



In consideration of payment of the premium and subject to the Declarations, General Terms and Conditions, and the limitations, conditions, provisions and other terms of this Coverage Part, the Company and the Insureds agree as follows:

I. INSURING CLAUSES

Insuring Clause (A): Employment Practices Liability Coverage

- (A) The Company shall pay, on behalf of an **Insured, Loss** on account of an **Employment Claim** first made against the **Insured** during the **Policy Period**, or the Extended Reporting Period if applicable, provided the Company's maximum liability for this Insuring Clause (A) shall be the Limit of Liability set forth in Item 3(A) of the EPL Declarations or the unpaid portion of the Maximum Aggregate Limit of Liability set forth in Item 2 of the EPL Declarations for each **Policy Year**, whichever is less.

Insuring Clause (B): Third Party Liability Coverage

- (B) The Company shall pay, on behalf of an **Insured, Loss** on account of a **Third Party Claim** first made against the **Insured** during the **Policy Period**, or the Extended Reporting Period if applicable, provided the Company's maximum liability for this Insuring Clause (B) shall be the Limit of Liability set forth in Item 3(B) of the EPL Declarations or the unpaid portion of the Maximum Aggregate Limit of Liability set forth in Item 2 of the EPL Declarations for each **Policy Year**, whichever is less.

II. DEFINITIONS

For purposes of this Coverage Part:

Application means:

- (A) any portion of an application given to the Company for this Policy, including any attachments, written information and materials provided to the Company by or on behalf of an **Insured** for the purposes of the Company's underwriting of this Coverage Part; and
- (B) any warranty provided to the Company within the past three years in connection with any coverage part or policy of which this Coverage Part is a renewal or replacement.

Benefits means perquisites, fringe benefits, deferred compensation or payments (including insurance premiums) in connection with an employee benefit plan and any other payment to or for the benefit of an employee arising out of the employment relationship. **Benefits** shall not include salary, wages, commissions, bonuses, **Stock Benefits** or non-deferred cash incentive compensation.

Breach of Employment Contract means any breach of any oral, written or implied contract or contractual obligation including any contract or contractual obligation arising out of any personnel manual, employee handbook, policy statement or other representation.

Claim means any **Employment Claim** and any **Third Party Claim**. Except as may otherwise be provided in Section V, Extended Reporting Period, of the General Terms and Conditions, or Section V(C), Reporting, a **Claim** shall be deemed to have first been made when such **Claim** is commenced as set forth in the respective definitions of **Employment Claim** and **Third Party Claim**.

Defense Costs means that part of **Loss** consisting of reasonable costs, charges, fees (including attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries, fees, benefits of the **Insured Persons**) incurred in defending, opposing or appealing any **Claim**, and the premium for appeal, attachment or similar bonds.

Employee means any natural person whose labor or service was, is or will be engaged and directed by an **Organization**, including a part-time, seasonal, leased and temporary employee, intern or volunteer. **Employee** shall not include any **Independent Contractor**.



Employment Claim means:

- (A) (1) any:
- (a) written demand first received by an **Insured** for monetary or non-monetary relief, including a written demand for reinstatement, reemployment, re-engagement or injunctive relief;
 - (b) civil proceeding commenced by the service of a complaint or similar pleading;
 - (c) criminal proceeding outside the United States of America commenced by a return of an indictment, information or similar document;
 - (d) arbitration proceeding pursuant to an employment contract, policy or practice of an **Organization**, commenced by the receipt by an **Insured** of a demand for arbitration or similar document, or any other external alternative dispute resolution proceeding commenced by receipt by an **Insured** of a demand for an alternative dispute resolution or similar document; or
 - (e) administrative, regulatory or tribunal proceeding commenced by:
 - (i) the issuance of a notice of charge, formal investigative order or similar document; or
 - (ii) in the event the **Insured** is not issued notice as set forth in (e)(i) above, the receipt by an **Insured** of the administrative, regulatory or tribunal proceeding resulting from such notice of charge, formal investigative order or similar document, including any such proceeding brought by or in association with the Equal Employment Opportunity Commission or any similar governmental agency located anywhere in the world with jurisdiction over the **Organization's** employment practices; or
- (2) in the context of an audit conducted by the Office of Federal Contract Compliance Programs, a Notice of Violation or Order to Show Cause or written demand for monetary relief or injunctive relief, commenced by the receipt by an **Insured** of such Notice, Order or written demand, which is brought and maintained by or on behalf of a past, present or prospective **Employee** or **Independent Contractor** of an **Organization** against any **Insured** for an **Employment Practices Wrongful Act** (even if such **Employment Practices Wrongful Act** is related to allegations in a criminal proceeding in the United States of America), including any appeal therefrom; or
- (B) a written request first received by an **Insured** to toll or waive a statute of limitations relating to a potential **Employment Claim** as described in Subsection (A) above.

Notwithstanding the foregoing, **Employment Claim** shall not include any labor or grievance arbitration or other proceeding pursuant to a collective bargaining agreement.

Employment Discrimination means any violation of employment discrimination laws including any actual, alleged or constructive employment termination, dismissal, or discharge, employment demotion, denial of tenure, modification of any term or condition of employment, any failure or refusal to hire or promote, or any limitation, segregation or classification of any employee or applicant for employment in any way that would deprive or tend to deprive any person of employment opportunities or otherwise affect his or her status as an employee based on such person's race, color, religion, creed, genetic information, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, Vietnam Era Veteran status or other protected military status or other status that is protected pursuant to any federal, state, or local statutory law or common law anywhere in the world.



Employment Harassment means:

- (A) sexual harassment, including unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature that is made a condition of employment with, used as a basis for employment decisions by, interferes with performance or creates an intimidating, hostile or offensive working environment within an **Organization**; or
- (B) workplace harassment, including work related harassment or bullying of a non-sexual nature that interferes with performance or creates an intimidating, hostile or offensive working environment within an **Organization**.

Employment Practices Wrongful Act means any actual or alleged:

- (A) **Breach of Employment Contract**;
- (B) **Employment Discrimination**;
- (C) **Employment Harassment**;
- (D) **Retaliation**;
- (E) **Workplace Tort**;
- (F) **Wrongful Employment Decision**; or
- (G) **Wrongful Termination**,

committed, attempted, or allegedly committed or attempted by an **Organization** or by an **Insured Person** while acting in his or her capacity as such.

Executive means any natural person who was, is or will be:

- (A) a duly elected or appointed director, officer, or in-house general counsel of any **Organization** incorporated in the United States of America;
- (B) a duly elected or appointed: (1) manager or member of the Board of Managers or equivalent position; or (2) in-house general counsel, of any **Organization** formed as a limited liability company in the United States of America; or
- (C) a holder of an equivalent position to those described in Subsections (A) or (B) above in any **Organization** incorporated, formed or organized anywhere in the world.

Financial Impairment means the status of an **Organization** resulting from:

- (A) the appointment by any federal or state official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate such **Organization**; or
- (B) such **Organization** becoming a debtor in possession under the United States bankruptcy law or the equivalent of a debtor in possession under the law of any other country,

provided that the court or other judicial or administrative body overseeing the receivership, conservatorship, liquidation, rehabilitation, bankruptcy or equivalent proceeding has denied a request by the **Organization**, or other party determined to have standing, for authorization of the **Organization** to indemnify an **Insured Person** for **Loss**; provided further that, the Company may, in its sole discretion, waive the foregoing requirement.

Independent Contractor means any natural person working for an **Organization** in the capacity of an independent contractor and pursuant to an **Independent Contractor Services Agreement**.

Independent Contractor Services Agreement means any express contract or agreement between an **Independent Contractor**, or any entity on behalf of such **Independent Contractor**, and the **Organization** governing the nature of the **Organization's** engagement of such **Independent Contractor**.

Insured means any **Organization** and any **Insured Person**.



Insured Person means any:

- (A) **Executive** or **Employee** of an **Organization**; or
- (B) **Independent Contractor** working for an **Organization**, but only while acting in his or her capacity as such and only if the **Organization** agrees to indemnify the **Independent Contractor** in the same manner as provided to the **Organization's Employees** for liability arising out of a **Claim**.

Loss means the amount which an **Insured** becomes legally obligated to pay as a result of any **Claim**, including:

- (A) compensatory damages;
- (B)
 - (1) punitive, exemplary or multiplied damages, if and to the extent such damages are insurable under the law of the jurisdiction most favorable to the insurability of such damages, provided such jurisdiction has a substantial relationship to the **Insured**, the Company, or to the **Claim** giving rise to such damages; or
 - (2) liquidated damages awarded pursuant to the Age Discrimination in Employment Act, Family and Medical Leave Act or Equal Pay Act;
- (C) back pay, front pay, claimant's attorney's fees awarded by a court against an **Insured** or agreed to by the Company in connection with a settlement (but only if such claimant's attorney's fees are agreed to in writing by the Company at the time of or after a final settlement);
- (D) judgments, including pre-judgment and post-judgment interest;
- (E) settlements; and
- (F) **Defense Costs**,

provided that **Loss** does not include any portion of such amount that constitutes any:

- (1) cost of compliance with any order for, grant of, or agreement to provide non-monetary relief, including injunctive relief;
- (2) amount uninsurable under the law pursuant to which this Coverage Part is construed;
- (3) tax, fine or penalty imposed by law; except as provided above with respect to punitive, exemplary or multiplied damages, or liquidated damages;
- (4) future salary, wages, commissions, or **Benefits** of a claimant who has been or shall be hired, promoted or reinstated to employment pursuant to a settlement, order or other resolution of any **Claim**;
- (5) salary, wages, commissions, **Benefits** or other monetary payments which constitute severance payments or payments pursuant to a notice period;
- (6) **Benefits** due or to become due or the equivalent value of such **Benefits**, except with respect to any **Employment Claim** for **Wrongful Termination**, or **Stock Benefits**;
- (7) cost associated with providing any accommodation for persons with disabilities or any other status which is protected under any applicable federal, state, or local statutory law or common law anywhere in the world, including, the Americans with Disabilities Act, the Civil Rights Act of 1964, or any amendments to or rules or regulations promulgated under any such law;
- (8) amount incurred by an **Insured** in the defense or investigation of any action, proceeding or demand that was not then a **Claim** even if (a) such amount also benefits the defense of a covered **Claim**; or (b) such action, proceeding, investigation or demand subsequently gives rise to a **Claim**; or
- (9) cost incurred in cleaning-up, removing, containing, treating, detoxifying, neutralizing, assessing the effects of, testing for, or monitoring **Pollutants**.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, asbestos, asbestos products or waste. Waste includes materials to be recycled, reconditioned or reclaimed.



Potential Claim means a complaint or allegation of a **Wrongful Act** by or on behalf of a potential claimant if such complaint or allegation:

- (A) does not constitute a **Claim** but may subsequently give rise to a **Claim**; and
- (B) is lodged with:
 - (1) any supervisory employee having management-level responsibility for personnel matters with respect to such claimant, if such supervisory employee provides notice of such complaint or allegation to any member of an **Organization's** human resources, general counsel or risk management departments, or other comparable department; or
 - (2) any member of an **Organization's** human resources, general counsel or risk management departments, or other comparable department.

Retaliation means retaliatory treatment against an **Employee** or **Independent Contractor** of an **Organization** on account of such individual:

- (A) exercising his or her rights under law, refusing to violate any law, or opposing any unlawful practice;
- (B) having assisted or testified in or cooperated with a proceeding or investigation (including any internal investigation conducted by the **Organization's** human resources department or legal department) regarding alleged violations of law by the **Insured**;
- (C) disclosing or threatening to disclose to a superior or to any governmental agency any alleged violations of law; or
- (D) filing any claim against the **Organization** under the Federal False Claims Act, Section 806 of the Sarbanes Oxley Act or any other federal, state, local or foreign whistleblower law.

Stock Benefits means any:

- (A) offering, plan or agreement between an **Organization** and any employee which grants stock, warrants, shares or stock options of the **Organization** to such employee, including grants of stock options, restricted stock, stock warrants, performance stock shares, membership shares, or any other compensation or incentive granted in the form of securities of the **Organization**; or
- (B) payment or instrument the amount or value of which is derived from the value of securities of the **Organization**, including stock appreciation rights or phantom stock plans or arrangements,

provided that **Stock Benefits** shall not include amounts claimed under any employee stock ownership plans or employee stock purchase plans.

Third Party means any natural person who is a customer, vendor, service provider or other business invitee of an **Organization**.

Third Party Claim means any:

- (A) written demand first received by an **Insured** for monetary or non-monetary relief, including injunctive relief;
- (B) civil proceeding commenced by the service of a complaint or similar pleading;
- (C) arbitration proceeding commenced by the receipt by an **Insured** of a demand for arbitration or similar document, or any other external alternative dispute resolution proceeding commenced by receipt by an **Insured** of a demand for an alternative dispute resolution or similar document; or
- (D) administrative, regulatory or tribunal proceeding commenced by the issuance of a notice of charge, formal investigative order or similar document,

which is brought and maintained by or on behalf of a **Third Party** against an **Insured** for a **Third Party Wrongful Act**, including any appeal therefrom; or



- (E) a written request first received by an **Insured** to toll or waive a statute of limitations relating to a potential **Third Party Claim** as described in Subsections (A) through (D) above.

Third Party Wrongful Act means any actual or alleged:

- (A) discrimination against a **Third Party** based upon such **Third Party's** race, color, religion, creed, genetic information, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, Vietnam Era Veteran status or other protected military status or other status that is protected pursuant to any federal, state, or local statutory law or common law anywhere in the world; or
- (B) harassment, including unwelcome sexual advances, requests for sexual favors or other conduct of a sexual nature against a **Third Party**,

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

Workplace Tort means any:

- (A) employment-related:
- (1) misrepresentation;
 - (2) defamation (including libel and slander);
 - (3) invasion of privacy (including the unauthorized use or disclosure of an **Employee's** (a) medical information in violation of the Health Insurance Portability and Accountability Act ("HIPAA"); (b) credit information or related information in violation of the Fair Credit Reporting Act; or (c) other information obtained through an employment-related background check);
 - (4) negligent evaluation;
 - (5) wrongful discipline; or
 - (6) wrongful deprivation of career opportunity; or
- (B) employment-related:
- (1) negligent retention;
 - (2) negligent supervision;
 - (3) negligent hiring;
 - (4) negligent training;
 - (5) wrongful infliction of emotional distress, mental anguish or humiliation;
 - (6) failure to provide or enforce consistent employment-related corporate policies and procedures; or
 - (7) false imprisonment,

but only when alleged as part of an **Employment Claim** for any **Wrongful Employment Decision, Breach of Employment Contract, Employment Discrimination, Employment Harassment, Retaliation, Wrongful Termination**, or any act set forth in Subsection (A) of this definition.

Wrongful Act means an **Employment Practices Wrongful Act** and **Third Party Wrongful Act**.

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

Wrongful Termination means any wrongful termination, dismissal or discharge of employment, including constructive termination, dismissal or discharge. **Wrongful Termination** does not include **Breach of Employment Contract**.



III. EXCLUSIONS

The Company shall not be liable for **Loss** on account of any **Claim**:

- (A) Prior Notice
based upon, arising from or in consequence of any fact, circumstance, situation, transaction, event or **Wrongful Act** that, before the inception date set forth in Item 2 (A), Policy Period, of the GTC Declarations, was the subject of any notice accepted under any employment practices liability policy or coverage part or any other liability policy or coverage part that includes coverage for employment practices liability of which this Coverage Part is a direct or indirect renewal or replacement;
- (B) Pending or Prior Proceedings
based upon, arising from or in consequence of a written demand alleging a **Wrongful Act**, suit, formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document, a Notice of Violation or Order to Show Cause resulting from an audit conducted by the Office of Federal Contract Compliance Programs or arbitration proceeding pending against or order, decree or judgment entered for or against any **Insured** on or prior to the applicable Pending or Prior Proceedings Date as set forth in Item 5 of the EPL Declarations or the same or substantially the same fact, circumstance or situation underlying or alleged therein;
- (C) Pollution
based upon, arising from or in consequence of any:
- (1) discharge, emission, release, dispersal or escape of any **Pollutants** or any threat thereof;
 - (2) treatment, removal or disposal of any **Pollutants**; or
 - (3) regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any **Pollutants**,
- including any **Claim** for financial loss to an **Organization**, its securityholders or its creditors based upon, arising from or in consequence of any matter described in Paragraphs (1), (2) or (3) of this Exclusion (C), provided that this Exclusion (C) shall not apply to **Loss** on account of any **Employment Claim** for **Retaliation**;
- (D) Bodily Injury/ Property Damage
for bodily injury, mental anguish, humiliation, emotional distress, sickness, disease or death of any person or damage to or destruction of any tangible property including the loss of use thereof whether or not it is damaged or destroyed, provided that this Exclusion (D) shall not apply to **Loss** for any mental anguish, humiliation or emotional distress when alleged as part of an otherwise covered **Claim**;
- (E) Workers' Compensation, Unemployment, Social Security, Disability Benefits
for any obligation of any **Insured** pursuant to any workers compensation, unemployment insurance, social security, disability benefits or any similar federal, state, or local statutory law or common law anywhere in the world, provided that this Exclusion (E) shall not apply to **Loss** on account of any **Employment Claim** for **Retaliation**;
- (F) Breach of Independent Contractor Agreement
for any breach of any **Independent Contractor Services Agreement**;
- (G) Employee Benefits Program
for any violation of the responsibilities, obligations or duties imposed by any federal, state, or local statutory law or common law anywhere in the world (including the Employment Retirement Income Security Act of 1974 (except section 510 thereof) and the Consolidated Omnibus Budget Reconciliation Act of 1985) or amendments to or regulations promulgated under any such law that governs any employee benefit arrangement, program, policy, plan or scheme of any type (whether or not legally required or whether provided during or subsequent to employment with an **Organization**), including any:
- (1) retirement income or pension benefit program;
 - (2) profit sharing plan, deferred compensation plan, employee stock purchase plan, or employee stock ownership plan;



- (3) vacation, maternity leave, personal leave, or parental leave;
- (4) severance pay arrangement;
- (5) apprenticeship program;
- (6) life insurance plan, welfare plan, supplementary unemployment compensation plan, or pre-paid legal service plan or scholarship plan;
- (7) health, sickness, medical, dental, disability or dependant care plan; or
- (8) similar arrangement, program, plan or scheme,

provided that this Exclusion (G) shall not apply to **Loss** on account of any **Employment Claim for Retaliation**;

(H) Occupational Safety and Health

for any violation of the responsibilities, obligations or duties imposed by any federal, state, or local statutory law or common law anywhere in the world (including the Occupational Safety and Health Act) or amendments to or regulations promulgated under any such law that governs workplace safety and health, including any obligation to maintain a place of employment free from hazards likely to cause physical harm, injury or death, provided that this Exclusion (H) shall not apply to **Loss** on account of any **Employment Claim for Retaliation**;

(I) Wage and Hour

for any violation of the responsibilities, obligations or duties imposed by any federal, state, or local statutory law or common law anywhere in the world (including the Fair Labor Standards Act) or amendments to or regulations promulgated under any such law that governs wage, hour and payroll policies and practices, except the Equal Pay Act, including:

- (1) the calculation, recordkeeping, timing or manner of payment of minimum wages, prevailing wage rates, overtime pay or other compensation alleged to be due and owing;
- (2) the classification of any organization or person for wage and hour purposes;
- (3) garnishments, withholdings or other deductions from wages;
- (4) child labor;
- (5) pay equity or comparable worth; or
- (6) any similar policies or practices,

provided that this Exclusion (I) shall not apply to **Loss** on account of any **Employment Claim for Retaliation**;

(J) Workforce Notification

for any violation of the responsibilities, obligations or duties imposed by any federal, state, or local statutory law or common law anywhere in the world (including the Worker Adjustment and Retraining Notification Act) or amendments to or regulations promulgated under any such law that governs any obligation of an employer to notify, discuss or bargain with its employees or others in advance of any plant or facility closing, or mass layoff, or any similar obligation, provided that this Exclusion (J) shall not apply to **Loss** on account of any **Employment Claim for Retaliation**;

(K) Labor Management Relations

for any violation of the responsibilities, obligations or duties imposed by any federal, state, or local statutory law or common law anywhere in the world (including the National Labor Relations Act) or any amendments to or regulations promulgated under any such law that governs:

- (1) the rights of employees to engage in, or to refrain from engaging in, union or other collective activities, including union organizing, union elections and other union activities;



- (2) the duty or obligation of an employer to meet, discuss, notify or bargain with any employee or employee representative, collectively or otherwise;
- (3) the enforcement of any collective bargaining agreement, including grievance and arbitration proceedings;
- (4) strikes, work stoppages, boycotts, picketing and lockouts; or
- (5) any similar rights or duties,

provided that this Exclusion (K) shall not apply to **Loss** on account of any **Employment Claim** for **Retaliation**;

(L) Breach of Written Employment Contract

based upon, arising from or in consequence of any breach of any written employment contract, provided that this Exclusion (L) shall not apply to:

- (1) **Loss** to the extent an **Insured** would have been liable for such **Loss** in the absence of such written employment contract; or
- (2) **Defense Costs**.

IV. REPORTING

(A) An **Insured** shall, as a condition precedent to exercising any right to coverage under this Coverage Part, give to the Company written notice of any **Claim** as soon as practicable after the chief executive officer, chief financial officer, any person with the responsibility for the management of insurance claims (or any equivalent position to any of the foregoing), or any member of the in-house general counsel or human resources departments, of an **Organization** becomes aware of such **Claim**, but in no event later than:

- (1) if this Coverage Part expires (or is otherwise terminated) without being renewed with the Company, ninety (90) days after the effective date of such expiration or termination; or
- (2) the expiration date of the Extended Reporting Period, if applicable,

provided that if the Company sends written notice to the **Parent Organization** stating that this Coverage Part is being terminated for nonpayment of premium, an **Insured** shall give to the Company written notice of such **Claim** prior to the effective date of such termination.

(B) Notwithstanding the foregoing Subsection (A) and solely with respect to an **Employment Claim** that is brought as a formal administrative or regulatory proceeding commenced by the filing of a notice of charges, an **Insured**, shall, as a condition precedent to exercising any right to coverage under this Coverage Part, give written notice thereof to the Company during the **Policy Period**, or, if applicable, in no event later than the earliest of the following dates:

- (1) if this Coverage Part is renewed, 180 days after the end of the **Policy Period**,
- (2) if this Coverage Part expires (or is otherwise terminated) without being renewed with the Company and if no Extended Reporting Period is purchased, ninety (90) days after the effective date of such expiration or termination; or
- (3) the expiration date of the Extended Reporting Period, if elected,

provided that if the Company sends written notice to the **Parent Organization**, stating that this Policy is being terminated for nonpayment of premium, an **Insured** shall give to the Company written notice of such **Employment Claim** prior to the effective date of such termination.

(C) If during the **Policy Period**, or any applicable Extended Reporting Period, an **Insured** becomes aware of a **Potential Claim** and gives written notice of such **Potential Claim** to the Company, and requests coverage under this Coverage Part for any **Claim** subsequently resulting from such **Potential Claim**, then any **Claim** subsequently arising from the **Potential Claim** shall be deemed made against the **Insured**



during the **Policy Year** in which written notice of such **Potential Claim** was first given to the Company, provided any such subsequent **Claim** is reported to the Company as soon as practicable, but in no event later than ninety (90) days after the chief executive officer, chief financial officer, any position responsible for the management of insurance claims (or any position equivalent to any of the foregoing), or any member of the in-house general counsel or human resources departments of an **Organization** becomes aware of such **Claim**.

- (D) An **Insured** shall, as a condition precedent to exercising any right to coverage under this Coverage Part, give to the Company such information, assistance and cooperation as the Company may reasonably require and shall include in any notice under Subsections (A), (B) or (C) above, a description of the **Claim**, request or **Potential Claim**, the nature of any alleged **Wrongful Act**, the nature of the alleged or potential damage, the names of all actual or potential claimants, the names of all actual or potential defendants, the manner in which such **Insured** first became aware of the **Claim**, **Potential Claim** or alleged **Wrongful Act**, and with respect to notices of **Potential Claims** under Subsection (C) above, the consequences which have resulted or may result from such **Potential Claim**.

V. RETENTION

- (A) The Company's liability under this Coverage Part shall apply only to that part of each **Loss** which is excess of the applicable Retention set forth in Item 4 of the EPL Declarations and such Retention shall be borne by the **Insureds** uninsured and at their own risk.
- (B) If different parts of a single **Claim** are subject to different Retentions in different Insuring Clauses within this Coverage Part, the applicable Retentions shall be applied separately to each part of such **Claim**, but the sum of such Retentions shall not exceed the largest applicable Retention.
- (C) If different parts of a single **Claim** are subject to different Retentions in different Coverage Parts, the applicable Retentions shall be applied separately to each part of such **Claim**, but the sum of such Retentions shall not exceed the largest applicable Retention.
- (D) **Claims** shall be subject to the Retention(s) applicable to the **Policy Year** during which such **Claims** are first made or first deemed to have been made.
- (E) No Retention shall apply to any **Loss** under this Coverage Part incurred by an **Insured Person** if such **Loss** can not be indemnified by an **Organization** because such **Organization** is not permitted by common or statutory law to indemnify, or is permitted or required to indemnify, but is unable to do so by reason of **Financial Impairment**.

VI. DEFENSE AND SETTLEMENT

- (A) Except as provided in Subsection (B) below, the Company shall have the right and duty to defend any **Claim** covered by this Coverage Part. Coverage shall apply even if any of the allegations are groundless, false or fraudulent. The Company's duty to defend any **Claim** shall cease upon exhaustion of the applicable Limit of Liability.
- (B) Notwithstanding Subsection (A) above, it shall be the duty of the **Insureds** and not the duty of the Company to defend any **Claim** which is in part excluded from coverage pursuant to Exclusion III(I), Wage and Hour. For such portion of such **Claim** that is otherwise covered under this Coverage Part, the **Insureds** shall select as defense counsel for such **Claim** a law firm included in the Company's then current list of approved employment defense firms for the jurisdiction in which such **Claim** is pending.
- (C) The Company may make any investigation it deems necessary and may, with the consent of the **Insureds**, make any settlement of any **Claim** it deems appropriate.
- (D) No **Insured** shall settle any **Claim**, incur any **Defense Costs**, or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the Company's written consent, which



shall not be unreasonably withheld. The Company shall not be liable for any settlement, **Defense Costs**, assumed obligation or admission to which it has not consented.

- (E) The Company shall have no obligation to pay **Loss**, including **Defense Costs**, or to defend or continue to defend any **Claim** after the Company's Maximum Aggregate Limit of Liability set forth in Item 2 of the EPL Declarations or the Combined Maximum Aggregate Limit of Liability set forth in Item 3 of the GTC Declarations, if applicable, has been exhausted by the payment of **Loss** and the premium shall be deemed fully earned.
- (F) The **Insureds** agree to provide the Company with all information, assistance and cooperation which the Company reasonably requests and agrees they will do nothing that may prejudice the Company's position or its potential or actual rights of recovery.

VII. ALLOCATION

If the **Insureds** who are afforded coverage for a **Claim** incur an amount consisting of both **Loss** that is covered by this Coverage Part and also loss that is not covered by this Coverage Part because such **Claim** includes both covered and uncovered matters, then coverage shall apply as follows:

- (A) **Defense Costs**: one hundred percent (100%) of **Defense Costs** incurred by such **Insured** on account of such **Claim** shall be covered **Loss**, provided that the foregoing shall not apply with respect to any **Insured** for whom coverage is excluded pursuant to Exclusion III(I), Wage and Hour, or Subsection X(C), Representations and Severability. Such **Defense Costs** shall be allocated between covered **Loss** and non-covered loss based on the relative legal exposures of the parties to such matters; and
- (B) loss other than **Defense Costs**: all remaining loss incurred by such **Insured** from such **Claim** shall be allocated between covered **Loss** and uncovered loss based upon the relative legal exposures of the parties to such matters.

VIII. EMPLOYMENT CLAIM ARBITRATION

- (A) Any dispute between any **Insured** and the Company based upon, arising from or in any way involving any actual or alleged coverage under this Coverage Part, or the validity, termination or breach of this Coverage Part, including any dispute sounding in contract or tort, shall be submitted to binding arbitration.
- (B) An **Organization**, however, shall first have the option to resolve the dispute by non-binding mediation pursuant to such rules and procedures, and using such mediator, as the parties may agree. If the parties cannot so agree, the mediation shall be administered by the American Arbitration Association pursuant to its then prevailing commercial mediation rules.
- (C) If the parties cannot resolve the dispute by non-binding mediation, the parties shall submit the dispute to binding arbitration pursuant to the then prevailing commercial arbitration rules of the American Arbitration Association, except that the arbitration panel shall consist of one arbitrator selected by the **Insureds**, one arbitrator selected by the Company, and a third arbitrator selected by the first two arbitrators.

IX. OTHER INSURANCE

Unless specifically stated otherwise, the coverage afforded under this Coverage Part for:

- (A) **Employment Claims** shall be primary, provided that with respect to that portion of an **Employment Claim** made against any leased or temporary employee or **Independent Contractor**, **Loss**, including **Defense Costs**, payable on behalf of such leased or temporary employee or **Independent Contractor** under this Coverage Part shall be excess of and shall not contribute with any other valid and collectible insurance policy (other than a policy that is issued specifically as excess of the insurance afforded by the Coverage Part), regardless of whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise.



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- (B) **Third Party Claims** shall be excess of and shall not contribute with any other valid and collectible insurance policy (other than a policy that is issued specifically as excess of the insurance afforded by the Coverage Part), regardless of whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise.

X. REPRESENTATIONS AND SEVERABILITY

- (A) In granting coverage to the **Insureds** under this Coverage Part, the Company has relied upon the declarations and statements in the **Application** for this Coverage Part. Such declarations and statements are the basis of the coverage under this Coverage Part and shall be considered as incorporated in and constituting part of this Coverage Part.
- (B) The **Application** for coverage shall be construed as a separate **Application** for coverage by each **Insured Person**. With respect to the declarations and statements in such **Application**, no knowledge possessed by an **Insured Person** shall be imputed to any other **Insured Person**.
- (C) However, in the event that such **Application** contains any misrepresentations made with the actual intent to deceive or contains misrepresentations which materially affect either the acceptance of the risk or the hazard assumed by the Company under this Coverage Part, then no coverage shall be afforded for any **Claim** based upon, arising from or in consequence of any such misrepresentations with respect to:
- (1) any **Insured Person** who knew of such misrepresentations (whether or not such **Insured Person** knew such **Application** contained such misrepresentations) or any **Organization** to the extent it indemnifies any such **Insured Person**; or
 - (2) any **Organization** if any past or present director of human resources, chief executive officer, chief financial officer, in-house general counsel (or any equivalent position to any of the foregoing) of the **Parent Organization** knew of such misrepresentations (whether or not such individual knew such **Application** contained such misrepresentations).
- (D) The Company shall not be entitled under any circumstances to void or rescind this Coverage Part with respect to any **Insured**.
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