

EPL DEFENSE SHIELD®

EMPLOYMENT PRACTICES LIABILITY DEFENSE COSTS POLICY

In consideration of the premium paid and in reliance upon the statements made and information supplied whether by **you** or a broker acting on **your** behalf in conjunction with this insurance, the Insurer agrees to this Policy as a contract with **you**.

Throughout this Policy, the words **you** and **your** refer to the Named Insured(s) shown in the Declarations and any other person(s) or organization(s) qualifying as an **Insured** under this Policy. The words **we**, **us** and **our** refer to the company providing this insurance.

The word **Insured** means any person or organization qualifying as such under SECTION II. DEFINITIONS

Other words and phrases that appear in boldface have special meaning. Refer to SECTION II. DEFINITIONS.

SECTION I. WHAT IS COVERED

A. Insuring Agreement

1. We shall pay those **Defense Costs** arising out of a **Claim** against an **Insured** for **Wrongful Employment Acts**. The **Wrongful Employment Acts** must first commence or take place after the **Original Inception Date**, but before the end of the Policy Period. A **Claim** for a **Wrongful Employment Act** must be first made during the Policy Period or Extended Reporting Period (if applicable) and reported to the Insurer pursuant to Section VII.D of this Policy.
2. **Wrongful Employment Acts** shall be deemed to first commence or take place as of the date of the earliest **Wrongful Employment Act** alleged in any **Claim** or **Related Wrongful Employment Act** alleged in more than one **Claim**. **Claims** can allege **Related Wrongful Employment Acts**, regardless of whether such **Claims** involve the same or different claimants, **Insureds** or legal causes of actions.

B. Defense

1. We do not assume any duty to defend. **You** shall defend and contest any **Claim** made against **you**.
2. **You** shall select a licensed, qualified and appropriately specialized attorney in the

geographical area where a **Claim** is brought against **you**.

3. We shall advance, at **your** written request, **Defense Costs** prior to the final disposition of a **Claim**. Such advanced payments shall be repaid to **us** by **you** in the event and to the extent that the **Insureds** shall not be entitled to such payment under the terms and conditions of this Policy.
4. The **Insureds** shall give **us** full cooperation and such information as **we** may reasonably require.

SECTION II. DEFINITIONS

- A. **Bodily Injury** means physical injury, sickness, or disease, including death resulting therefrom. **Bodily Injury** shall not include emotional distress or mental anguish arising from an otherwise covered **Wrongful Employment Act**.
- B. **Claim** means a written demand for monetary or non-monetary relief by a past, present or future **Employee** or applicant for employment with the Named Insured or any **Subsidiary** solely in his or her capacity as such. The term **Claim** shall also mean an Equal Employment Opportunity Commission ("EEOC"), Department of Labor ("DOL") or Office of Federal Contract Compliance Program ("OFCCP") (or similar federal, state or local agency) proceeding commenced by the filing of a notice of charges, service of a complaint or similar document of which notice has been given to **you**. However, in no event shall the term **Claim** include any criminal proceeding or any labor or

grievance disputes, including any civil or administrative proceeding, which is subject to a collective bargaining agreement.

C. Defense Costs means reasonable and necessary fees, costs and expenses resulting solely from the response to and/or defense and appeal of a **Claim** against **you**. Fees must be customary and consistent with those of the geographic area in which the **Claim** is made. Rates that are less than or equal to the following amounts shall automatically be deemed reasonable under this Policy: \$250/hour for partners; \$200/hour for associates; and \$85/hour for paralegals. Rates in excess of such amounts shall only be deemed reasonable under this Policy with **our** written consent.

D. Employee means an individual whose labor or service is engaged by and directed by **you** for remuneration, whether such individual is in a supervisory, co-worker or subordinate position or otherwise, including any part-time, seasonal, and temporary employees. Individuals who are leased employees for **you** shall also be **Employees**, but only if **you** provide or are required pursuant to a written contract to provide indemnification to such individual in the same manner as that provided to **your** other **Employees**. Independent contractors are not **Employees**.

E. Individual Insured means any past, present or future directors, officers, trustees or governors and **Employees** of the Named Insured, but solely in their capacity as such.

F. Insured means:

1. any **Individual Insured**; and
2. the Named Insured and any **Subsidiary**.

G. Original Inception Date means the inception date of **your** first EPL Defense Shield Employment Practices Liability Defense Costs Policy issued by **us** or any other member company of Chartis.

H. Property Damage means physical injury to, or destruction of, tangible property including the loss of use of thereof, which has not been physically injured or destroyed.

I. Related Wrongful Employment Act(s) means **Wrongful Employment Acts** which are the same, related or continuous, or **Wrongful Employment Acts** which arise from a common nucleus of facts.

J. Retaliation means a **Wrongful Employment Act** of an **Insured** alleged to be in response to the actual or attempted exercise by an **Employee** of any right that such **Employee** has under the law including any **Wrongful Employment Act** of an **Insured** alleged to be in response to the threat of or the actual filing of any claim or suit under the Federal False Claims Act or any other federal state, local or foreign whistleblower law.

K. Subsidiary means any corporation of which the Named Insured owns more than 50% of the voting interest as of the inception of the Policy Period.

Coverage as is afforded under this Policy with respect to a **Claim** made against any **Subsidiary** or an **Individual Insured** of any **Subsidiary** shall only apply to **Wrongful Employment Acts** commenced or allegedly commenced after the effective date that such **Subsidiary** became a **Subsidiary** and prior to the date that such **Subsidiary** ceased to be a **Subsidiary** under this Policy.

L. Wrongful Employment Act(s) means any actual or alleged:

1. wrongful dismissal, discharge or termination (either actual or constructive), including breach of an implied contract; **Retaliation**; employment-related misrepresentation(s) to **your Employee** or applicant for employment with **you**; employment-related libel, slander, humiliation, mental anguish, infliction of emotional distress, defamation, or invasion of privacy; wrongful failure to employ or promote; wrongful deprivation of career opportunity; wrongful demotion or negligent **Employee** evaluation, including the giving of negative or defamatory statements in connection with an **Employee** reference; wrongful discipline; failure to grant tenure; failure to provide or enforce adequate or consistent corporate policies and procedures relating to any **Wrongful Employment Act**; negligent supervision or hiring by an **Insured** relating to any of the above; or violation of an **Employee's** civil rights relating to any of the above.
2. harassment, including, but not limited to, sexual harassment, whether "quid pro quo," hostile work environment or otherwise; or
3. discrimination, including, but not limited to, discrimination based upon age, gender, race, color, national origin, religion, sexual

orientation or preference, pregnancy or disability.

SECTION III. EXTENSIONS

Subject otherwise to the terms hereof, this Policy shall cover **Defense Costs** arising from any **Claim(s)** made against the estates, heirs, or legal representative of a deceased **Individual Insured**, and, in the event of incompetency, the legal representatives of an **Individual Insured** who was an **Individual Insured** at the time the **Wrongful Employment Act(s)** upon which such **Claim(s)** are based were committed.

SECTION IV. EXCLUSIONS – WHAT IS NOT COVERED

A. This insurance does not apply to **Defense Costs** incurred in connection with any **Claim** arising out of:

1. Fraud and Dishonest Conduct

a dishonest, fraudulent, criminal or malicious act or any intentional or knowing violation of the law, or gaining of any profit or advantage to which **you** are not legally entitled; however, **we** will defend **Suits** alleging any of the foregoing conduct until there is a judgment, final adjudication, adverse admission or finding of fact against **you** as to such conduct at which time **you** shall reimburse **us** for **Defense Costs**; **we** shall not cover any **Claim** if **you** plead *nolo contendere* or no contest to a criminal proceeding against **you** arising out of the same, or essentially the same, material facts as such **Claim**;

2. Contractual Liability

any actual or alleged contractual liability of any **Insured** under any express contract or agreement; provided, however, that this exclusion shall not apply to liability which would have attached in the absence of such express contract or agreement;

3. Prior Notice

any facts alleged, or the same or **Related Wrongful Employment Acts** alleged or contained in, any **Claim** which has been reported, or in any circumstances of which notice has been given, under any policy of which

this Policy is a renewal or replacement or which it may succeed in time;

4. Prior Knowledge

any facts, events, incidents, circumstances or **Wrongful Employment Acts**, of which, prior to the **Original Inception Date**, any **Insured**, had knowledge or which any **Insured** could have reasonably foreseen might result in a **Claim**;

5. Prior or Pending Matters

any (a) claim or litigation or (b) EEOC (or similar state, local or foreign agency) proceeding or investigation of which any **Insured** had notice, prior to or as of the **Original Inception Date**, or alleging or derived from the same or **Related Wrongful Employment Acts** alleged in such pending or prior claim, litigation, proceeding or investigation.

B. This insurance does not apply to **Defense Costs** incurred in connection with any **Claim**:

1. Bodily Injury and Property Damage

for **Bodily Injury** or **Property Damage**;

2. Worker's Compensation, Social Security and Unemployment, Disability and Retirement Benefits

for any obligation pursuant to any worker's compensation, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law; provided, however, that this exclusion shall not apply to **Retaliation**;

3. ERISA, COBRA, WARN, OSHA, NLRA and FLSA

for any **Insured's** failure to fulfill any responsibility, duty or obligation imposed by the Employment Retirement Income Security Act of 1974 (ERISA), Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Workers' Adjustment and Retraining (OSHA), National Labor Relations Act of 1947 (NLRA), or the Fair Labor Standards Act and amendments thereto, any rules or regulations of the foregoing promulgated thereunder, or any similar provisions of any federal, state, or local statutory or common law (except the Equal Pay Act);

provided, however, that this exclusion shall not apply to **Retaliation**;

4. Late Notice

that is not reported to **us** in accordance with Section VII.D of this Policy;

5. Certain Insureds

that is made by or on behalf of any person who is or was a director, trustee, or equivalent position of the Named Insured or any **Subsidiary**; or

6. Class Actions

that is brought as a class action regardless of whether a class is ultimately certified.

SECTION V. LIMIT OF LIABILITY

A. The aggregate Limit of Liability stated in Item 6 of the Declarations to this Policy and the information contained in this section limits the most **we** shall pay for all **Defense Costs** arising out of **Claims** first made against **Insureds** during the Policy Period or Extended Reporting Period (if applicable) and reported to **us** pursuant to Section VII.D of this Policy regardless of:

1. the number of persons or organizations covered by this Policy;
2. the number of **Claims** made; or
3. the length of the Policy Period.

B. All **Claims** made anytime after the **Original Inception Date** arising from the same or **Related Wrongful Employment Acts**, including any **Claim** which is made subsequent to the Policy Period or Extended Reporting Period (if applicable) which, pursuant to Section VII.D.2, is considered made during the Policy Period or Extended Reporting Period (if applicable), shall be deemed to have been first made during the Policy Period or Extended Reporting Period (if applicable) in effect as of the date the earliest of such **Claims** was made and reported to **us**, and all such **Claims** shall be subject solely to the aggregate Limit of Liability of such policy.

C. The aggregate Limit of Liability for the Extended Reporting Period shall be part of, and not in addition

to, the aggregate Limit of Liability for the Policy Period stated in Item 6 of the Declarations.

SECTION VI. RETENTION

We shall only be liable for the amount of **Defense Costs** arising from a **Claim** which is in excess of the Retention amount stated in Item 7 of the Declarations. Such Retention amount is to be borne by the **Insureds** and shall remain uninsured with regard to all **Defense Costs**: (1) for which the Named Insured or any **Subsidiary** has indemnified or is permitted or required to indemnify the **Individual Insured(s)**; or (2) of the Named Insured or any **Subsidiary**. A single Retention amount shall apply to all **Defense Costs** arising from all **Claims** alleging the same or **Related Wrongful Employment Acts**.

Under no circumstances will the Named Insured's or a **Subsidiary's** bankruptcy, insolvency, or inability to pay require us to drop down, in any way replace, or assume any of the Named Insured's or **Subsidiary's** obligations with respect to the Retention provision of this Policy.

SECTION VII. CONDITIONS

A. Full Compliance

We have no obligation to pay under this Policy unless there has been full compliance with all the Conditions contained in this Policy.

B. No Assignment

The interest of any **Insured** is not assignable. **You** cannot assign or transfer **your** interest in this Policy without **our** written consent attached to this Policy.

C. Coverage Territory

We will cover **Wrongful Employment Acts** in the United States of America, its territories and possessions, Puerto Rico, or Canada, but only if the **Claim** is brought for such **Wrongful Employment Act** in the United States of America, its territories and possessions, Puerto Rico, or Canada; provided, however, that this Policy shall not apply to **Wrongful Employment Acts** occurring or **Claims** brought in those states or territories listed as Excluded Territories in Item 9 of the Declarations.

D. Duties in the Event of a Claim

1. If, during the Policy Period, a **Claim** is made against an **Insured** for which coverage may be

provided hereunder, **you** shall give written notice to **us** at the address set forth in the Declarations in all events no later than:

- a. sixty (60) days after the date the **Claim** was first made against the **Insured**; or
 - b. within thirty (30) days after the end of the Policy Period or Extended Reporting Period (if applicable), as long as such **Claim** is reported no later than thirty (30) days after the date such **Claim** was first made against an **Insured**.
2. If **you** submit written notice of a **Claim** to **us** pursuant to this Clause D, then any **Claim** that may subsequently be made against an **Insured** and reported to **us** alleging the same or **Related Wrongful Employment Acts** to the **Claim** for which such notice is given shall be deemed to have been first made during the Policy Period or Extended Reporting Period (if applicable) in effect at the time such written notice was first submitted to **us**.

E. Transfer of Rights of Recovery Against Others to Us

You may be able to recover all or part of a loss from someone other than **us**. **You**, therefore, shall do all that is possible after a **Claim** is made against **you** to preserve any such right(s) of recovery. If **we** make a payment under this Policy, that right of recovery shall belong to **us**. **You** shall take whatever action **we** deem necessary, including signing of documents, to help **us** obtain such recovery.

F. Extended Reporting Period

1. Except as indicated below, if **you** or **we** shall cancel or refuse to renew this Policy, **you** shall have the right to an Extended Reporting Period of one (1), two (2) or three (3) years following the effective date of cancellation or non-renewal upon payment of the respective additional premium amount described below, in which to give **us** written notice of any **Claims** first made against **you** during said Extended Reporting Period for any **Wrongful Employment Act(s)** which take place after the **Original Inception Date** and before the end of the Policy Period and are otherwise covered by this Policy.

To obtain an Extended Reporting Period, **you** must request it in writing and pay the additional

premium amount due within thirty (30) days of cancellation or non-renewal.

The additional premium amount for: (1) one year shall be 75% of the full annual premium; (2) two years shall be 150% of the full annual premium; and (3) three years shall be 200% of the full annual premium.

2. The aggregate limit of liability applicable to **Claims** made against **you** during such Extended Reporting Period is part of, and not in addition to, the applicable aggregate Limit of Liability stated in Item 6 of the Declarations.
3. The Extended Reporting Period cannot be canceled, except for nonpayment of premium. The additional premium for the Extended Reporting Period shall be fully earned at the inception of the Extended Reporting Period. If **we** do not receive the written request as required, **you** may not exercise this right at a later date. The Extended Reporting Period and the rights contained herein shall not apply to any cancellation resulting from non-payment of premium. **Our** offer of renewal terms, conditions, limits of liability and/or premiums different from those of the expiring policy shall not constitute a refusal to renew.
4. This insurance, provided during the Extended Reporting Period, is excess over any other valid and collectible insurance that begins or continues in effect after the Extended Reporting Period becomes effective, whether the other insurance applies on a primary, excess, contingent, or any other basis.
5. In the event of a Transaction, as defined in Clause G below, the Named Insured shall have the right, within thirty (30) days before the end of the Policy Period, to request an offer from **us** of an Extended Reporting Period (with respect to any **Wrongful Employment Acts** which take place after the **Original Inception Date** and prior to the end of the Policy Period) for a period of no less than three (3) years or for such longer or shorter period as the Named Insured shown in the Declarations may request. **We** shall offer such Extended Reporting Period pursuant to such terms, conditions, and premium as we may reasonably decide. In the event of a Transaction, the right to an Extended Reporting Period shall not otherwise exist except as indicated in this paragraph.

G. Change in Control of Named Insured

If during the Policy Period:

1. the Named Insured shall consolidate with, merge into or sell all or substantially all of its assets to any other person or entity or group of persons or entities acting in concert; or
2. any person or entity or group of persons or entities acting in concert shall acquire an amount of outstanding securities representing more than 50% of the voting power for the election of directors of the Named Insured, or acquires the voting rights of such an amount of such securities

(any of the above events herein referred to as the "Transaction"),

then this Policy shall continue in full force and effect as to **Wrongful Employment Acts** occurring after the **Original Inception Date** and prior to the effective date of the Transaction, but there shall be no coverage afforded by any provision of this Policy for any actual or alleged **Wrongful Employment Acts** occurring after the effective date of the Transaction.

H. Legal Action Against Us

No person or organization has the right to join us as a party or otherwise bring us into a **Claim** seeking damages from an **Insured**.

I. Alternative Dispute Resolution Process

It is hereby understood and agreed that all disputes and differences which may arise under or in connection with this Policy, whether arising before or after termination of this Policy, including any determination of the amount of **Defense Costs**, may be submitted to the non-binding mediation process as set forth in this clause.

Either the Named Insured or we may elect a non-binding mediation administered by any mediation facility to which we and the Named Insured mutually agree, in which all implicated **Insureds** and we shall try in good faith to settle the dispute by mediation in accordance with the then-prevailing Commercial Mediation Rules. The mediator shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute.

The mediator shall also give due consideration to the general principles of the law of the state where the Named Insured is incorporated in the construction or interpretation of the provisions of this Policy. Either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until at least one hundred and twenty (120) days after the date the mediation shall be deemed concluded or terminated. Each party shall share equally the expenses of the non-binding mediation.

The non-binding mediation may be commenced in New York, New York; Atlanta, Georgia; Chicago, Illinois, Denver, Colorado; or in the state indicated in Item 3 of the Declarations as the mailing address for the Named Insured. The Named Insured shall act on behalf of each and every **Insured** in connection with any non-binding mediation under this clause.

J. Other Insurance and Indemnification

1. Such insurance as is provided by this Policy shall apply only as excess over any other valid and collectible insurance, unless such other insurance is written only as specific excess insurance over the Limit of Liability provided by this Policy. This Policy shall specifically be excess of any other valid and collectible insurance pursuant to which any other insurer has a duty to defend a **Claim**.
2. In the event any such other insurance is provided by us or any member company of Chartis (or would be provided, but for the application of the retention amount, exhaustion of the limit of liability or failure to submit a notice of a claim) then our maximum aggregate Limit of Liability for all losses combined in connection with a **Claim** covered, in part or in whole, by this Policy and such other insurance policy issued by a member company of Chartis shall not exceed the greater of the Limit of Liability of this Policy or the limit of liability of such other insurance policy issued by another member company of Chartis.
3. In the event of a **Claim** against a leased or temporary **Employee** as described in Section II.D, coverage as is afforded by this Policy shall be specifically excess of indemnification provided by such leasing company or temporary agency and any insurance provided to such leasing company or temporary agency.

K. Policy Changes

This Policy contains all the agreements between **you** and **us** concerning this insurance. This Policy can only be changed by a written endorsement **we** issue and make part of this Policy.

L. Representations

1. By accepting this Policy, **you** agree that the statements in the application (if applicable), any statements made and information supplied to **us** by **you** or any insurance broker on **your** behalf in conjunction with the purchase of this insurance and the Declarations are true, and that they are **your** agreements and representations.
2. Each **Insured** agrees that this Policy is issued in reliance upon the truth of those statements, information and representations.
3. Any and all relevant provisions of this Policy may be voidable by **us** in any case of fraud, intentional concealment, or misrepresentation of material fact by any **Insured**.

M. Special Rights and Duties of the Named Insured

You agree that the Named Insured stated in the Declarations shall act on behalf of all **Insureds** as to:

1. giving of notice of a **Claim**;
2. receiving notice of cancellation or non-renewal;
3. payment of premiums; and
4. acceptance of any endorsements issued to form a part of this Policy.

N. Headings

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

B. We may cancel this Policy by mailing or delivering to the first **named insured** written notice of cancellation at least:

1. ten (10) days before the effective date of cancellation if **we** cancel for nonpayment of premium; or
2. thirty (30) days before the effective date of cancellation if **we** cancel for any other reason.

C. We will mail or deliver **our** notice to the Named Insured's address shown in the Declarations.

D. Notice of cancellation will state the effective date of cancellation. The Policy Period will end on that date.

E. If this Policy is canceled, **we** will send the Named Insured any premium refund due. If **we** cancel, the refund will be pro rata. If the Named Insured cancels, **we** shall retain the customary short rate proportion of the premium herein. The cancellation will be effective even if **we** have not made or offered a refund.

F. The Policy cannot be canceled by either party after the premium for an Extended Reporting Period is paid.

G. If notice is mailed, proof of mailing will be sufficient proof of notice.

H. If the period of limitations relating to the giving of notice is prohibited or made void by any law controlling the construction thereof, such period shall be deemed to be amended so as to be equal to the minimum period of limitations permitted by such law.

SECTION VIII. CANCELLATION/NONRENEWAL

A. The Named Insured shown in the Declarations may cancel this Policy by mailing or delivering to **us** advance written notice of cancellation.