



Employment Practices Liability Policy Part of the Executive First™ Suite

In consideration of the payment of the premium and subject to all terms, conditions and limitations of this Policy, the **Insureds** and **Insurer** agree:

Section I Insuring Agreement

The **Insurer** shall pay on behalf of an **Insured** all **Loss** as a result of a **Claim** first made against such **Insured** during the **Policy Period** for a **Wrongful Act** and reported to the **Insurer** as required by this Policy.

Section II Definitions

1. **“Application”** shall mean the application submitted to the **Insurer** for this Policy together with any written materials attached thereto or submitted to the **Insurer** in connection with the underwriting of this Policy. **Application** shall also include all publicly available documents filed by or on behalf of the **Company** with any federal, state, local or foreign regulatory agency during the twelve (12) months preceding the effective date of this Policy.
2. **“Claim”** shall mean:
 - a. a written demand against an **Insured**:
 - i. for monetary or non-monetary (including injunctive) relief, including a request to toll any statute of limitations; or
 - ii. to engage in arbitration or mediation;which shall be deemed first made upon receipt by the **Insured** of such demand;
 - b. a civil, criminal, administrative or regulatory proceeding (other than an investigation) against an **Insured**, which shall be deemed first made upon:
 - i. the service of a complaint or similar pleading upon the **Insured**;
 - ii. in the case of a criminal proceeding, an arrest, the return of an indictment or information, or the receipt or filing of notice of charges or similar document; or
 - iii. receipt of a notice of charges by the **Insured**; and
 - c. an administrative or regulatory investigation when conducted by the Equal Employment Opportunity Commission (**“EEOC”**), or similar state, local or foreign agency, which shall be deemed first made upon the filing of a notice of charges, service of a complaint or similar document of which notice has been given to the **Insured**.

In no event shall **Claim** include any labor or grievance proceeding which is subject to a collective bargaining agreement.

3. **“Company”** shall mean the **Parent Company** and any **Subsidiary**, including in the event of a bankruptcy, the **Parent Company** and any **Subsidiary** as a debtor in possession as

such term is used in Chapter 11 of the United States Bankruptcy Code, or any similar state, local or foreign law.

4. **“Defense Costs”** shall mean that part of **Loss** consisting of:
- a. reasonable fees, costs and expenses incurred by the **Insureds** in the defense or appeal of any **Claim**, including the costs of an appeal bond, attachment bond or similar bond, but does not include the obligation to apply for or furnish such bonds; and
 - b. reasonable fees, costs and expenses incurred by the **Insureds** at the **Insurer’s** request to assist the **Insurer** in investigating a **Claim**.

Defense Costs shall not include: (i) any salaries, wages, overhead, benefits or benefit expenses associated with any **Insured**; or (ii) any fees, costs or expenses incurred by an **Insured** prior to the time that the **Claim** is first made against the **Insured**.

5. **“Employee”** shall mean any natural person who was, is or shall be a full or part-time, seasonal or temporary employee of a **Company**. **Employee** shall also mean any natural person independent contractor for the **Company**, any natural person leased to the **Company**, or any intern or volunteer, but in each instance, only to the extent that such individual is entitled to indemnification in the same manner and to the same extent as an **Employee**.

“Employee” shall also include:

- a. a duly elected or appointed director (including shadow directors and *de facto* directors), officer, in-house general counsel, risk manager, controller, trustee, regent or governor of a **Company**;
- b. a manager, member of any board of managers or the equivalent executive of a **Company** that is a limited liability company or a joint venture; and
- c. an official of a **Company**, including a **Company** organized or operated in a **Foreign Jurisdiction**, while serving in a functionally equivalent position to those described in subsections (a) or (b), above.

6. **“Employment Practices Violation”** shall mean any actual or alleged:
- a. wrongful dismissal, discharge or termination (either actual or constructive) of employment, including breach of an implied contract;
 - b. sexual or workplace harassment of any kind (including, but not limited to quid pro quo, bullying or hostile work environment);
 - c. discrimination, including, but not limited to, discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy, disability, genetic information or military status;
 - d. **Retaliation**;
 - e. employment-related misrepresentation(s) to an **Employee** of the **Company** or applicant for employment with the **Company**;
 - f. employment-related libel, slander, humiliation, defamation or invasion of privacy;
 - g. wrongful failure to employ or promote, wrongful deprivation of a career opportunity with the **Company** or wrongful demotion;

- h. negligent **Employee** evaluation, including the giving of negative or defamatory statements in connection with an **Employee** reference;
- i. wrongful discipline;
- j. failure to grant tenure; or
- k. with respect to any of the foregoing subparagraphs a. through j. of this definition: negligent hiring, retention, training or supervision; wrongful infliction of emotional distress or mental anguish; failure to provide or enforce adequate or consistent corporate policies and procedures; or violation of an individual's civil rights;

but only if the **Employment Practices Violation** relates to an **Employee** or applicants for employment with a **Company**, whether committed directly, indirectly, intentionally or unintentionally.

- 7. "**Financial Insolvency**" shall mean the **Company** becoming a debtor in possession (as defined under U.S. bankruptcy law or equivalent foreign law), or the appointment, pursuant to state or federal law, of a receiver, conservator, liquidator, trustee, rehabilitator or other official to control, supervise, manage or liquidate the **Company**.
- 8. "**Foreign Jurisdiction**" shall mean any jurisdiction, other than the United States or any of its territories or possessions.
- 9. "**Foreign Policy**" shall mean the standard employment practices liability insurance policy (including all mandatory endorsements, if any) approved by the **Insurer** for use within a **Foreign Jurisdiction** that provides coverage substantially similar to the coverage afforded under this Policy.
- 10. "**Improper Internet Activity**" shall mean any actual or alleged **Employment Practices Violation** or **Third Party Violation**, in either case when committed by an **Employee** through use of the internet, including, but not limited to, social networking or blogging.
- 11. "**Insured**" shall mean any **Insured Person** or **Company**.
- 12. "**Insured Person**" shall mean any **Employee of a Company**.
- 13. "**Insurer**" shall mean the insurance company identified in **Item 2.** of the Declarations.
- 14. "**Loss**" shall mean those amounts any **Insured** is legally obligated to pay as a result of a **Claim**, including, but not limited to:
 - a. compensatory, punitive, exemplary and multiple damages (including, but not limited to, damages awarded under the Age Discrimination in Employment Act and the Equal Pay Act);
 - b. settlements and judgments, including back pay, front pay, costs and fees awarded pursuant to a covered judgment and pre-judgment and post-judgment interest on that portion of a covered judgment; and
 - c. **Defense Costs.**

Loss (other than **Defense Costs**) shall not include any of the following:

- i. taxes, fines or penalties;
- ii. future salary, wages, commissions or any employment-related benefits of a claimant who has been or shall be hired, promoted or reinstated to employment pursuant to a settlement of, order in or other resolution of any **Claim**;

- iii. any amount for which an **Insured** is legally absolved from payment;
- iv. employment-related benefits (including, but not limited to, perquisites, fringe benefits, deferred compensation, payments in connection with any employee benefit plan and any other payment to or for the benefit of an **Employee** arising out of the employment relationship) or an amount equivalent to or substantially equivalent to such employment-related benefits; stock, stock warrants, stock appreciation rights, phantom stock plans or arrangements, or stock options; bonuses; any type of monetary payments which constitute severance payments or payments pursuant to a notice period; or any other type of compensation other than salary or wages;
- v. any liability or costs incurred by any **Insured** to modify any building or property in order to make the 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 corporate program, policy or seminar;
- vi. any amount incurred to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**; and
- vii. matters which may be deemed uninsurable under the law pursuant to which this Policy may be construed.

The insurability of matters otherwise included within this definition shall be determined under the law of the applicable jurisdiction most favorable to such insurability, including, without limitation, the jurisdiction in which the **Parent Company**, the **Insured Persons**, the **Insurer** or such **Claim** is located.

15. "Management Control" shall mean:

- a. owning an interest of an entity representing more than fifty percent (50%) of the power to manage or control said entity, including the power to elect, appoint or designate a majority of the board of directors or equivalent executives of such entity; or
- b. having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of an entity (including a limited liability company or joint venture), to elect, appoint or designate a majority of the board of directors or equivalent executives of such entity.

16. "Mass/Class Action Claim" shall mean any **Claim** which is:

- a. brought or maintained by or on behalf of five (5) or more natural persons acting in concert; or
- b. brought or maintained by or on behalf of:
 - i. less than five natural persons; or
 - ii. a governmental entity;

if any such natural person(s) or governmental entity is making a pattern and practice or systemic allegation of discrimination and is seeking monetary relief on behalf of a class or group in order to resolve such **Claim**.

Mass/Class Action Claim shall mean any of the foregoing, regardless of whether such **Mass/Class Action Claim** is brought as, or sought to be certified as, a class action claim.

17. **“Parent Company”** shall mean the entity or organization identified in **Item 1.** of the Declarations.
18. **“Policy Period”** shall mean the period from the inception date of this Policy to the expiration date of this Policy as set forth in **Item 3.** of the Declarations (subject to its earlier cancellation in accordance with **Section XII Cancellation or Non-Renewal**) and the **Discovery Period**, if applicable.
19. **“Pollutants”** shall mean any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on any list of hazardous substances issued by, the United States Environmental Protection Agency or any state, county, municipality or locality counterpart thereof including, but not limited to, nuclear material or nuclear waste. Such substances shall include, without limitation, solids, liquids, gaseous, biological, radiological or thermal irritants, contaminants or smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals or waste materials and any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products and any noise.
20. **“Related Wrongful Acts”** shall mean all **Wrongful Acts** that are logically or causally connected by any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.
21. **“Retaliation”** shall mean a retaliatory act against an **Employee** of a **Company** on account of such **Employee**:
- a. disclosing or threatening to disclose to a superior or to any governmental agency any act by an **Insured**, which act is alleged to be in violation of any federal, state, local or foreign statutory or common law or any rule or regulation promulgated thereunder, including, but not limited to, any federal, state, local or foreign “whistle-blower” law;
 - b. actually or attempting to exercise any right that such **Employee** has under law, including, but not limited to, any federal, state, local or foreign “whistle-blower” law;
 - c. refusing to violate any law or opposing any unlawful practice; or
 - d. assisting or testifying in, or cooperating with, a proceeding or investigation regarding alleged violations of law by an **Insured**, including but not limited to, pursuant to any federal, state, local or foreign “whistleblower” law.
22. **“Subsidiary”** shall mean any entity with respect to which the **Company** has **Management Control**.
23. **“Third Party Violation”** shall mean any actual or alleged:
- a. harassment of any kind; or
 - b. discrimination, as described in subparagraph c. of the definition of **Employment Practices Violation**;
- when such acts are alleged to be committed against anyone other than an **Employee** or an applicant for employment with a **Company**.
24. **“Wrongful Act”** shall mean any actual or alleged:
- a. **Employment Practices Violation**;
 - b. **Third Party Violation**; or
 - c. **Improper Internet Activity**.

Section III Exclusions

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

A. Prior Notice

based upon, arising out of or attributable to any **Wrongful Act**, fact, circumstance or situation which has been the subject of any written notice given before the inception of the **Policy Period** under any employment practices, fiduciary, or directors and officers liability policy or similar coverage part, provided the insurer of such policy or coverage part does not reject such notice as invalid.

B. Bodily Injury/Property Damage

for any actual or alleged bodily injury (other than mental anguish and emotional distress), sickness, disease, death or damage to or destruction of any tangible property, including the loss of use thereof.

C. Violations of Law/Wage and Hour

1. for any actual or alleged violation of any of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974; the Consolidated Omnibus Budget Reconciliation Act of 1985; the Occupational Safety and Health Act of 1970 (OSHA); the Fair Labor Standards Act; the Workers' Adjustment and Retraining Notification Act; or the National Labor Relations Act, each of the foregoing as amended, or any similar provisions of any federal, state, local or foreign statutory or common law; or
2. based upon, arising out of or attributable to:
 - a. the refusal, inability or failure of a **Company** or an **Insured Person** to pay wages or overtime pay, or any amounts representing such wages or pay, for services rendered or time spent in connection with work-related activities;
 - b. improper pay deductions taken by a **Company** or an **Insured Person** from any employee or purported employee;
 - c. improper classification of any employee or purported employee; or
 - d. failure to provide or enforce any legally required rest or meal breaks;

provided, however, exclusions **C.1** and **C.2** shall not apply to the extent a **Claim** is for **Retaliation**.

D. Employee Benefits

for any actual or alleged violation of any of the responsibilities, obligations or duties imposed by any law governing workers' compensation, unemployment insurance, unemployment compensation, social security, retirement benefits, disability benefits or similar provisions of any federal, state, local or foreign statutory or common law; provided, however, this exclusion shall not apply to the extent a **Claim** is for **Retaliation**.

E. Contract

based upon, arising out of or attributable to an actual or alleged contractual liability of an **Insured** under any express contract or agreement; provided however, this exclusion shall not apply to:

1. an **Insured's** liability that exists in the absence of such contract or agreement; or
2. **Defense Costs.**

F. Pending and Prior Litigation

based upon or arising out of or attributable to essentially the same facts, circumstances, situations or events underlying or alleged in any litigation, any administrative or regulatory proceeding, any investigation or any alternative dispute resolution proceeding that was pending on or prior to the **Pending and Prior Date** as set forth in **Item 8.** of the Declarations.

Section IV Limit of Liability

The **Insurer's** maximum liability for all **Loss**, including **Defense Costs**, in the aggregate for all **Claims** combined shall be the amount stated in **Item 4.** of the Declarations.

- A. Defense Costs** shall be part of, and not in addition to, the Limits of Liability stated in **Item 4** of the Declarations. Such **Defense Costs** shall reduce the Limit of Liability.
- B.** The maximum liability of the **Insurer** for all **Loss** arising from all **Claims** combined shall be the amount stated in **Item 4.** of the Declarations.

Section V Retention

- A.** The **Insurer's** liability with respect to covered **Loss** resulting from each **Claim** that is not a **Mass/Class Action Claim** shall be excess of the Retention specified in **Item 5.A.** of the Declarations. The **Insurer's** liability with respect to covered **Loss** resulting from each **Mass/Class Action Claim** shall be excess of the Retention specified in **Item 5.B.** of the Declarations. The applicable Retention shall be borne by the **Company**, uninsured under this Policy, and shall apply to all covered **Loss**, including **Defense Costs**.
- B.** If a **Company** refuses or fails within sixty (60) days after an **Insured Person's** request to indemnify or advance covered **Loss** or if a **Company** is unable to indemnify or advance covered **Loss** due to its **Financial Insolvency**, the **Insurer** shall pay such covered **Loss** without applying the applicable Retention. If the **Insurer** pays under this Policy any **Loss** incurred by an **Insured Person** for which the **Company** is legally permitted or required and is financially able to advance or indemnify, then the **Company** shall reimburse the **Insurer** for such amounts up to the applicable Retention, and such amounts shall become due and payable as a direct obligation of the **Company** to the **Insurer**.

Section VI Related Claims

More than one **Claim** involving the same **Wrongful Act, Related Wrongful Acts** or arising from the same or related facts or circumstances or series of causally or logically related facts or circumstances, shall be considered a single **Claim**, and only one Retention shall be applicable to such single **Claim**. In the event such single **Claim** triggers more than one Retention, the highest retention shall be applicable. All such **Claims** constituting a single **Claim** shall be deemed to have been first made on the earlier of the following dates: (1) the earliest date on which any such **Claim** was first made; or (2) the earliest date on which any such **Wrongful Act, Related Wrongful Act**, or fact or circumstance, was reported under this Policy or any other Policy providing similar coverage, regardless of whether such date is before or during the **Policy Period**. In no event shall a single lawsuit or proceeding constitute more than one **Claim** subject to more than one Retention.

Section VII Defense and Settlement

A. Defense of Claims

1. The **Insureds**, and not the **Insurer**, shall have the duty to defend all **Claims**.
2. The **Insureds** shall not incur **Defense Costs** in connection with any **Claim** without the prior written consent of the **Insurer**, which consent shall not be unreasonably withheld or delayed. The **Insurer** shall not be liable under this Policy for any **Defense Costs** incurred without such consent.
3. The **Insurer** shall advance such **Defense Costs** on a current basis but no later than sixty (60) days after the **Insurer** receives itemized invoices for such **Defense Costs**; provided that to the extent it is finally established that any such **Defense Costs** are not covered under this Policy, the **Insureds**, severally according to their interests, shall repay such **Defense Costs** to the **Insurer**.

B. Settlement of Claims

1. The **Insureds** shall not admit liability, offer to settle, or agree to any settlement in connection with any **Claim** without the express prior written consent of the **Insurer**, which consent shall not be unreasonably withheld or delayed. The **Insurer** shall not be liable under this Policy for **Loss** incurred as a result of any such admission, offer or agreement to which the **Insurer** did not consent.
2. Notwithstanding the preceding subsection 1., the **Insureds** may settle all **Claims** subject to a single Retention without the **Insurer's** prior written consent only if the settlement amount plus **Defense Costs** for all such **Claims** do not exceed the applicable Retention.

C. Insurer's Right to Associate

The **Insurer** shall have the right, but not the duty, to associate with the **Insureds** in the investigation, defense or settlement of any **Claim** that may implicate coverage under this Policy. The **Insureds** shall cooperate with the **Insurer** and provide the **Insurer** with such information as it may reasonably require in the investigation, defense or settlement of any **Claim**. The failure of one **Insured Person** or any **Company** to comply with this provision shall not impair the rights of any other **Insured Person** under this Policy.

D. Allocation

If in any **Claim** the **Insureds** incur **Loss** jointly with others (including other **Insureds**) who are not afforded coverage under this Policy for such **Claim** or incur both **Loss** covered by this Policy and other amounts which are not covered by this Policy, the **Insureds** and the **Insurer** shall allocate such amounts between covered **Loss** and uncovered loss based on the relative legal and financial exposures of the parties to covered and uncovered matters. If the **Insureds** and the **Insurer** cannot agree on an allocation of **Defense Costs**, the **Insurer** shall advance **Defense Costs** which the **Insurer** believes to be covered under this Policy until a different allocation is negotiated, arbitrated or judicially determined. In such event, such allocation shall be applied retroactively to all **Defense Costs**.

Section VIII Notice

A. Claims

The **Insureds** shall, as a condition precedent to their rights under this Policy with respect to a **Claim**, give the **Insurer** notice in writing of any **Claim** which is made during the **Policy Period**. Any notice provided pursuant to this section shall be given as soon as practicable after the risk manager, in-house general counsel, or human resource manager, or equivalent positions of the **Parent Company** first learns of such **Claim**, but in no event later than sixty (60) days after the end of the **Policy Period**.

B. Potential Claims

During the **Policy Period** or the **Discovery Period** (if purchased), the **Insureds** may give written notice to the **Insurer** of circumstances that may reasonably be expected to give rise to a **Claim**:

1. such notice shall set forth the **Wrongful Act** allegations anticipated and the reasons for anticipating such a **Claim**, with full particulars as to dates, persons and entities involved;
2. any **Claim** which is subsequently made against such **Insured** alleging, arising out of, based upon or attributable to such circumstances, shall be considered made at the time notice of such circumstances was first given to the **Insurer**; and
3. notice of any such subsequent **Claim** shall be given to the **Insurer** as soon as practicable after the risk manager, in-house general counsel, or human resource manager first learns of such **Claim**. No coverage shall be provided under this Policy for fees, costs, expenses or other loss incurred as a result of such circumstances prior to the time such subsequent **Claim** is actually made.

- C. Except as otherwise provided in this Policy, all notices under any provision of this Policy shall be in writing and given by email, prepaid express courier or certified mail properly addressed to the appropriate party. Notice to the **Insureds** may be given to the **Parent Company** at the address shown in **Item 1.** of the Declarations. Notice to the **Insurer** shall be given to the respective address shown in **Item 6.** of the Declarations. If notice is given as described above, it shall be deemed to be received and effective upon the date of transmittal, subject to proof of transmittal.

Section IX Transactions: Coverage Implications of Mergers, Acquisitions and Sales of the Parent Company or Any Subsidiary

A. Merger or Acquisition of Parent Company

If during the **Policy Period** any of the following events occur:

1. the **Parent Company**: (i) sells all or substantially all of its assets to any other person or entity or affiliated group of persons or entities; or (ii) merges or consolidates with another entity such that the **Parent Company** is not the surviving entity; or
2. any person, entity or affiliated group of persons or entities acquires **Management Control** of the **Parent Company**;

(each a "Transaction") then coverage under this Policy shall continue until expiration of the **Policy Period**, but only for **Wrongful Acts** taking place prior to the effective date of such transaction. The entire premium for this Policy shall be deemed earned as of the date of such transaction.

B. Acquisition of a Subsidiary

1. Except as set forth in the following paragraph **B.2.** if before or during the **Policy Period** any entity qualifies as a **Subsidiary**, then such **Subsidiary**, its **Insured Persons** and **Companies** (if any) shall be **Insureds**, but only with respect to **Wrongful Acts** occurring or allegedly occurring after such entity qualified as a **Subsidiary**.
2. If an entity first qualifies as a **Subsidiary** during the **Policy Period** and if at that time such **Subsidiary's** total number of employees exceeds twenty percent (20%) of the total number of employees of the **Parent Company** or 1,000, whichever is less, then coverage under this Policy for such **Subsidiary** and its **Insured Persons** as set forth in the preceding paragraph shall cease ninety (90) days after such entity first qualifies as a **Subsidiary** unless:
 - a. the **Parent Company** within such ninety (90) days provides the **Insurer** with written notice of such qualification;
 - b. the **Parent Company** and the **Insurer** agree on any revisions to the Policy either party may require; and
 - c. the **Parent Company** pays any additional premium required by the **Insurer** as a result of the addition of the new **Subsidiary**.

C. Cessation of a Subsidiary

If during or prior to the **Policy Period** any entity ceases to be a **Subsidiary**, then coverage for such former **Subsidiary** and its **Insured Persons** under this Policy shall only be available, subject to all other terms and conditions of this Policy, for **Wrongful Acts** occurring or allegedly occurring prior to the date it ceased to qualify as a **Subsidiary**.

Section X Other Insurance and Subrogation

A. Other Insurance

Unless expressly written to be excess over other applicable insurance, all amounts payable under this Policy will be specifically primary of any other valid and collectible insurance.

B. Subrogation and Recovery

1. In the event of any payment under this Policy, the **Insurer** shall be subrogated to all of the **Insureds'** rights of recovery and the **Company** and **Insured Persons** shall execute all papers required and do everything that may be necessary to secure such rights, including the execution of such documents as may be necessary to enable the **Insurer** to effectively bring suit in the name of any **Insured Persons** or the **Company**. The **Insurer** shall not exercise any available right of subrogation against an **Insured Person** under this Policy.
2. In the event the **Insurer** recovers amounts it paid under this Policy, the **Insurer** will reinstate the applicable Limits of Liability of this Policy to the extent of such recovery, less the **Insurer's** costs incurred in obtaining such recovery. The **Insurer** assumes no duty to seek a recovery of any amounts paid under this Policy.

Section XI Discovery Period

- A.** In the event the **Insurer** refuses to renew this Policy or the **Parent Company** cancels or non-renews this Policy, the **Parent Company** and the **Insured Persons** shall have the right to elect an extension of the coverage provided by this Policy for the time period and

subject to the additional premium set forth in **Item 7.A.** and **Item 7.B.** of the Declarations. Coverage for any **Claim** deemed first made during the Discovery Period shall apply only with respect to any **Wrongful Act** committed or alleged to have been committed before the expiration date of the **Policy Period** as listed in **Item 3.** of the Declarations.

- B.** As a condition precedent to the right to purchase the **Discovery Period**, the total premium for this Policy must have been paid and a written request to elect the **Discovery Period**, together with payment of the additional premium for the **Discovery Period**, must be provided to the **Insurer** no later than sixty (60) days following the effective date of such non-renewal or cancellation. The premium paid for the **Discovery Period** is deemed fully earned at the inception of the **Discovery Period**.
- C.** The fact that the coverage provided by this Policy may be extended by virtue of the purchase of the **Discovery Period** shall not in any way increase the Limit of Liability stated in **Item 4.** of the Declarations. For purposes of the Limit of Liability, the **Discovery Period** is considered to be part of, and not in addition to, the **Policy Period**.

Section XII Cancellation or Non-Renewal

- A.** This Policy may be cancelled by the **Parent Company** at any time by prior written notice to the **Insurer** stating the effective time of such cancellation. Upon cancellation, the **Insurer** shall be entitled to retain the *pro rata* proportion of the premium calculated from the effective date of such cancellation.
- B.** This Policy may be cancelled by the **Insurer** only for nonpayment of premium. Such cancellation shall be effective on the date specified in the written notice of cancellation given by the **Insurer** to the **Parent Company**, provided such date is at least ten (10) days after the date such notice is given. If the **Parent Company** pays in full the premium due prior to such effective date, the **Insurer's** notice of cancellation shall be ineffective.
- C.** If the **Insurer** elects not to renew this Policy, the **Insurer** shall provide the **Parent Company** with no less than sixty (60) days advance written notice thereof.

Section XIII Application

- A.** The **Insureds** represent and acknowledge that statements made and information in the **Application** are accurate and complete, are the basis of this Policy and are incorporated in and constitute part of this Policy.
- B.** With respect to any statements or other information provided in the **Application**, the knowledge possessed by any one **Insured Person** shall not be imputed to any other **Insured Person**.
- C.** If any statement in the **Application** was: (i) not accurate and complete; and (ii) either was made with the intent to deceive or materially affected the acceptance of the risk or hazard assumed by the **Insurer** under this Policy, then the **Insurer** shall not be liable to make any payment for **Loss** in connection with that portion of any **Claim** based upon, arising out of or in consequence of the facts that were not accurately and completely disclosed in the **Application**, to the extent such **Loss** is incurred by:
 - 1. an **Insured Person** who knew, prior to the **Policy Period**, the facts that were not accurately and completely disclosed in the **Application** if prior to the **Policy Period** a reasonable person would have believed such facts were likely to give rise to a **Claim**;
or

2. any **Company**, if the human resource manager knew, prior to the **Policy Period**, the facts that were not accurately and completely disclosed in the **Application** if prior to the **Policy Period** a reasonable person would have believed such facts were likely to give rise to a **Claim**,

whether or not such **Insured Person** or human resource manager knew the **Application** contained such inaccurate and incomplete information.

- D. The **Insurer** shall not be entitled under any circumstances to rescind or void this Policy in whole or in part.

Section XV Dispute Resolution Process

The **Insurer** and the **Insureds** shall attempt in good faith to resolve any dispute arising out of or relating to this Policy promptly by negotiation between executives with authority to settle such dispute. If any dispute cannot be resolved through negotiation, the parties agree that they will submit the dispute to non-binding mediation. The parties will use best efforts to agree on the terms of any such mediation process, but if they do not agree within thirty (30) days of either party requesting mediation, the dispute will be submitted to JAMS for mediation. Each party will bear their own costs, regardless of the mediation process used. If the dispute is not settled at mediation, no party may commence an action against any other party until at least thirty (30) days after the final mediation session.

Section XVI Action Against the Insurer

- A. No action shall lie against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this Policy.
- B. No person or organization shall have any right under this Policy to join the **Insurer** as a party to any **Claim** against an **Insured**, nor shall the **Insurer** be impleaded by any **Insured** or their legal representative in any such **Claim**.

Section XVII Spouses, Domestic Partners, Estates and Legal Representatives

- A. The coverage provided by this Policy shall also apply to an **Insured Person's** lawful spouse or domestic partner under applicable law or the provisions of any formal program established by the **Company**, but only for a **Claim** arising out of any actual or alleged **Wrongful Acts** of such **Insured Person**.
- B. The coverage provided by this Policy also shall apply to the estates, heirs, legal representatives or assigns of any **Insured Person** in the event of their death, incapacity or bankruptcy, but only for **Claims** arising out of any actual or alleged **Wrongful Acts** of such **Insured Person**.

Section XVIII Assignment

This Policy and any and all rights hereunder are not assignable without the prior written consent of the **Insurer**, which consent shall be in the sole and absolute discretion of the **Insurer**.

Section XIX Conformity to Statute

Any terms of this Policy which are in conflict with the terms of any applicable laws are hereby amended to conform to such laws.

Section XX Territory and Loss in Foreign Jurisdictions

A. Worldwide Territory

If permitted by applicable law, coverage shall apply to **Claims** made and **Wrongful Acts** committed worldwide.

B. Liberalization Clause for Claims in Foreign Jurisdictions

If permitted by applicable law, when determining coverage under this Policy for **Loss** from that portion of any **Claim** maintained in a **Foreign Jurisdiction** or to which the law of a **Foreign Jurisdiction** is applied, the **Insurer** shall apply to such **Claim** the terms and conditions of this Policy, as amended to include the terms and conditions of the **Foreign Policy** in such **Foreign Jurisdiction** that are more favorable to **Insureds** in the **Foreign Jurisdiction**. However, this subsection shall not apply to: (i) any provision of any **Foreign Policy** addressing limits of liability, retentions, other insurance, non-renewal, duty to defend, defense within or without limits, taxes, conformance to law or excess liability coverage, or any claims made provisions; and (ii) any provision in this Policy that excludes or limits coverage for specific events or litigation.

C. Loss Incurred By an Insured in a Foreign Jurisdiction

If permitted by applicable law, any **Loss** incurred by an **Insured** in a **Foreign Jurisdiction** may be deemed a **Loss** of the **Parent Company** payable to the **Parent Company** at the address listed at **Item 1.** of the Declarations. Any such payment by the **Insurer** to the **Parent Company** pursuant to this paragraph shall fully discharge the **Insurer's** liability under the Policy for such **Loss** to such **Company**.

Section XXI Compliance with Applicable Trade and Economic Sanction Laws

This Policy does not provide coverage that would be in violation of any applicable laws or regulations concerning trade or economic sanctions, including, but not limited to, those administered and enforced by the U.S. Treasury's Office of Foreign Asset Control (OFAC). Payment of **Loss** under this Policy shall only be made in full and complete compliance with all economic or trade sanction laws or regulations, including, but not limited to, sanctions, laws and regulations administered and enforced by OFAC.

Section XXII Currency

All premiums, limits, retentions, **Loss** and other amounts under this Policy are and shall be expressed and payable in the currency of the United States of America. If any covered **Loss**, including judgments or settlements, is expressed in, calculated on or otherwise based upon any other currency, payment of such **Loss**, whether in such other currency or U.S. dollars, shall be made at the rate of exchange published in *The Wall Street Journal* on the date the **Insurer's** obligation to pay such **Loss** is established (or, if not published on that date, on the date of next publication).

Section XXIII Bankruptcy

Bankruptcy or insolvency of any **Insured Person** or **Company**, shall not relieve the **Insurer** of any of its obligations under this Policy. In such event the **Insureds** hereby waive and release any automatic stay or injunction in such proceeding which may apply to this Policy or its proceeds and agree not to oppose or object to any efforts by the **Insurer** or any **Insureds** to obtain relief from any such stay or injunction.

Section XXIV Headings

The descriptions in the headings of this Policy form no part of the terms and conditions of the coverage under this Policy.

Section XXV Entire Agreement

By acceptance of this Policy, all **Insureds** and the **Insurer** agree that this Policy (including the Declarations and **Application**) and any written endorsements attached hereto constitute the entire agreement between the parties. The terms, conditions and limitations of this Policy can be waived or changed only by written endorsement hereto.

Section XXVI Authorization

By acceptance of this Policy, the **Parent Company** agrees to act on behalf of all **Insureds** with respect to the giving and receiving of any notice provided for in this Policy (except the giving of notice to apply for any **Discovery Period**), the payment of premiums and the receipt of any return premiums that may become due under this Policy, and the agreement to and acceptance of endorsements, and the **Insureds** agree that the **Parent Company** shall act on their behalf.

SPECIMEN