

PRIVATE COMPANY MANAGEMENT LIABILITY POLICY EMPLOYMENT PRACTICES LIABILITY COVERAGE SECTION

In consideration of payment of the premium and subject to the Declarations, the General Terms and Conditions, and the terms, conditions and limitations of this Coverage Section, the Underwriter and the **Insureds** agree as follows:

I. INSURING AGREEMENTS

A. EMPLOYMENT PRACTICES LIABILITY COVERAGE

The Underwriter shall pay on behalf of the **Insureds** all **Loss** for which the **Insureds** become legally obligated to pay on account of any **Employment Practices Claim** first made against the **Insureds** during the **Policy Period** or during the **Extended Reporting Period**, if exercised, for **Employment Practices Wrongful Act**.

B. THIRD PARTY LIABILITY COVERAGE

The Underwriter shall pay on behalf of the **Insureds** all **Loss** for which the **Insureds** become legally obligated to pay on account of any **Third Party Claim** first made against the **Insureds** during the **Policy Period** or during the **Extended Reporting Period**, if exercised, for a **Third Party Wrongful Act**.

II. COVERAGE ENHANCEMENTS

A. WORKPLACE VIOLENCE COVERAGE

1. The Underwriter shall pay on behalf of the **Organization** all **Workplace Violence Expenses** incurred by the **Organization** as a result of all **Workplace Violence Incidents** first occurring during the **Policy Period**, subject to the Sublimit of Liability for all **Workplace Violence Expenses**, combined as set forth in the Coverage Schedule in ITEM 8 of the Declarations, which shall be part of and not in addition to the Aggregate Limit of Liability for this Coverage Section, provided that the Underwriter shall not be liable to make any payment pursuant to this Section II.A for:
 - a any **Workplace Violence Expenses** incurred in connection with any **Workplace Violence Incident** based upon, arising out of, or attributable to (i) declared or undeclared war, civil war, insurrection, riot, rebellion, revolution, governmental intervention, expropriation or nationalization, or (ii) use or threat of force or violence occurring on the **Premises** for the purpose of demanding money, securities or property;
 - b any **Workplace Violence Expenses** incurred in connection with any **Workplace Violence Incident** which occurs at any location other than the **Premises**; or
 - c any **Workplace Violence Expenses** incurred as a result of any demand, suit or proceeding against any **Organization** based upon, arising out of, or attributable to a **Workplace Violence Incident**.
2. The **Insureds** shall, as a condition precedent to coverage provided by this Section II.A, give the Underwriter notice in writing of any **Workplace Violence Incident** as soon as practicable after the general counsel or risk manager of the **Organization** first learns of

such **Workplace Violence Incident**, but in no event later than thirty (30) days after the **Workplace Violence Incident** occurs.

B. EPL CRISIS MANAGEMENT REIMBURSEMENT COVERAGE

Upon satisfactory proof of payment by the **Organization**, the Underwriter will reimburse the **Organization**, up to the EPL Crisis Management Expense Sublimit stated in ITEM 8 of the Declarations, for all **EPL Crisis Management Expenses** actually paid by the **Organization** in connection with a **EPL Crisis Management Event** that first occurs during the **Policy Period**, subject to the Sublimit of Liability as set forth in ITEM 8 of the Declarations, for all **EPL Crisis Management Expenses**, which shall be part of and not in addition to the Aggregate Limit of Liability for this Coverage Section.

C. OUTSIDE CAPACITY COVERAGE

Subject to the other terms and conditions applicable to this Coverage Section, Insuring Agreement A and Insuring Agreement B include coverage for **Executives** while serving in an **Outside Capacity**. Such coverage shall be specifically excess of any indemnification and insurance available from or provided by the **Outside Entity** in which the **Executives** serves in an **Outside Capacity**.

D. ILLEGAL HIRING OR HARBORING COVERAGE

The Underwriter shall pay on behalf of the **Organization** all **Loss** on account of all **Employment Practices Claims** for **Illegal Hiring** or **Harboring Wrongful Acts** first received by the **Organization** during the **Policy Period** or the **Extended Reporting Period**, if exercised, subject to the Illegal Hiring or Harboring Sublimit of Liability set forth in ITEM 8 of the Declarations, for all **Loss**, which shall be part of and not in addition to the Aggregate Limit of Liability for this Coverage Section.

E. ADDITIONAL DEFENSE EXPENSES LIMIT FOR EMPLOYMENT PRACTICES LIABILITY

Additional Defense Expenses Limit for Employment Practices Liability if selected on ITEM 8 of the Declarations, then the **Organization** shall provide an additional Limit of Liability for **Defense Expenses** covered under this Coverage Section, in the amount set forth in the Declarations. This Additional Defense Expenses Limit shall be in addition to and not part of the Aggregate Limit of Liability for this Coverage Section, and in addition to and not part of the **Policy Aggregate** Limit of Liability set forth in ITEM 2 of the Declarations, provided that such Additional Limit shall attach only after the exhaustion of such Aggregate Limit of Liability and any amounts payable under any other insurance policies that are specifically written excess of this Coverage Section.

III. DEFINITIONS

When used in the Employment Practices Liability Coverage Section, the following terms, whether in the singular or plural, are defined as follows:

- A. **Benefits** means perquisites, fringe benefits, deferred compensation, stock options 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, including without limitation to retirement benefits, vacation or sick days, medical or insurance benefits other than wages, salary, commissions or similar non-deferred cash compensation.

- B. **Claim** means an **Employment Practices Claim** or a **Third Party Claim**.
- C. **EEOC Charge** means any written charge filed against one or more **Insureds** with the Equal Employment Opportunity Commission or any state or local fair employment practices agency but does not include any proceeding or investigation initiated by the Equal Employment Opportunity Commission or any state or local fair employment practices agency.
- D. **Employment Practices Claim** means:
1. a written demand against any **Insured** for monetary damages or non-monetary (including injunctive) relief, including a written demand for reinstatement, reemployment or reengagement of an **Employee**, a written demand that the **Insured** toll or waive a statute of limitations, or a written demand or request for arbitration, mediation or other alternative dispute resolution, which shall be deemed first made upon the **Insured's** receipt of the demand;
 2. a civil proceeding against any **Insured** commenced by and which shall be deemed first made upon service upon the **Insured** of a complaint or similar pleading;
 3. a criminal proceeding against any **Insured** commenced by and which shall be deemed first made upon the **Insured's** arrest, the return of an indictment or information, or receipt of a notice of charges or similar document;
 4. an administrative or regulatory proceeding against any **Insured**, including a proceeding before the Equal Employment Opportunity Commission or a similar state or local governmental body, or by the Office of Federal Contract Compliance Programs, commenced by and which shall be deemed first made upon the **Insured's** receipt of a notice of charges or similar document;
 5. an **EEOC Charge** against any **Insured** commenced by and which shall be deemed first made upon the service on or other receipt by the **Insured** of such **EEOC Charge**;
 6. in the content of an audit conducted by the Office of Federal Contract Compliance Programs, a Notice of Violation or Order to Show Cause commenced by the receipt by an **Insured** of such Notice or Order; or
- For the purpose of III. Definition D, *commenced by* is defined as: by or on behalf of any past, present or prospective **Employee**, in their capacity as such, or by or on behalf of any past, present or prospective **Outside Entity Employees** against an **Executive** in his or her **Outside Capacity**, or an **Employment Practices Wrongful Act**.

- E. **Employment Practices Wrongful Act** means any actual or alleged:
1. breach of any express or implied employment contract;
 2. violation of any law or public policy concerning discrimination in employment whether based upon race, national origin, religion, sex, sexual orientation or preference, gender identity or expression, age, military or veteran status, marital or family status, disability, pregnancy, HIV status, mental status, medical leave or genetic predisposition;
 3. employment-related misrepresentation(s);

4. harassment, sexual harassment, or hostile work environment;
5. retaliation;
6. employment-related libel, slander, defamation, humiliation, invasion of privacy, wrongful entry, false imprisonment, malicious prosecution, workplace bullying or the giving of negative or defamatory statements in connection with an employment reference;
7. wrongful deprivation or a career opportunity within the **Organization**, or the wrongful discipline, demotion or failure to employ, promote or grant tenure;
8. wrongful termination of employment, including constructive termination, dismissal or discharge;
9. wrongful failure or refusal to adopt or enforce workplace or employment practices, policies or procedures, solely as respects to employment-related discrimination or harassment;
10. failure to provide or enforce adequate or consistent corporate policies and procedures;
11. employment-related negligent hiring, retention, training or supervision leading to the infliction of emotional distress or mental anguish;
12. violation of an individual's civil rights, but only when alleged as part of an **Employment Practices Claim** for paragraphs 1-12 above;

Without limitation, the conduct described in paragraphs 1-12 above shall include matters carried out by any means in any location, including, without limitation to the Internet (i.e. e-mail, instant messaging, social networking services, blogs, etc.), regardless of whether access to the Internet is effected (i) on or off the **Premises**; or (ii) through any computer or device owned or leased by an **Organization**, **Insured Person**, or others.

- F. **EPL Crisis Management Event** means any of the following events which, in the good faith opinion of the **Organization**, did cause or is reasonably likely to cause material public harm to the **Organization**:
1. a past or present **Employee** alleging an **Employment Practices Wrongful Act**;
 2. a **Third Party** alleging a **Third Party Wrongful Act** by an **Insured**;
 3. a congressional inquiry regarding the **Insured's** violations of employment laws; or
 4. the **Insured's** receipt of notice by a civil rights **Organization** or public interest group that it is investigating the **Insured** for violations of employment laws.
- G. **EPL Crisis Management Expenses** means reasonable fees, costs and other expenses of a public relations or crisis management firm engaged by the **Organization** and approved by the Underwriter, such approval not to be unreasonably withheld, to mitigate reputational harm to such **Organization** as a result of an **EPL Crisis Management Event**.
- H. **Independent Contractor** means any natural person who is not an **Employee** and who is working for an **Organization** in the capacity as an independent contractor pursuant to an

express contract or agreement with the **Organization** which governs the nature of such person's engagement.

- I. **Illegal Hiring or Harboring Wrongful Act** means any actual or alleged (1) hiring of any illegal alien as an **Employee**; or (2) harboring of any illegal alien who is an **Employee**, in violation of any state or federal law of the United States of America by the **Organization** or any **Insured Person** acting within the scope of his or her duties for the **Organization**.
- J. **Insured Persons** means:
 - 1. any one or more natural persons who were, now are or shall become a duly elected or appointed director (including a de facto director and shadow director), trustee (other than a bankruptcy or litigation trustee), governor, **Manager**, officer, **Employee** (including employed lawyers solely in their capacity as an **Employee**), general counsel, risk manager, controller, advisory director, or member of a duly constituted committee or board of the **Organization** or their functional equivalent; or
 - 2. any **Independent Contractor**, but only if the **Organization** agrees in writing to provide indemnification to such **Independent Contractor** to the same extent as provided to the **Organization's** employees; provided any coverage under this Coverage Section for any such **Independent Contractor** shall be specifically in excess of any indemnification or insurance otherwise available to such **Independent Contractor** from any other source.
- K. **Insured** means the **Insured Persons** and the **Organization**.
- L. **Labor Relations Law** means any federal, state, local, foreign, statutory or common law (including the National Labor Relations Act) or any amendments to or regulations promulgated under any such law that governs:
 - 1. the rights of employees to engage in, or to refrain from engaging in, union or other collective bargaining activities, including union organizing, union elections and any other union activities;
 - 2. the duty or obligation of an employer to meet, discuss, notify or bargain with an employee or employee representative, collectively or otherwise;
 - 3. the enforcement of any collective bargaining agreement, including any grievance or arbitration proceedings;
 - 4. strikes, work stoppages, boycotts, picketing and lockouts; or
 - 5. any similar rights or duties.
- M. **Loss** means the total amount the **Insureds** become legally obligated to pay on account of a **Claim** made against them, including, but not limited to, damages (including punitive, exemplary, liquidated damages awarded pursuant to the Age Discrimination in Employment Act or the Equal Pay Act, or the multiple portion of any multiplied damages awards, to the extent such damages are insurable under the law of any jurisdiction which has a substantial relationship to the **Insureds**, this Policy or the **Claim** giving rise to such damages and which is most favorable to the insurability of such damages), back pay, front pay, claimant's attorney's fees awarded by a court against an **Insured** or agreed to in writing by the Underwriter in

connection with a settlement, any award of pre-judgment and post-judgment interest with respect to covered damages, settlements and **Defense Expenses**.

Loss, except with respect to **Defense Expenses**, does not include:

1. any amount incurred by the **Insured** to comply with any injunctive or other non-monetary relief or any agreement to provide such relief, including without limitation any 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 foreign, federal, state or local statute, regulation, rule or law;
 2. future salary, wages, commissions, **Benefits**, **Stock Benefits**, or any other employment related benefits or compensation of a claimant who has been or shall be rehired, promoted or reinstated;
 3. salary, wages, commissions, **Benefits**, **Stock Benefits**, or other monetary payments which constitute severance payments or payments pursuant to a notice period, other than any payments negotiated with and consented to by the **Organization** as part of a settlement
 4. taxes, fines or penalties imposed by law, except as provided above; or
 5. matters uninsurable under the law pursuant to which this Policy is construed.
- N. **Outside Capacity** means services by an **Executive** in the position of a director, officer, trustee, trustee emeritus or governor of an **Outside Entity**, but only during the time that such service is at the request or direction of the **Organization**;
- O. **Outside Entity** means any of the following Organizations, provided such **Organization** is not included in the definition of **Organization**
1. any Organization chartered and operated as a not-for-profit Organization;
 2. any other Organization specifically included as an **Outside Entity** by endorsement to this Policy.
- P. **Premises** means all properties and buildings which the **Organization** regularly occupies in conducting its business.
- Q. **Related Claims** means all **Claims for Wrongful Acts** or **Interrelated Wrongful Acts**, which allege, arise out of, are based upon, or are in consequence of, the same or related facts, circumstances, situations, transactions or events, or series of related facts, circumstances, situations, transactions or events.
- R. **Stock Benefits** means stock, stock warrants, stock appreciation rights, phantom stock plans or arrangements, stock options or other similar rights.
- S. **Third Party** means any natural person who is not an Insured Person or an applicant for employment with the **Organization** or an **Outside Entity**, including but not limited to customers, vendors and suppliers provided.

T. **Third Party Claim** means:

1. a written demand against any **Insured** for monetary damages or non-monetary relief, including a written demand that the **Insured** toll or waive a statute of limitations or a written demand or request for arbitration, mediation or other alternative dispute resolution, which shall be deemed first made upon the **Insured's** receipt of the demand;
2. a civil proceeding against any **Insured** commenced by and which shall be deemed first made upon the service upon the **Insured** of a complaint or similar pleading;
3. a criminal proceeding against any **Insured** commenced by and which shall be deemed first made upon, the **Insured's** arrest, the return of an indictment or information or receipt of a notice of charges or similar document;

by or on behalf of a **Third Party** in their capacity as such, including any appeal therefrom.

U. **Third Party Wrongful Act** means any actual or alleged:

1. discrimination against a **Third Party** based on race, national origin, religion, sex, sexual orientation or preference, gender identity or expression, age, military or veteran status, marital or family status, disability, pregnancy, HIV status, mental status, medical leave or genetic predisposition;
2. sexual harassment, including unwelcome sexual advances, requests for sexual favors or other conduct of a sexual nature, against a **Third Party**; or
3. unlawful harassment of a non-sexual nature against a **Third Party**.

Without limitation, the conduct described in paragraphs 1, 2 and 3 above, shall include matters carried out by any means in any location, including, without limitation, the Internet (i.e. e-mail, instant messaging, social networking services, blogs, etc.), regardless of whether access to the Internet is effected (i) on or off the **Premises**; or (ii) through any computer or device owned or leased by an **Organization, Insured Person**, or others.

V. **Workplace Violence Expenses** means reasonable fees and expenses incurred by the **Organization** with the **Organization's** prior written consent, such consent not to be unreasonably withheld, to hire:

1. an independent public relations or security consultant or forensic analyst for ninety (90) days;
2. an independent consultant to provide counseling for **Employees**; or
3. an independent security guard to provide security services for fifteen (15) days;

immediately following the **Workplace Violence Incident**.

W. **Workplace Violence Incident** means any unlawful and intentional actual or threatened use of deadly force involving the display of a lethal weapon which occurs in or on the **Premises** and which did or could reasonably result in the death or bodily injury of any **Insured Person**.

X. **Wrongful Act** means:

1. an **Employment Practices Wrongful Act** by any of the **Insured Persons** in their capacity as such, or by the **Organization**;
2. an **Employment Practices Wrongful Act** by any **Executive** in their **Outside Capacity**;
3. a **Third Party Wrongful Act** by any of the **Insured Persons** in their capacity as such, or by the **Organization**; or
4. an **Illegal Hiring or Harboring Wrongful Act** by any of the **Insured Persons** in their capacity as such, or by the **Organization**.

IV. **EXCLUSIONS**

The Underwriter shall not be liable under this Coverage Section to pay any **Loss** from any **Claim** made against any **Insured**:

A. **PRIOR NOTICE**

based upon, arising out of, or attributable to any fact, circumstance, situation, transaction, event or **Wrongful Act** which have been the subject of any written notice given prior to inception of this Policy and accepted under any prior employment practices liability or comparable insurance policy or coverage section.

B. **PENDING OR PRIOR LITIGATION**

based upon, arising out of, or attributable to any **Claim** against any **Insured** which was pending on or existed prior to the respective Pending or Prior Date for this Coverage Section set forth in the Coverage Schedule in ITEM 8 of the Declarations, or the same or substantially the same fact, circumstance or **Wrongful Act** alleged in or underlying such prior **Claim**.

C. **BODILY INJURY/PROPERTY DAMAGE**

for bodily injury, sickness, emotional distress, mental anguish, humiliation, disease or death of any person or damage to or destruction of any tangible property including loss of use of such damaged or destroyed property, provided this exclusion shall not apply to any **Loss** for employment-related emotional distress, mental anguish or humiliation.

D. **VIOLATIONS OF LAW**

for an actual or alleged violation of the responsibilities, obligations or duties imposed by:

1. any law governing workers' compensation, unemployment insurance, social security, disability benefits or similar law;
2. **ERISA** (except Section 510 thereof);
3. **Wage and Hour Law**, provided that notwithstanding anything in this Policy to the contrary it shall be the duty of the **Insureds** and not the duty of the **Organization** to defend any **Claim** which is in part excluded from coverage pursuant to this Exclusion D.3;

4. any **Labor Relations Law**, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act;

or any rules or regulations promulgated under any of such statutes or laws, amendments thereto or similar provisions of any federal, state, local or foreign statutory or common law; but this exclusion shall not apply to **Loss** on account of that portion of any **Claim** for any actual or alleged retaliatory treatment of the claimant by the **Insured** on account of the claimant's exercise of rights pursuant to any such law, rule or regulation or for any other actual or alleged violation of any whistleblower statute or law.

E. **CONTRACT**

based upon, arising out of, or attributable to any liability under any written contract or agreement, provided this exclusion shall not apply to: (1) the extent that liability would have been incurred in the absence of such contract or agreement; or (2) **Defense Expenses**.

V. **SEVERABILITY OF EXCLUSIONS**

For the purpose of determining the applicability of any Exclusion set forth in Section IV, the **Wrongful Act** or knowledge of any **Insured Person** shall not be imputed to any other **Insured Person**, and only the **Wrongful Act** or knowledge of the chief executive officer or chief financial officer of the **Organization** shall be imputed to such **Organization**.

VI. **NOTICE OF CLAIM AND CIRCUMSTANCES**

- A. *Notice of Claim:* The **Insureds** shall give to the Underwriter written notice of any **Claim** made against an **Insured** as soon as practicable after a risk manager or general counsel of an **Organization** (or the functional equivalent), first learns of such **Claim**, but in no event later than ninety (90) days after the expiration of the **Policy Period** or the end of the **Extended Reporting Period**, if exercised. The failure of the **Insureds** to provide notice of a **Claim** as soon as practicable as required by this Section VI.A shall not constitute a coverage defense with respect to such **Claim** unless the Underwriter establishes it was materially prejudiced by such failure.
- B. *Notice of an EPL Crisis Management Event:* If an **Insured** elects to seek coverage for a **EPL Crisis Management Event**, the **Insured** shall give notice of such of any **EPL Crisis Management Event** to the Underwriter no later than thirty (30) days after the **Organization's** risk manager or general counsel (or functional equivalent) first learns of such **EPL Crisis Management Event**. Within sixty (60) days of making any payment of **EPL Crisis Management Event Expenses**, the **Insureds** must provide the Underwriter with a detailed breakdown of all **EPL Crisis Management Event Expenses** for which the **Organization** seeks reimbursement, together with satisfactory proof of payment and any additional information as the Underwriter may reasonably request.
- C. *Notice of Circumstances:* If during the **Policy Period** or the **Extended Reporting Period**, if exercised, the **Insured** first becomes aware of circumstances that could give rise to a **Claim** against the **Insureds** and give written notice of such circumstances to the Underwriter during the **Policy Period** or the **Extended Reporting Period**, if exercised, then any **Claims** subsequently arising from such circumstances shall be considered to have been made during the **Policy Period**. No coverage is afforded under this Coverage Section for fees, expenses or

other loss incurred in connection with such circumstances prior to the time a **Claim** is actually made and reported to the Underwriter.

The **Insureds** shall include with any such notice of circumstance a description of the circumstances, the nature of any potential **Wrongful Act(s)**, the nature of the alleged or potential damage, the names of actual or potential claimants, and the manner in which the **Insureds** first became aware of the **Wrongful Act(s)**.

VII. CLAIM SETTLEMENT

The **Insureds** agree not to admit any liability for any **Claim**, offer to settle or settle any **Claim**, incur any **Defense Expenses** or otherwise assume any contractual obligation, without the Underwriter's prior written consent, such consent shall not be unreasonably withheld. The Underwriter shall not be liable for or as a result of any offer to settle, settlement, **Defense Expenses**, assumed obligation, admission or stipulated judgment to which it has not given its prior consent, provided however, if the **Insured** is able to fully and finally settle all **Claims** in their entirety, which are subject to a single retention, for an aggregate amount including **Defense Expenses** not exceeding fifty percent (50%) of such retention, the Underwriter's consent will not be required for the settlement of such **Claims**.

The Underwriter shall have the right to make investigations and conduct negotiations and, with the consent of the **Insureds**, enter into such settlement of any **Claim** as the Underwriter deems appropriate. If the **Insureds** refuse to consent to a settlement acceptable to the claimant in accordance with the Underwriters' recommendation, then, subject to the Underwriter's applicable Limits of Liability stated in ITEM 8 of the Declarations, the Underwriter's liability for such **Claim** will not exceed:

- A. the amount for which the **Claim** could have been settled plus **Defense Expenses** incurred up to the date of the **Insureds** refused to settle such **Claim** (the "settlement amount"); plus
- B. ninety percent (90%) of any **Loss** in excess of the settlement amount incurred in connection with such **Claim**. The remaining ten percent (10%) of **Loss** in excess of the settlement amount will be carried by the **Insureds** at their own risk and will be uninsured.

VIII. CLAIM DEFENSE

The Underwriter shall have the right and duty to defend any **Claim** covered this Coverage Section, even if any of the allegations are groundless, false or fraudulent. The Underwriter's duty to defend any **Claim** shall cease upon exhaustion of the applicable Limit of Liability applicable to such **Claim**.

The Underwriter shall have the right to select and appoint counsel to defend against any **Claim**. The Underwriter may appoint different defense counsel to represent different **Insureds**, but only if required due to an actual conflict of interest.