



**THIS IS A CLAIMS-MADE COVERAGE FORM.**

**PLEASE NOTE THAT DEFENSE COSTS ARE CONTAINED WITHIN THE LIMIT OF LIABILITY AND THE DEDUCTIBLE. THIS MEANS THAT THE LIMIT OF LIABILITY AND THE DEDUCTIBLE SPECIFIED IN THE SUPPLEMENTAL DECLARATIONS OF THIS EPL COVERAGE FORM SHALL BE REDUCED, AND MAY BE COMPLETELY EXHAUSTED, BY DEFENSE COSTS. IN THE EVENT THAT THE LIMIT OF LIABILITY IS EXHAUSTED, THE INSURER SHALL NOT BE LIABLE FOR DEFENSE COSTS OR FOR ANY DAMAGES, JUDGMENTS OR SETTLEMENTS.**

**EMPLOYMENT PRACTICES LIABILITY  
INSURANCE COVERAGE ENDORSEMENT**

Throughout this Coverage Endorsement (hereinafter referred to as EPL Coverage), the words *you* and *your* refer to the *named insured(s)* shown in the Supplemental Declarations of this EPL Coverage and any other person(s) or organization(s) qualifying as a *named insured* under this EPL Coverage. 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 III. WHO IS AN INSURED.**

Other words and phrases that appear in *Bold* and *Italics* have special meaning. Refer to **SECTION VII. DEFINITIONS.**

The Policy Conditions containing cancellation and various nonrenewal provisions applicable to *your* General Liability Coverage and any amendment to such *terms* incorporated by endorsement, are hereby incorporated herein and shall apply to coverage as is afforded by this EPL Coverage, unless specifically stated otherwise in an endorsement(s) attached hereto.

The *terms* and conditions of this endorsement apply only to EPL Coverage.

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**SECTION I. WHAT IS COVERED**

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**A. Insuring Agreement**

1. *We* shall pay those *losses* arising out of an *insured's wrongful employment act* (other than a *third party violation*) against *your employees, recognized volunteers and applicants for employment* to which this insurance applies.
2. If coverage for *third party violations* is shown on the Supplemental Declarations, then *we* shall pay those *losses* arising out of an *insured's third party violation*.
3. For coverage to apply under this EPL Coverage, the *wrongful employment act* or *third party violation* must commence or take place after the Retroactive Date, but before the end of the *EPL coverage period*. If no Retroactive Date appears on the Supplemental Declarations then the Retroactive Date shall be the date of organization of the *named insured*. A *claim* or *suit* for a *wrongful employment act* or *third party violation* must be first made against *you* during the *EPL coverage period* or Extended Reporting Periods (if applicable) and reported to *us* pursuant to the *terms* of this EPL Coverage.
4. A *claim* or *suit* by a person or organization seeking damages will be deemed to have been first made when *we* receive written notice of the *claim* or *suit* from *you* or a third party.
5. Notwithstanding the above, in the event a *claim* or *suit* is filed against, sent or delivered to, or received by *you* prior to the *EPL coverage period* but notice of which is received by *us* during the *EPL coverage period*, coverage under the *EPL coverage period* shall apply (subject to the other *terms* and conditions of this EPL Coverage) only as follows:
  - a. If at the time the *claim* or *suit* was filed against, sent or delivered to, or received by *you*, there was in existence at that time a valid and collectible liability insurance policy, providing substantially similar coverage as is provided by this EPL Coverage Endorsement, issued to *you* by *us* of which this policy is a renewal (hereinafter referred to as the *Former Policy*), then coverage shall be afforded under this EPL Coverage in an amount not

greater than the amount of coverage which would have been provided for the *claim* or *suit* under the *Former Policy* if notice of the *claim* or *suit* had been received by *us* during the policy period of such *Former Policy*. The foregoing sentence may result in (but not be limited to): (1) reducing the EPL Aggregate Limit of Liability available for such a *claim* or *suit* to the available limit of liability applicable to the *Former Policy*; (2) increasing the applicable deductible amount to that deductible amount applicable to the *Former Policy*; or (3) reducing or eliminating coverage due to exclusions or other restrictions appearing in the *Former Policy* but eliminated, in part or in whole, in this EPL coverage; and

- b. If at the time the *claim* or *suit* was filed against, sent or delivered to, or received by *you*, a *Former Policy* was not in existence, no coverage shall be afforded under this EPL Coverage for such *claim* or *suit*.

## B. Defense

1. *We* have the right and duty to defend and appoint an attorney to defend any *claim* or *suit* brought against any *insured* for a *wrongful employment act* or *third party violation* to which this insurance applies, even if the *claim* or *suit* is groundless, false or fraudulent. *You* shall have the right to participate in the defense. *You* shall have the option to select *your* attorney or to consent to *our* appointment of an attorney, which consent shall not be unreasonably withheld.

At the time a *claim* or *suit* is first reported to *us*, *you* may request that *we* appoint a defense attorney of *your* choice. *We* will give full consideration to any such request.

2. *We* have the right to investigate and settle any *claim* or *suit* that *we* believe is proper. *You* shall be entitled to consent to such settlement, provided *your* consent is not unreasonably withheld and is provided as soon as practicable.

If *you* refuse to consent to any settlement that *we* recommend and that is acceptable to the claimant, then *our* liability under this EPL Coverage for such *claim* or *suit* shall not exceed the amount for which *we* could have settled had *your* consent not been withheld at the time of *our* recommendation. *You* shall thereafter negotiate and defend that *claim* or *suit* at *your* own cost and without *our* involvement.

3. *We* shall pay all reasonable costs *we* ask the *insured* to incur while helping *us* investigate or defend a *claim* or *suit*. *We*, however, will not pay more than \$250 per day for earnings lost by the *insured* because of time taken off from work.
4. *We* shall pay premiums for appeal bonds, or bonds to release property being used to secure a legal obligation, for a covered *suit*. *We* shall only pay, however, for bonds valued up to *our* EPL Aggregate Limit of Liability. *We* shall have no obligation to appeal or to obtain these bonds.
5. Payments for *defense costs* are included within the EPL Aggregate Limit of Liability. They are not in addition to the EPL Aggregate Limit of Liability. *Our* duty to defend or to make payment of any *claim* or *suit* pursuant to Paragraphs 1. through 4. of this Clause B., ends after the EPL Aggregate Limit of Liability has been exhausted by payment of *loss*, including *defense costs*.
6. *We* shall pay all interest on that amount of any judgment within the EPL Aggregate Limit of Liability:
  - a. Which accrues after entry of judgment; and
  - b. Before *we* pay, offer to pay, or deposit in court that part of the judgment within the EPL Aggregate Limit of Liability.

These interest payments shall be in addition to and not part of the EPL Aggregate Limit of Liability.

## C. Transfer of Control

1. If *we* conclude that, based on *claims* or *suits* which have been reported to *us* and to which this insurance may apply, the EPL Aggregate Limit of Liability is likely to be used up in the payment of judgments, settlements, or *defense costs* *we* will notify the first *named insured*, in writing, to that effect.
2. When the EPL Aggregate Limit of Liability has actually been used up in the payment of judgments, settlements, or *defense costs*:
  - a. *We* will notify the first *named insured*, in writing, as soon as practicable, that:
    - (i) Such EPL Aggregate Limit of Liability has actually been used up; and
    - (ii) *Our* duty to defend “suits” seeking damages subject to the EPL Aggregate Limit of Liability has also ended.
  - b. *We* will initiate, and cooperate in, the transfer of control, to any appropriate *insured*, of all *claims* and *suits* seeking damages which are subject to the EPL Aggregate Limit of Liability and which are reported to *us* before the EPL Aggregate Limit of Liability is used up. That *insured* must cooperate in the transfer of control of said *claims* and *suits*.

*We* agree to take such steps, as *we* deem appropriate, to avoid a default in, or continue the defense of, such *suits* until such transfer is completed, provided the appropriate *insured* is cooperating in completing such transfer.

*We* will take no action whatsoever with respect to any *claim* or *suit* seeking damages that would have been

subject to the EPL Aggregate Limit of Liability, had it not been used up, if the *claim* or *suit* is reported to *us* after the EPL Aggregate Limit of Liability has been used up.

- c. The first *named insured* and any other *insured* involved in a *suit* seeking damages subject to the EPL Aggregate Limit of Liability must arrange for the defense of such *suit* within such time period as agreed to between the appropriate *insured* and *us*. Absent any such agreement, arrangements for the defense of such *suit* must be made as soon as practicable.
3. The first *named insured* will reimburse *us* for expenses *we* incur in taking those steps *we* deem appropriate in accordance with Paragraph 2.b. above.  
The duty of the first *named insured* to reimburse *us* will begin on:
  - a. The date on which the EPL Aggregate Limit of Liability is used up, if *we* sent notice in accordance with Paragraph 1. above; or
  - b. The date on which *we* sent notice in accordance with Paragraph 2.a. above, if *we* did not send notice in accordance with Paragraph 3.a. above.
4. The exhaustion of the EPL Aggregate Limit of Liability by the payments of judgments, settlements, or *defense costs* and the resulting end of *our* duty to defend, will not be affected by *our* failure to comply with any of the provisions of this Condition.

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## SECTION II. EXCLUSIONS—WHAT IS NOT COVERED

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This EPL Coverage does not apply to:

### A. Criminal Acts

Any liability arising out of any dishonest, fraudulent, criminal, or malicious act by or at the direction of any *insured*. The *wrongful employment act(s)* or *third party violation(s)* of an *insured* shall not be imputed to any other *insured* for the purpose of determining the applicability of this Exclusion A.

### B. Property Damage

Any liability arising out of *property damage*.

### C. Bodily Injury

Any liability arising out of *bodily injury*. This exclusion, however, shall not apply to claims of mental anguish or infliction of emotional distress.

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

Any liability arising out of any obligation pursuant to any worker's compensation, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law. This exclusion, however, shall not apply to *loss* arising from a *claim* or *suit* for *retaliation*.

### E. Contractual Liability

Any liability arising out of any actual or alleged contractual liability of any *insured* under any express contract or agreement. This exclusion, however, shall not apply to any liability the *insured* would have in the absence of such express contract or agreement.

### F. ERISA, FLSA, NLRA, WARN, COBRA, and OSHA

Any liability for violation(s) 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.

It is acknowledged that *claims* and *suits* for violation(s) of any of the responsibilities, obligations or duties imposed by similar federal, state, local or foreign statutory law or common law, as such quoted language is used in the immediately-preceding paragraph, include, without limitation, any and all *claims* and *suits* which in whole or in part allege, arise out of, are based upon, are attributable to, or are in any way related to any of the circumstances described in any of the following:

1. The refusal, failure or inability of any *insured(s)* to pay wages or overtime pay (or amounts representing such wages or overtime pay) for services rendered or time spent in connection with work related activities (as opposed to tort-based back pay or front pay damages for torts other than conversion);
2. Improper deductions from pay taken by any *insured(s)* from any *employee(s)* or purported *employee(s)*; or

3. Failure to provide or enforce legally required meal or rest break periods;

Notwithstanding the foregoing, this Exclusion **F.** shall not apply to the extent that a *claim* or *suit* is for *retaliation*.

#### **G. Prior Knowledge**

Any liability arising out of incidents, circumstances or *wrongful employment acts* or *third party violations*, which an *insured*:

1. Had knowledge of; or
2. Could have reasonably foreseen might result in a *claim* or *suit*

and which were known to the *insured* prior to the retroactive date of this EPL Coverage or the first EPL Coverage issued by *us* of which this EPL Coverage is an uninterrupted renewal.

#### **H. Prior Notice**

Any liability arising out of the facts alleged, or to the same or *related wrongful employment acts* or *related third party violations* alleged or contained in any *claim* or *suit* which has been reported, or in any circumstances of which notice has been given, under any policy of which this EPL Coverage is a renewal or replacement or which it may succeed in time.

#### **I. Prior Litigation**

Any liability arising out of any prior:

1. Litigation; or
2. Administrative or regulatory proceeding or investigation

of which an *insured* had notice, or alleging the same or *related wrongful employment acts* or *related third party violations* alleged or contained in such pending or prior litigation or administrative or regulatory proceeding or investigation which the *insured* had knowledge of prior to the retroactive date of this EPL Coverage or the first EPL Coverage issued by *us* of which this EPL Coverage is an uninterrupted renewal.

#### **J. Non-Monetary Relief**

That part of any *claim* or *suit* seeking any non-monetary relief, including but not limited to: (1) injunctive relief; (2) declaratory relief; (3) disgorgement; (4) job reinstatement; (5) costs or expenses incurred in accommodating any person with a disability, pursuant to the Americans With Disabilities Act of 1990 (ADA), including amendments to that law or similar federal, state or local statutory or common law; (6) any liability or costs incurred in connection with any educational, sensitivity or other corporate program, policy or seminar relating to a *claim* or *suit* alleging discrimination or other *wrongful employment act* or *third party violation*; or (7) other equitable remedies, including as to all of the above, the cost of compliance therewith; provided, however, if such request for non-monetary relief is part of an otherwise covered *claim* or *suit*, *we* will not seek to allocate *defense costs* for the portion of the *claim* or *suit* seeking non-monetary relief.

#### **K. Intentional Acts**

Any liability arising out of intentional harassment or coercion (including sexual harassment), intentional *retaliation*, disparate treatment discrimination or intentional civil rights violations which any *insured* allegedly or actually participates in, directs or knowingly allows.

This exclusion, however, shall not apply to *wrongful employment act(s)* or *third party violation(s)* based on the vicarious liability of an *insured*.

The *wrongful employment act(s)* or *third party violation(s)* of an *insured* shall not be imputed to any other *insured* for the purpose of determining the applicability of this exclusion.

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### **SECTION III. WHO IS AN INSURED**

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#### **A. Individual**

If *you* are shown in the Supplemental Declarations of this EPL Coverage as an individual, *you* and *your* spouse are *insureds*, only for the conduct of a *business* of which *you* are the sole owner.

#### **B. Corporation**

If *you* are shown in the Supplemental Declarations of this EPL Coverage as a corporation or organization other than a partnership, joint venture, or limited liability company, *you* and *your subsidiaries* are *insureds*.

#### **C. Partnership or Joint Venture**

If *you* are shown in the Supplemental Declarations of this EPL Coverage as a partnership or joint venture, *you* are an

*insured*. **Your** members, partners or co-venturers and their spouses are also *insureds*, but only for the conduct of **your business**.

#### D. Limited Liability Company

If **you** are shown in the Supplemental Declarations of this EPL Coverage as a limited liability company, **you** are an *insured*. **Your** members are also *insureds*, but only with respect to the conduct of **your business**. **Your** managers are *insureds*, but only with respect to their duties as **your** managers.

#### E. Trusts

If **you** are shown in the Supplemental Declarations of this EPL Coverage as a trust, **you** are an *insured*. **Your** trustees are also *insureds*, but only with respect to their duties as trustees.

#### F. Employees

**Your employees**, executive officers and directors are *insureds*, only for the conduct of **your business** within the scope of their employment or their duties as executive officers or directors.

#### G. Extensions

1. Subject otherwise to the **terms** hereof, this EPL Coverage shall cover **loss** arising from any **claims** or **suits** made against the estates, heirs, or legal representative of deceased individual *insureds*, and the legal representatives of individual *insureds*, in the event of incompetency, who were individual *insureds* at the time the **wrongful employment acts** or **third party violations**, upon which such **claims** or **suits** are based, were committed.
2. Subject otherwise to the **terms** hereof, this EPL Coverage shall cover **loss** arising from all **claims** and **suits** made against the lawful spouse of an individual *insured*, including a **claim** or **suit** that seeks damages recoverable from marital community property, property jointly held by the individual *insured* and the spouse, or property transferred from the individual *insured* to the spouse; provided, however, that this extension shall not afford coverage for a **claim** or **suit** arising out of any **wrongful employment act** or **third party violation** of the spouse, but shall apply only to **claims** or **suits** arising out of any **wrongful employment acts** or **third party violations** of an individual *insured*, subject to this EPL Coverage's **terms**, conditions and exclusions.
3. Subject otherwise to the terms hereof, during the **EPL coverage period** and any extended reporting period, an individual covered by **your** EPL Coverage Endorsement during such affiliation shall continue to be covered under this EPL Coverage Endorsement and any extended reporting period after such affiliation has ceased for such individual's covered **wrongful employment acts** or **third party violations** during such affiliation.

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## SECTION IV. LIMIT OF LIABILITY (including defense costs)

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- A. The EPL Aggregate Limit of Liability shown in the Supplemental Declarations of this EPL Coverage and the information contained in this section limits the most **we** shall pay for all **loss** (other than post-judgment interest described in Section I., Clause B., Paragraph 6.) arising out of **claims** and **suits** first made against *insureds* during the **EPL coverage period** or Extended Reporting Periods (if applicable), regardless of:
  1. The number of persons or organizations covered by this EPL Coverage; or
  2. The number of **claims** made or **suits** brought; or
  3. The length of the **EPL coverage period**.
- B. The EPL Aggregate Limit of Liability is the most **we** shall pay for all **losses** (other than post-judgment interest described in Section I., Clause B., Paragraph 6.), including amounts incurred for **defense costs**.
- C. The EPL Aggregate Limit of Liability for the Automatic Extended Reporting Period and the Supplemental Extended Reporting Period shall be part of, and not in addition to the EPL Aggregate Limit of Liability for the **EPL coverage period**. Where **Termination of Coverage** is due only to a decrease in the EPL Aggregate Limit of Liability, the EPL Aggregate Limit of Liability for the Supplemental Extended Reporting Period, if elected, shall be no greater than the amount of such decrease. In such instance, the EPL Aggregate Limit of Liability provided for the Supplemental Extended Reporting Period shall replace, and shall not be in addition to the limit of liability provided for the Automatic Extended Reporting Period.
- D. All **claims** and **suits** arising from the same or **related wrongful employment acts** or **related third party violations** shall be treated as arising out of a single **wrongful employment act** or **third party violation**.
- E. All **claims** or **suits** arising out of one **wrongful employment act** or **third party violation** shall be deemed to be made on the date that the first such **claim** is made or **suit** is brought. All **claims** asserted in a **class action suit** will be treated as arising out of a single **wrongful employment act** or **third party violation**.

- F. Any *claim* or *suit* which is made subsequent to the *EPL coverage period* or Extended Reporting Periods (if applicable) which, pursuant to Section VI., Clause D., Paragraphs 3. and 4. is considered made during the *EPL coverage period* or Extended Reporting Periods (if applicable), shall also be subject to the one EPL Aggregate Limit of Liability stated in the Supplemental Declarations of this EPL Coverage.

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## SECTION V. DEDUCTIBLE

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This Deductible applies to the EPL Coverage only.

*You* shall be responsible for the deductible amount shown in the Supplemental Declarations of this EPL Coverage with respect to each *claim* and *suit* and *you* may not insure against it. A single deductible amount shall apply to *loss* arising from all *claims* and *suits* alleging the same *wrongful employment act* or *third party violation* or *related wrongful employment acts* or *related third party violations*. Expenses *we* incur in investigating, defending and settling *claims* and *suits* are included in the deductible. The deductible is not included within the EPL Aggregate Limit of Liability.

*We* may pay any part or all of the EPL Deductible Amount to effect settlement of any *claim* or *suit* and upon notification of the action taken, *you* shall promptly reimburse *us* for such part of the deductible that has been paid by *us*.

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## SECTION VI. CONDITIONS

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*We* have no duty to provide coverage under this EPL Coverage, unless there has been full compliance with all the Conditions contained in this EPL Coverage. These Conditions apply to the EPL Coverage only.

### A. Assignment

The interest of any *insured* is not assignable. *You* cannot assign or transfer *your* interest in this EPL Coverage without *our* written consent attached to the EPL Coverage.

### B. Bankruptcy or Insolvency

The bankruptcy, insolvency or inability to pay, of *you* or *your* estate, will not relieve *us* from the payment of any *claim* or *suit* covered by this EPL Coverage.

Under no circumstances will the bankruptcy, insolvency, or inability to pay, of *you* or *your* estate, require *us* to drop down, in any way replace, or assume any of *your* obligations with respect to the Deductible provisions of this EPL Coverage.

### C. Coverage Territory

*We* cover *wrongful employment acts* or *third party violations* anywhere in the world, but only if the *claim* is made and the *suit* is brought for such *wrongful employment act* or *third party violation* in the United States of America, its territories and possessions, Puerto Rico, or Canada.

### D. Duties in the Event of an Incident, Claim or Suit

1. If, during the *EPL coverage period*, incidents or events occur which *you* reasonably believe may give rise to a *claim* or *suit* for which coverage may be provided hereunder, such belief being based upon either written notice from the potential claimant or the potential claimant's representative; or notice of a complaint filed with EEOC, DOL or OFCCP (or similar federal, state or local agency); or upon an oral *claim*, allegation or threat, *you* shall give written notice to *us* as soon as practicable and either:
  - a. Anytime during the *EPL coverage period*;
  - b. Anytime during the sixty (60) days immediately following the expiration of the *EPL coverage period*, for *claims* first made or *suits* first brought during the *EPL Coverage Period*, (as shown on the Supplemental Declarations) when this policy is renewed by *us*; or
  - c. Anytime during the Extended Reporting Periods (if applicable).
2. If a *claim* is made or a *suit* is brought against any *insured*, *you* must:
  - a. Immediately record the specifics of the *claim* or *suit* and the date received; and
  - b. Provide *us* with written notice, as described in Paragraph 3. of this Clause D., as soon as practicable.
3. Such written notice of *claim* or *suit* shall contain:
  - a. The identity of the person(s) alleging a *wrongful employment act* or *third party violation*;
  - b. The identity of the *insured(s)* who allegedly were involved in the incidents or events;
  - c. The date the alleged incidents or events took place; and

d. The written notice or a memorandum of the oral *claim*, allegation or threat referred to above.

If written notice is given to *us* during the *EPL coverage period* or Extended Reporting Periods (if applicable), pursuant to the above requirements, then any *claim* or *suit* which is subsequently made against any *insureds* and reported to *us* alleging, arising out of, based upon or attributable to such circumstances or alleging any *related wrongful employment act* or *related third party violation* to such circumstances, shall be considered made at the time such notice of such circumstances was first given.

4. If notice of a *claim* is given by *you* or on *your* behalf or if written notice is given by or on behalf of an injured person or any other claimant, to one of *our* licensed agents in the state of New York with particulars sufficient to identify *you*, then such notice shall be deemed notice to *us*.
5. Failure to give notice to *us* as soon as practicable, as required under this EPL Coverage, shall not invalidate any *claim* made by *you*, an injured person or any other claimant, unless the failure to provide such notice has prejudiced *us*. However, no *claim* made by *you*, an injured person or any other claimant will be invalidated if it shall be shown that it was not reasonably possible to give such notice and that notice was given as soon as was reasonably possible thereafter.

If, with respect to a *claim* arising out of death or personal injury to any person, *we* disclaim liability or deny coverage based upon the failure to provide timely notice, then the injured person or other claimant may maintain an action directly against *us*, in which the sole question is such disclaimer or denial unless, within sixty (60) days following such disclaimer or denial, *we*:

- a. Initiate an action to declare the rights of the parties under the insurance policy; and
  - b. Name the injured person or other claimant as a party to the action.
6. If *you* submit written notice of a *claim* or *suit*, pursuant to this Clause D., then any *claim* or *suit* that may subsequently be made against an *insured* and reported to *us* alleging the same or a *related wrongful employment act* or the same or a *related third party violation* to the *claim* or *suit* for which such notice has been given shall be deemed, for the purpose of this insurance, to have been first made during the *EPL coverage period* in effect at the time such written notice was first submitted to *us*.
  7. *You* and any other *insured* must:
    - a. Immediately send *us* copies of any demands, notices, summonses or legal papers received in connection with any *claim* or *suit*;
    - b. Authorize *us* to obtain records and other information;
    - c. Cooperate with *us* in the investigation, settlement or defense of the *claim* or *suit*;
    - d. Assist *us*, upon *our* request, in the enforcement of any right against any person or organization which may be liable to the *insured* because of injury or damage to which this insurance may also apply; and
    - e. Not take any action, nor fail to take any required action, that prejudices the rights of the *insureds* or *us* with respect to such *claim* or *suit*.
  8. No *insureds* will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense without *our* prior written consent.

#### 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 *loss* to preserve any such right of recovery. If *we* make a payment under this EPL Coverage, that right of recovery shall belong to *us*. *You* shall do whatever is necessary, including signing documents, to help *us* obtain that recovery.

#### F. Extended Reporting Periods

1. *You* shall have the right to the Extended Reporting Periods described in Paragraph 2. of this Clause F., in the event that:
  - a. *You* or *we* shall cancel this EPL Coverage;
  - b. *You* or *we* shall refuse to renew this EPL Coverage; or
  - c. *We* renew this EPL Coverage with a decrease in the limit of liability, a reduction in coverage, an increase to the deductible or self-insured retention, a new exclusion, or any other change in coverage that is less favorable to you;(All of the above herein referred to as *Termination of Coverage*);
2. If an event as specified in Paragraph 1. of this Clause F. has occurred, *you* shall have the right to the following:
  - a. An Automatic Extended Reporting Period of sixty (60) days after the effective date of *Termination of Coverage* and solely with respect to the coverage terminated hereunder at no additional premium in which to give to *us* written notice of *claims* first made or *suits* first brought against the *insureds* during said Automatic Extended

Reporting Period for any *wrongful employment acts* or *third party violations* occurring before the end of the *EPL coverage period* and are otherwise covered by this EPL Coverage. The Automatic Extended Reporting Period shall be void ab initio if the Supplemental Extended Reporting Period becomes effective. For the purposes of determining the length of the Supplemental Extended Reporting Period, the Automatic Extended Reporting Period shall be included; and

- b. Upon payment of an additional premium of 98% of the full annual premium applicable to this EPL Coverage, a Supplemental Extended Reporting Period of one (1) year immediately following the effective date of Termination of Coverage and solely with respect to the coverage terminated hereunder in which to give to *us* written notice of *claims* first made or *suits* first brought against the *insureds* during said Supplemental Extended Reporting Period for any *wrongful employment acts* or *third party violations* occurring before the end of the *EPL coverage period* and are otherwise covered by this EPL Coverage. Such premium, as described above, will be based upon premium in effect on the latter of the date this EPL Coverage was first issued or last renewed, regardless of whether there has been a change in rates or rating rules subsequent to the issuance or last renewal of the EPL coverage.
- c. Within thirty (30) days of the effective date of *Termination of Coverage*, *we* shall mail or deliver to *you* a written advice of the existence of the Automatic Extended Reporting Period and the amount of the required additional premium for the Supplemental Extended Reporting Period; however, if this policy is canceled by *us* for non-payment of premium or fraud on the part of *you*, *we* shall not be required to provide such premium quotation unless requested by *you*.

*Your* right to the Supplemental Extended Reporting Period shall terminate, however, unless *you* request it in writing and pay the additional premium due not later than the later of: (1) sixty (60) days after the effective date of *Termination of Coverage*; or (2) thirty (30) days after *we* have mailed or delivered to *you* a written advice of the amount of the required additional premium if *we* are obligated to give such written notice.

- d. The Supplemental Extended Reporting Period cannot be canceled by either party, except for nonpayment of premium. The additional premium for the Supplemental Extended Reporting Period shall be fully earned at the inception of the Supplemental Extended Reporting Period and this EPL Coverage cannot be canceled after such additional premium is paid. If *we* do not receive the written request as required, *you* may not exercise this right at a later date.
- e. This insurance, provided during the Supplemental Extended Reporting Period, is excess over any other valid and collectible insurance that begins or continues in effect after the Supplemental Extended Reporting Period becomes effective, whether the other insurance applies on a primary, excess, contingent, or any other basis.
- f. In the event that:
  - (1) *We* shall cancel for nonpayment of premium or fraud on the part of *you*; and
  - (2) At the effective date of such *Termination of Coverage* *we* have provided this coverage to *you* on a claims-made basis without interruption for less than one (1) year then *you* shall not have the right to elect and purchase the Supplemental Extended Reporting Period. For purposes of this paragraph, Automatic Extended Reporting Period coverage shall not be considered as time when *we* provided *you* this coverage.
- g. Any other *insured* shall have the right to purchase a Supplemental Extended Reporting Period to the extent of *Termination of Coverage* as respects only himself, if
  - (1) *You* have been placed in liquidation or bankruptcy or permanently cease operations;
  - (2) *You* or a designated trustee does not purchase the Supplemental Extended Reporting Period; and
  - (3) Within one hundred twenty (120) days of the *Termination of Coverage* *we* have received from such other *insured* a written request for such Supplemental Extended Reporting Period.

#### **G. Change in Control of Named Insured**

In the event of a *transaction* then this EPL Coverage shall continue in full force and effect as to *wrongful employment acts* or *third party violations* occurring prior to the effective time of the *transaction*, but there shall be no coverage afforded by any provision of this EPL Coverage for any actual or alleged *wrongful employment acts* or *third party violations* occurring after the effective time of the *transaction*. *You* shall also have the right to the Extended Reporting Periods described in Clause **F.** of this Section **VI.**

*You* shall give *us* written notice of the *transaction* as soon as practicable, but not later than thirty (30) days after the effective date of the *transaction*.

#### **H. Legal Action Against Us**

No one may bring an action against *us* unless there has been full compliance with all the terms of this EPL Coverage and the amount of *your* obligation to pay has been finally determined either by:

- 1. Judgment against *you* which remains unsatisfied at the expiration of thirty (30) days from the service of notice of



entry of the judgment upon *you* and upon *us*; or

2. Written agreement of *you*, the claimant and *us*.

Any person or organization or legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this EPL Coverage to the extent of the insurance afforded by this EPL Coverage. *We* may not be impleaded by *you* or *your* legal representative in any legal action brought against *you* by any person or organization.

**I. Other Insurance**

Unless expressly written to be excess over other valid and collectible insurance, it is intended that the insurance provided by this EPL Coverage shall be primary.

**J. EPL Coverage Changes**

This EPL Coverage contains all the agreements between *you* and *us* concerning this insurance. The first *named insured* in the Supplemental Declarations of this EPL Coverage is authorized to request changes in this EPL Coverage. This EPL Coverage can only be changed by a written endorsement *we* issue and make part of this EPL Coverage.

**K. Special Rights and Duties of the First Named Insured**

*You* agree that when there is more than one person and/or entity covered under this EPL Coverage, the first *named insured* in the Supplemental Declarations of this EPL Coverage shall act on behalf of all *insureds* as to:

1. Giving of notice of a *claim* or *suit*;
2. Giving and receiving notice of cancellation or nonrenewal;
3. Payment of premiums and receipt of return premiums;
4. Acceptance of any endorsements issued to form a part of this EPL Coverage; or
5. Purchasing or deciding not to purchase the Supplemental Extended Reporting Period.

**L. Separation of Insureds**

Except with respect to the EPL Aggregate Limit of Liability and any rights or duties specifically assigned to the first *named insured* in Clause L. of this Section VI., this insurance applies:

1. As if each *named insured* were the only *named insured*; and
2. Separately to each *insured* against whom a *claim* or *suit* is made.

**M. Headings**

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

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## SECTION VII. DEFINITIONS

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The following Definitions apply to EPL Coverage only.

- A. **Applicant(s) for employment** means individual(s) who have applied or interviewed for a position of employment where work will be performed for, and completed under the direction of, the *named insured*.
- B. **Bodily injury** means physical injury, sickness, or disease, including death resulting therefrom.
- C. **Claim** means a written demand for money. The word *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 or investigation seeking monetary relief 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 word *claim* include any labor or grievance proceeding, which is subject to a collective bargaining agreement.
- D. **Class action suit** means any *suit* seeking certification or certified as a class action by a federal or state court.
- E. **Defense costs** means reasonable and necessary fees, costs and expenses consented to by *us* resulting solely from the investigation, adjustment, defense and appeal of a *claim* or *suit* against *you*. In no event shall *defense costs* include *your* or *our* routine on-going expenses, including, without limitation, the salaries of *your* or *our* employees, officers or staff attorneys.
- F. **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.

An individual who is an independent contractor or leased to *you* shall also be an *employee*. Independent contractors

who do not provide ongoing and routine services solely for **you** shall not be considered **employees**, including but not limited to independent trade contractors (e.g. plumber, electrician).

- G. EPL coverage period** means the period commencing on the effective date shown in the Supplemental Declarations of this EPL Coverage. This period ends on the earlier of the expiration date or the effective date of **Termination of Coverage**. If **you** became an **insured** under this EPL Coverage after the effective date, the **EPL coverage period** begins on the date **you** became an **insured**.
- H. Loss(es)** means monetary amounts to which this insurance applies and which **you** are legally obligated to pay (including front pay and back pay), judgments, settlements, pre- and post-judgment interest on that part of any judgment paid by **us**, statutory attorney fees, and **defense costs**; however, **loss** shall not include:
1. Civil or criminal fines or penalties imposed by law;
  2. Taxes;
  3. Employment related benefits, stock options, perquisites, deferred compensation or any other type of compensation other than salary, wages or bonus compensation;
  4. 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 person with a disability, or any liability or costs incurred in connection with any educational, sensitivity or other corporate program, policy or seminar;
  5. Matters which may be deemed uninsurable under the law pursuant to which this EPL Coverage shall be construed; or
  6. Punitive or exemplary damages.
- I. Named insured** means the person or organization designated in the Supplemental Declarations page of this EPL Coverage.
- J. Property damage** means physical injury to, or destruction of, tangible property including the loss of use thereof, or loss of use of tangible property, which has not been physically injured or destroyed.
- K. Recognized volunteer** means an uncompensated individual who volunteers labor or services to **you**, but only when performing such labor or services at the request of and under the direction of **you**.
- L. 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. **Claims** or **suits** can allege **related wrongful employment acts**, regardless of whether such **claims** or **suits** involve the same or different claimants, **insureds** or legal causes of actions.
- M. Related third party violation(s)** means **third party violation(s)** which are the same, related or continuous, or **third party violation(s)** which arise from a common nucleus of facts. **Claims** or **suits** can allege **related third party violations**, regardless of whether such **claims** or **suits** involve the same or different claimants, **insureds** or legal causes of actions.
- N. 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.
- O. Subsidiary** means:
1. Any for-profit organization which, on or before the inception of the **EPL coverage period**, is more than fifty (50%) percent owned by the **named insured**, either directly or indirectly through one or more of its **subsidiaries**; or
  2. A for-profit organization which becomes a **subsidiary** during the **EPL coverage period**, but only upon the condition that within ninety (90) days of its becoming a **subsidiary**, the **named insured** shall have provided **us** with full particulars of the new **subsidiary** and agreed to any additional premium or amendment of the provisions of this EPL Coverage required by **us** relating to such new **subsidiary**. Further, coverage as shall be afforded to the new **subsidiary** is conditioned upon the **named insured** paying when due any additional premium required by **us** relating to such new **subsidiary**.

An organization becomes a **subsidiary** when the **named insured** owns more than fifty (50%) percent ownership interest in such **subsidiary**, either directly, or indirectly through one or more of its **subsidiaries**. An organization ceases to be a **subsidiary** when the **named insured** ceases to own more than a fifty (50%) percent ownership in such **subsidiary**, either directly, or indirectly through one or more of its **subsidiaries**.

In all events, coverage as is afforded under this EPL Coverage with respect to a **claim** made or **suit** brought against any **subsidiary** or an **insured** of any **subsidiary**, shall only apply to **wrongful employment act(s)** or **third party violation(s)** commenced or allegedly commenced after the effective time that such **subsidiary** became a **subsidiary**, and prior to the time that such **subsidiary** ceased to be a **subsidiary**.

- P. Suit** means a civil proceeding or an administrative proceeding seeking **money** damages, and includes an arbitration, mediation or any other alternative dispute resolution procedure seeking such damages, to which the **insured** must submit or may submit with **our** consent. **Suit** shall not include any civil proceeding or administrative proceeding arising from

any labor or grievance dispute which is subject to a collective bargaining agreement.

- Q. *Third party violation*** means any actual or alleged discrimination (other than disparate treatment discrimination) or sexual harassment (other than intentional sexual harassment) against **your** clients, customers, tenants, or vendors. ***Third party violation*** shall also include any of the following as it relates to such discrimination or sexual harassment:
1. Violation of an individual's civil rights; provided, however, violation of an individual's civil rights shall not include intentional violation of an individual's civil rights;
  2. Libel;
  3. Slander;
  4. Humiliation;
  5. Mental anguish;
  6. Infliction of emotional distress;
  7. Defamation;
  8. Invasion of privacy; or
  9. Any discrimination arising out of Title III of the Americans With Disabilities Act of 1990.
- R. *Transaction*** means any of the following that occur during the ***EPL coverage period***:
1. The ***named insured*** shall consolidate with or 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;
  2. Any person or entity or group of persons or entities acting in concert shall acquire an amount of the outstanding securities representing more than fifty (50%) percent of the voting power for the election of directors or General Partners of the ***named insured*** (in the event the ***named insured*** is a Partnership), or acquires the voting rights of such an amount of such securities; or
  3. A General Partner of the ***named insured*** (in the event the ***named insured*** is a partnership) withdraws, resigns or is terminated.
- S. *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;
  2. Harassment or coercion (including sexual harassment, whether quid pro quo, hostile work environment or otherwise); provided, however, harassment or coercion shall not include intentional harassment or coercion;
  3. Discrimination (including but not limited to discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy, disability, or violation of Title III of the Americans With Disabilities Act of 1990); provided, however, discrimination shall not include discrimination based on disparate treatment;
  4. ***Retaliation*** (including lockouts); provided, however, retaliation shall not include intentional retaliation;
  5. Employment-related misrepresentation(s) to ***your employee*** or ***applicant for employment*** with ***you***;
  6. Employment-related libel, slander, humiliation, mental anguish, infliction of emotional distress, defamation, or invasion of privacy;
  7. Wrongful failure to employ or promote;
  8. 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;
  9. Wrongful discipline;
  10. Failure to provide or enforce adequate or consistent corporate policies and procedures relating to any ***wrongful employment act*** or ***third party violation***;
  11. Negligent supervision or hiring by an ***insured***, relating to any of the above; or
  12. Violation of an individual's civil rights relating to any of the above; provided, however, violation of an individual's civil rights shall not include intentional violation of an individual's civil rights.

ALL OTHER ***TERMS***, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.