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# EMPLOYMENT PRACTICES LIABILITY INSURANCE COVERAGE FORM

THIS COVERAGE PART PROVIDES LIABILITY COVERAGE ONLY ON A **CLAIMS MADE AND REPORTED BASIS**. TO BE COVERED, A LIABILITY CLAIM MUST BE BOTH FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY IN WRITING DURING THE POLICY PERIOD OR EXTENDED REPORTING PERIOD, IF ANY.

ALL LIABILITY COVERAGE INCLUDES CLAIM EXPENSES WITHIN THE LIMIT OF LIABILITY, AND OUR PAYMENTS OF CLAIM EXPENSES REDUCE THE LIMIT OF LIABILITY AVAILABLE TO PAY SETTLEMENTS OR JUDGMENTS.

Various provisions in this Policy restrict coverage. Read the entire Policy carefully to determine rights, duties and what is and is not covered.

Throughout this Policy the words “you” and “your” refer to the **Named Insured** shown on the Declarations Page. The words “we,” “us” and “our” refer to the **Company** providing this insurance as shown on the Declarations Page.

Words and phrases that appear in bold have special meaning. Refer to **SECTION II – DEFINITIONS**. Headings are included for convenience only and shall not affect the construction or interpretation of any of the Policy provisions.

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## SECTION I – INSURING AGREEMENT

### A. Payment of Damages and Claim Expenses

The **Company** will pay on behalf of an **Insured**, **Loss** in excess of the Deductible that the **Insured** becomes legally obligated to pay arising out of a **Claim** for an **Employment Related Wrongful Act** or **Third-Party Discrimination or Harassment** committed by an **Insured**; provided:

1. The **Claim** is both first made against the **Insured** and reported to the **Company** in writing during the **Policy Period** or **Extended Reporting Period**, if any, in accordance with **SECTION V – NOTICE AND CONDITIONS** of this Coverage Form;
2. The **Claim** arises out of an **Employment Related Wrongful Act** or **Third-Party Discrimination, or Harassment** committed by an **Insured**:
  - a. On or after the earlier of **(1)** the applicable Retroactive Date, if any, as shown on the Declarations Page, or **(2)** the Policy Effective Date;



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## SECTION II – DEFINITIONS

Whenever specially defined terms are used in the Policy, they will be printed in boldface type and shall have the meanings indicated below.

### A. Automatic Extended Reporting Period

The additional period of time for reporting **Claims** beginning with the effective date this Policy is cancelled, non-renewed or expires and ending at the earliest of the following dates:

1. Sixty (60) days after such cancellation, non-renewal or expiration takes effect; or
2. The date any other policy obtained by the **Named Insured** that provides similar coverage takes effect.

### B. Bodily Injury

Any physical injury, sickness, disease, or death of any person. **Bodily Injury** includes mental anguish, humiliation, and emotional distress.

### C. Borrowed or Leased Employee

Any person doing work for an **Insured Entity** and who is employed by a firm that the **Insured Entity** has contracted and/or agreed with, either verbally and/or in writing, to supply the **Insured Entity** with people to do such work.

### D. Breach Notification Law

Any United States federal, state or territory statute or regulation that requires notice to persons whose **Personally Identifiable Information** was accessed or reasonably may have been accessed by an unauthorized person.

### E. Claim

1. Any written demand for monetary relief or non-monetary relief;
2. Any judicial, civil, administrative, regulatory or arbitration proceeding (other than a labor, grievance, arbitration, or other proceeding pursuant to a collective bargaining agreement), including any appeal therefrom, which subjects an **Insured** to a binding adjudication of liability for monetary relief; or
3. Any written request to toll or waive any statute of limitations applicable to any actual or potential suit or causes of action against an **Insured**.

### F. Claim Expenses

1. Reasonable and necessary fees charged by any lawyer designated by the **Company**;

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2. Any third party legal and professional expenses (including disbursements) reasonably incurred in the defense of **Claims** or circumstances which could reasonably be expected to give rise to a **Claim** or in quashing or challenging the scope of any injunction, subpoena, or witness summons;
  3. All reasonable and necessary fees and expenses charged by any lawyers selected by the **Insured** as independent counsel, where a conflict of interest exists, and applicable law permits the **Insured** to select such independent counsel and requires the **Company** to pay for such independent counsel;
  4. All other fees, costs and expenses resulting from the investigation, adjustment, defense, and appeal of a **Claim**, including **Post-Judgment Interest**; and
  5. Premiums on appeal bonds and premiums on bonds to release attachments in such suits, but not for bond amounts in excess of the applicable **Limits of Liability** of this Policy. The **Company** shall have no obligation to pay for or furnish any bond.

However, **Claim Expenses** does not include the salary, expenses, or wages of any **Insured** or any director, officer, shareholder, member, partner, associate, or **Employee** of the **Named Insured**.

#### G. Company

The entity issuing this Policy as shown on the Declarations Page.

#### H. Computer System

Computer, hardware, software, communications system, electronic device (including, but not limited to, any smart phone, laptop, tablet or wearable device), server, cloud or microcontroller, including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, owned or operated by the **Insured** or any other party.

#### I. Damages

**Damages** include any monetary judgment, award or settlement owed by the **Insured** to a third-party.

**Damages** does not include any:

1. Fines or penalties imposed by law, punitive, exemplary damages or multiplied damages, taxes, or sanctions, in whatever form assessed, or matters which may be deemed uninsurable under applicable laws;
2. Amounts, other than **Claim Expenses**, which an **Insured** is obligated to pay as a result of a **Claim** seeking redress in any form other than monetary relief;
3. Costs, other than **Claim Expenses**, associated with any accommodation to any building or physical structure required pursuant to the Americans with Disabilities Act (ADA), the Civil Rights Act of 1964, rules or regulations promulgated thereunder, amendments thereto, or similar provisions of any federal, state, or local law or common law; or

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4. Matter deemed uninsurable under the law pursuant to which this Policy shall be construed.

## J. Employee

Any full-time or part-time **Employee** (including any **Borrowed or Leased Employee** or any **Volunteer**), but only while in the course of their performance of work or services on behalf of or at the direction of the **Named Insured**.

## K. Employment Related Wrongful Acts

### 1. Breach of an Implied Employment Contract

Any actual or alleged breach of any implied employment contract or employment contractual obligation, including but not limited to any implied contract or contractual obligation arising out of any personnel manual or **Employee** handbook;

### 2. Employment Discrimination

Any actual or alleged violation of employment discrimination laws because of such person's race, color, religion, age, sex, national origin, disability, pregnancy, HIV status, mental status, genetic information, marital or family status, sexual orientation or preference, military or veteran status or other status that is protected pursuant to any applicable federal, state or local statute, ordinance, regulation or common law;

### 3. Employment Harassment

Any actual or alleged harassment that interferes with an **Employee's** performance at, or creates an intimidating, hostile or offensive working environment, within the **Insured Entity**, including any unwelcome sexual advances, requests for sexual favors or other conduct of a sexual nature that is made a condition of employment with or is used as a basis for employment decisions;

### 4. Employment Related Personal Injury

Any actual or alleged employment-related defamation, libel, slander, humiliation, invasion of privacy, negligent evaluation, or wrongful discipline;

### 5. Retaliation

Any actual or alleged retaliatory treatment against any **Employee** on account of such individual **a.** exercising his or her rights under law; **b.** refusing to violate any law; **c.** opposing any unlawful practice; **c.** disclosing or threatening to disclose to a superior or to any governmental agency any alleged violations of law; or **d.** having assisted or testified in or cooperated with a proceeding or investigation regarding alleged violations of law by any **Insured**; or

### 6. Wrongful Employment Decision

Any actual or alleged wrongful termination, dismissal, or discharge of employment, including constructive termination, dismissal or discharge for any reasons, or any wrongful demotion,

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denial of tenure, failure, or refusal to promote, failure to employ, negligent reassignment, deprivation of a career opportunity or employment related misrepresentation.

**L. ERISA**

The Employee Retirement Income Security Act of 1974 (ERISA), as amended, any similar federal, state, local or common law and any rules and regulations promulgated thereunder.

**M. Extended Reporting Period**

The additional period of time for reporting **Claims** as set forth in, and pursuant to the terms and conditions of **SECTION VI – EXTENDED REPORTING PERIOD**.

**N. Insured**

1. The **Insured Entity**; and
2. An **Insured Person**.

**O. Insured Entity**

1. The **Named Insured**; and
2. Any **Subsidiary**.

**P. Insured Person**

1. Any individual who was, now is or shall become a director, officer, governor, trustee, in-house general counsel, risk manager, committee member or equivalent executive of the **Insured Entity** while acting in his or her capacity as such on behalf of the **Insured Entity**;
2. The lawful spouse or domestic partner of a director, officer, governor, trustee, in-house general counsel, risk manager, committee member or equivalent executive of the **Insured Entity**, but only for an actual or alleged **Employment Related Wrongful Act** or **Third-Party Discrimination or Harassment** of such executive for which such spouse or domestic partner may be liable as the spouse or domestic partner of such director, officer, governor, trustee, in-house general counsel, risk manager, committee member or equivalent executive of the **Insured Entity**, and only while acting in the course and scope of their employment on behalf of the **Insured Entity**;
3. The estate, heirs, legal representative or assigns of any deceased person as described above, or the legal representatives or assigns of such a person who is incompetent, but only for an **Employment Related Wrongful Act** or **Third-Party Discrimination or Harassment** of any **Insured Person** which, in the absence of such death or incompetence, would have been covered by this Policy;
4. Any individual who was, now is or shall become an **Employee** of the **Insured Entity**, but only while acting in the course and scope of their employment on behalf of the **Insured Entity**; and

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5. Any individual who was, now is or shall become a **Volunteer**, but only while acting at the direction of and within the scope of duties as determined by the **Insured Entity**.

**Q. Loss**

1. **Damages**; and
2. **Claim Expenses**.

**R. Named Insured**

The **Insured Entity** designated as such on the Declarations Page.

**S. Optional Extended Reporting Period**

The additional period of time for reporting **Claims** beginning with the effective date this Policy is cancelled, non-renewed or expires and ending at the earliest of the following dates:

1. The expiration date specified in the applicable **Optional Extended Reporting Period** Endorsement; or
2. When the applicable Limits of Liability have been exhausted.

**T. Personally Identifiable Information**

1. Information concerning an individual that is defined as private personal information under a **Breach Notification Law**;
2. Information which an individual may be uniquely and reliably identified, including an individual's name, address, unpublished telephone number, in combination with their social security number, driver's license or state identification number, credit, debit or other financial account numbers and security codes, access codes, passwords or PIN numbers associated with such credit, debit or other financial account numbers;
3. Non-public personal information as defined in the Gramm-Leach Bliley Act of 1999 (GLBA), including any amendment of or addition to such Act; or
4. Protected health information as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) or the Health Information Technology for Economics and Clinical Health Act of 2009 (HITECH), including any amendments of or additions thereto.

**U. Privacy Breach**

Unauthorized access to, misappropriation or disclosure of **Personally Identifiable Information**.

**V. Property Damage**

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Any injury to or destruction of any tangible property or loss of use therefrom. **Property Damage** also includes any costs or expenses to repair, to remediate, to remodel, to remove, to restore, to test or to monitor any property for any reason.

#### **W. Related Wrongful Act**

Any **Employment Related Wrongful Act** or **Third-Party Discrimination or Harassment** based upon or arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the same or related facts, circumstances, situations, transactions, omissions or events or the same or related series of facts, circumstances, situations, transactions, events, whether related logically, causally or in any other way.

#### **X. Subsidiary**

Any entity identified as a **Subsidiary** on the **Application**, but only if the **Named Insured**:

1. Owns, directly or indirectly, more than fifty percent (50%) of the issued and outstanding voting stock of such entity;
2. Has the right to elect, appoint or designate more than fifty percent (50%) of such entity's board of directors, trustees, or managers; or
3. Has majority control over the management and operations of the entity through a written agreement.

An entity or organization consisting of net assets, provided such entity was created or acquired by the **Named Insured**, either directly or indirectly, before the end of the **Policy Period**.

#### **Y. Third-Party Discrimination or Harassment**

1. Any actual or alleged discrimination based on such person's race, color, religion, age, sex, national origin, disability, pregnancy, HIV status, mental status, genetic information, marital or family status, sexual orientation or preference, military or veteran status or other status that is protected pursuant to any applicable federal, state or local statute, ordinance, regulation or common law;
2. Any actual or alleged sexual harassment, including unwelcome sexual advances, requests for sexual favors or other conduct of a sexual nature, or any unlawful harassment of a non-sexual nature;

against any natural person who is an active or current customer, supplier, vendor, applicant, business invitee or other client of the **Insured Entity**.

#### **Z. Volunteer**

Any person who donates his or her services and is not paid a fee, salary or other compensation by the **Insured Entity** or anyone else for their services performed for the **Insured Entity**.

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## SECTION III – LIMITS OF LIABILITY AND DEDUCTIBLE

### A. Limits of Liability

#### 1. Employment Practices Per Claim Limit of Liability

Subject to Paragraph **A.2.** below, the most the **Company** will pay as **Loss** for each covered **Claim** for **Employment Related Wrongful Acts** or **Third-Party Discrimination or Harassment** shall not exceed the amount shown as the Employment Practices Per Claim Limit on the Declarations Page.

#### 2. Employment Practices Aggregate Limit of Liability

Subject to Paragraph **A.4.** below, the most the **Company** will pay for **Loss** for all covered **Claims** for **Employment Related Wrongful Acts** or **Third-Party Discrimination or Harassment** shall not exceed the amount shown as the Employment Practices Aggregate Limit on the Declarations Page.

#### 3. Additional Limit for Claim Expenses

If an Additional Limit for **Claim Expenses** is shown on the Declarations Page, the **Insured** is entitled to such additional amount for the payment of **Claim Expenses** for all covered **Claims** for an **Employment Related Wrongful Act** or **Third-Party Discrimination or Harassment** up to, but not exceeding, the amount shown on the Declarations Page as the Additional Limit for **Claim Expenses**. This limit is in addition to the Employment Practices Limit of Liability and Employment Practices Aggregate Limit as set forth above; provided, however, if no Additional Limit for **Claim Expenses** is shown on the Declarations Page, then this subparagraph shall not apply, and the Limit of Liability and Policy Aggregate Limit shall apply to all **Loss**.

Any **Claim Expenses** incurred shall apply first to, and shall reduce, the Additional Limit for **Claim Expenses**. If the Additional Limit for **Claim Expenses** is exhausted by the payment of **Claim Expenses**, then **Claim Expenses** shall apply to the remaining applicable Limit of Liability until the exhaustion of such limit.

#### 4. Liability Coverages Policy Aggregate Limit

The **Limit of Liability** of the **Company** for **Damages** or **Claim Expenses** for all liability coverages afforded under this Policy, shall not exceed the amount as shown on the Declarations Page as the Liability Coverages Policy Aggregate Limit.

### B. Multiple Claimants and Insureds

The Limit of Liability shown on the Declarations Page is the amount the **Company** will pay as **Loss** regardless of **a.** the number of **Claims** made or persons or entities making such **Claims**; or **b.** the number of **Insureds** involved in such **Claims**.

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### C. Related Claims

All **Claims** based upon or arising out of the same **Employment Related Wrongful Act, Third-Party Discrimination or Harassment or Related Wrongful Acts**, or one or more series of any similar, repeated, or continuous **Employment Related Wrongful Act, Third-Party Discrimination or Harassment or Related Wrongful Acts** shall be considered a single **Claim**.

### D. Deductible

The Deductible amount shown on the Declarations Page shall be paid by the **Named Insured** and shall apply to each and every **Claim**. The **Company** shall only be liable for the amounts which are in excess of the applicable Deductible which shall upon written demand by the **Company** to the **Named Insured**, be paid within thirty (30) days. If the **Named Insured** fails to pay the Deductible, then all the **Insureds** shall be jointly and severally obligated to pay the Deductible. Any funds advanced by the **Company** will serve to reduce the Limit of Liability.

If the **Company** brings suit to collect the Deductible, or any part thereof, and prevails therein, then the **Named Insured** shall also pay the legal fees, costs and expenses incurred by the **Company** in such suit.

### E. Multiple Insurance Policies

In the event a **Claim** is deemed, either by the **Company** or a court of competent jurisdiction, to be covered under more than one Policy of Insurance or Coverage Form issued by the **Company** or an affiliated company, it is expressly understood and agreed that the maximum aggregate Limit of Liability for such **Claim** shall not exceed the highest applicable Limit of Liability – Per Claim as shown in each policy's respective Declarations Page, and only the policy with the highest applicable Limit of Liability – Per Claim shall apply.

### F. Exhaustion of Limits of Liability

The **Company** shall not be obligated to pay **Damages** or **Claim Expenses** or defend or continue to defend any **Claim**, or **Claims**, after the applicable **Limit of Liability** as stated on the Declarations Page has been exhausted by payment of **Damages** or **Claim Expenses** or a combination of both.

The **Company** shall not be obligated to pay **Damages** or **Claim Expenses** or defend or continue to defend any **Claim**, or **Claims**, after the applicable **Liability Coverages Policy Aggregate Limit** as shown on the Declarations Page has been exhausted by payment of **Damages** or **Claim Expenses**.

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## SECTION IV – EXCLUSIONS

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This insurance does not apply to any **Claim** based upon, arising out of, directly or indirectly resulting from, or in any way connected with any of the following, whether actual or alleged:

**A. Known or Reported Wrongful Acts**

Any **Employment Related Wrongful Act** or **Third-Party Discrimination or Harassment** occurring prior to the **Policy Period** if, prior to the effective date of the first Employment Practices Liability Insurance Policy issued by the **Company** to the **Named Insured** which has been continuously renewed and maintained in effect to the Effective Date of this Policy:

1. An **Insured** knew or should have known that such **Employment Related Wrongful Act** or **Third-Party Discrimination or Harassment** might reasonably be expected to result in a **Claim**; or
2. An **Insured** gave notice of such **Employment Related Wrongful Act** or **Third-Party Discrimination or Harassment** to a prior insurer.

**B. Breach of an Express Employment Contract**

Any breach of an express contract or agreement or the assumption of any liability, including any provision to provide or extend any defense costs, in an express contract or agreement; provided, however, this exclusion shall not apply to liability of the **Insured** which would have attached even in the absence of such contract or agreement.

**C. Future Salary or Benefits**

Any future salary, wages, commissions, benefits, or any other type of compensation of a person who has been or shall be hired, promoted, or reinstated to employment.

**D. Labor Disputes or Negotiations**

Any lockout, strike, picket line, hiring of replacement workers or other similar actions in connection with labor disputes, labor negotiations or collective bargaining agreements.

**E. Employment Related Benefits or Compensation**

Any employment related benefits, stock options, perquisites, deferred compensation, or any other type of compensation earned by the claimant in the course of employment or the equivalent value thereof; provided, however, this exclusion shall not apply to back pay.

**F. Bodily Injury or Property Damage**

**Bodily Injury or Property Damage**, except that this exclusion does not apply to mental injury, mental anguish, mental stress, or emotional distress caused by Employment Related Personal Injury.

**G. Dishonesty or Fraud**

Any dishonest or fraudulent act, error or omission committed by or at the direction of an **Insured** or which is ratified by an **Insured**, or the gaining of any profit, remuneration or advantage by an **Insured**

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to which such **Insured** was not legally entitled. This exclusion shall only apply if a final and non-appealable judgment or final adjudication in any judicial or administrative procedure establishes the **Insured** committed such act or omission.

Innocent Insured. This exclusion shall not apply to an **Insured** who did not personally participate or personally acquiesce in or remain passive after having knowledge of and was not aware of any of the preceding offenses.

#### H. Criminal Acts

Any criminal act committed by or at the direction of an **Insured**.

Criminal Proceedings. Criminal proceedings are not covered under this Policy regardless of the allegations made against any **Insured** and the **Company** shall have no duty to defend or indemnify an **Insured** in connection with such proceedings.

#### I. Matters Brought by the Insured Entity

Any matter brought or maintained by, on behalf of, or for the benefit of the **Insured Entity**; provided, however, this Exclusion does not apply to any **Claim** that is brought:

1. Derivatively on behalf of the **Insured Entity**, which is instigated and continued totally independent of, and totally without the solicitation, assistance, active participation of, or intervention by, any **Insured**; or
2. By a bankruptcy trustee or bankruptcy appointed representative of the **Insured Entity**.

#### J. ERISA

Any violation of or failure to comply with **ERISA**, including the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) and the Health Insurance Portability and Accountability Act (HIPAA).

#### K. Fair Labor Standards Act

Any violation of or failure to comply with the Fair Labor Standards Act (FLSA) or any other similar state or local statute, ordinance, regulation, or common law.

#### L. Other Statutory Obligations or Duties

Any violation of or failure to comply with:

1. Any law concerning workers compensation, unemployment insurance, social security, or any similar laws;
2. The National Labor Relations Act (NLRA);
3. The Occupational Safety and Health Act (OSHA);

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4. The Worker Adjustment and Retraining Act (WARN); or
  5. Any amendments to or rules, regulations or orders promulgated under these laws, or similar provisions of any federal, state, or local statutory or common law.

#### **M. Securities Act**

Any violation of or failure to comply with the Securities Act of 1933 or the Securities Exchange Act of 1934 (SEA), including amendments thereto, or any similar provisions of any federal, state, local or foreign statute, rule, regulation, or common law.

#### **N. Improper Securities Offerings or Solicitation of Investors**

Any violation of or failure to comply with the provisions of any federal, state, local or foreign statute rule, regulation, or common law regarding the offering of securities in any form or the solicitation of investors or investment funds which are exempt from, or not registered under, the Securities Act of 1933, the Securities Exchange Act of 1934 (SEA), including amendments thereto.

#### **O. Data and Privacy**

1. Any loss or theft of, disclosure of, or unauthorized access to or use of, any person's or entity's private or confidential information, no matter the cause;
2. Any unauthorized access to a **Computer System**, no matter the cause;
3. Any use of authorized access to cause intentional harm to a **Computer System**;
4. Any actual or threatened ransomware or denial-of-service attack against a **Computer System**;
5. Any introduction of malicious code into a **Computer System**;
6. Failure to provide an authorized user with access to a **Computer System**;
7. Any release of data or information, or provision of access to data or information, caused by fraud or trickery;
8. Any violation of law regarding the protection, use, collection, destruction, disclosure of, loss of, access to, or storage of any person's or entity's private or confidential information;
9. The failure to provide notification required by law in connection with **1.** through **8.**; or
10. Any action taken or not taken in controlling, preventing, suppressing, or remediating any of the above.

#### **P. Personal Injury (Other Than Employment Related Personal Injury) or Advertising Injury**

1. False arrest, detention or imprisonment, wrongful entry, eviction or other invasion of private occupancy, abusive litigation (criminal or civil), abuse of process or malicious prosecution;

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2. The publication or utterance of a libel or slander or other defamatory or disparaging material, or a publication or utterance in violation of an individual's right of privacy or which disparages a person's or organization's goods, products, or services; or
  3. Misappropriation of advertising ideas or style of doing business or the unauthorized use of title or slogan or plagiarism.

This exclusion does not apply to any otherwise covered **Claim** for Employment Related Personal Injury.

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## SECTION V - NOTICE AND CONDITIONS

### A. Notice of Circumstances

If during the Policy Period the **Insured** first becomes aware of any **Employment Related Wrongful Act** or **Third-Party Discrimination or Harassment** that may reasonably be expected to give rise to a **Claim**, and if the **Insured** gives written notice to the **Company** during the Policy Period of such **Employment Related Wrongful Act** or **Third-Party Discrimination or Harassment** with full particulars acceptable to the **Company**, including but not limited to:

1. The loss, injury, damage, or expenses which may result or has resulted from the **Employment Related Wrongful Act** or **Third-Party Discrimination or Harassment**;
2. The circumstances by which the **Insured** first became aware of the **Employment Related Wrongful Act** or **Third-Party Discrimination or Harassment**, and the reasons for anticipating a **Claim**;
3. The dates and person(s) involved;
4. The nature and scope of the **Employment Related Wrongful Act** or **Third-Party Discrimination or Harassment** provided; and
5. The identity of likely claimants;

then any such **Claim** that arises out of such reported **Employment Related Wrongful Act** or **Third-Party Discrimination or Harassment** that is subsequently made against the **Insured** and reported to the **Company** shall be deemed to have been made at the time such written notice was originally given to the **Company**.

### B. Notice of Claim

An **Insured** shall give immediate written notice of any and all **Claims** to the **Company** during the **Policy Period** or **Automatic Extended Reporting Period**.

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Any **Claim** first reported to the **Company** beyond the **Policy Period** or **Automatic Extended Reporting Period** shall not be covered under this Policy unless the **Claim** is reported pursuant to an applicable **Optional Extended Reporting Period**, if any. In addition, any **Claim** first made against an **Insured** during the **Policy Period** but first reported to the **Company** under a renewal policy issued by the **Company** shall be deemed first made and reported under such renewal policy and this Policy shall not apply.

### C. Duties in the Event of a Claim

As a condition precedent to an **Insured's** rights under this Policy, an **Insured** shall:

1. Cooperate fully with the **Company** in the investigation, defense, and settlement of any **Claim**, including but not limited to attending hearings, depositions, and trials, preserving, and obtaining evidence, and giving written statements;
2. Immediately send the **Company** copies of any demand, notices, summonses, and other legal papers received in connection with the **Claim**;
3. Take reasonable measures to protect **Insured Entity's** interests;
4. Submit to examination and interrogation under oath; and
5. Authorize the **Company** to obtain records and other information.

Under no circumstances shall an **Insured** assume any obligation or incur any **Claim Expenses**, admit liability for any **Claim**, enter into any settlement agreement, stipulate to any judgment, or agree to any arbitration without the prior written consent of the **Company**, nor shall an **Insured** do anything that may prejudice the **Company's** ability to enforce any right of contribution, indemnity, a claim for joint and several liability or any similar right against any person or entity that may be liable to the **Insured** or the **Company**. Any settlement, **Damages** or **Claim Expenses** incurred or agreed to prior to the **Company** giving its written consent shall not be covered under this Policy.

### D. Allocation

If both **Loss** covered under this Coverage Part and **Loss** not covered under this Coverage Party are incurred by the **Insured** on account of any **Claim** because such **Claim** against the **Insured** includes both covered and non-covered matters, then coverage under this Coverage Part with respect to such **Claim** shall apply as follows:

1. One hundred percent (100%) of reasonable and necessary **Claim Expenses** incurred by the **Insured** on account of such **Claim** will be considered covered **Loss**; and
2. **Damages** incurred by the **Insured** on account of such **Claim** shall be allocated by the **Company** between covered **Damages** and non-covered **Damages** based on the relative legal and financial exposures of the **Insured** to covered and non-covered matters and, in the event of a settlement in such **Claim**, also based on the relative benefits to the **Insured** from such settlement. In making such determination, the **Company** and the **Insured** agree to use their best efforts to determine a fair and proper allocation of all such amounts. In the event that the **Company** and the **Insured** do

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not reach an agreement with respect to an allocation, then the **Company** shall be obligated to make an interim payment of the amount of **Damages** which the **Company** and the **Insured** agree is not in dispute until a final amount is agreed upon or determined by a court of law.

#### E. Right to Investigate

The **Company** shall have the right, but not the duty, to make any investigation it deems necessary including, without limitation, any investigation with respect to the **Application** and statements and/or representations made in the **Application**, and with respect to coverage. The **Insured** shall submit for examination under oath, by a representative of the **Company**, if requested, in connection with all matters relating to this Policy.

#### F. Consent to Settle

The **Company** shall not settle any **Claim** without the consent of the **Insured**, such consent not to be unreasonably withheld or delayed. However, if the **Insured** shall refuse to consent to any settlement or compromise that is recommended by the **Company**, and acceptable to the claimant, and instead the **Insured** elects to continue defending against a **Claim**, the **Company's** total liability with regard to that **Claim** shall be limited to the amount of **Damages** for which the **Claim** could have been settled at the time of such refusal, less the **Insured's** remaining Employment Practices Deductible, plus the **Claim Expenses** incurred up to the time of such refusal.

The **Company** shall have the right to withdraw from the further defense of that **Claim** by tendering control of said defense to the **Insured**.

If, prior to institution of arbitration proceedings or service of suit or within sixty (60) days of the institution of such proceedings or service of suit, the **Company** and the **Named Insured** agree to use a process of non-binding intervention by a neutral third party to resolve any **Claim** reported to the **Company**, and if such **Claim** is resolved through such process, the **Company** will reduce the retention applicable to such **Claim** by fifty percent (50%) or ten thousand dollars (\$10,000.00), whichever is less.

#### G. Rights of Subrogation

In the event of any payment under this Coverage Part, the **Company** shall be subrogated to all of the **Insured's** rights of recovery thereof against any person or entity. The **Insured** must execute and deliver instruments and papers and do whatever else is necessary to secure such rights and must do nothing to prejudice such rights.

Any amount recovered pursuant to subrogation shall be applied as follows: first, to the repayment of expenses incurred in connection with the subrogation; second, to **Loss** paid by an **Insured** in excess of the Limit of Liability; third, to **Loss** paid by the **Company**; fourth, to **Loss** paid by the **Insured** in excess of the Employment Practices Deductible; and last, to the repayment of the Employment Practices Deductible.

#### H. Other Insurance

If there is other valid and collectible insurance that applies to a **Claim**, then the **Insured** shall, as a condition precedent to coverage under this Coverage Part, immediately tender the defense and

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indemnity of that **Claim** to the insurance carrier providing coverage. In addition, this insurance shall be excess over any such other valid and collectible insurance.

#### I. **Action Against the Company**

No person or organization has a right under this Coverage Part:

1. To join us as a party or otherwise bring us into a **Suit** asking for damages from an insured; or
2. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured, but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

#### J. **Change of Control**

If, during the Policy Period, any of the following transactions occur:

1. An **Insured Entity** is dissolved, sold, acquired by, merged into, or consolidated with another entity such that the **Insured Entity** is not the surviving entity;
2. A person, entity or affiliated group of persons or entities obtains **a.** ownership or possession of fifty percent (50%) or more of the issued and outstanding capital stock, equity, member units, or any other applicable form of ownership of an **Insured Entity**, or **b.** the right to elect or appoint more than fifty percent (50%) of an **Insured Entity's** directors, officers or trustees;
3. A person, entity or affiliated group of persons or entities acquires fifty percent (50%) or more of the assets of an **Insured Entity**; or
4. An **Insured Entity** ceases to do business for any reason;

then coverage under this Policy shall continue in full force and effect for such **Insured Entity** until the end of the Policy Period, but only as respects to **Employment Related Wrongful Acts** or **Third-Party Discrimination or Harassment** which occurred prior to the effective date of the transaction.

#### K. **Acquisition of Subsidiary**

If, during the **Policy Period**, any **Insured Entity** acquires or creates a **Subsidiary** for which entity there is no other similar insurance available, then during a period of sixty (60) days after the effective date of the transaction or until the end of the **Policy Period**, whichever is earlier, the new **Subsidiary** will be an **Insured Entity**, but only with respect to an **Employment Related Wrongful Act** or **Third-Party Discrimination or Harassment** committed by an **Insured** after the effective date of the transaction.

There will be no coverage under this Coverage Part for any **Employment Related Wrongful Act** or **Third-Party Discrimination or Harassment** committed by the new Subsidiary, or for any **Claim** first

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made after the sixty (60) day period has expired, unless the **Named Insured** has provided the **Company** with written notice of the transaction, containing full details thereof, and the **Company** has agreed to add coverage for the new entity upon such terms, conditions, and limitations of coverage and such additional premium as the **Company**, in its sole discretion, may require.

#### L. Change in Non-Profit Status

If, during the Policy Period, an **Insured Entity** that is a non-profit entity forfeits, revokes, rescinds or otherwise loses its non-profit status under any state or federal law, coverage will continue in force, but only upon the condition that:

1. The **Named Insured** provides the **Company** with full details of the status change and such other information as the **Company** deems necessary within forty-five (45) days of the transaction or the end of the Policy Period, whichever is earlier; and
2. The **Named Insured** agrees to any special terms, conditions, exclusions, or additional premium required by the **Company**, relating to the status change due to the material change in risk.

#### M. Territory

This Policy applies to any **Employment Related Wrongful Act** or **Third-Party Discrimination or Harassment** committed occurring within any of the fifty (50) states of United States of America or the District of Columbia.

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## SECTION VI – EXTENDED REPORTING PERIOD

#### A. Automatic Extended Reporting Period

Subject to Paragraphs **D.** and **E.** of this **SECTION VI – EXTENDED REPORTING PERIOD**, if this Coverage Part or the Policy is cancelled or not renewed, an **Automatic Extended Reporting Period** applies without additional premium beginning on the date this Coverage Part or the Policy is cancelled or expires, whichever applies.

The **Automatic Extended Reporting Period** applies to **Claims** reported to the **Company** in writing during the **Automatic Extended Reporting Period**, but only for **Employment Related Wrongful Act** or **Third-Party Discrimination or Harassment** committed wholly prior to the effective date this Coverage Part or the Policy is cancelled or expires, whichever applies and which otherwise would be covered.

The **Automatic Extended Reporting Period** shall not apply if the **Named Insured** has purchased similar insurance from the **Company** or any other insurer covering such **Claim**.

#### B. Optional Extended Reporting Period

Subject to Paragraphs **D.** and **E.** of this **SECTION VI – EXTENDED REPORTING PERIOD**, if this Coverage Part or the Policy is cancelled or is not renewed, whichever applies, the **Named Insured** may give the **Company** written notice that it desires to purchase an **Optional Extended Reporting Period** for one of the periods shown in the ERP Schedule in Paragraph **C.** below, subject to the following:

1. Written notice of such election must be provided to and received by the **Company** within sixty (60) days of the effective date such Coverage Part or the Policy is cancelled or expires, whichever applies. Such notice must indicate the total extension period desired and must include payment of premium for such **Optional Extended Reporting Period**. If such notice is not timely given to the **Company**, the **Named Insured** will not be able to elect such right at a later date.
2. The **Optional Extended Reporting Period** applies to **Claims** reported to the **Company** in writing during the **Optional Extended Reporting Period**, but only for **Employment Related Wrongful Acts** or **Third-Party Discrimination or Harassment** committed wholly prior to the effective date such Coverage Part or the Policy is cancelled or expires, whichever applies, and which otherwise would be covered.
3. The first sixty (60) days of the **Optional Extended Reporting Period**, if purchased, shall run concurrently with the **Automatic Extended Reporting Period**.

**C. Premium Due - Optional Extended Reporting Period**

The premium due for the **Optional Extended Reporting Period** equals the percentage amount shown in the ERP Schedule below in relation to the annualized premium for this Coverage Part or the Policy, whichever applies.

**ERP Schedule**

| <b>ERP</b> | <b>Additional Premium</b> |
|------------|---------------------------|
| 12 months  | 100%                      |
| 24 months  | 125%                      |
| 36 months  | 150%                      |

The entire premium of the **Optional Extended Reporting Period** must be received by the **Company** within sixty (60) days of the effective date the Coverage Part or the Policy is cancelled or expires, whichever applies, and will be deemed fully earned (even if cancelled upon request of the **Insured**) at the commencement of the **Optional Extended Reporting Period**.

The **Optional Extended Reporting Period** will not take effect unless the **Named Insured** has fulfilled all other duties, and complied with all other terms and conditions, of this Policy, and has fully repaid any Deductible owed to the **Company** within sixty (60) days of the effective date such Coverage Part or the Policy is cancelled or expires.

**D. Elimination of Right to Extended Reporting Periods**

There is no right to any **Extended Reporting Period** set forth in this **SECTION VI – EXTENDED REPORTING PERIOD** if:

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1. The **Company** cancels or refuses to renew this Coverage Part or the Policy due to the non-payment of premium or to misrepresentations or omissions in any **Application** used by the **Company** as a basis for issuing this Policy;
  2. The **Named Insured** has not complied with the terms and conditions of this Policy, including but not limited to the prior refusal or inability of the **Named Insured** to pay any outstanding Deductible amounts owed under this Policy.

**E. No Additional Limit of Liability for Extended Reporting Period**

The **Extended Reporting Period** does not reinstate or increase the **Limits of Liability**. The Deductible shown on the Declarations Page will apply separately to each **Claim** reported under the **Extended Reporting Period**.

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