



## Employment Practices Liability Coverage Element Declarations

1. **NAMED INSURED:**

2. **POLICY PERIOD:**

Inception:

Expiration:

The **Policy Period** incepts and expires as of 12:01 A.M. at the **Named Insured** Address.

3. **COVERAGE ELEMENT** LIMIT OF LIABILITY:

\$

4. RETENTIONS:

(a) Each **Claim** for an **Employment Practices Violation:**

\$

(b) Each **Claim** for a **Third Party Violation:**

\$

5. CONTINUITY DATE:

SPECIMEN

## Employment Practices Liability Coverage Element

In consideration of the premium charged and in reliance upon the statements made by the **Insureds** in the **Application**, which forms a part of this policy, and subject to all the terms and conditions of this policy, the **Insurer** agrees as follows:

### I. Insuring Agreements

The **Insurer** shall pay **Loss** of an **Insured** arising from a **Claim** first made against such **Insured** during the **Policy Period** or Extended Reporting Period if applicable for any actual or alleged **Wrongful Act** of such **Insured**.

### II. Definitions

In addition to the Definitions in the General Terms and Conditions, the following terms whenever set forth in boldface type in this **Coverage Element**, whether in singular or in plural, shall have the meanings indicated.

A. **Claim** means

1. a written demand for monetary, non-monetary or injunctive relief, (including any request to toll or waive any statute of limitations);
2. a civil, criminal, administrative or regulatory proceeding for monetary, non-monetary or injunctive relief which is commenced by:
  - (i) service of a complaint or similar pleading;
  - (ii) return of an indictment, information or similar document (in the case of a criminal proceeding); or
  - (iii) receipt or filing of a notice of charges, including, but not limited to, an Equal Employment Opportunity Commission ("EEOC") or Office of Federal Contract Compliance Program ("OFCCP") (or similar federal, state or local agency) proceeding or investigation; or
3. an arbitration proceeding pursuant to an employment contract, policy or practice of a **Company** commenced by receipt of a demand for arbitration or similar document.

However, in no event shall the term "**Claim**" include any labor or grievance proceeding which is subject to a collective bargaining agreement.

B. **Defense Costs** means reasonable and necessary fees, costs and expenses consented to by the **Insurer** (including premiums for any appeal bond, attachment bond or similar bond arising out of a covered judgment, but without any obligation to apply for or furnish any such bond), resulting solely from the investigation, adjustment, defense and appeal of a **Claim** against an **Insured**, but excluding compensation of any **Individual Insured**. **Defense Costs** shall not include any fees, costs or expenses incurred prior to the time that a **Claim** is first made against an **Insured**.

C. **Employee** means any past, present or future employee of a **Company**, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including

1. any part-time, seasonal and temporary employee,
2. volunteer, individual who is contracted to perform work for a **Company**, or independent contractor for a **Company** in his or her capacity as such, or
3. an individual who is leased to a **Company**,

but only if such **Company** provides indemnification to such employees, volunteers or individuals in the same manner as is provided to such **Company's** own employees. A **Company** may request that no coverage be provided under this **Coverage Element** for an independent contractor or leased employee named in a specific **Claim**. Such request must be made in writing and within 90 days of the **Claim** being reported to the **Insurer**. If no such request is made, this **Coverage Element** shall apply as if such **Company** determined that such independent contractor or leased employee shall receive coverage.

- D. **Employment Practices Violation** means the following actual or alleged acts whether committed directly or indirectly, intentionally or unintentionally:
1. wrongful, including constructive termination of employment (actual or constructive), dismissal or discharge;
  2. breach of an implied contract of employment;
  3. harassment, sexual harassment or creation of a hostile work environment;
  4. discrimination (including, but not limited to, discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy or disability);
  5. Retaliation;
  6. employment-related misrepresentations to an **Employee** of a **Company** or applicant for employment with a **Company** or an **Outside Entity**;
  7. employment-related libel, slander, humiliation, defamation or invasion of privacy;
  8. wrongful failure to employ or promote;
  9. wrongful deprivation of a career opportunity with a **Company**, wrongful discipline, wrongful demotion or negligent **Employee** evaluation, including the giving of negative or defamatory statements in connection with an **Employee** reference;
  10. failure to grant tenure; or
  11. with respect to 1 through 10 above, negligent hiring, retention, training, supervision, infliction of emotional distress or mental anguish, failure to provide or enforce adequate or consistent organizational policies and procedures, or violation of an individual's civil rights;

but only if the actual or alleged **Employment Practices Violation** is brought by an **Employee** or an **Outside Entity Employee**, or by an applicant for employment with a **Company** or an **Outside Entity**.

- E. **Executive** means:
1. any past, present or future duly elected or appointed director, officer, management committee member of a duly constituted committee or member of the Board of Managers;
  2. any past, present or future person in a duly elected or appointed position in an entity which is organized and operated in a jurisdiction other than the United States of America or any of its territories or possessions that is equivalent to an executive position listed in subparagraph 1. of this Definition; or
  3. any past, present or future General Counsel and Risk Manager (or equivalent position) of the **Named Insured**.
- F. **Individual Insured** means any:
1. **Executive**;
  2. **Employee**; or
  3. **Outside Entity Executive**.
- G. **Insured** means any:
1. **Company**; or

## 2. **Individual Insured.**

### H. **Loss** means

1. the amount that any **Insured** becomes legally obligated to pay in connection with any covered **Claim**, including, but not limited to:

- (i) judgments (including pre-judgment and post-judgment interest on any covered portion thereof) and settlements;
- (ii) damages, including punitive or exemplary damages and the multiple portion of multiplied damages relating to punitive or exemplary damages (including the multiple or liquidated damages awarded under the Age Discrimination in Employment Act and the Equal Pay Act). The enforceability of this subparagraph (ii) shall be governed by such applicable law that most favors coverage for such punitive, exemplary and multiple damages;
- (iii) salary, wages and bonus compensation, including back pay and front pay; and
- (iv) A statutory award of attorneys' fees; and

### 2. **Defense Costs;**

**Loss** shall not include

1. any amount for which the **Insureds** are not financially liable or which are without legal recourse to the **Insureds**;
2. matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed;
3. employment-related benefits, stock options, perquisites, deferred compensation or any other type of compensation other than salary, wages or bonus compensation;
4. the costs and expenses of complying with any order of injunctive relief or other form of non-monetary relief, including any liability or costs incurred by any **Insured** to modify any building or property in order to make said 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;
5. civil or criminal fines or penalties; or
6. taxes or tax penalties or interest thereon (whether imposed by federal, state, local or other governmental authority).

**Defense Costs** shall be provided for items specifically excluded from **Loss** pursuant to 1. through 6. above provided such **Defense Costs** result from a covered **Claim**.

### I. **Outside Entity** means any not-for-profit organization, other than a **Subsidiary**;

### J. **Outside Entity Executive** means:

1. any **Executive** of a **Company** serving in the capacity as director, officer, trustee, trustee emeritus or governor of an **Outside Entity**, but only if such service is at the specific request or direction of a **Company**; or
2. any other person listed as an **Outside Entity Executive** in an endorsement to this Employment Practices Liability **Coverage Element**.

It is understood and agreed that, in the event of a disagreement between a **Company** and an individual as to whether such individual was acting at the specific request or direction of such **Company**, the determination of the **Named Insured** shall control on this issue. The **Named Insured's** determination shall be made by written notice to the **Insurer** within 90 days after the **Claim** first is reported to the **Insurer** pursuant to the terms of this policy. In the event no determination is made within such period, this **Coverage Element** shall apply as if the **Named Insured** determined that such **Executive** was not acting at such **Company's** specific request or direction.

- K. **Retaliation** means an adverse employment act committed or allegedly committed by an **Insured** in response to any of the following activities:
1. the disclosure or threat of disclosure by an **Employee** of a **Company** or an **Outside Entity** to a superior or to any governmental agency of any act by an **Insured** that is alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder;
  2. the actual or attempted exercise by an **Employee** of a **Company** or an **Outside Entity** of any right that such **Employee** has under law, including rights under worker's compensation laws, the Family and Medical Leave Act, the Americans with Disabilities Act or any other law relating to employee rights;
  3. the actual or threatened filing of any claim under the Federal False Claims Act or any other federal, state, local or foreign "whistle-blower" law; or
  4. the actual or threatened labor strikes of an **Employee** of a **Company** or an **Outside Entity**.
- L. **Settlement Opportunity** means an **Insurer** recommended settlement that is within any applicable Limit of Liability and that is acceptable to the claimant.
- M. **Subsidiary** means:
1. any for-profit entity in which the **Company** has or had **Management Control** on or before the inception date of the policy either directly or indirectly through one or more other **Subsidiaries**;
  2. any for-profit entity in which the **Company** acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other **Subsidiaries** and whose total number of employees does not exceed 35% of the total number of **Employees** that fall under the definition of **Insured** under this policy prior to the **Company** acquiring **Management Control** of the **Subsidiary**; or
  3. any for-profit entity in which the **Company** acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other **Subsidiaries** and whose total number of employees exceed 35% of the total number of **Employees** that fall under the definition of **Insured** under this policy prior to the **Company** acquiring **Management Control** of the **Subsidiary** but only for a period of 90 days subsequent to the **Company** acquiring **Management Control** of the **Subsidiary**.
- N. **Third Party Violation** means any actual or alleged harassment or unlawful discrimination, as described in subparagraphs 3 and 4 of the Definition of **Employment Practices Violation**, or the violation of the civil rights of a person relating to such harassment or discrimination, when such acts are committed or alleged to be committed against anyone other than an **Individual Insured** or applicant for employment with a **Company** or an **Outside Entity**, including, but not limited to, customers, vendors and suppliers.
- O. **Wrongful Act** means any actual or alleged **Employment Practices Violation** or **Third Party Violation**.

### III. Exclusions

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

- A. alleging, arising out of, based upon or attributable to:
1. the gaining of any profit or advantage to which any final adjudication establishes the **Insured** was not legally entitled; or

2. the committing of any deliberate criminal or deliberate fraudulent act, or any willful violation of any statute, rule or law, if any final adjudication establishes that such deliberate criminal or deliberate fraudulent act or willful violation of statute, rule or law was committed. For purposes of determining the applicability of this exclusion (i) the facts pertaining to and knowledge possessed by any **Insured** shall not be imputed to any other **Individual Insured**; and (ii) only facts pertaining to and knowledge possessed by any past, present or future chairman, chief executive officer or chief financial officer (or equivalent positions) of a **Company** or the signatory of the **Application** shall be imputed to such **Company**;
- B. alleging, arising out of, based upon or attributable to the circumstances alleged or the same **Wrongful Act** or **Related Wrongful Act** alleged or contained in any claim or demand which has been reported, or to any circumstances, **Wrongful Act** or **Related Wrongful Act** of which notice has been given, under any prior insurer's policy or policy of which this **Coverage Element** is a renewal or replacement or which it may succeed in time;
  - C. alleging, arising out of, based upon or attributable to any demand, suit, EEOC (or similar state, local or foreign agency) proceeding or investigation or other proceeding pending against any **Insured**, or order, decree or judgment entered for or against any **Insured**, on or prior to the Continuity Date set forth in Item 5 of the Employment Practices Liability **Coverage Element** Declarations, or the alleging of any **Wrongful Act** which is the same or a **Related Wrongful Act** to that alleged in such pending or prior demand, suit, EEOC (or similar state, local or foreign agency) proceeding or investigation or other proceeding in the underlying demand, order, decree or judgment;
  - D. with respect to an **Outside Entity Executive**, for any **Wrongful Act** occurring prior to the Continuity Date set forth in Item 5 of the Employment Practices Liability **Coverage Element** Declarations if any **Insured**, as of such Continuity Date, knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim** under this **Coverage Element**;
  - E. alleging, arising out of, based upon or attributable to any actual or alleged act, error or omission of an **Individual Insured** serving in any capacity other than as an **Executive** or **Employee** of a **Company** or as an **Outside Entity Executive** of an **Outside Entity**;
  - F. for bodily injury, sickness, disease or death of any person, or damage to, loss of use or destruction of any tangible property. This Exclusion shall not apply to a **Claim** for emotional distress or mental anguish arising from a **Wrongful Act**;
  - G. for violations of any of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act (except the Equal Pay Act), the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, any rules or regulations of the foregoing promulgated thereunder, and amendments thereto or any similar federal, state, local or foreign statutory law or common law. This Exclusion shall not apply to the portion of a **Claim** attributable to **Retaliation**;
  - H. alleging, arising out of, based upon or attributable to:
    1. the refusal, failure or inability of any **Insured** to pay wages or overtime pay (or amounts representing such wages or overtime pay) for services rendered (other than tort-based back pay or front pay damages for non-conversion related torts);
    2. improper payroll deductions taken by any **Insured** from any **Employee** or purported **Employee**; or

3. the failure to provide or enforce legally required meal or rest break periods. This Exclusion shall not apply to the portion of a **Claim** attributable to **Retaliation**;
- I. alleging, arising out of, based upon or attributable to any obligation pursuant to any worker's compensation, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law. This Exclusion shall not apply to the portion of a **Claim** attributable to **Retaliation**.
- J. alleging, arising out of, based upon or attributable to any actual or alleged contractual liability of any **Insured** under any express contract or agreement. This Exclusion shall not apply to:
  1. liability which would have attached in the absence of such express contract or agreement; or
  2. **Defense Costs**.

#### IV. Limit of Liability

Subject to the Policy Aggregate Limit of Liability set forth in Item 3 of the General Declarations, the Limit of Liability set forth in Item 3 of the Employment Practices Liability **Coverage Element** Declarations shall be the maximum aggregate limit of the **Insurer's** liability for all **Loss** under this **Coverage Element**. Upon exhaustion of the Limit of Liability set forth in Item 3 of the Employment Practices Liability **Coverage Element** Declarations or the Policy Aggregate Limit of Liability set forth in Item 3 of the General Declarations, the **Insurer's** obligations under this **Coverage Element** shall be deemed completely fulfilled and extinguished and the **Insurer's** duty to defend and pay **Defense Costs** shall end.

#### V. Retentions

The following provision shall apply in addition to the provisions of Section V. Retentions of the General Terms and Conditions:

- A. The Retention set forth in Item 4(a) of the Employment Practices Liability **Coverage Element** Declarations shall apply to each **Claim** for an **Employment Practices Violation**. The Retention set forth in Item 4(b) of the Employment Practices Liability **Coverage Element** Declarations shall apply to each **Claim** for a **Third Party Violation**.
- B. The **Insurer** shall only be liable for the amount of **Loss** arising from a **Claim** which is in excess of the applicable Retention set forth in Item 4. of the **Employment Practices Liability Coverage Element** Declarations. Retention shall be borne by the **Insureds** and shall remain uninsured.
- C. A single Retention shall apply to **Loss** arising from all **Claims** alleging the same **Wrongful Act** or **Related Wrongful Acts**.
- D. In the event a **Company** is unable to pay the applicable Retention due to **Financial Insolvency**, the **Insurer** shall advance payment for **Loss** within the applicable Retention. The **Insurer** shall be entitled to recover the amount of **Loss** advanced within the Retention from such **Company** pursuant to Section X. Subrogation of the General Terms and Conditions.

## VI. Defense Costs, Defense Counsel, Settlements & Judgments

### A. Defense

Except as hereinafter stated, the **Insurer** shall have both the right and duty to defend any **Claim** made against an **Insured** alleging a **Wrongful Act**, even if such **Claim** is groundless, false or fraudulent. The **Insurer** shall have the right and duty to defend any **Claim** until the Limit of Liability set forth in Item 3 of the Employment Practices Liability **Coverage Element** Declarations or the Policy Aggregate Limit of Liability set forth in Item 3 of the General Declarations has been exhausted by payment of **Loss**. With the express prior written consent of the **Insurer**, an **Insured** may select a defense counsel different from that selected by other **Insured** defendants if such selection is required due to an actual conflict of interest.

### B. General Provisions

1. The **Named Insured** shall have the right to associate fully and effectively, at its own expense, with the **Insurer** in the defense of any **Claim** including but not limited to, choice of defense counsel and negotiating a settlement.

2. Each and every **Insured** agrees to provide such information as the **Insurer** may reasonably require and to give the **Insurer** full cooperation and take such actions which, in such **Insurer's** judgment, are deemed necessary and practicable to prevent or limit **Loss** arising from any **Wrongful Act**.

### C. Settlement

The **Insured** shall not admit or assume any liability, enter into any settlement agreement or stipulate to any judgment without the prior written consent of the **Insurer**. If the **Insured** admits or assumes any liability in connection with any **Claim** without the consent of the **Insurer**, then the **Insurer** shall not have any obligation to pay **Loss** with respect to such **Claim**. Only those settlements, stipulated judgments and **Defense Costs** which have been consented to by the **Insurer** shall be recoverable as **Loss** under the terms of this **Coverage Element**. The **Insurer** shall not unreasonably withhold any consent required under this **Coverage Element**, provided that in all events the **Insurer** may withhold consent to any settlement, stipulated judgment or **Defense Costs**, or any portion thereof, to the extent such **Claim** (or any portion thereof) is not covered under the terms of this **Coverage Element**. In addition, the **Insured** shall not take any action which prejudices the **Insurer's** rights under this **Coverage Element**.

In the event the **Insureds** do not consent to the first **Settlement Opportunity** within 30 days of the date the **Insureds** first are made aware of such **Settlement Opportunity** (or in the case of a **Settlement Opportunity** which arises from a settlement offer by the claimant, then within the time permitted by the claimant to accept such settlement offer, but in all events no later than 30 days after the settlement offer was made), then, subject to all applicable limits of liability, the **Insurer's** liability for all **Loss** on account of such **Claim** shall not exceed: (1) the amount for which the **Insurer** could have settled such **Claim** plus **Defense Costs** incurred as of the date such settlement was proposed in writing by the **Insurer** ("**Settlement Opportunity Amount**"), plus (2) 80% of covered **Loss** in excess of such **Settlement Opportunity Amount**, it being a condition of this insurance that the remaining 20% of such covered **Loss** in excess of such **Settlement Opportunity Amount** shall be carried by the **Insureds** at their own risk and be uninsured. Notwithstanding the foregoing, this paragraph shall not apply until such **Settlement Opportunity Amount** exceeds the applicable Retention set forth in Item 4 of the Employment Practices Liability **Coverage Element** Declarations.



## VII. Other insurance

The insurance that is provided by this **Coverage Element** shall be primary unless expressly written to be excess over other applicable insurance, except that, in the event of a **Claim** against an **Insured** arising out of his or her service as an **Outside Entity Executive**, or a **Claim** against an **Insured** for the **Insured's** liability with respect to a leased individual or independent contractor as described in the Definition of **Employee**, coverage as is afforded by this policy specifically shall be excess of any: (1) indemnification provided by such **Outside Entity** or leasing company; and (2) any other insurance provided to such **Outside Entity**, leasing company or independent contractor.

## VIII. Allocation

If both **Loss** covered under this **Coverage Element** and loss not covered under this **Coverage Element** are incurred by the **Insureds** on account of any **Claim** because such **Claim** against the **Insureds** includes both covered and non-covered matters, then coverage under this **Coverage Element** with respect to such **Claim** shall apply as follows:

1. **Defense Costs**: 100% of **Defense Costs** incurred by the **Insured** or the **Insurer** on account of such **Claim** will be considered covered **Loss**; and
2. **Loss** other than **Defense Costs**: All remaining amounts incurred by the **Insured** on account of such **Claim** shall be allocated by the **Insurer** pro rata between covered **Loss** and non-covered loss based on the legal liability and financial exposures of the **Insureds** to covered and non-covered matters and, in the event of a settlement in such **Claim**, also based on the number of covered and non-covered counts, causes of action or allegations against the **Insureds**.

If the **Insureds** and the **Insurer** cannot agree on an allocation of covered **Loss** and non-covered loss:

- A. no presumption as to allocation shall exist in any arbitration, suit or other proceeding; and
- B. the **Insurer**, if requested by the **Insureds**, shall submit the dispute to binding arbitration. The rules of the American Arbitration Association shall apply except with respect to the selection of the arbitration panel, which shall consist of one arbitrator selected by the **Insureds**, one arbitrator selected by the **Insurer**, and a third independent arbitrator selected by the first two arbitrators.