



AXIS Staffing Insurance SolutionsSM

A LIABILITY POLICY FOR TEMPORARY HELP AND PERMANENT PLACEMENT ORGANIZATIONS

EMPLOYMENT PRACTICES LIABILITY INSURANCE COVERAGE PART CLAIMS MADE COVERAGE

THIS COVERAGE PART IS A CLAIMS MADE COVERAGE PART FOR THE PURPOSES OF THIS POLICY. THE DEFINITION OF CLAIMS MADE COVERAGE PART AS SET FORTH IN THE GENERAL TERMS AND CONDITIONS SHALL INCLUDE THIS COVERAGE PART.

I. INSURING AGREEMENT

The Insurer shall pay in connection with a **Wrongful Act** which takes place before or during the **Policy Period** all **Loss** on behalf of the **Insureds** arising from a **Claim** for a **Wrongful Employment Act** made against any **Insured** by or on behalf of any **Employee** provided that the **Claim** is first made against the **Insureds** during the **Policy Period** or the Extended Reporting Period, if applicable, and reported in writing to the Insurer as soon as practicable after any **Insured** first becomes aware of such **Claim**, but in no event later than sixty (60) days after the expiration of the **Policy Period** or the Extended Reporting Period, if applicable; provided that the **Wrongful Employment Act** giving rise to the **Claim** occurred on or after the **Retroactive Date** shown on the Declarations Page and before the termination of the **Policy Period**.

II. DEFINITIONS

The following definitions are applicable to the coverage afforded under this **Coverage Part**:

- A. "**Benefits**" means perquisites, fringe benefits, deferred compensation or payments (including insurance premiums) in connection with an employee benefit plan and any other payment to or for the benefit of an employee arising out of the employment relationship. **Benefits** shall not include salary, wages, commissions or non-deferred cash incentive compensation.
- B. "**Breach of Contract**" means an unintentional breach of any oral, written or implied employment contract.
- C. "**Insured Individual**" means any one or more natural persons who are past, present or future:
 - 1. directors, officers or trustees of the **Named Insured**;
 - 2. individuals compensated by the **Named Insured** through wages, salary and/or commissions and whose labor or service is directed by the **Named Insured**, whether such labor or service is on a part-time, temporary, seasonal, or full-time basis; or
 - 3. individuals contracted to perform work for the **Named Insured** or who are independent contractors for the **Named Insured**, but only if prior to any **Claim** against any such individual the **Named Insured** has agreed in writing to indemnify such individual for matters within the scope of coverage of this Policy.
- D. "**Insured**" means individually and collectively:
 - 1. a **Named Insured**; and
 - 2. the **Insured Individuals**.
- E. "**Retroactive Date**" means the date, if any, stated in Item 5. on the Declarations Page of this **Coverage Part**.

- F. **“Wrongful Act”** means a **Wrongful Employment Act**.
- G. **“Wrongful Employment Act”** means any **Breach of Contract, Discrimination, Harassment, Retaliation, or Wrongful Job Action**, actually or allegedly committed or attempted by:
1. the **Named Insured**;
 2. any **Insured Individuals** in their capacities as such; or
 3. by any other persons for whom the **Insureds** are legally responsible.
- H. **“Wrongful Job Action”** means wrongful:
1. dismissal, discharge or termination (either actual or constructive) of employment;
 2. wrongful failure to employ or promote;
 3. wrongful reference, discipline or deprivation of a career opportunity; or
 4. wrongful demotion or adverse change in the terms, conditions or status of employment;
- because of race, color, creed, national origin, sex, sexual orientation or preference, religion, age, gender, disability or handicap, pregnancy, marital status, or any other protected class established pursuant to federal, state or local statute or ordinance.

III. EXCLUSIONS

- A. The **Insurer** shall not be liable for **Loss**, including **Defense Costs**, arising from any **Claim** made against any **Insured**:
1. based upon or arising out an **Insured’s** capacity as an officer, director, partner, shareholder or **Employee** of any entity other than the **Named Insured**;
 2. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving any action that relates to a collective bargaining agreement;
 3. based upon, arising from, or in consequence of the liability assumed by any **Insured** under any written or oral contract or agreement; provided that this Exclusion A. 3 shall not apply to: (i) the extent that an **Insured** would have been liable in the absence of such a contract or agreement; or (ii) **Claims for Breach of Contract**;
 4. for an actual or alleged violation of the responsibilities, obligations or duties imposed by the following laws and any amendments thereto:
 - (a) any law governing workers' compensation, unemployment insurance, social security, disability benefits or similar law;
 - (b) the Employee Retirement Income Security Act of 1974 (except Section 510 thereof) or any law that governs any employee benefit arrangement, program, policy, plan or scheme of any type (whether or not legally required or whether provided during or subsequent to employment with the **Named Insured**);
 - (c) the Fair Labor Standards Act or any law that governs wage, hour or payroll policies and practices, except the Equal Pay Act;

- (d) the National Labor Relations Act or any law that pertains to the rights of employees with respect to unions, unionizing, or collective activities in the workplace or any obligations of employers with respect to such employee activities;
- (e) the Worker Adjustment and Retraining Notification Act, or any law that governs any obligation of an employer to notify, discuss, or bargain with its employees or others in advance of any plant or facility closing, or mass layoff or any similar obligation;
- (f) the Consolidated Omnibus Budget Reconciliation Act of 1985;
- (g) the Federal False Claims Act or any similar federal, state, or local statutory law or common law anywhere in the world; or
- (h) the Occupational Safety and Health Act or any law that governs workplace safety and health;

including any other federal, state, local, or foreign statute or law similar to any statute or law described in (a) through (h) of this exclusion, or rules or regulations promulgated under any of such statutes or laws; provided however this Exclusion A. 4. shall not apply to any **Claim** for **Retaliation**;

- 5. for any actual or alleged breach of any express contract between the **Named Insured** and an independent contractor of the **Named Insured**;
- 6. for any violation of a court order where such order was a remedy for a **Wrongful Act**;
- 7. based upon or arising from liability of others assumed by an **Insured** under any written or oral contract or agreement or any express obligation to make payments in the event of termination of employment;
- 8. based upon or arising out of lockout, strike, picket line, related worker replacement(s) or other similar actions resulting from labor disputes or labor negotiations;
- 9. relating to any **Wrongful Employment Act** which occurs when or after the **Insured** files for or is placed in bankruptcy, receivership, liquidation or reorganization;
- 10. based upon or arising out of express warranties, guarantees or hold harmless agreements unless such liability would have attached to the **Insured** by law, even in the absence of such express warranties, guarantees or hold harmless agreements; or
- 11. based upon or arising out of the performance of services as a **Professional Employer Organization**.

B. Exclusions Applicable Solely To Loss other than Defense Costs

With respect to **Claims** not excluded by the General Terms and Conditions, Section IV. Exclusions A. of this **Coverage Part** or another exclusion attached to or made part of this Policy, the **Insurer** shall only pay **Defense Costs**, and not other components of **Loss**, on account of any **Claim** made against any **Insured**, for:

- 1. amounts which constitute **Benefits** due or to become due or the equivalent value of such **Benefits**; provided that this Exclusion B. 1. shall not apply to any **Claim** for wrongful termination of employment;
- 2. amounts which constitute costs associated with providing any accommodation for persons with disabilities or any other status which is protected under any applicable federal, state, or local statutory law or common law anywhere in the world, including but not limited to the Americans With Disabilities Act, the Civil Rights Act of 1964, or amendments to or rules or regulations promulgated under any such law;

3. the recovery of amounts owing under or assumed by any **Insured** pursuant to any express written employment contract or agreement with any **Employee**; provided, however, this Exclusion shall not apply to the extent the **Insured** would be liable for such amounts in the absence of such contract or agreement; or
 4. any request order (including the cost of compliance with such order), or agreement for non-monetary relief including injunctive relief, declaratory relief, restitution, or any other equitable remedy.
- C. The exclusion set forth in Section II. 2. of the General Terms and Conditions of this Policy shall not apply with respect to any actual or alleged mental anguish or emotional distress in a **Claim** for a **Wrongful Employment Act**.

IV. MODIFICATIONS TO THE GENERAL TERMS AND CONDITIONS SECTION

For the purposes of this **Coverage Part**, the term **Loss** as defined in the General Terms and Conditions of this Policy shall not include:

- A. the future salary, wages, commissions, or **Benefits** of a claimant who has been or shall be hired, promoted, or reinstated to employment pursuant to a settlement of, order in, or other resolution of any **Claim**;
- B. any payment, incentive, or other compensation that is granted in the form of securities of the **Named Insured** or is based on the value of securities of the **Named Insured**;
- C. any salary, wages, commissions, **Benefits** or other monetary payments which constitute severance payments or payments pursuant to a notice period; or
- D. any amount incurred by an **Insured** in the defense or investigation of any action, proceeding, or demand that is not then a **Claim** even if (i) such amount also benefits the defense of a covered **Claim**, or (ii) such action, proceeding or demand subsequently gives rise to a **Claim**.