**EMPLOYMENT PRACTICES LIABILITY COVERAGE PART**

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**INSURING AGREEMENTS**

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A. Employment Practices Liability Coverage

The Insurer shall pay **Loss** of an **Insured** on account of a **Claim** first made against such **Insured** during the **Policy Period** or the Extended Reporting Period, if applicable, for a **Wrongful Employment Act** that takes place before or during the **Policy Period**.

B. Third-Party Liability Coverage

If Third-Party Liability Coverage is purchased, then the Insurer shall pay **Loss** of the **Insured** on account of a **Third-Party Claim** first made against such **Insured** during the **Policy Period** or the Extended Reporting Period, if applicable, for a **Wrongful Third-Party Act** that takes place before or during the **Policy Period**.

As a condition precedent to the coverage afforded by these Insuring Agreements, the **Insured** shall report any such **Claim** in writing to the Insurer as soon as practicable after the risk manager, general counsel, human resources manager, or the functional equivalent of the foregoing in an **Organization** first becomes aware of such **Claim**, but in no event later than ninety (90) days after the expiration of the **Policy Period**, or, with respect to a **Claim** made during the Extended Reporting Period, no later than the expiration of the Extended Reporting Period.

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**DEFINITIONS**

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For purposes of this **Coverage Part**, and whether singular or plural, the following Definitions apply:

**Breach of Employment Contract** means a breach of any oral, written, or implied employment contract.

**Claim** as defined in the General Terms and Conditions does not apply to this **Coverage Part**.. **Claim** means:

1. a written demand for monetary, non-monetary, or injunctive relief, including, but not limited to, a written demand for reinstatement, reemployment, or reengagement;

2. a civil proceeding commenced by the service of a complaint or similar pleading;

3. an arbitration, mediation, or other alternative dispute resolution proceeding commenced by a written demand or other similar document;

4. a criminal proceeding commenced by the return of an indictment, information, or similar document;

5. an administrative or regulatory proceeding or formal investigation commenced by the issuance of a notice of charges, formal investigative order, or similar document, including, but not limited to, a formal administrative, investigative, or regulatory proceeding by or before the Equal Employment Opportunity Commission (EEOC), the Office of Federal Contract Compliance Programs (OFCCP), or other formal proceeding before a similar federal, state, or foreign governmental agency; or

6. a proceeding brought by the OFCCP commenced by a notice of violation, an order to show cause, or a written demand for monetary or injunctive relief by the OFCCP;

including an appeal of any of the foregoing; or

7. a request to toll or waive a statute of limitations with respect to a **Wrongful Act**.

**Claim** does not include any labor or grievance arbitration or other proceeding pursuant to a collective bargaining agreement.

**Employment Benefits** means perquisites, fringe benefits, deferred compensation, retirement or medical benefits, vacation days, sick days, stock options, or other rights or payments (including insurance premiums) in connection with an employee benefit plan or arising out of the employment relationship. **Employment Benefits** does not include salary, wages, commissions, or non-deferred cash incentive compensation.

**Employment Discrimination** means the violation of any law with respect to discrimination in employment, including, but not limited to, any federal, state, local, or foreign statute, regulation, ordinance, or common law. **Employment Discrimination** includes, but is not limited to, employment-related discrimination based on age, gender, gender identity or expression, sexual orientation or preference, pregnancy, marital status, race, color, national origin, genetic information, disability, religion, or military status.

**Employment Harassment** means:

1. work-related sexual harassment that interferes with performance or creates an intimidating, hostile, or offensive working environment;

2. sexual advances, requests for sexual favors, or other conduct of a sexual nature that is made a condition of employment or that is used as a basis for employment decisions; or

3. other work-related harassment that interferes with performance or creates an intimidating, hostile, or offensive working environment, including workplace bullying.

**Entity Insured** means an **Insured** in this **Coverage Part** that is not a natural person.

**Insured** means the **Insured Individuals** and the **Organization**.

**Insured Individual** means an **Employee** or **Executive** of an **Organization** in his or her capacity as such.

**Loss** as defined in the General Terms and Conditions does not apply to this **Coverage Part**. **Loss** means amounts that the **Insured** becomes legally obligated to pay on account of a **Claim**, including, but not limited to, damages, judgments, settlement amounts, any award of pre-judgment or post-judgment interest, punitive and exemplary damages, the multiple portion of any multiplied damage award, costs and fees awarded pursuant to judgments (including prevailing plaintiff attorney’s fees awarded pursuant to Section 1988 of the Civil Rights Act, or liquidated damages awarded under the Age Discrimination in Employment Act, the Equal Pay Act, or the Family Medical Leave Act), back pay, front pay, and **Defense Costs**.

**Loss** does not include:

1. any amounts for which the **Insureds** are legally or financially absolved from payment;

2. taxes or the loss of tax benefits;

3. fines or penalties;

4. costs to comply with an injunction or any other non-monetary relief, or any agreement to provide such relief;

5. any amount that constitutes the return or disgorgement of fees or any other compensation paid to the **Insured**;

6. the future salary, wages, commissions, or **Employment Benefits** of a claimant who has been or will be hired, promoted, or reinstated to employment pursuant to a settlement of, order in, or other resolution of any **Claim**;

7. compensation that is granted in the form of securities of the **Organization** or is based on the value of securities of the **Organization**, or any compensation based on investment results or trading profits;

8. compensation earned by the claimant in the course of employment but not paid by the **Organization**, including, but not limited to, any unpaid salary, wages, commissions, and **Employment Benefits**;

9. compensation that constitutes severance payments or payments pursuant to a notice period, including, but not limited to, salary, wages, commissions, and **Employment Benefits**; or

10. matters uninsurable under the law applicable to this **Coverage Part**;

however, the Insurer shall pay **Defense Costs** in an otherwise covered **Claim** in which the foregoing are amounts that the **Insured** becomes legally obligated to pay on account of such **Claim**.

Notwithstanding the foregoing in this Definition, in determining the insurability of punitive or exemplary damages, or the multiple portion of any multiplied damage award, it is agreed that the law of the jurisdiction most favorable to the insurability of those damages will control, if such jurisdiction has a substantial relationship to the **Claim**, the **Insured**, or this Policy.

**Other Workplace Tort** means:

1. failure to grant or adopt adequate employment-related policies and procedures;

2. negligent hiring, training, supervision, or retention of employees;

3. false arrest, detention, or false imprisonment; or

4. employment-related wrongful infliction of emotional distress, mental anguish, or humiliation;

but only when alleged as part of a **Claim**, other than a **Third-Party Claim**, for an actual or alleged **Breach of Employment Contract**, **Employment** **Discrimination**, **Employment Harassment**, **Retaliation**, or **Wrongful Job Action**.

**Retaliation** means the illegal retaliatory treatment of an employee of the **Organization** or an applicant for prospective employment by the **Organization**, including, but not limited to, any retaliatory treatment for engaging in any of the following activities:

1. exercising his or her rights under the law;

2. refusing to violate any law or opposing an unlawful practice;

3. threatening to disclose or actually disclosing violations of the law to any governmental authority or the management of the **Organization**;

4. bringing a claim against the **Organization** under Section 806 of the Sarbanes-Oxley Act of 2002, the Federal False Claims Act, or any similar whistleblower statute; or

5. testifying, cooperating, or assisting with respect to an investigation or proceeding by a governmental authority against the Organization, or any internal investigation by the Organization’s human resources or legal department, relating to an Insured’s alleged violation of the law.

Third-Party Claim means any Claim brought and maintained against any Insured by or on behalf of any natural person who is not an Employee or Executive of the Organization or an applicant for prospective employment by the Organization for a Wrongful Third-Party Act.

**Wage & Hour Law** means any law governing or relating to payroll practices and policies, payment of wages, including, but not limited to, the payment of overtime, on-call time, rest periods, minimum wages, garnishments, withholdings or deductions from wages, the form or timing of the payment of wages, or the classification of employees for the purpose of determining employees’ eligibility for compensation or other benefits under such laws. **Wage & Hour Law** includes, but is not limited to, the Fair Labor Standards Act, and any regulations promulgated thereunder. **Wage & Hour Law** does not include the Equal Pay Act.

**Wrongful Act** means any **Wrongful Employment Act** or **Wrongful Third-Party Act**.

**Wrongful Employment Act** means any:

1. **Breach of Employment Contract**;

2. **Employment** **Discrimination**;

3. **Employment Harassment**;

4. **Retaliation**;

5. **Wrongful Job Action**; or

6. **Other Workplace Tort**;

actually or allegedly committed or attempted by an **Organization**, an **Insured Individual**, or by any other person for whose acts the **Insureds** are legally liable, but only where related to an employee of an **Organization** or an applicant for prospective employment by an **Organization**.

**Wrongful Job Action** means:

1. wrongful dismissal, discharge, or termination (either actual or constructive) of employment;

2. wrongful failure to employ or promote;

3. wrongful discipline, evaluation, deprivation of a career opportunity, or negative reference;

4. wrongful demotion or adverse change in the terms, conditions, or status of employment;

5. employment-related misrepresentation;

6. employment-related defamation, libel, or slander; or

7. employment-related invasion of privacy, including the unauthorized use or disclosure of an employee’s: (i) medical information in violation of the privacy provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as amended; (ii) credit and related information in violation of the Fair Credit Reporting Act; and any rules or regulations promulgated thereunder; or (iii) information obtained through a background check.

**Wrongful Third-Party Act** means sexual harassment, including, but not limited to, unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature against any person who is not an **Employee** or **Executive** of the **Organization** or an applicant for prospective employment by an **Organization**, that is actually or allegedly committed by an **Organization**, an **Insured Individual**, or by any other person for whose acts the **Insureds** are legally liable.

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**EXCLUSIONS**

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The following Exclusions are applicable to this **Coverage Part** only:

A. Bodily Injury and Property Damage

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

1. actual or alleged bodily injury, mental anguish, emotional distress, humiliation, sickness, disease, or death of any person; or

2. damage to or destruction of any tangible property or electronic data or loss of use thereof;

except that Paragraph 1 of this Exclusion does not apply to any actual or alleged mental anguish, humiliation, or emotional distress in a **Claim** otherwise covered under this **Coverage Part**.

B. Breach of Contract with Independent Contractor

The Insurer shall not be liable for **Loss** on account of any **Claim** for an actual or alleged breach of any express contract between the **Organization** and an independent contractor of the **Organization**.

C. Collective Bargaining Agreement

The Insurer shall not be liable for **Loss** on account of any **Claim** based upon, arising from, or attributable to any **Wrongful Act**, conduct, or event that relates to a collective bargaining agreement.

D. Compliance with Disabilities or Civil Rights Law

The Insurer shall not be liable for that portion of **Loss** that constitutes costs associated with providing any accommodation for persons with disabilities or persons having any other status that is protected under any applicable law anywhere in the world, including, but not limited to, the Americans With Disabilities Act, the Civil Rights Act of 1964, or amendments to or rules or regulations promulgated under any such law; except that the Insurer shall pay **Defense Costs** in an otherwise covered **Claim** for such amounts.

E. Employee Benefit Plan Law

The Employee Benefit Plan Law Exclusion in the General Terms and Conditions does not apply to this **Coverage Part**.

The Insurer shall not be liable for **Loss** on account of any **Claim** for an actual or alleged violation of the responsibilities, obligations, or duties imposed by any law that governs any employee benefit arrangement, program, policy, plan, or scheme of any type, including, but not limited to, the Employee Retirement Income Security Act of 1974 (except Section 510 thereof), and the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended; except that this Exclusion does not apply to any **Claim** for **Retaliation** under the Employment Practices Liability Coverage Insuring Agreement.

F. Employment Contract Liability

The Insurer shall not be liable for that portion of **Loss** that constitutes amounts due and owing by any **Insured** under any express written employment contract or agreement, except that this Exclusion does not apply:

1. to the extent the **Insured** would be liable for such amounts in the absence of such contract or agreement; or

2. to **Defense Costs** in an otherwise covered **Claim** for such amounts.

G. Labor Law

The Insurer shall not be liable for **Loss** on account of any **Claim** for an actual or alleged violation of the responsibilities, obligations, or duties imposed by

1. any law that pertains to the rights of employees with respect to unions, unionizing, or collective activities in the workplace, or any obligations of employers with respect to such employee activities, including, but not limited to, the National Labor Relations Act;

2. any law that governs any obligation of an employer to notify, discuss, or bargain with its employees or others in advance of any plant or facility closing or mass layoff, or any similar obligation, including, but not limited to, the Worker Adjustment and Retraining Notification Act; or

3. any law that governs workplace safety and health, including, but not limited to, the Occupational Safety and Health Act;

and any other federal, state, local, or foreign law similar to those described in Paragraphs 1, 2, or 3 of this Exclusion, and any rules or regulations promulgated under any such laws; except that this Exclusion does not apply to any **Claim** for **Retaliation** under the Employment Practices Liability Coverage Insuring Agreement.

H. Liability Assumed Under Contract

The Insurer shall not be liable for **Loss** on account of any **Claim** based upon, arising from, or attributable to the liability of others assumed by any **Insured** under any written or oral contract or agreement; except that this Exclusion does not apply to liability that would attach to an **Insured** in the absence of such contract or agreement.

I. Wage and Hour

The Insurer shall not be liable for **Loss** on account of any **Claim** based upon, arising from, or attributable to an actual or alleged violation of **Wage & Hour Law**; except that this Exclusion does not apply to a **Claim** for **Retaliation** under the Employment Practices Liability Coverage Insuring Agreement.

J Workers’ Compensation, Unemployment, Social Security, and Disability

The Insurer shall not be liable for **Loss** on account of any **Claim** for an actual or alleged violation of the responsibilities, obligations, or duties imposed by any law governing workers' compensation, unemployment insurance, social security, disability benefits, or any law governing similar programs; except that this Exclusion does not apply to any **Claim** for **Retaliation** under the Employment Practices Liability Coverage Insuring Agreement.

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**LIMITS OF LIABILITY AND RETENTIONS**

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A. Third-Party Liability Sublimit

The Insurer’s maximum aggregate liability for all **Loss** on account of all **Third-Party Claims** shall be the Third-Party Liability Sublimit set forth in the Declarations, which is part of, and not in addition to, the Coverage Part Limit of Liability applicable to the Employment Practices Liability **Coverage Part** and the Combined Aggregate Limit of Liability set forth in the Declarations. If the Third-Party Liability Sublimit is exhausted by payment of **Loss**, then the Insurer’s obligations with respect to the payment of **Loss** on account of all **Third-Party Claims** shall be completely fulfilled and extinguished.

B. Employment Practices Retention

The Retention applicable to each **Claim** for an **Employment Wrongful Act** is the Employment Practices Retention set forth in the Declarations.

C. Third-Party Liability Retention

The Retention applicable to each **Third-Party** **Claim** for a **Wrongful Third-Party Act** is the Third-Party Liability Retention set forth in the Declarations.

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**DEFENSE OF CLAIMS**

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Panel Counsel Requirement

With respect to all **Claims** under this **Coverage Part**, the **Insureds** shall select defense counsel from the Insurer’s then current list of approved defense firms in the jurisdiction in which the **Claim** is made.

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**CONDITIONS**

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A. Subrogation

Notwithstanding the Subsection entitled Subrogation of the General Terms and Conditions, if the Insurer’s right of subrogation arises from illegal profit, remuneration, or advantage, or deliberate criminal or deliberate fraudulent conduct, then the Insurer shall not exercise its right of subrogation against any **Insured Individual** with respect to this **Coverage Part** unless it is established by a final and non-appealable adjudication in a **Claim** other than an action or proceeding brought by the Insurer that (i) such **Insured Individual** gained any profit, remuneration, or advantage to which he or she was not legally entitled; or (ii) such **Insured Individual** committed a deliberate criminal or deliberate fraudulent act or omission.

B. Indemnification Obligations

For purposes of this **Coverage Part**, the articles of incorporation or bylaws, or resolutions by shareholders, the board of directors, the board of managers, trustees, or similar resolutions of the **Entity Insureds** shall be deemed to require indemnification of the **Insured Individuals** for all **Loss** to the fullest extent permitted by law and the **Entity Insureds** shall be deemed under this **Coverage Part** to provide such indemnification to the fullest extent permitted by law.