

Mt. Hawley Insurance Company

**Employment Practices Liability
Coverage Section**

State of Vermont

In consideration of the payment of the premium, and in reliance upon the statements made to the Insurer in the Application forming a part hereof and its attachments and the material incorporated therein, Mt. Hawley Insurance Company, herein called the "Insurer," and the Insureds agree as follows:

INSURING CLAUSES

1. The Insurer will pay on behalf of the **Insureds, Loss** which the **Insureds** are legally obligated to pay as a result of **Claims** first made during the Policy Period, or during the Discovery Period (if purchased), against an **Insured** by or on behalf of a past, present or prospective **Employee** or a **Wrongful Employment Act**.

DEFINITIONS

2. When used in this coverage section:

"**Claim**" means:

- i) a written demand for monetary relief, or
- ii) a civil proceeding commenced by the service of a complaint or similar pleading, or
- iii) a criminal proceeding commenced by the return of an indictment, or
- iv) an administrative, regulatory or EEOC (or similar state or local agency) proceeding commenced by the filing of a notice of charges or formal investigative order,

against any **Insured**, including any appeal thereof.

Claim shall not include any labor or grievance proceeding pursuant to a collective bargaining agreement.

"**Class Action**" means a civil proceeding against any **Insured** by or on behalf of a putative or certified class of past, present or prospective **Employees**, pursuant to Rule 23, Federal Rules of Civil Procedure, or a similar state rule of civil procedure.

"**Defense Expenses**" means reasonable and necessary fees and expenses (including without limitation attorneys' fees and experts' fees) incurred in the defense or appeal of a **Claim** after notice of such **Claim** is given to the Insurer pursuant to subsection 5. of this coverage section. **Defense Expenses** shall not include the **Entity's** overhead expenses or any salaries, wages, fees or benefits of its directors, officers or **Employees**.

"**Discrimination**" means the failure to hire an applicant, the failure to promote, the demotion of, the segregation or classification of, or the employment related defamation of any **Employee** because of race, color, creed, religion, age, national origin, sex, sexual orientation or preference, gender, disability, handicap, pregnancy, obesity, marital status, or other protected class or characteristic established under any applicable federal, state or local statute or ordinance.

"**Employee**," either in the singular or plural, means any person who receives wages or a salary from the **Entity** for work that is directed and controlled by the **Entity**, including part-time, seasonal and temporary workers. For purposes of this definition, "temporary worker(s)" shall mean a person who is furnished to the **Entity** to substitute for a permanent **Employee** on leave, or to meet a seasonal or short term work load condition. Leased Workers or Independent Contractors are neither **Employees** nor **Insureds** under this coverage section UNLESS:

- i) coverage for Leased Workers or Independent Contractors is specifically purchased pursuant to Item 7. of the Declarations for this coverage section,
- ii) the Leased Workers or Independent Contractors are specifically scheduled by written endorsement attached hereto,
- iii) the Leased Worker or Independent Contractor remains under the supervision of the **Entity**, and
- iv) the **Entity** provides indemnification to such Leased Worker or Independent Contractor in the same manner as is provided to the **Entity's Employees**.

For purposes of this definition, "Leased Workers" shall mean any worker leased by a labor leasing firm under an agreement between the **Entity** and the labor leasing firm to perform duties related to the conduct of the **Entity's** business, and "Independent Contractor" shall mean any individual who is contracted to perform work for the **Entity**, and who is not considered an **Employee** of the **Entity** under applicable law.

"**Entity**" means the Parent Company and all **Subsidiaries**.

"**Financial Impairment**" means the status of the **Entity** as a result of the appointment of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the **Entity**, or the **Entity** becoming a debtor in possession.

"**Harassment**" means:

- i) unwelcome sexual advances, requests for sexual favors, or other verbal, visual or physical conduct of a sexual nature that is made either explicitly or implicitly a term or condition of employment with the **Entity**, is used as a basis for employment decisions with the **Entity**, or creates a work environment that interferes with an **Employee's** performance or that is otherwise intimidating, hostile, or offensive; or
- ii) conduct of a non-sexual nature which creates a work environment that interferes with an **Employee's** performance or that is otherwise intimidating, hostile, or offensive.

"**Insured**," either in the singular or plural, means the **Entity** and all its past, present and future directors, officers and **Employees**. In the event of the death, incapacity or bankruptcy of any natural person **Insured**, any **Claim** against the estate, heirs, legal representatives or assigns of such natural person **Insured** for a **Wrongful Employment Act** of such natural person **Insured** will be deemed to be a **Claim** against such natural person **Insured**.

"**Loss**" means monetary damages, judgments, settlements and **Defense Expenses** which the **Insureds** are legally obligated to pay as a result of a covered **Claim**, including but not limited to punitive, exemplary and noncontractual liquidated damages where insurable under applicable law, pre- and post-judgment interest, back pay, front pay, damages for mental anguish or emotional distress, compensatory damages, and the multiple portion of any multiplied damage award.

The law of the jurisdiction most favorable to the insurability of those punitive or exemplary damages shall control whether such damages are insurable, provided that such jurisdiction is where:

- i) those damages were awarded or imposed;
- ii) any **Wrongful Employment Act** occurred for which such damages were awarded or imposed;
- iii) the **Entity** is incorporated or has its principal place of business; or
- iv) the Insurer is incorporated or has its principal place of business.

Loss shall not include: (1) taxes or civil or criminal fines or penalties imposed by law; (2) severance pay or damages determined to be owing under an express contract of employment or an express obligation to make such payments in the event of the termination of employment, including but not limited to payments for stock option or stock appreciation rights; (3) the payment of any insurance plan benefits; (4) the cost to provide any reasonable accommodation for any disabled person pursuant to the Americans with Disabilities Act or any similar federal, state or local law; (5) the cost to comply with any injunctive or other nonmonetary relief or any agreement to provide any such relief; or (6) other matters which may be deemed uninsurable pursuant to the law under which this coverage section shall be interpreted.

"Related Claims" means all **Claims** for **Wrongful Employment Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.

"Retaliation" means unlawful or abusive treatment against an **Employee** which results from an **Employee's** exercise or attempted exercise of his or her rights under law.

"Subsidiary" means any corporation while the **Entity** owns, directly or through one or more **Subsidiaries**, more than fifty percent (50%) of the outstanding securities representing the right to vote for the election of such corporation's directors.

Subject to subsection 8. of this coverage section, coverage afforded under this coverage section with respect to **Claims** made against a **Subsidiary** or any **Insured** thereof shall only apply for **Wrongful Employment Acts** occurring after the effective time such **Subsidiary** became a **Subsidiary** and prior to the time such **Subsidiary** ceased to be a **Subsidiary**.

"Wrongful Employment Act" means actual or alleged:

- i) **Wrongful Termination** of an **Employee** by an **Insured**; or
- ii) **Discrimination** against an **Employee** or an applicant who has sought and been refused employment with the **Entity** by an **Insured**; or
- iii) **Harassment** against an **Employee** or an applicant who has sought and been refused employment with the **Entity** by an **Insured**; or
- iv) **Retaliation** against an **Employee** by an **Insured**; or
- v) any other violation of any federal, state or local laws concerning employment, including without limitation any failure to adopt adequate workplace or employment policies and procedures;

provided, such **Wrongful Employment Act** occurred on or after the Retroactive Date as stated in Item 8. of the Declarations for this coverage section and prior to the expiration of the Policy Period.

"Wrongful Termination" means the actual or constructive termination of an employment relationship in a manner which constitutes a violation of any law, a breach of an implied agreement to continue employment, or a retaliatory discharge.

EXCLUSIONS

3. The Insurer shall not be liable for **Loss** on account of any **Claim** made against any **Insured**:
 - a) for any actual or alleged 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) for liability of others assumed by the **Insured** under any oral, written or implied contract or agreement; however, this Exclusion shall not apply to the extent the **Insured** would have been liable in the absence of such contract or agreement; or
 - c) for compensation earned by the claimant in the course of employment but not paid by the **Insured**; however, this Exclusion shall not apply to **Defense Expenses**, any back pay or front pay, or any additional compensation allegedly due as a result of **Discrimination**.

4. The Insurer shall not be liable for **Loss** on account of any **Claim** made against any **Insured** based upon, arising out of, directly or indirectly resulting from, or in consequence of:
- a) any actual or alleged violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974 (ERISA), any social security, worker's compensation, disability benefits unemployment compensation law, 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 of 1985, the Occupational Safety and Health Act, rules or regulations promulgated thereunder and amendments thereto, or similar provisions of any federal, state or local statutory law or common law; however, this Exclusion shall not apply to any **Claim** for actual or alleged **Wrongful Termination** or **Retaliation** on account of the claimant's exercise of rights pursuant to any such law, rule or regulation;
 - b) a lockout, strike, picket line, replacement or any similar actions in connection with labor disputes or labor negotiations;
 - c) any litigation or EEOC (or similar state or local agency) proceeding or investigation against any **Insured** pending on or before the Pending or Prior Date set forth in Item 5. of the Declarations for this coverage section; or
 - d) any **Wrongful Employment Act**, fact, circumstance, situation, transaction, or event which was the subject of any notice given under any prior policy or coverage section for employment practices or similar insurance, of which this coverage section is a direct or indirect renewal or replacement.

No **Wrongful Employment Act** of any **Insured Person** will be imputed to any other **Insured Person** to determine the applicability of the foregoing Exclusions.

CONDITIONS

5. Notice/Claim Reporting Provisions

If, during the Policy Period or the Discovery Period (if purchased):

- i) an **Insured** first becomes aware of a **Wrongful Employment Act** which may subsequently give rise to a **Claim**,
- ii) the **Insureds** give the Insurer written notice of such **Wrongful Employment Act**, including a description of the **Wrongful Employment Act**, the identities of the potential claimants, the consequences which have resulted or may result from such **Wrongful Employment Act** and the circumstances by which the **Insured** first became aware of such **Wrongful Employment Act**, and
- iii) the **Insureds** request coverage under this coverage section for any subsequent **Claim** arising from such **Wrongful Employment Act**;

then the Insurer will treat any such subsequent **Claim** as if it had been first made during the Policy Period.

As a condition precedent to any right to payment in respect of any **Claim**, the **Insured** must give the Insurer written notice of such **Claim**, with full details, as soon as practicable after it is first made.

6. Defense and Settlement

If duty to defend coverage is granted pursuant to Item 6. of the Declarations for this coverage section, the Insurer shall have the right and duty to defend any **Claim** covered by this coverage section, even if any of the allegations are groundless, false or fraudulent. The Insurer's duty to defend shall cease upon exhaustion of the Limit of Liability set forth in Item 2. (b) of the Declarations for this coverage section.

If duty to defend coverage is not granted pursuant to Item 6. of the Declarations for this coverage section, it shall be the duty of the **Insureds** and not the duty of the Insurer to defend **Claims**. The Insurer shall have the right and shall be given the opportunity to effectively associate with the **Insureds** in the investigation, defense and settlement (including the negotiation of a settlement) of any **Claim** that appears reasonably likely to be covered in whole or in part by this coverage section.

The **Insureds** agree to provide the Insurer with all information, assistance and cooperation which the Insurer reasonably requests, including without limitation attendance at hearings and trials, assistance in effecting settlements, obtaining and giving evidence and obtaining the attendance of witnesses, copies of records, investigations and pleadings. In the event of a **Claim** the **Insureds** will do nothing that may prejudice the Insurer's position or its potential or actual rights of recovery. The Insurer may make any investigation it deems necessary. If the **Insureds** are required to investigate, evaluate and attempt to negotiate a settlement within the applicable Retention set forth in the Declarations for this coverage section, and in good faith attempt to do so, the Insurer will not thereafter allege that the **Insureds** have prejudiced the Insurer's defense and deny coverage on that basis.

The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Defense Expenses** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the Insurer's written consent, which shall not be unreasonably withheld. The Insurer shall not be liable for any settlement, **Defense Expenses**, assumed obligation or admission to which it has not consented.

If duty to defend coverage is not granted pursuant to Item 6. of the Declarations for this coverage section, the Insurer shall, upon request, advance on a current basis covered **Defense Expenses** on behalf of the **Insureds** prior to the final disposition of any such **Claims**. Any advancement of **Defense Expenses** shall be subject to, and conditioned upon, receipt by the Insurer of a written undertaking by the **Insureds** that such advanced amounts shall be repaid to the Insurer by the **Insureds** severally according to their respective interests if and to the extent any such **Insured** shall not be entitled under the terms and conditions of this coverage section to coverage for such **Defense Expenses**.

7. **Limits of Liability and Retention**

The amount stated in Item 2. (a) of the Declarations for this coverage section shall be the maximum aggregate liability of the Insurer under this coverage section for all **Loss** (excluding **Defense Expenses**) from all **Claims** made during the Policy Period for which this coverage section provides coverage, regardless of the time of payment by the Insurer. The amount stated in Item 2. (b) of the Declarations for this coverage section will be the maximum aggregate liability of the Insurer under this coverage section for all **Defense Expenses** from all **Claims** and Shareholder Derivative Demands first made during the Policy Period for which this coverage section provides coverage, regardless of the time of payment by the Insurer.

All **Related Claims** will be treated as a single **Claim** made when the earliest of such **Related Claims** was first made, regardless of whether such date is before or during the Policy Period. The applicable Retention shall apply only once to each such single **Claim**.

The Insurer's liability with respect to all **Loss** resulting from each **Claim** shall apply only to that part of **Loss** which is excess of the applicable Retention set forth in Item 3. of the Declarations for this coverage section, which shall be borne by the **Entity** uninsured and at its own risk.

No Retention shall apply to **Loss** incurred by any **Insured** for which the **Entity** is not permitted or required by law to indemnify or is permitted or required by law to indemnify but does not do so by reason of **Financial Impairment**. The Retention for Indemnifiable **Claims** set forth in Item 3. (a) of the Declarations for this coverage section shall apply to all other **Loss**, including **Defense Expenses**. For purposes of this subsection 7. the resolutions of the **Entity** shall be deemed to provide indemnification for **Loss** to the fullest extent permitted by common or statutory law.

If **Loss** resulting from a **Claim** is subject in part to no Retention and in part to the Retention for Indemnifiable **Claims**, the Retention for Indemnified **Claims** shall be applied only to that part of the **Loss** otherwise subject to such Retention.

If the Limits of Liability are exhausted by the payment of **Loss**, the premium will be fully earned, all obligations of the Insurer under this coverage section will be completely fulfilled and exhausted, and the Insurer will have no further obligations of any kind or nature whatsoever under this coverage section.

The Limits of Liability under this coverage section shall be waived as to a **Claim** if, after a judgment has been rendered against an **Insured**, the Insurer continues the litigation by appeal or otherwise, unless the **Insured** has consented to such continuation of litigation.

Solely with respect to **Claims** under this coverage section which are **Class Actions** and which are fully and finally resolved with prejudice in favor of all **Insureds** without any **Insureds** becoming legally obligated to pay any monetary damages or settlement or judgment amounts arising out of the **Claim**, the Insurer shall reimburse the amount of the Retention paid by the **Insureds** for **Defense Expenses** in such **Claim**.

If such a **Class Action Claim** is dismissed in its entirety without prejudice and without any **Insureds** becoming legally obligated to pay any monetary damages or settlement, such reimbursement shall occur ninety (90) days after the date of dismissal as long as the **Claim** is not brought again within that time, and further subject to an undertaking by the **Insureds** in a form acceptable to the Insurer that such reimbursement shall be paid back by the **Insureds** to the Insurer in the event the **Claim** is brought after such ninety (90) day period and before the expiration of the statute of limitations for such **Claim**.

8. **Acquisitions, Mergers and Subsidiaries**

If during the Policy Period the **Entity** acquires securities or voting rights in another **Entity** or creates another **Entity** which as a result of such acquisition or creation such **Entity** becomes a **Subsidiary**; or acquires any **Entity** by merger into or consolidation with such **Entity** ("Event"), then such **Entity** and its directors, officers and **Employees** shall become **Insureds** if:

- i) the **Entity** gives written notice to the Insurer of the Event within ninety (90) days of such Event together with such information the Insurer may require (except as provided for in (1) and (2) below), and
- ii) the **Entity** pays any reasonable additional premium required by the Insurer.

Such coverage shall be afforded, subject to the terms and conditions of this coverage section, from the date of the Event for such **Subsidiary** and any **Insureds**, but only for **Wrongful Employment Acts** committed or allegedly committed after the Event, unless the Insurer agrees by endorsement to provide coverage for **Wrongful Employment Acts** committed or allegedly committed prior to such date.

The requirement that written notice of the Event be given to the Insurer shall not apply if: (1) the total number of new **Employees** does not exceed ten percent (10%) of the total **Employees** as reflected in the **Entity's** Application to the Insurer for this coverage section; or (2) the total number of new **Employees** arising out of the Event is less than one thousand (1000).

9. **Marital Estate Extension**

Subject otherwise to the terms hereof, this coverage section shall cover **Loss** arising from any **Claim** made against the lawful spouse (whether such stature is derived by reason of statutory law, common law or any other applicable law of any jurisdiction in the world) of an **Insured** for **Claims** arising solely out of his or her capacity as the spouse of an **Insured**, including such **Claims** that seek damages recoverable from marital community property, property jointly held by the **Insured** and the spouse; or property transferred from the Insured Person to the spouse; provided, however, this extension shall not afford coverage for **Wrongful Employment Acts** of the spouse. All terms, conditions and other provisions of this coverage section, inclusive of any provision relative to the applicable Retention, which would be applicable to **Loss** incurred by the **Insured** in such **Claim** shall also apply to **Loss** incurred by the spouse in such **Claim**.

10. **Change of Control**

If, during the Policy Period:

- a) the Parent Company shall consolidate with or merge into, or sell all or substantially all of its assets to any other person or organization or group of persons or organizations acting in concert; or
- b) any person or organization or group of persons or organizations acting in concert shall acquire an amount of the outstanding securities representing more than fifty percent (50%) of the voting power for the election of directors of the Parent Company, or acquires the voting rights of such an amount of such securities;

(either of the above events herein referred to as the "Transaction").

then this coverage section shall continue in full force and effect as to **Wrongful Employment Acts** occurring prior to the effective time of the Transaction, but there shall be no coverage afforded by any provision of this coverage section for any **Wrongful Employment Act** occurring after the effective time of the Transaction and the entire premium for this coverage section shall be deemed fully earned as of such time. The Parent Company shall also have the right to elect a Discovery Period described in Section 11. of this coverage section or a greater period as may be negotiated with the Insurer.

The Parent Company shall give the Insurer written notice of the Transaction as soon as practicable, but not later than thirty (30) days after the effective date of the Transaction.

11. Discovery Period

If: i) the Parent Company cancels this coverage section, ii) either the Insurer or the Parent Company refuses or declines to renew this coverage section for any reason, or iii) a Transaction described in subsection 10. occurs, and, within thirty (30) days after the end of the Policy Period the Parent Company elects to purchase the Discovery Period by paying the additional premium set forth in Item 4. (a) of the Declarations for this coverage section, then the coverage otherwise afforded by this coverage section will be extended for the period set forth in Item 4. (b) of the Declarations for this coverage section but only for **Wrongful Employment Acts** occurring before the end of the Policy Period or the date of any Transaction under subsection 10., whichever is earlier. The aggregate limit of liability for all **Loss** (excluding **Defense Expenses**) from all **Claims** first made during the Discovery Period shall be an amount equal to the amount stated in Item 2. (a) of the Declarations for this coverage section. The aggregate limit of liability for all **Defense Expenses** for all **Claims** first made during the Discovery Period shall be an amount equal to the amount stated in Item 2. (b) of the Declarations for this coverage section. Such amount shall be a sublimit of the aggregate limit of liability for **Defense Expenses** and shall be a part of, and not in addition to, the limit of liability for **Defense Expenses**.

As a condition precedent to the right to exercise the Discovery Period, the total premium for this coverage section must have been paid in full.

If the Discovery Period is purchased, the entire premium for the Discovery Period shall be deemed fully earned at its commencement.

Subject to all the terms and conditions of this subsection 11., the Insurer shall, upon request, provide the Parent Company with a quotation for a three (3) year Discovery Period.

12. Representations; Severability

The **Insureds** represent the particulars and statements contained in the Application are true, accurate and complete, and agree that this coverage section is issued in reliance on the truth of those representations, and agree that such particulars and statements, which are deemed to be incorporated into and to constitute a part of this coverage section, are the basis of this coverage section. In the event any of the particulars or statements in the Application are untrue, and (a) were made with actual intent to deceive, or (b) materially affected either the acceptance of the risk or the hazard assumed by the Insurer, this coverage section will be void with respect to any **Insured** who knew the facts that were not truthfully disclosed or to whom such knowledge is imputed, whether or not such **Insured** knew the Application contained the untruthful disclosure. No knowledge or information possessed by any natural person **Insured** will be imputed to any other natural person **Insured** except for material facts or information known to the person or persons who signed the Application.

In witness whereof, the Insurer issuing this Policy has caused this Policy to be signed by its authorized officers, but it shall not be valid unless also signed by a duly authorized representative of the Company.


Corporate Secretary


President & COO