policy or policies to this Policy's Policy Number.

VI. CHANGES IN EXPOSURE

- (A) This section shall supplement, and not replace, Common Terms and Conditions Section XIV. Changes in Exposure.

- (B) In addition to the asset percentage size limit for automatic coverage of any newly merged or acquired entity specified in Common Terms and Conditions Section XIV. Changes in Exposure (A), if the number of employees of a newly merged or acquired entity exceeds 25% of the number of employees of all **Insured Entities** combined prior to such merger or acquisition, the **Insureds** shall give the Insurer full details of the transaction in writing as soon as practicable and the Insurer shall be entitled to impose such additional terms, conditions, and premium as the Insurer, in its absolute discretion, chooses. There shall be no coverage for any newly merged or acquired entity or any of its subsidiaries, managers, directors, officers, or employees unless the **Insureds** comply with the terms of this provision.

VII. RETENTION WAIVER

Regarding a **Claim** that is a class action civil proceeding, no Retention shall apply to **Defense Costs** incurred in connection with such **Claim**, and the Insurer shall reimburse the **Insureds** for any covered **Defense Costs** paid by the **Insureds** within the Retention otherwise applicable to such **Claim**, if a:

- (A) final adjudication with prejudice pursuant to a trial, motion to dismiss or motion for summary judgment; or
- (B) complete and final settlement with prejudice;

establishes that none of the **Insureds** in such **Claim** are liable for any **Loss**.

VIII. COORDINATION OF COVERAGE

If this **Liability Coverage Part** and either the Directors, Officers and Entity Liability Coverage Part or Fiduciary Liability Coverage Part are included under this Policy, and a **Claim** is covered under this **Liability Coverage Part** and any such other **Liability Coverage Part**, **Loss** shall be first covered and paid under this **Liability Coverage Part**.

If notice of a **Claim** has been given under either the Directors, Officers and Entity Liability Coverage Part or Fiduciary Liability Coverage Part and a determination is made by the Insurer that such **Claim** would be covered under this **Liability Coverage Part** if notice had been given under this **Liability Coverage Part**, then the **Insureds** shall be deemed to have given notice of such **Claim** under this **Liability Coverage Part** at the same time that notice was given under such other **Liability Coverage Part**.