

Employment Practices Liability Policy Claims Made Coverage

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Employment Practices Liability Policy

Claims Made Coverage

In consideration of payment of the premium and in reliance upon the statements made in the application and its attachments and any materials submitted therewith, all of which are made a part hereof, and subject to the Declarations and the limitations, conditions, provisions and other terms of this policy (including any endorsements hereto), the Insurer shown in the Declarations (herein called the Underwriter), the **Company** and the **Insured Persons** agree as follows:

I. INSURING CLAUSES

A. Liability

The Underwriter shall pay on behalf of the **Insureds** all **Loss** for which the **Insureds** become legally obligated to pay on account of any **Claim** by or on behalf of a past, present or prospective **Employee** of the **Company** for a **Wrongful Employment Act** taking place before or during the **Policy Period** if such **Claim** is first made against the **Insureds**, individually or otherwise, during the **Policy Period** or, if exercised, during the Extended Reporting Period.

B. Defense

The Underwriter shall have the right and duty to defend **Claims** against the **Insureds**, even if the allegations in the **Claim** are groundless, false or fraudulent. The Underwriter's right and duty to defend includes, without limitation, the right and duty to select defense counsel, subject to the consent of the **Insureds**. The Underwriter's duty to defend any **Claim** or to pay **Loss** for such **Claim** ends when the Limit of Liability applicable to such **Claim** or to the **Policy Period** in which such **Claim** is first made has been exhausted.

The **Insureds** agree not to settle any **Claim**, incur any **Defense Costs** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the Underwriter's written consent; provided such consent to settle any **Claim** shall not be required if the total **Loss** incurred on account of such **Claim** is equal to or less than the applicable Retention Amount set forth in Item 4 of the Declarations. The Underwriter shall not be liable for any settlement, **Defense Costs**, assumed obligation or admission to which it has not consented.

The **Insureds** agree to provide the Underwriter with all information, assistance and cooperation which the Underwriter reasonably requests and agree that in the event of a **Claim** the **Insureds** will do nothing that shall prejudice the Underwriter's position or its potential or actual rights of recovery. The Underwriter may make any investigation it deems necessary.

If with respect to any **Claim** the Underwriter requests the **Insureds'** consent to a settlement offer from the claimant and if the **Insureds** withhold such consent and if the total **Loss** incurred on account of such **Claim** is more than what would have been incurred had the **Insureds** consented to such settlement offer, the Coinsurance Percent applicable to such excess **Loss** shall be increased by adding 30 to the percent number set forth in Item 5 of the Declarations.

The Underwriter and the **Insureds** shall not unreasonably withhold any consent referenced in this Subsection I.B.

Defense Costs are part of and not in addition to the Limits of Liability set forth in Item 2 of the Declarations, and the payment by the Underwriter of **Defense Costs** reduces such Limits of Liability.

II. EXTENSIONS

A. Spousal Liability

If a **Claim** against an **Insured Person** includes a claim against the **Insured Person's** lawful spouse solely by reason of (1) such spouse's status as spouse of the **Insured Person**, or (2) such spouse's ownership interest in property which the claimant seeks as recovery for alleged **Wrongful Employment Acts** of the **Insured Person**, all loss which such spouse becomes legally obligated to pay by reason of such claim shall be treated for purposes of this policy as **Loss** which the **Insured Person** becomes legally obligated to pay on account of the **Claim** made against the **Insured Person**. Such spousal loss shall be covered under this policy only if and to the extent such loss would be covered if incurred by the **Insured Person**.

The coverage extension afforded by this Subsection II.A. does not apply to any **Claim** alleging any wrongful act or omission by the **Insured Person's** spouse.

B. Extended Reporting Period

If either the Underwriter or the **Parent Company** refuses to renew this policy other than for nonpayment of premium, the **Parent Company** or the **Insured Persons** shall have the right, upon payment of the additional premium set forth in Item 7(A) of the Declarations, to an extension of the coverage granted by this policy for the period set forth in Item 7(B) of the Declarations (Extended Reporting Period) following the effective date of such nonrenewal, but only with respect to any **Wrongful Employment Act** taking place prior to the effective date of such nonrenewal. This right of extension shall lapse unless written notice of such election, together with payment of the additional premium due, is given by the **Parent Company** or **Insured Persons** to the Underwriter within thirty (30) days following the effective date of nonrenewal. Any **Claim** made during the Extended Reporting Period shall be deemed to have been made during the immediately preceding **Policy Period**.

C. Estates and Legal Representatives

This policy shall afford coverage for **Claims** for the **Wrongful Employment Acts** of **Insured Persons** made against the estates, heirs, legal representatives or assigns of any such **Insured Persons** who are deceased or against the legal representatives or assigns of any such **Insured Persons** who are incompetent, insolvent or bankrupt to the extent that in the absence of such death, incompetence, insolvency or bankruptcy, such **Claims** would have been covered by this policy.

III. DEFINITIONS

When used in this policy:

A. **Claim** means:

1. a written demand for monetary damages,
 2. a civil proceeding commenced by the service of a complaint or similar pleading,
 3. a criminal proceeding commenced by a return of an indictment,
 4. a formal administrative or regulatory proceeding (including without limitation an **EEOC Proceeding**) commenced by the **Insured's** receipt of a notice of charges, formal investigative order or similar document, or
 5. an arbitration or other alternative dispute resolution proceeding,
- against any **Insured** for a **Wrongful Employment Act**, including any appeal therefrom.

B. **Company** means, collectively, the **Parent Company** and its **Subsidiaries**.

C. Defense Costs means that part of **Loss** consisting of reasonable costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries or fees of the directors, officers or **Employees** of the **Company**) incurred in defending or investigating **Claims** and the premium for appeal, attachment or similar bonds.

D. EEOC Proceeding means an investigative proceeding before the Equal Employment Opportunity Commission or an adjudicatory or investigative proceeding before any similar federal, state or local government body whose purpose is to address **Wrongful Employment Acts**.

E. Employee means one or more persons while in the regular service of the **Company** in the ordinary course of the **Company's** business and whom the **Company** compensates (if at all) by salary, wages and/or commissions and has the right to govern and direct in the performance of such service, including without limitation volunteers, past, present, prospective, part-time, temporary, seasonal, contract and leased employees otherwise described within this definition. **Employee** also means any independent contractor who is treated under applicable law as an employee of the **Company**.

F. Financial Impairment means the status of the **Company** resulting from:

1. the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Company**, or
2. the **Company** becoming a debtor in possession.

G. Insured Persons, either in the singular or plural, means any person who has been, now is or shall become:

1. a duly elected director or a duly elected or appointed officer of the **Company** or, with respect to a **Subsidiary** incorporated outside the United States, their functional equivalent; and
2. an **Employee** of the **Company** if such person is considered an employee of the **Company** under the law applicable to the **Claim**.

- H. Insureds**, either in the singular or plural, means the **Company** and the **Insured Persons**.
- I. Interrelated Wrongful Employment Acts** means all **Wrongful Employment Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes .
- J. Loss** means the total amount which the **Insureds** become legally obligated to pay on account of each **Claim** and for all **Claims** in each **Policy Period** and the Extended Reporting Period, if exercised, made against them for **Wrongful Employment Acts** for which coverage applies, including, but not limited to, damages (including front pay and back pay), judgments, pre-judgment and post-judgment interest, settlements and **Defense Costs**. **Loss** does not include (1) any amount not indemnified by the **Company** for which the **Insureds** are absolved from payment by reason of any covenant, agreement or court order, (2) fines or penalties imposed by law, (3) taxes, (4) the cost to comply with any injunctive or other non-monetary relief or any agreement to provide any such relief, (5) **Punitive Damages**, or (6) matters uninsurable under the law pursuant to which this policy is construed. However, **Loss** shall include liquidated damages awarded under the Age Discrimination in Employment Act or the Equal Pay Act, as amended and if such coverage is granted pursuant to Item 6 of the Declarations, **Punitive Damages** to the extent such damages are insurable under the internal laws of any state or jurisdiction which has a substantial relationship to the **Insureds**, the Underwriter, this policy or the **Claim**, including without limitation any state or jurisdiction:
1. where the **Punitive Damages** were awarded or imposed;
 2. where any **Wrongful Employment Act** underlying the **Claim** took place;
 3. where either the Underwriter or any **Insured** is incorporated, has its principal place of business or resides; or
 4. where this policy was issued or became effective.
- If the **Insured** determines in good faith that **Punitive Damages** in a **Claim** are insurable, the Underwriter shall not challenge such determination unless required to do as a matter of public policy.
- K. Parent Company** means the organization designated in Item 1 of the Declarations.
- L. Policy Period** means the period of time specified in Item 3 of the Declarations, subject to prior termination in accordance with Subsection V.K. of this policy. If this period is less than or greater than one year, then the Limits of Liability specified in Item 2 of the Declarations shall be the Underwriter's maximum limit of liability under this policy for the entire period.
- M. Punitive Damages** means punitive or exemplary damages or the multiple portion of any multiplied damage award (other than liquidated damages awarded pursuant to the Age Discrimination in Employment Act or the Equal Pay Act, as amended).
- N. Subsidiary**, either in the singular or plural, means any organization in which more than 50% of the outstanding voting securities or voting rights representing the present right to vote for election of directors is owned or controlled, directly or indirectly, in any combination, by one or more **Companies**.
- O. Wrongful Employment Act** means any error, misstatement, misleading statement, act, omission, neglect, or breach of duty actually or allegedly committed or attempted by the **Company** or by one or more **Insured Persons** in their capacities as such or by any other person for whom the **Insureds** are legally responsible, in connection with any actual, alleged or constructive wrongful dismissal, discharge or termination of employment; breach of any oral, written or implied employment contract or quasi-employment contract; employment-related misrepresentation; violation of any federal, state, or local statute, regulation, ordinance, common law or public policy concerning employment or discrimination in employment; sexual or other illegal workplace harassment (including without limitation offensive, intimidating, coercive or unwelcome conduct, advances, contact or communications); wrongful failure to employ or promote; wrongful discipline; wrongful deprivation of a career opportunity; wrongful demotion or adverse change in the terms, conditions or status of employment; failure to grant tenure; failure to adopt adequate workplace or employment policies and procedures; illegal retaliatory treatment of employees; negligent hiring; negligent evaluation of employees; wrongful reference; employment-related invasion of privacy; employment-related defamation; employment-related wrongful infliction of emotional distress; or other employment-related torts.

IV. EXCLUSIONS

- A. The Underwriter shall not be liable for **Loss** on account of any **Claim** made against any **Insured**:
1. based upon, arising out of, or attributable to any fact, circumstance or situation which has been the subject of any written notice given under any policy of which this policy is a renewal or replacement;
 2. based upon, arising out of, or attributable to any demand, suit or proceeding pending against any **Insured** on or prior to the Pending or Prior Date set forth in Item 8 of the Declarations, or the same or substantially the same fact, circumstance or situation underlying or alleged therein;
 3. for an actual or alleged violation of the responsibilities, obligations or duties imposed by (i) any law governing workers' compensation, unemployment insurance, social security, disability benefits or similar law, (ii) the Employee Retirement Income Security Act of 1974 (except Section 510 thereof), (iii) the Fair Labor Standards Act (except the Equal Pay Act), (iv) the National Labor Relations Act, (v) the Worker Adjustment and Retraining Notification Act, (vi) the Consolidated Omnibus Budget Reconciliation Act of 1985, (vii) the Occupational Safety and Health Act, (viii) any other federal, state or local statute or law similar to any statute or law described in (i) through (vii) of this exclusion, or (ix) rules or regulations promulgated under any of such statutes or laws; provided this exclusion shall not apply to 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 statute, law, rule or regulation; or
 4. for bodily injury (other than mental anguish or emotional distress), sickness, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof.
- B. The Underwriter shall not be liable for that part of **Loss**, other than **Defense Costs**, which constitutes:
1. amounts owing under or assumed by the **Insured** pursuant to any express written contract or agreement with the **Insured**; provided, however, this exclusion shall not apply to the extent the **Insured** would be liable for such **Loss** in the absence of such contract or agreement;
 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 law; or the costs associated with providing any reasonable accommodations to any person with a disability or other protected characteristics;
 3. compensation earned by the claimant in the course of employment but not paid by the **Company**, including any unpaid salary, bonus, wages, severance pay, retirement benefits, vacation days or sick days; provided, however, this exclusion shall not apply to any back pay or front pay; or
 4. medical or insurance benefits (or the equivalent value thereof) to which the claimant allegedly was entitled or would have been entitled had the **Company** provided the claimant with a continuation or conversion of such benefits or insurance.

No fact pertaining to or knowledge possessed by any **Insured** shall be imputed to any other **Insured** for purposes of applying the exclusions set forth in this Section IV.

V. GENERAL CONDITIONS AND LIMITATIONS

A. Limit of Liability, Retention and Coinsurance

For the purposes of this policy, all **Claims** arising out of the same **Wrongful Employment Act** and all **Interrelated Wrongful Employment Acts** of **Insureds** shall be deemed one **Claim**, and such **Claim** shall be deemed to be first made when the earliest of such **Claims** is first made, whether before or during the **Policy Period**.

The Underwriter's maximum liability for each **Claim** shall be the Limit of Liability for each **Claim** set forth in Item 2(A) of the Declarations. The Underwriter's maximum aggregate liability for all **Loss** on account of all **Claims** first made during the same **Policy Period** shall be the Limit of Liability for each **Policy Period** set forth in Item 2(B) of the Declarations.

The Underwriter's liability for **Loss** on account of each **Claim** shall apply only to that part of such **Loss** which is excess of the applicable Retention Amount set forth in Item 4 of the Declarations and such Retention Amount shall be borne by the **Insureds** uninsured and at their own risk. The Retention Amount set forth in Item 4(A) of the Declarations shall apply to **Loss** incurred by **Insured Persons** for which the **Company** is neither permitted nor required by common or statutory law to indemnify or for which the **Company** fails to indemnify by reason of its **Financial Impairment**. The Retention Amount set forth in Item 4(B) of the Declarations shall apply to all other **Loss**.

If **Loss** on account of a single **Claim** is subject to more than one Retention Amount, the maximum Retention Amount applicable to the **Loss** shall be the Retention Amount set forth in Item 4(B) of the Declarations.

With respect to all **Loss** (excess of the applicable Retention Amount) on account of all **Claims** first made in any one **Policy Period**, the **Insureds** shall bear uninsured at their own risk that percent of all such **Loss** specified as the Coinsurance Percent in Item 5 of the Declarations and the Underwriter's liability hereunder shall apply only to the remaining percent of all such **Loss**.

For purposes of this Subsection V.A., the Extended Reporting Period, if exercised, shall be part of and not in addition to the immediately preceding **Policy Period**.

Defense Costs are part of and not in addition to the Limits of Liability set forth in Item 2 of the Declarations, and the payment by the Underwriter of **Defense Costs** reduces such Limits of Liability.

B. Reporting and Notice

The **Insureds** shall, as a condition precedent to their rights under this policy, give to the Underwriter written notice of any **Claim** made against the **Insureds** as soon as practicable but in no event later than ninety (90) days after expiration of the **Policy Period** or, if exercised, the Extended Reporting Period.

If during the **Policy Period** or Extended Reporting Period (if exercised) the **Insureds** become aware of circumstances which could give rise to a **Claim** against the **Insureds** and give written notice of such circumstances to the Underwriter during the **Policy Period** or Extended Reporting Period (if exercised), then any **Claims** subsequently arising from such circumstances shall be considered to have been made during the **Policy Period** or the Extended Reporting Period in which the circumstances were first reported to the Underwriter.

The **Company** or the **Insured Persons** shall, as a condition precedent to exercising their rights under this policy:

1. include within any notice of **Claim** or circumstance a description of the **Claim** or circumstances, the nature of the alleged **Wrongful Employment Act**, 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 **Claim** or circumstances, and
2. give to the Underwriter such information and cooperation as it may reasonably require.

All notices under any provision of this policy shall be in writing and given by prepaid express courier, certified mail or fax properly addressed to the appropriate party. Notice to the **Insureds** may be given to the **Parent Company** at the address as shown in Item 1 of the Declarations. Notice to the Underwriter of any **Claim** or circumstance shall be given to Zurich-American Insurance Group, One Liberty Plaza, New York, New York 10006, Fax (212) 566-4002, Attention: Executive Assurance Claims. All other notices to the Underwriter under this policy shall be given to the same addressee but to the attention of Executive Assurance Department. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or one day following the date such notice is sent, whichever is earlier.

C. Representations and Severability

In granting coverage under this policy, the Underwriter has relied upon the declarations, representations and warranties in the written application for this policy and, if applicable, upon any declarations, representations and warranties in the original written application submitted to another insurer in respect of the prior employment practices liability coverage incepting as of the Continuity Date set forth in Item 9 of the Declarations. All such declarations, representations and warranties are the basis of coverage under this policy and shall be considered as incorporated in and constituting part of this policy.

Such written application(s) for coverage shall be construed as a separate application for coverage by each of the **Insured Persons**. No statement in the application or knowledge possessed by any of the **Insured Persons** shall be imputed to any other **Insured Person** for the purpose of determining if coverage is available. The statements in the application and only knowledge possessed by the chairperson, president, chief executive officer, chief financial officer, chief operating officer, director of human resources and in-house general counsel shall be imputed to the **Company** for the sole purpose of determining if coverage is available with respect to **Claims** against the **Company**.

D. Changes in Exposure

1. Acquisition or Creation of Another Organization

If before or during the **Policy Period** the **Company**:

- a. acquires securities or voting rights in another organization or creates another organization, which as a result of such acquisition or creation becomes a **Subsidiary**, or
- b. acquires any organization by merger into or consolidation with the **Company**,

such organization and its **Insured Persons** shall be covered under this policy but only with respect to **Wrongful Employment Acts** taking place after such acquisition or creation unless the Underwriter agrees after presentation of a complete application and all appropriate information, to provide coverage by endorsement for **Wrongful Employment Acts** by such **Insureds** taking place prior to such acquisition or creation.

If as an immediate result of such acquisition the number of **Employees** of all **Companies** increases by more than 10% or 500, whichever is less, the **Parent Company**, as a condition precedent to coverage with respect to such organization and its **Insured Persons**, shall give written notice of such acquisition to the Underwriter as soon as practicable, but in no event later than 90 days after the effective date of such acquisition, together with such information as the Underwriter may require and shall pay any additional premium required by the Underwriter.

2. Acquisition of **Parent Company**

If during the **Policy Period**:

- a. the **Parent Company** merges into or consolidates with another organization, or
- b. another organization, or person or group of organizations and/or persons acting in concert acquires securities or voting rights which result in ownership or voting control by the other organization(s) or person(s) of more than 50% of the outstanding securities representing the present right to vote for the election of directors of the **Parent Company**,

then coverage under this policy shall continue until the later of:

- (i) the third anniversary of such merger, consolidation or acquisition if during the **Policy Period** the **Parent Company** or the **Insured Persons** give written notice to the Underwriter of their desire to elect such extended coverage period,
- (ii) any subsequent date to which the Underwriter may agree by endorsement, or
- (iii) termination of this policy,

but only with respect to **Claims** for **Wrongful Employment Acts** taking place by **Insureds** prior to such merger, consolidation or acquisition. Any coverage extension pursuant to (i) or (ii) above shall be conditioned upon payment during the **Policy Period** by the **Parent Company** or the **Insured Persons** of any additional premium, and shall be subject to any additional terms and conditions, required by the Underwriter. Any **Claim** made during such coverage extension shall be deemed to have been made during the **Policy Period** in which such merger, consolidation or acquisition occurred.

The **Parent Company** shall give written notice of such merger, consolidation or acquisition to the Underwriter as soon as practicable together with such information the Underwriter may require.

3. Cessation of **Subsidiaries**

If before or during the **Policy Period** an organization ceases to be a **Subsidiary**, coverage with respect to such **Subsidiary** and its **Insured Persons** shall continue until termination of this policy but only with respect to **Claims** for **Wrongful Employment Acts** taking place prior to the date such organization ceased to be a **Subsidiary**.

E. Arbitration

The Underwriter and the **Insureds** shall submit any dispute or controversy arising out of or relating to this policy or the breach, termination or invalidity thereof to final and binding arbitration pursuant to such rules and procedures as the parties may agree. If the parties cannot so agree, the arbitration shall be administered by the American Arbitration Association ("AAA") in accordance with its then prevailing commercial arbitration rules. The AAA arbitration panel shall consist of one arbitrator selected by the **Insureds**, one arbitrator selected by the Underwriter, and a third independent arbitrator selected by the first two arbitrators. In any such arbitration, each party will bear its own legal fees and expenses.

F. Territory and Valuation

All premiums, limits, retentions, **Loss** and other amounts under this policy are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of **Loss** under this policy is stated in a currency other than United States of America dollars, payment under this policy shall be made in United States dollars at the rate of exchange published in *The Wall Street Journal* on the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of **Loss** is due, respectively.

Coverage under this policy shall extend to **Claims** made and **Wrongful Employment Acts** occurring anywhere in the world .

G. Other Insurance

Unless expressly written to be excess over other applicable insurance, this policy is intended to provide primary insurance; provided that if any **Loss** arising from any **Claim** made against any **Insured** is also insured under another valid and collectible policy(ies), then this policy shall share such **Loss** with such other policy(ies) pro rata based on the respective limits of liability set forth in the declarations for this policy and such other policy(ies).

H. Subrogation

In the event of any payment under this policy, the Underwriter shall be subrogated to the extent of such payment to all the **Insureds'** rights of recovery, and the **Insureds** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the Underwriter effectively to bring suit in the name of the **Insureds**.

I. Alteration and Assignment

No change in, modification of, or assignment of interest under this policy shall be effective except when made by a written endorsement to this policy which is signed by an authorized representative of the Underwriter.

J. Action Against the Underwriter

No action shall lie against the Underwriter unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this policy. No person or organization shall have any right under this policy to join the Underwriter as a party to any action against the **Insureds** to determine the **Insureds'** liability nor shall the Underwriter be impleaded by the **Insureds** or their legal representatives. Bankruptcy or insolvency of a **Company** or the **Insured Persons** or of the estate of any **Insured Person** shall not relieve the Underwriter of its obligations nor deprive the Underwriter of its rights or defenses under this policy.

K. Policy Termination

This policy shall terminate at the earliest of the following times:

1. upon expiration of the **Policy Period** as set forth in Item 3 of the Declarations;
2. ten (10) days after receipt by the **Parent Company** of a written notice of termination from the Underwriter for failure to pay a premium when due; or
3. at such other time as may be agreed upon by the Underwriter and the **Parent Company**.

The Underwriter shall refund the unearned premium computed at customary short rates if this policy is terminated by the **Parent Company**. Under any other circumstances the refund shall be computed pro rata.

L. Authorization Clause

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