

OLD REPUBLIC UNION INSURANCE COMPANY

EMPLOYMENT PRACTICES AND THIRD PARTY LIABILITY COVERAGE SECTION

Important Notice

This is a claims made policy that applies only to **Claims** first made during the **Policy Period** or the **Extended Reporting Period**, if exercised. **Defense Costs** shall be applied against the Retention, if applicable. **Defense Costs** paid by the Insurer shall reduce and may completely exhaust the Limit of Liability of the **Policy**.

Please read the entire Policy carefully.

I. INSURING CLAUSES

A. Employment Practices Liability

The Insurer shall pay on behalf of the **Insureds Loss** which the **Insureds** become legally obligated to pay by reason of any **Employment Claim** first made against the **Insureds** during the **Policy Period** or any applicable **Extended Reporting Period** for any **Employment Practices Wrongful Acts**.

B. Third Party Liability

The Insurer shall pay on behalf of the **Insureds Loss** which the **Insureds** become legally obligated to pay by reason of any **Third Party Claim** first made against the **Insureds** during the **Policy Period** or any applicable **Extended Reporting Period** for any **Third Party Wrongful Act**.

II. DEFINITIONS

When used in this Coverage Section either in the singular or the plural:

- A. **Benefits** means perquisites, fringe benefits, deferred compensation, payments for time off, or leave of absence, including but not limited to any payment (including insurance premiums) in connection with an employee benefit plan. **Benefits** includes any other payment to or for the benefit of an **Employee** arising out of the employment relationship but shall not include salary, wages, commissions, bonuses, non-deferred cash incentive compensation or **Stock Benefits**.
- B. **Claim** means:
 - 1. solely with respect to Insuring Clause A., any **Employment Claim**; and
 - 2. solely with respect to Insuring Clause B., any **Third Party Claim**.
- C. **Entity** means, collectively, the **Named Insured**, any **Investment Advisor** and the **Subsidiaries** thereof, including any such organization as a debtor in possession under United States bankruptcy law or an equivalent status under the law of any other country.
- D. **Employment Discrimination** means any actual or alleged violation of employment discrimination laws or public policy, including but not limited to any actual, alleged or constructive employment termination, dismissal, or discharge, employment demotion, denial of tenure, modification of any term or condition of employment, any failure or refusal to hire or promote, or any limitation or segregation of any **Employee** or applicant for employment in any way that would deprive any person of employment opportunities or otherwise affect his or her status as an employee based on such person's race, color, religion, creed, age, sex, disability, marital status, genetic information, national origin, pregnancy, HIV status, sexual orientation or preference, veteran status or any other status that is protected pursuant to any federal, state, local or foreign statutory law or common law.

- E. **Employment Practices Wrongful Act** means any of the following actually or allegedly committed by the **Entity** or by an **Insured Person** in their capacity as such:
1. **Employment Discrimination;**
 2. **Harassment;**
 3. **Retaliation;**
 4. **Workplace Tort;**
 5. **Wrongful Employment Decision;** or
 6. **Wrongful Termination,**
- F. **Harassment** means any actual or alleged;
1. harassment, including unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature that is made as a condition of employment with, used as a basis for employment decisions by, or interferes with performance or creates an intimidating, hostile or offensive working environment within, the **Entity**; or
 2. workplace harassment, including work-related harassment or bullying of a non-sexual nature that interferes with performance or creates an intimidating, hostile or offensive working environment within the **Entity**.
- G. **Independent Contractor** means any natural person working in the capacity as an independent contractor for an **Entity** pursuant to an express contract or agreement between such independent contractor and the **Entity**, provided that such express contract or agreement governs the nature of the **Entity's** engagement of such independent contractor.
- H. **Insured Persons** means:
1. any **Executive Officer**;
 2. any one or more **Employees** who are not described in subparagraph H. 1. above and who is not an **Independent Contractor**; and
 3. **Independent Contractor**, but only if the **Entity** has agreed, prior to the date of the alleged **Wrongful Act** by such **Independent Contractor**, to provide indemnification to such individual to the same extent as that provided to the **Entity's** employees.
- I. **Insureds** means the **Entity** and the **Insured Persons**.
- J. **Loss** means the amount which the **Insureds** become legally obligated to pay on account of **Claims** for which coverage applies, including, but not limited to, (1) damages (including punitive, exemplary or multiple damages if insurable as provided below), (2) judgments, (3) any award of pre-judgment and post-judgment interest with respect to covered damages, (4) settlements, (5) **Defense Costs**, (6) claimant's attorney's fees and costs for which an **Insured** against whom the **Claim** is made is legally obligated to pay by reason of a court order or settlement agreement to which the Insurer consents pursuant to Section VI of the General Terms and Conditions, (7) civil fines or penalties assessed against an **Insured Person** for an unintentional or non-willful violation of any federal, state, local or foreign law, (8) back pay or front pay, and (9) liquidated damages awarded in accordance with the Age Discrimination in Employment Act, Family and Medical Leave Act, or Equal Pay Act.

Loss (other than **Defense Costs**) does not include (1) any amount for which the **Insureds** are absolved from payment, (2) taxes, other than taxes imposed on an **Entity** for which the **Insured Persons** are legally liable solely by reason of the **Entity's** insolvency, or taxes imposed on an **Insured Person** solely by reason of the Insurer's payment of covered **Loss** incurred by such **Insured Person**, (3) fines or penalties imposed by law, other than civil fines or penalties expressly referenced above, (4) any costs

incurred to comply with any injunctive or other non-monetary relief or any agreement to provide such relief, including without limitation any costs to modify any building or property, (5) salary, wages, commissions, bonuses, non-deferred cash incentive compensation, severance compensation of any kind, **Stock Benefits** or other compensation if actually or allegedly earned by the claimant in the course of employment, other than back pay, front pay or any additional compensation allegedly due as a result of an **Employment Practices Wrongful Act**, (6) future salary, wages, commissions or **Benefits** of a claimant who has been hired, promoted or reinstated to employment, or shall be hired, promoted or reinstatement to employment, pursuant to a settlement, order or other resolution of any **Claim**, (7) **Benefits** due or that are to become due, or the equivalent value of such **Benefits**, except with respect to any **Employment Claim for Wrongful Termination**, or (8) matters uninsurable under the law pursuant to which this **Policy** is construed.

The insurability of punitive, exemplary, multiple or liquidated damages, fines, penalties or taxes otherwise included within this definition shall be determined under the internal laws of any applicable jurisdiction most favorable to the **Insureds**, including without limitation the jurisdiction in which the **Named Insured**, the **Insured Persons**, the Insurer, this **Policy** or such **Claim** is located.

K. **Stock Benefits** means:

1. any offering, plan or agreement between an **Entity** and any **Employee** which grants stock, stock options, warrants, or shares of the **Entity** to such **Employee**, including grants of stock options, restricted stock, stock warrants, performance stock shares, membership shares, or any other incentive or compensation granted in the form of securities of the **Entity**; or
2. any instrument or payment whereby the value or amount of such instrument or payment is derived from the value of the **Entity's** securities, including a phantom stock plan or arrangement, or stock appreciation rights,

provided that **Stock Benefits** shall not include any amounts based upon, arising out of, or attributable to employee stock purchase plans or employee stock ownership plans.

L. **Third Party** means any natural person who is at the time of a **Third Party Wrongful Act** (i) a customer, vendor, service provider or other business invitee of the **Entity**, or (ii) an independent contractor of the **Entity** who is not an **Insured Person** as defined in Section II. J. 3. above. **Third Party** shall not include any **Insured Person** or any applicant for employment with the **Entity**.

M. **Third Party Claim** means any of the following which are brought and maintained against an **Insured** by or on behalf of a **Third Party**, including, if applicable, any appeal therefrom:

1. a written demand against an **Insured** for monetary damages or other non-monetary or injunctive relief, commenced by the **Insured's** receipt of such demand;
2. a civil proceeding against an **Insured** commenced by the service of a complaint or similar pleading upon the **Insured**;
3. an arbitration, mediation or other alternative dispute resolution proceeding against an **Insured** commenced by the **Insured's** receipt of a demand for an arbitration or mediation or similar document;
4. a formal administrative or formal regulatory proceeding or investigative proceeding against an **Insured** commenced by the filing of a notice of charges, formal investigative order or similar document which names the **Insured** as a target or subject of such proceeding; or
5. a written demand that the **Insured** toll or waive a statute of limitations relating to a potential **Third Party Claim** otherwise described in this definition, commenced by the **Insured's** receipt of such demand.

N. **Third Party Wrongful Act** means:

1. any sexual harassment directed against a **Third Party**, including unwelcome sexual advances, requests for sexual favors or other conduct of a sexual nature; or

2. any discrimination against a **Third Party** based upon such **Third Party's** race, color, religion, creed, age, sex, disability, marital status, genetic information, national origin, pregnancy, HIV status, sexual orientation or preference, veteran status or any other status that is protected pursuant to federal, state, local or foreign statutory law or common law;

committed, attempted, or allegedly committed or attempted by the **Entity** or by any **Insured Person** while acting in his or her capacity as such.

O. **Workplace Tort** means any actual or alleged employment-related:

1. misrepresentation or defamation (including libel and slander);
2. invasion of privacy, including the unauthorized use or disclosure of an **Employee's**:
 - a. medical information in violation of the Health Insurance Portability and Accountability Act ("HIPAA");
 - b. credit information or related information in violation of the Fair Credit Reporting Act;
 - c. other information obtained through an employment-related background check; or
3. negligent evaluation, wrongful discipline or wrongful deprivation of a career opportunity.

Workplace Tort shall also mean any actual or alleged employment-related:

- (i) negligent retention, negligent supervision, negligent hiring or negligent training;
- (ii) false arrest, false detention, false imprisonment;
- (iii) wrongful infliction of emotional distress, mental anguish or humiliation; or
- (iv) failure to provide or enforce consistent employment-related corporate policies and procedures;

solely when alleged as part of an **Employment Claim** for any **Employment Discrimination, Harassment, Retaliation, Wrongful Employment Decision, or Wrongful Termination**, or any act set forth in subparagraphs 1., 2. and 3. of this definition.

P. **Wrongful Act** means:

1. solely with respect to Insuring Clause A., an **Employment Practices Wrongful Act**; and
2. solely with respect to Insuring Clause B., a **Third Party Wrongful Act**.

Q. **Wrongful Employment Decision** means any actual or alleged wrongful demotion, denial of tenure, or failure or refusal to hire or promote, failure to employ, or wrongful or negligent employee reference.

R. **Wrongful Termination** means any actual or alleged wrongful dismissal, termination or discharge of employment, including constructive dismissal, termination or discharge, including breach of an implied contract.

III. EXCLUSIONS

The Insurer shall not be liable for **Loss** on account of that portion of any **Claim**:

1. Select Employment Statutes

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

- a. any law governing workers' compensation, unemployment insurance, unemployment compensation, social security, retirement or disability benefits, or benefits of any kind;
- b. the Fair Labor Standards Act (except the Equal Pay Act) or any other law concerning wage and hour practices, including without limitation any **Claim** for off-the-clock work, failure to provide rest or meal periods, failure to reimburse expenses, improper classification of employees as exempt or non-exempt, failure to properly maintain accurate time records, or failure to properly determine or timely pay wages, overtime, minimum wage or other compensation;
- c. the National Labor Relations Act;
- d. the Worker Adjustment and Retraining Notification Act;
- e. the Occupational Safety and Health Act;
- f. **ERISA**, except Section 510 thereof;
- g. the Consolidated Omnibus Budget Reconciliation Act; or
- h. any federal, state, local or foreign statute, rule, regulation or common law similar or related to, or promulgated pursuant to, any law otherwise described in this exclusion;

provided that this exclusion shall not apply to **Loss** arising out of any **Employment Claim** for **Retaliation**; or

2. Contract

for any actual or alleged breach of or liability under any written contract or agreement, other than the **Entity's** Employment Manual or similar document; provided that this exclusion shall not apply to the extent the **Insured** would have been liable in the absence of such contract or agreement.