



A Corporate Liability Policy for Private Companies Including Directors and Officers Liability Insurance and Employment Practices Liability Coverage, and Entity Coverage

THIS IS A CLAIMS MADE POLICY WHICH APPLIES ONLY TO CLAIMS FIRST MADE DURING THE POLICY PERIOD. THE LIMIT OF LIABILITY AVAILABLE TO PAY DAMAGES OR SETTLEMENTS WILL BE REDUCED AND MAY BE EXHAUSTED BY THE PAYMENT OF DEFENSE EXPENSES. PLEASE READ AND REVIEW THE POLICY CAREFULLY.

In consideration of the payment of the premium, in reliance on the **Application**, and subject to all of the terms, conditions and limitations of, and any endorsements to, this Policy, the **Underwriter**, the **Insured Persons** and the **Insured Entity** agree as follows:

I. INSURING AGREEMENT

- (A) The **Underwriter** will pay on behalf of the **Insured Persons Loss** from **Claims** first made against them during the **Policy Period** for **Wrongful Acts**, including **Employment Practices Wrongful Acts**, unless the **Company** is required or permitted to pay such **Loss** to or on behalf of the **Insured Persons** as indemnification.
- (B) The **Underwriter** will pay on behalf of the **Company Loss** from **Claims** first made against the **Insured Persons** during the **Policy Period** for **Wrongful Acts**, including **Employment Practices Wrongful Acts**, if the **Company** pays such **Loss** to or on behalf of the **Insured Persons** as indemnification.
- (C) The **Underwriter** will pay on behalf of the **Company Loss** from **Claims** first made against the **Company** during the **Policy Period** for **Wrongful Acts**, including **Employment Practices Wrongful Acts**.
- (D) As part of and subject to the limit of liability stated in ITEM 3 of the Declarations, the **Underwriter** will have the right and duty to defend any **Claim** as described in INSURING AGREEMENT (A), (B), (C) even if such **Claim** is groundless, false or fraudulent.

II. EXCLUSIONS

- (A) No coverage will be available under this Policy for **Loss**, other than **Defense Expenses**, from **Claims**:
 - (1) against any **Insured** brought about or contributed to in fact by any dishonest or fraudulent act or omission or any willful violation of any statute, rule or law by any **Insured**; or
 - (2) against any **Insured** brought about or contributed to in fact by the gaining by any **Insured** of any profit, remuneration or advantage to which such **Insured** is not legally entitled; or

If any **Insured** in fact engaged in the conduct specified in EXCLUSION (A)(1) or (A)(2), or if such conduct is imputed to the **Insured Entity**, such **Insured** and the **Insured Entity** will reimburse the **Underwriter** for any **Defense Expenses** advanced to or on behalf of such **Insured**.

- (3) seeking relief or redress in any form other than money damages; or

- (4) for any actual or alleged violation of any provision of the Fair Labor Standards Act other than the Equal Pay Act, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act, any workers' Compensation, unemployment insurance, social security, or disability benefits law and any amendments thereto, or any other similar provisions of any federal, state or local statutory or common law or any rules or regulations promulgated under any of the foregoing.

(B) No coverage will be available under this Policy for:

- (1) any **Claim** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
- (a) any actual or alleged bodily injury, sickness, mental anguish, emotional distress, disease or death of any person, damage or destruction of any tangible property including loss of use thereof, libel, slander, oral or written publication of defamatory or disparaging material, invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, malicious use or abuse of process, assault, battery or loss of consortium; provided, that this EXCLUSION (B)(1)(a) shall not apply to mental anguish, emotional distress, invasion of privacy, libel, slander or oral or written publication of defamatory or disparaging material actually or allegedly resulting from a **Claim** for an **Employment Practices Wrongful Act**.
- (b) any actual, alleged or threatened exposure to, or generation, storage, transportation, discharge, emission, release, dispersal, escape, treatment, removal or disposal of, any smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials (including materials which are intended to be or have been recycled, reconditioned or reclaimed) or other irritants, pollutants or contaminants, or any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any of the foregoing, or any action taken in contemplation or anticipation of any such regulation, order, direction or request, including but not limited to any such **Claim** alleging damage to the **Company** or to its shareholders;
- (c) any fact, circumstance, situation, transaction, event or **Wrongful Act**:
- (i) underlying or alleged in any prior and/or pending litigation or administrative or regulatory proceeding of which any **Insured** had received written notice before the Inception Date in ITEM 2(a) of the Declarations; or
- (ii) which, before the Inception Date in ITEM 2(a) of the Declarations, was the subject of any notice given by or on behalf of any **Insured** under any other policy of insurance;

if, however, this Policy is a renewal of one or more policies previously issued by the **Underwriter** to the **Company**, and the coverage provided by the **Underwriter** to the **Company** was in effect, without interruption, for the entire

- time between the inception date of the first such other policy and the Inception Date of this Policy, the reference in this EXCLUSION (B)(1)(c) to the Inception Date will be deemed to refer instead to the inception date of the first policy under which the Underwriter began to provide the **Company** with the continuous and uninterrupted coverage of which this Policy is a renewal;
- (d) any actual or alleged nuclear reaction, nuclear radiation, radioactive contamination, or radioactive substance;
 - (e) any lockout, strike, picket line, hiring of replacement workers or other similar actions in connection with labor disputes or labor negotiations;
 - (f) any actual or alleged violation of any **Securities Laws**, or any actual or alleged violation of any provision of the common law imposing liability in connection with the offer, sale or purchase of securities; provided, that this EXCLUSION (B)(1)(f) shall not apply to any **Claim** arising out of the offering, sale or purchase of securities, whether debt or equity, in a transaction that is exempt from registration under the Securities Act of 1933;
 - (g) any actual or alleged (i) violation of any law or statute protecting any patent, copyright, trademark, trade name, service mark, trade dress or similar interest including any actual or alleged violation of any rule or regulation promulgated thereunder or of any provision of the common law imposing liability in connection therewith, or (ii) misappropriation of any trade secret or confidential information. Provided, that EXCLUSION (B)(1)(g)(i) shall not apply to any **Claim** against an **Insured Person**;
- (2) any **Claim** by or on behalf of, or in the name or right of, the **Company** or any **Insured Person**, in any capacity, except that this EXCLUSION (B)(2) will not apply to:
 - (a) any derivative action by a security holder of the **Company** on behalf of, or in the name or right of, the **Company**, if such action is brought and maintained independently of, and without the solicitation, assistance, participation or intervention of, the **Company** or any **Insured Person**;
 - (b) any **Claim** in the form of a cross-claim, third party claim or other **Claim** for contribution or indemnity by an **Insured Person** which is part of or results directly from a **Claim** which is not otherwise excluded by the terms of this Policy; or
 - (c) any **Claim** for an **Employment Practices Wrongful Act**;
 - (3) any **Claim** for any actual or alleged violation of the Employee Retirement Income Security Act of 1974 or any regulations promulgated thereunder and any amendments thereto, or of any similar provisions of federal, state or local law or regulation or any other actual or alleged **Wrongful Act** in the administration of employee benefits;
 - (4) any **Claim** against any **Subsidiary**, assets or other entity acquired by the **Company**, whether by merger, consolidation or otherwise, or against any **Insured Person** of such **Subsidiary**, assets or other entity in his or her capacity as such for any **Wrongful Act** committed during any time in which such entity is not a **Subsidiary** or at any time before the **Company's** acquisition of such asset or entity;

- (5) any **Claim** against an **Insured** arising out of any actual or alleged liability under any express contract or agreement. For the purposes of this EXCLUSION (B)(5), an “express contract or agreement” is an actual agreement among the contracting parties, the terms of which are openly stated in distinct or explicit language, either orally or in writing, at the time of its making; provided, that this EXCLUSION (B)(5) will not apply to Claims for liability resulting from **Employment Practices Wrongful Acts** if such liability would have attached in the absence of the express contract or agreement in question; or
- (6) any **Claim** by or on behalf of, or in the name or right of, any **Outside Entity** against an **Insured Person** for a **Wrongful Act** in his or her **Outside Capacity** with respect to such **Outside Entity**.

No **Wrongful Act** of any **Insured Person** will be imputed to any other **Insured Person** to determine the application of any exclusion set forth in EXCLUSIONS (A) or (B) above.

III. CONDITIONS

(A) Limit of Liability:

- (1) Regardless of the number of **Claims**, the number of persons or entities included within the definition of **Insured**, or the number of claimants who make a **Claim** against the **Insureds**, the amount stated in ITEM 3 of the Declarations shall be the maximum aggregate limit of liability of the Underwriter for all **Loss**, including **Defense Expenses**, resulting from all **Claims** for which this Policy provides coverage, regardless of whether such **Claims** are made during the **Policy Period** or the Extended Reporting Period, and regardless of the time of payment by the **Underwriter**.
- (2) If any **Claim** made against the **Insured Persons** gives rise to coverage both under this Policy and under any other policy or policies of directors and officers liability or other similar insurance issued by the Underwriter, or any affiliate of the **Underwriter**, to any **Outside Entity**, the Underwriter’s and, if applicable, such affiliate’s maximum aggregate limit of liability under all such policies for all **Loss**, including **Defense Expenses**, in respect of such **Claim** will not exceed the largest single available limit of liability under any such policy, including this Policy.
- (3) **Defense Expenses** are part of and not in addition to the **Underwriter’s** limit of liability, and payment of **Defense Expenses** by the **Underwriter** will reduce its limit of liability.

(B) Application of Retention; Presumption of Indemnification:

- (1) The obligation of the **Underwriter** to pay **Loss**, including **Defense Expenses**, will only be in excess of the applicable retention set forth in ITEM 4 of the Declarations. The **Underwriter** will have no obligation whatsoever, either to the **Insureds** or to any other person or entity, to pay all or any portion of any retention amount on behalf of any **Insured**, although the **Underwriter** will, at its sole discretion, have the right and option to do so, in which event the **Insureds** agree to repay the **Underwriter** any amounts so paid.
- (2) The certificate of incorporation, charter, articles of association or other organizational documents of the **Parent Corporation**, each **Subsidiary** and each **Outside Entity**,

including bylaws and resolutions, will be deemed to have been adopted or amended to provide indemnification to the **Insured Persons** to the fullest extent permitted by law.

- (3) The retention set forth in ITEM 4(b) of the Declarations will apply to any Loss as to which indemnification by the **Company** or any **Outside Entity** is legally permissible, whether or not actual indemnification is made, unless such indemnification is not made by the **Company** or such **Outside Entity** solely by reason of its financial insolvency.
- (4) If different retentions are applicable to different parts of any **Claim**, the applicable retentions will be applied separately to each part of such **Claim**, but the sum of such retentions will not exceed the largest applicable retention as set forth in ITEM 4 of the Declarations.

(C) Defense and Settlement of Claims:

- (1) No Insured may incur any **Defense Expenses** or admit liability for or settle or offer to settle any **Claim** without the **Underwriter's** written consent. The **Underwriter** will 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 **Underwriter's** recommendation, then, subject to the **Underwriter's** maximum aggregate limit of liability set forth in ITEM 3 of the Declarations, the **Underwriter's** liability for such **Claim** will not exceed:

- (a) the amount for which such **Claim** could have been settled by the **Underwriter plus Defense Expenses** up to the date the **Insureds** refused to settle such **Claim**; plus
- (b) eighty percent (80%) of any **Loss** and/or **Defense Expenses** in excess of the amount in clause (a) above, incurred in connection with such **Claim**. The remaining twenty percent (20%) of **Loss** and/or **Defense Expenses** in excess of the amount in clause (a) above will be carried by the Insured at its own risk and will be uninsured.

- (2) The **Underwriter** will have no obligation to pay **Loss**, including **Defense Expenses**, or to defend or continue to defend any **Claim** after the **Underwriter's** maximum aggregate limit of liability, as set forth in ITEM 3 of the Declarations, has been exhausted by the payment of **Loss**, including **Defense Expenses**. If the **Underwriter's** maximum aggregate limit of liability, as set forth in ITEM 3 of the Declarations, is exhausted by the payment of **Loss**, including **Defense Expenses**, the premium will be fully earned.

(D) Other Insurance; Other Indemnification:

- (1) All **Loss** payable under this Policy will be specifically excess of and will not contribute with other valid insurance (whether collectible or not), including but not limited to any other insurance under which there is a duty to defend, unless such other insurance is specifically stated to be in excess of this Policy. This Policy will not be subject to the terms of any other insurance.
- (2) All coverage for **Loss** from **Claims** against **Insured Persons** for **Wrongful Acts** in their **Outside Capacities** will be specifically excess of, and will not contribute with, any other valid insurance (whether collectible or not) available to such **Insured Persons** by reason of their service in **Outside Capacities**, and any indemnification by

any person or entity other than the **Company**, including any **Outside Entity**, available to such **Insured Persons** in connection with their service in **Outside Capacities**.

- (3) Notwithstanding CONDITIONS (D)(1) and (D)(2) above, with respect to any **Claim** under this Policy for which any coverage is available under any insurance policy(ies) which applies to claims for bodily injury and/or property damage, the **Underwriter** will have no duty to defend such **Claim**, or to pay **Defense Expenses** incurred by or on behalf of any Insured in connection with such **Claim**, or to contribute to any defense provided to any Insured under such other insurance policy(ies), or to reimburse any other insurer, in whole or in part, for **Defense Expenses** incurred in connection with such **Claim**.

(E) **Cooperation; Subrogation:**

In the event of a **Claim**, the **Insureds** will provide the **Underwriter** with all information, assistance and cooperation that the **Underwriter** reasonably requests, and will do nothing that may prejudice the **Underwriter's** position or potential or actual rights of recovery. At the **Underwriter's** request, the **Insureds** will assist in any actions, suits or proceedings, including but not limited to attending hearings, trials and depositions, securing and giving evidence and obtaining the attendance of witnesses, and will also assist in making settlements. In the event of payment, the **Underwriter** will be subrogated to the extent of any payment to all of the rights of recovery of the **Insureds**. The **Insureds** will execute all papers and do everything necessary to secure such rights, including the execution of any documents necessary to enable the **Underwriter** effectively to bring suit in their name. The obligations of the **Insureds** under this CONDITION (E) will survive the Policy.

(F) **Extended Reporting Period:**

If either the **Underwriter** or the **Parent Corporation** refuses or declines to renew this Policy for any reason and, within thirty (30) days of the end of the **Policy Period**, the **Parent Corporation** elects to purchase the Extended Reporting Period set forth in ITEM 7(a) of the Declarations by paying the additional premium set forth in ITEM 7(b) of the Declarations, then the coverage otherwise afforded by this Policy will be extended to apply to **Loss** from **Claims** first made during the Extended Reporting Period, but only if such **Claims** are for **Wrongful Acts** committed before the end of the **Policy Period** or the date of any conversion of coverage under CONDITION (I), whichever is earlier.

(G) **Notice; Timing and Interrelationship of Claims:**

- (1) As a condition precedent to any right to payment in respect of any **Claim**, the **Insureds** must give the **Underwriter** written notice of such **Claim**, with full details, as soon as practicable after it is first made and in no event later than thirty (30) days after the expiration date of the **Policy Period**.
- (2) If, during the **Policy Period**, the **Insureds** first become aware of a **Wrongful Act** which may subsequently give rise to a **Claim** and, as soon as practicable thereafter but before the expiration or cancellation of the Policy:
 - (a) give the **Underwriter** written notice of such **Wrongful Act**, including a description of the **Wrongful Act** in question, the identities of the potential claimants, the consequences which have resulted or may result from such **Wrongful Act**, the damages which may result from such **Wrongful Act** and the circumstances by which the Insureds first became aware of such **Wrongful Act**; and

- (b) request coverage under this Policy for any subsequently resulting **Claim** for such **Wrongful Act**;

then the **Underwriter** will treat any such subsequently resulting **Claim** as if it had been first made during the **Policy Period**.

- (3) All notices under CONDITIONS (G)(1) and (2) must be sent by certified mail or prepaid courier to the address set forth in ITEM 5 of the Declarations.
- (4) All **Related Claims** will be treated as a single **Claim** made when the earliest of such **Related Claims** was first made, or when the earliest of such **Related Claims** is treated as having been made in accordance with CONDITION (G)(2), whichever is earlier.

(H) Adjustments:

If, during the **Policy Period**, the **Company** acquires any assets, acquires or creates a **Subsidiary**, or acquires any entity by merger (each a "New Entity") and, at the time of the transaction, the assets of the New Entity exceed twenty-five percent (25%) of the total assets of the **Company** as reflected in the **Company's** most recent audited consolidated financial statements (a "Transaction"), then for a period of ninety (90) days after the effective date of the Transaction, the New Entity will be included within the definition of **Insured**, but only with respect to **Wrongful Acts** committed or allegedly committed after the effective date of the Transaction. Upon the expiration of the ninety (90) day period, there shall be no coverage under this Policy for **Wrongful Acts** committed or allegedly committed by the New Entity or its **Insured Persons**, unless the **Company** has provided the **Underwriter** with written notice of the Transaction, containing full details thereof, and the **Company** and the **Underwriter** have agreed to add coverage for the New Entity and its **Insured Persons** upon such terms, conditions and limitations of coverage and such additional premium as the **Underwriter**, in its sole discretion, may require.

(I) Conversion of Coverage Under Certain Circumstances:

If, during the **Policy Period**, any of the following events occurs:

- (1) the acquisition of the **Parent Corporation**, or of all or substantially all of its assets, by another entity, or the merger or consolidation of the **Parent Corporation** into or with another entity such that the **Parent Corporation** is not the surviving entity;
- (2) the appointment of a receiver, conservator, trustee, liquidator or rehabilitator, or any similar official, for or with respect to the **Parent Corporation**; or
- (3) the obtaining by any person, entity or affiliated group of persons or entities of the right to elect, appoint or designate at least fifty percent (**50%**) of the directors of the **Parent Corporation**;
- (4) the **Parent Corporation's** filing for an initial public offering.

coverage under this Policy will continue in full force and effect with respect to **Claims** for **Wrongful Acts** committed before such event, but coverage will cease with respect to **Claims** for **Wrongful Acts** committed after such event. After any such event, the Policy may not be canceled, regardless of CONDITION (J)(2), and the entire premium for the Policy will be deemed fully earned.

(J) Cancellation; No Obligation to Renew:

- (1) The **Underwriter** may not cancel this Policy except for failure to pay a premium when due. The **Underwriter** will deliver or mail by first class, registered or certified mail to the **Parent Corporation** at its last known address, written notice of cancellation at least twenty (20) days before the effective date of cancellation. Such notice shall state the reason for cancellation. A copy of such notice shall be sent to the agent of record.
- (2) The **Parent Corporation** may cancel this Policy by mailing to the **Underwriter** written notice stating when, not later than the Expiration Date set forth in ITEM 2(b) of the Declarations, such cancellation will be effective. In such event, the earned premium will be computed in accordance with the customary short rate table and procedure. Premium adjustment may be made either at the time cancellation by the **Parent Corporation** is effective or as soon as practicable thereafter.
- (3) The **Underwriter** will not be required to renew this Policy upon its expiration. If the **Underwriter** elects not to renew this Policy, the **Underwriter** will deliver or mail by first class, certified or registered mail to the **Parent Corporation** at its last known address written notice to that effect at least sixty (60) days before the Expiration Date set forth in ITEM 2(b) of the Declarations. Such notice shall state the specific reason(s) for non-renewal.

(K) Representations; Severability:

The **Insureds** represent that the particulars and statements contained in the **Application** are true, accurate and complete, and agree that this Policy is issued in reliance on the truth of that representation, and that such particulars and statements, which are deemed to be incorporated into and to constitute a part of this Policy, are the basis of this Policy.

No knowledge or information possessed by any **Insured** will be imputed to any other **Insured**, except that:

- (1) for material facts or information known to the person or persons who signed the **Application** will be imputed to all **Insureds**; and.
- (2) material facts or information known to any **Executive Officer(s)** will be imputed to the **Insured Entity**.

In the event of any of the particulars or statements in the **Application** is untrue, this Policy will be void with respect to any **Insured** who knew of such untruth or to whom such knowledge is imputed.

(L) Spouses of Insured Persons:

- (1) The coverage afforded under this Policy will, subject to all of its terms, conditions, limitations and exclusions, be extended to apply to **Loss** resulting from a **Claim** made against a person who, at the time the **Claim** is made, is a lawful spouse of an **Insured Person**, but only if:
 - (a) the **Claim** against such spouse results from a **Wrongful Act** actually or allegedly committed by the **Insured Person** to whom the spouse is married;

- (b) such **Insured Person** and his or her spouse are represented by the same counsel in connection with such **Claim**; and
 - (c) the **Claim** against the spouse seeks damages from marital community property.
- (2) No spouse of an **Insured Person** will, by reason of this CONDITION (L), have any greater right to coverage under this Policy than the **Insured Person** to whom such spouse is married.
 - (3) The **Underwriter** will not be liable under this CONDITION (M) to make any payment of **Loss** in connection with any **Claim** against a spouse of an **Insured Person** for any actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty by such spouse.

(M) No Action against the Underwriter:

- (1) No action may be taken against the **Underwriter** unless, as conditions precedent thereto, there has been full compliance with all of the terms of this Policy and the amount of the **Insureds'** obligation to pay has been finally determined either by judgment against the **Insureds** after adjudicatory proceedings, or by written agreement of the **Insureds**, the claimant and the **Underwriter**.
- (2) No person or entity will have any right under this Policy to join the **Underwriter** as a party to any **Claim** to determine the liability of any **Insured**; nor may the **Underwriter** be impleaded by an **Insured** or his, her or its legal representative in any such **Claim**. The **Underwriter** will not be relieved of any of its obligations under the Policy by the bankruptcy or insolvency of any of the **Insureds** or their estates.

(N) Authorization and Notices:

The **Insureds** agree that the **Parent Corporation** will act on their behalf with respect to receiving any notices and return premiums from the **Underwriter**.

(O) Changes:

Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the **Underwriter** will not effect a waiver or change in any part of this Policy or stop the **Underwriter** from asserting any right under the terms, conditions and limitations of this Policy. The terms, conditions and limitations of this Policy can be waived or changed only by written endorsement.

(P) Assignment:

No assignment of interest under this **Policy** will bind the **Underwriter** without its consent.

(Q) Entire Agreement:

The **Insureds** agree that this Policy, including the **Application** and any endorsements, constitutes the entire agreement between them and the **Underwriter** or any of its agents relating to this insurance.

(R) Headings:

The descriptions in the headings and sub-headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

IV. DEFINITIONS

- (A) **“Application”** means the application submitted to the **Underwriter** or any of its agents or brokers for the Policy, all prior applications submitted to the **Underwriter** or any of its agents or brokers for any prior policies issued by the **Underwriter** to the **Named Insured**, and any and all materials and information submitted to or obtained by the **Underwriter** in connection with such applications, including all statements made by the **Insureds** or their agents or brokers, and the **Insured Entity’s** annual reports, quarterly reports, interim financial statements, proxy statements (or other notices to shareholders), articles of incorporation, bylaws and any indemnification contracts, all of which are deemed to be on file with the **Underwriter** and are deemed to be attached to, and form part of, this Policy, as if physically attached.
- (B) **“Claim”** means:
- (1) any written demand for monetary, non-monetary or injunctive relief;
 - (2) any civil proceeding in a court of law or equity, including any appeal therefrom, which is commenced by the filing of a complaint, motion for judgment or similar proceeding;
 - (3) any criminal proceeding which is commenced by the return of an indictment or similar document;
 - (4) any administrative or regulatory proceeding which is commenced by the filing or issuance of a notice of charges, formal investigative order, or similar document; provided that such administrative or regulatory proceeding, or any such investigation, will be a **Claim** only if and only during the time that an **Insured Person** is identified by the administrative or regulatory agency, or by the investigating authority, as a person against whom a proceeding described in DEFINITION (B)(2) or (3) above may be commenced; or
 - (5) any arbitration proceeding.
- A **Claim** will be deemed to have been first made when the **Claim** is commenced as set forth above and an **Insured** receives notice of the commencement, or when the **Underwriter** first receives notice under GENERAL CONDITION (B)(2) of a **Wrongful Act** out of which such **Claim** subsequently arises, whichever occurs first.
- (C) **“Company”** means the **Parent Corporation** and any **Subsidiary** created or acquired on or before the Inception Date in ITEM 2(a) of the Declarations or, subject to CONDITION (H), during the **Policy Period**.
- (D) **“Defense Expenses”** means reasonable legal fees and expenses incurred by or on behalf of the **Insureds** in the defense or appeal of a **Claim**; provided that **Defense Expenses** will not include the **Company’s** overhead expenses or any salaries, wages, fees or benefits of its **Insured Persons**.
- (E) **“Employee”** means any individual whose labor or service is engaged by and directed by the

Company. This may include part-time, seasonal and temporary employees as well as volunteers, but will not include independent contractors.

- (F) "**Employment Practices Wrongful Act**" means any actual or alleged:
- (1) wrongful discharge or termination of employment, including constructive discharge
 - (2) employment-related misrepresentation;
 - (3) sexual or other workplace harassment;
 - (4) wrongful failure to employ or promote;
 - (5) wrongful deprivation of career opportunity, employment or promotion;
 - (6) wrongful discipline or evaluation;
 - (7) failure to adopt or provide adequate employment or workplace policies and procedures;
 - (8) wrongful retaliation; or
 - (9) violation of any federal, state or local law concerning employment, including without limitation the Americans with Disabilities Act of 1992, the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967, Title VII of the Civil Rights Act of 1964, the Pregnancy Discrimination Act of 1978, the Civil Rights Act of 1966, the Family and Medical Leave Act of 1993, the Older Workers Benefit Protection Act of 1990, the Fifth and Fourteenth Amendments to the United States Constitution, and any other federal, state or local law relating or applying to employment or discrimination in employment; or any rule or regulation promulgated under any of the foregoing.
- (G) "**Executive Officer**" means any past, present or future Chairman, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, President or General Counsel, or any equivalent position, of the **Insured Entity**.
- (H) "**Insured**" means any **Insured Person** and the **Company**.
- (I) "**Insured Person**" means any past, present or future:
Director, officer or **Employee** of the **Company**, and any individual serving the **Company** outside of the United States in a capacity comparable to the capacity of director, officer or **Employee** of the **Company** within the United States.
- In the event of the death, incapacity or bankruptcy of an **Insured Person**, any **Claim** against the estate, heirs, legal representatives or assigns of such **Insured Person** for a **Wrongful Act** of such **Insured Person** will be deemed to be a **Claim** against such **Insured Person**.
- (J) "**Loss**" means **Defense Expenses** and damages (including back pay awards and front pay awards), pre-judgment interest, post-judgment interest, judgments, settlements, punitive or exemplary damages where insurable under applicable law, or other amounts that an Insured is obligated to pay as a result of a **Claim**. **Loss** will not include fines, taxes, penalties, or the multiplied portion of multiplied damages. Provided that **Loss** will include any multiplied damages awarded pursuant to the Age Discrimination in Employment Act or the Equal Pay Act ("Specified Multiplied Damages"), that an **Insured** is obligated to pay as a

result of a **Claim**, but only if such Specified Multiplied Damages are insurable under applicable law.

- (K) “**Outside Capacity**” means service by an **Insured Person** as a director, officer, trustee, regent or governor of an **Outside Entity**, but only during the time that such service is at the specific written request of the **Company**.
- (L) “**Outside Entity**” means a corporation or organization other than the **Company** which is exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code, as the same may be amended from time to time.
- (M) “**Parent Corporation**” means the entity named in ITEM 1 of the Declarations.
- (N) “**Policy Period**” means the period from the Inception Date to the Expiration Date in ITEM 2 of the Declarations or to any earlier cancellation date.
- (O) “**Related Claims**” means all **Claims** for **Wrongful Acts** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the same or related facts, circumstances, situations, transactions or events or the same or related series of facts, circumstances, situations, transactions or events.
- (P) “**Securities Laws**” means the Securities Act of 1933, the Securities Exchange Act of 1934, any state “blue sky” law, or any other federal, state or local securities law, or any rule or regulation promulgated under any of the foregoing.
- (Q) “**Subsidiary**” means any entity during any time which the **Parent Corporation** owns or controls, directly or through one or more **Subsidiaries**, the right to elect or appoint more than fifty percent (50%) of such entity’s directors or trustees.
- (R) “**Underwriter**” means the insurer identified on the Declarations page.
- (S) “**Wrongful Act**” means:
- (1) any actual or alleged act, error, omission, misstatement, misleading statement breach of duty or **Employment Practices Wrongful Act** by the **Company** or by an **Insured Person** in his or her capacity as such;
 - (2) any matter asserted against an **Insured Person** solely by reason of his or her status as such;
 - (3) any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by an **Insured Person** in his or her **Outside Capacity**.
 - (4) any **Employment Practices Wrongful Act** by the **Company** or any other actual or alleged error, omission, misstatement, misleading statement or breach of duty by the **Company**.

In witness whereof the **Underwriter** has caused this Policy to be executed by its authorized officers, but this Policy will not be valid unless countersigned on the Declarations page by a duly authorized representative of the **Underwriter**.