

# EMPLOYMENT PRACTICES LIABILITY ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This Endorsement modifies insurance provided under the following:

LPLP-1u (11-2021)

**PLEASE READ THIS ENDORSEMENT CAREFULLY. EXCEPT AS STATED HEREIN, THIS ENDORSEMENT PROVIDES CLAIMS MADE AND REPORTED COVERAGE. SUBJECT TO ITS TERMS, IT APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE INSURED DURING THE ENDORSEMENT PERIOD AND REPORTED IN WRITING TO US IN ACCORDANCE WITH THE TERMS OF THIS ENDORSEMENT. AMOUNTS INCURRED AS DEFENSE COSTS SHALL REDUCE AND MAY EXHAUST THE APPLICABLE LIMITS OF LIABILITY AND ARE SUBJECT TO THE APPLICABLE RETENTIONS. WE HAVE NO OBLIGATION TO PAY DEFENSE COSTS OR ANY SETTLEMENTS OR JUDGMENTS ONCE THE APPLICABLE LIMITS OF LIABILITY ARE EXHAUSTED.**

This Employment Practices Liability Endorsement is added to the Policy and the terms and conditions of this Endorsement govern the scope of coverage and your and our duties. This Endorsement amends the Policy to provide employment practices liability coverage. Various provisions in this Endorsement restrict coverage. Read the entire Endorsement carefully to determine your rights and duties and what is and is not covered. The terms, conditions, exclusions and limits of liability set forth in this Endorsement apply only to the coverage provided by this Endorsement.

The words **we**, **us** and **our** refer to the company providing this coverage. The term **Policy** refers to the policy to which this Endorsement is attached. Words and phrases that appear in **bold** have special meaning. Refer to **DEFINITIONS**. To the extent any words or phrases used in this Endorsement are defined elsewhere in the Policy, such definitions provided elsewhere do not apply to give meaning to the words or phrases used in this Endorsement.

The terms and conditions of the Cancellation provision of the Policy, and any amendment to such terms, are incorporated herein and shall apply to coverage as is afforded by this Endorsement, unless specifically stated otherwise in an endorsement(s) attached hereto.

We agree with the **Named Insured**, in consideration of the payment of the premium and reliance upon the statements contained in the information and materials provided to us in connection with the underwriting and issuance of this Endorsement and subject to all the provisions, terms and conditions of this Endorsement:

## SECTION I – COVERAGE

### A. Employment Practices Liability Insuring Clause

We will pay on behalf of the **Insureds** all **Loss**, in excess of the retention, resulting from any **Claim** first made against any **Insured(s)** during the **Endorsement Period** or **Optional Extension Period**, if applicable, and reported in accordance with Clause VII.A. for a **Wrongful Act** that occurred on or after the **Retroactive Date**.

### B. Employment Practices Liability - Third Party Coverage Insuring Clause

If purchased as indicated in the Supplemental Declarations, we will pay on behalf of the **Insureds** all **Loss**, in excess of the retention, resulting from any **Claim** first made against any **Insured(s)** during the **Endorsement Period** or **Optional Extension Period**, if applicable, and reported in accordance with Clause VII.A. for a **Third Party Wrongful Act** that occurred on or after the **Retroactive Date**.

### C. Immigration Practices Coverage Insuring Clause

If purchased as indicated in the Supplemental Declarations, we will pay on behalf of the **Insureds** **Defense Costs** only that any of the **Insureds**, other than an **Employee** alleged to be employed in violation of any **Immigration Practices Law**, becomes obligated to pay as a result of an **Immigration Practices Claim** alleging a violation of any **Immigration Practices Law**, first made against any such

**Insured during the Endorsement Period or Optional Extension Period, if applicable, and reported in accordance with Clause VII.A., provided such violation occurs on or after the Retroactive Date. Coverage under this Insuring Clause shall not apply to any Loss other than Defense Costs.**

**D. OSHA Coverage Insuring Clause**

If purchased as indicated in the Supplemental Declarations, we will pay on behalf of the Insureds:

1. **Assistance Costs** only resulting from:
  - a) any **Work-Related Fatality** which happens during the **Endorsement Period** provided that such **Work-Related Fatality** is reported by the **Insureds** in writing to the Occupational Safety and Health Administration in accordance with their reporting requirements and to us within twenty-four (24) hours of such **Work-Related Fatality**; or
  - b) any **Serious Work-Related Incident** which happens during the **Endorsement Period** provided that such **Serious Work-Related Incident** is reported by the **Insureds** in writing to the Occupational Safety and Health Administration in accordance with their reporting requirements and to us within forty-eight (48) hours of such **Serious Work-Related Incident**; or
2. **OSHA Defense Costs** only resulting from any **OSHA Citation** first made against any **Insured** during the **Endorsement Period**, provided that as a condition precedent to their right to payment under this Insuring Clause, such **OSHA Citation** is reported by the **Insureds** in writing to us within five (5) days after any **Executive Officer** or any safety officer of the **Insured Organization** becomes aware of such **OSHA Citation**.

The coverages provided under Insuring Clauses I.C and I.D are subject to the respective sublimits of liability indicated in the Supplemental Declarations; and such sublimits shall be part of, and not in addition to, the aggregate limit of liability.

**SECTION II – DEFINITIONS**

- A. **Additional Insured** means any person or entity that the **Insured Organization** has agreed in writing to add as an **Additional Insured** under the Policy or Endorsement prior to the commission of any act for which such person or entity would be provided coverage under this Endorsement, but only to the extent the **Insured Organization** would have been liable and coverage would have been afforded under the terms and conditions of this Endorsement had such **Claim** been made against the **Insured Organization**.
- B. **Assistance Costs** means reasonable and necessary legal fees and expenses charged to the **Insureds**, by counsel chosen by us, in assisting the **Insureds** in investigating or mitigating any **Work-Related Fatality** or **Serious Work-Related Incident**, but shall not include:
  1. any fees or expenses incurred in defending, settling, appealing, or investigating any **Claim** brought by or on behalf of any **Employee**; any spouse (or person living together as spouse), child, parent, brother, sister, or dependent of such **Employee** who suffered such **Work-Related Fatality** or **Serious Work-Related Incident**; or any other third party; or
  2. salaries, regular or overtime wages, fees or benefit expenses associated with **Employees** or the **Insured Organization's** overhead expenses.
- C. **Claim** means:
  1. a written demand or request for monetary damages against any of the **Insureds**;
  2. a civil, administrative, investigative, or regulatory proceeding initiated against any **Insured(s)**, including any proceeding before the Equal Employment Opportunity Commission or any similar federal, state, or local governmental body;

3. in the context of an audit conducted by the Office of Federal Contract Compliance Programs, a Notice of Violation or Order to Show Cause;
4. an arbitration, mediation, or other alternative dispute resolution proceeding against any **Insured(s)**; or
5. solely for the purpose of coverage afforded under Insuring Clause I.D., an **OSHA Citation**;

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

- D. **Defense Costs** means reasonable and necessary legal fees and expenses, including (a) reasonable and necessary expert fees that we consent to in advance, which are incurred by or on behalf of the **Insureds** in defending, settling, appealing, or investigating any **Claim** and (b) the cost of appeal, supersedeas, injunction, attachment or similar bonds (provided, however, we shall have no obligation to apply for or furnish any bond for appeal, supersedeas, injunction, attachment or any similar purpose). **Defense Costs** do not include salaries, regular or overtime wages, fees or benefit expenses associated with **Employees** or the **Insured Organization's** overhead expenses.
- E. **Discrimination** means any actual or alleged termination of the employment relationship, demotion, failure or refusal to hire or promote, denial of an employment benefit, or the taking of any adverse or differential employment action because of race, color, religion, age, sex, disability, pregnancy, sexual orientation or identity, national origin, citizenship or immigration status, genetic information, military status, or any other basis prohibited by federal, state or local employment law.
- F. **Employee** means all persons whose labor or service is currently, has formerly been, or will be engaged and directed by the **Insured Organization**, but only while that person is acting in such capacity. This includes applicants for employment, employees, volunteers, interns, part time, seasonal, leased, and temporary employees; any individual employed in a supervisory, managerial, or confidential position; and **Independent Contractors**. Leased employees are **Employees**, but only to the extent that such leased employee brings a **Claim** against an **Insured**. Employees who are leased to another employer are not **Employees**.
- G. **Endorsement Period** means the period from the effective date and hour of this Endorsement to the Endorsement expiration date and hour as set forth in the Supplemental Declarations, or its earlier termination, if any, or the end of the **Optional Extension Period**, if purchased.
- H. **Executive Officer** means any member of the in-house general counsel or human resources department, any risk manager, any executive officer or any **Employee** with personnel or risk management responsibilities of the **Insured Organization**.
- I. **Harassment** means actual or alleged unwelcome sexual or non-sexual advances; requests for sexual or non-sexual favors; or other verbal, visual or physical conduct of a sexual or non-sexual nature, including workplace bullying, where such conduct is based on an **Employee's** race, color, religion, age, sex, disability, pregnancy, sexual orientation or identity, national origin, or any other basis protected by federal, state or local employment law.
- J. **Immigration Practices Claim** means any **Claim** solely alleging violations of any **Immigration Practices Law**.
- K. **Immigration Practices Law** means the Immigration Reform Control Act of 1986 or any other similar federal or state laws or regulations.
- L. **Inappropriate Employment Conduct** means any of the following:
1. actual or constructive termination of an employment relationship in a manner which is alleged to have been against the law or wrongful;

2. actual or alleged wrongful demotion, evaluation, deprivation of a career opportunity, or discipline;
  3. actual or alleged violation of the Family and Medical Leave Act and similar state and local laws and regulations;
  4. actual or alleged misrepresentation, false imprisonment, detention, or malicious prosecution in connection with an employment decision;
  5. actual or alleged libel, slander, defamation of character, or any invasion of right of privacy in connection with an employment decision;
  6. actual or alleged negligent hiring, retention, or supervision; failure to employ, promote, train; failure to create or enforce adequate workplace or employment policies and procedures; failure to grant tenure or seniority; but only if alleged in connection with an act described in 1. through 5. above.
- M. **Independent Contractor** means any natural person who performs labor or service for the **Insured Organization** on a full-time or part-time basis pursuant to a contract or agreement, where such labor or service is under the exclusive direction of the **Insured Organization**. The status of an individual as an **Independent Contractor** shall be determined as of the date of an alleged **Wrongful Act**.
- N. **Insureds** means:
1. **Insured Persons**;
  2. the **Insured Organization**; and
  3. an **Additional Insured**, but only as respects **Claims** against such person or entity for acts, errors or omissions of the **Insured Organization**.
- O. **Insured Organization** means:
1. the **Named Insured**;
  2. any **Subsidiary**;
  3. the **Named Insured** or any **Subsidiary** as a debtor in possession within the meaning of the United States Bankruptcy Code or similar legal status under foreign law; and
  4. any foundation, charitable trust or political action committee totally funded or controlled by the **Named Insured** or any **Subsidiary**.
- P. **Insured Persons** means:
1. any person who was, now is, or will be directors, officers, trustees, **Managers** or **Employees** of the **Insured Organization**; and
  2. the lawful spouse or domestic partner of any of the persons set forth in the above provisions of this definition, but only to the extent the spouse or domestic partner is a party to any **Claim** solely because of his or her status as the spouse or domestic partner of any such persons and only for the purposes of any **Claim** seeking damages recoverable from marital community property, property jointly held by any such person and the spouse or domestic partner, or property transferred from any such person to the spouse or domestic partner,
- including their estates, heirs, legal representatives, trusts, estate planning vehicles or assigns in the event of their death, incapacity, or bankruptcy.

**Q. Interrelated Wrongful Acts** means any and all **Wrongful Acts** which have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally or logically connected facts, circumstances, situations, events, transactions, or causes.

**R. Loss** means:

1. amounts which an **Insured** is legally obligated to pay as a result of a **Claim**, including compensatory damages, judgments (including pre-judgment and post-judgment interest awarded against an **Insured** on that part of any judgment paid by us), back pay, front pay, settlements, verdicts, awards, statutory attorney fees pursuant to a covered judgment against an **Insured**, **Defense Costs**, and punitive, exemplary and multiple damages where insurable by law;

In applying the foregoing, punitive damages are not insurable in Ohio.

2. solely for the purpose of coverage afforded under Insuring Clause I.C., any **Defense Costs** resulting from any **Immigration Practices Claim**, subject to the applicable sublimit as shown in the Supplemental Declarations; and
3. solely for the purpose of coverage afforded under Insuring Clause I.D., any **Assistance Costs** and **OSHA Defense Costs**, subject to the applicable sublimit as shown in the Supplemental Declarations.

However, **Loss** does not include any of the following:

- a) the cost of providing non-monetary or injunctive relief (this provision does not apply to **Defense Costs** where non-monetary or injunctive relief is sought);
- b) civil or criminal fines (other than civil fines imposed under the Health Insurance Portability and Accountability Act), penalties, sanctions, liquidated damages (other than those awarded under the Age Discrimination in Employment Act or the Equal Pay Act), payroll or other taxes, statutory damages that are predicted upon a finding of willfulness, or other amounts or matters that may be deemed uninsurable according to the law under which this Endorsement is construed;
- c) amounts recoverable under **Wage and Hour Laws** or **Immigration Practices Laws**;
- d) severance pay, commissions, bonuses, profit sharing, or benefits including but not limited to medical benefits, stock options, and vacation, holiday, and/or sick pay;
- e) future salary, wages, bonus, commissions and/or benefits resulting from a settlement, judgment, order, or award that results in the rehiring, promotion, or reinstatement of an **Employee**; or
- f) awards, costs, judgments, or orders resulting from contempt of court or violation of a court order or administrative decree.

**S. Management Control** means:

1. owning interest representing more than 50% of the voting, appointment, or designation power for the selection of a majority of the board of directors of a corporation, the members of the management board of a limited liability corporation, the management committee members of a joint venture, or with respect to entities operating or organized outside the United States of America, persons serving in a functionally equivalent role; or
2. having the right, pursuant to written contract or the bylaws, charter, operating agreement or similar documents of the **Insured Organization** to elect, appoint, or designate a majority of the board of directors of a corporation, the management board of a limited liability corporation, the management committee members of a joint venture, or with respect to entities operating or organized outside of the United States of America, persons serving in a functionally equivalent

role.

- T. **Managers** means all persons who were, now are, or shall be managers, managing members, principals, members of the board of managers, managing partners, general partners of a limited partnership (including the board of directors of any such general partner that is a corporation) or equivalent executives of any **Insured Organization**.
- U. **Named Insured** means the entity designated in the Supplemental Declarations.
- V. **Optional Extension Period** means the period described in the **Optional Extension Period** section.
- W. **Outside Entity** means:
1. any non-profit corporation, community chest, fund or foundation that is not included in the definition of the **Insured Organization**; or
  2. any other entity, if specified in an endorsement to this Endorsement.
- X. **Outside Executive Position** means the position of director, officer, trustee or other equivalent executive position held by any of the **Insured Person** in an **Outside Entity** if service in such position is with the knowledge and consent of the **Insured Organization**.
- Y. **OSHA Citation** means any citation brought by:
1. the Occupational Safety and Health Administration; or
  2. any safety and health plan of any state approved and monitored by the Occupational Safety and Health Administration under 29 U.S.C. § 667,
- solely alleging any violation of the Occupational Safety and Health Act or any violation of a state-specific occupational safety and health standard which addresses standards or hazards above and beyond those addressed by the Occupational Safety and Health Act.
- Z. **OSHA Defense Costs** means reasonable and necessary legal fees and expenses charged to the **Insureds** by counsel chosen by us, in defending, settling, appealing, or investigating any **OSHA Citation** and the cost of appeal, supersedeas, injunction, attachment, or similar bonds (provided, however, we shall have no obligation to apply for or furnish any bond for appeal, supersedeas, injunction, attachment or any similar purpose), but shall not include salaries, regular or overtime wages, fees, or benefit expenses associated with **Employees** or the **Insured Organization's** overhead expenses.
- AA. **Retaliation** means any actual or alleged **Discrimination, Harassment, and/or Inappropriate Employment Conduct** against an **Employee** on account of such **Employee's** exercise or attempted exercise of rights protected by law, refusal to violate any law, disclosure or threat to disclose to a superior or to any governmental agency alleged violations of the law, or on account of the **Employee** having assisted or testified in or cooperated with a proceeding or investigation regarding alleged violations of law.
- BB. **Retroactive Date** means the date shown on the Supplemental Declarations.
- CC. **Serious Work-Related Incident** means inpatient hospitalization of, amputation suffered by, or loss of an eye to an **Employee** which happens in the course of performing their duties in relation to the **Insured Organization's** business.
- DD. **Subsidiary** means any entity, including but not limited to any limited liability company, over which the **Named Insured** directly or indirectly had or has **Management Control**, if the **Named Insured** had or has **Management Control** of such entity prior to or on the inception date of this Endorsement; provided,

that this Endorsement only provides coverage for any **Wrongful Act** committed or any conduct undertaken while the **Named Insured** had or has **Management Control** of such entity.

EE. **Third Party Wrongful Act** means any actual or alleged harassment or discrimination, including discriminatory or sexual harassment, by any of the **Insureds** against any natural person who is not an **Insured Person**, based on that natural person's race, color, religion, age, sex, disability, pregnancy, sexual orientation or identity, national origin, or any other basis protected by federal, state or local law.

**Third Party Wrongful Act** does not mean actual or alleged discrimination under the federal Fair Housing Act of 1968 and the federal Fair Housing Act Amendments Act of 1988 or any other state or local housing law.

FF. **Wage and Hour Law** means the Fair Labor Standards Act or any other federal, state, or local law or regulation relating to any pay practices, including, but not limited to, any failure to provide rest or meal periods; failure to provide or pay for vacation, off-the-clock work, sick time, holidays or other paid time off; failure to reimburse expenses or charges improperly allocated to an actual or alleged **Employee**; improper classification of **Employees** as exempt or non-exempt; failure to timely pay wages; failure to pay overtime or required wages; failure to pay minimum wage or other underpayment of wages, including improper deductions from pay; improper credit for food, lodging, or transportation; failure to document or properly record hours, pay, tips, commissions, wages, expenses, or any other sum allegedly due any worker; and any allegation related to the foregoing for conversion, unjust enrichment, or unfair business practices.

**Wage and Hour Law** does not mean claims under the **Equal Pay Act** portion of the Fair Labor Standards Act.

GG. **Work-Related Fatality** means the fatality of an **Employee** which happens in the course of performing their duties in relation to the **Insured Organization's** business.

HH. **Wrongful Act** means:

1. **Inappropriate Employment Conduct;**
2. **Discrimination;**
3. **Harassment; and/or**
4. **Retaliation,**

by any of the **Insureds** against an **Insured Person** or an applicant for employment of the **Insured Organization**.

If purchased as indicated in the Supplemental Declarations, **Wrongful Act** shall also include a **Third Party Wrongful Act**.

**Wrongful Act** shall not include any actual or alleged violations of any **Immigration Practices Law** or any **Wage and Hour Law**.

### SECTION III – EXCLUSIONS

We shall not be liable to make any payment for **Loss** in connection with or resulting from that portion of any **Claim** based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:

- A. Any **Wrongful Act** or any fact, circumstance, transaction or situation which has been the subject of:
  1. Any notice of a **Claim** given prior to the **Endorsement Period** under any other policy; or

2. Any notice of a potential **Claim** given prior to the **Endorsement Period** and accepted under any policy which this Endorsement is a renewal, replacement or succeeds in time; or
  3. Any **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** which has been the subject of such notice, would constitute Interrelated **Wrongful Acts**.
- B. Arising out of a **Wrongful Act** that first occurred, or is alleged to have occurred, on or before the **Retroactive Date** set forth in the Supplemental Declarations or arising out of a **Wrongful Act** that is related to another **Wrongful Act**, such as by similar conduct or an ongoing pattern of conduct, that first occurred, or is alleged to have occurred, before the **Retroactive Date**.
- C. Actual or alleged bodily injury, sickness, disease, death, assault, battery, mental anguish, emotional distress, invasion of privacy, or damage to or destruction of tangible property (including loss of use thereof); provided, however, this exclusion shall not apply to that portion of a **Claim** for a **Wrongful Act** seeking **Loss** for mental anguish, emotional distress, or humiliation.
- D. Actual or alleged violation(s) of any of the responsibilities, obligations, or duties imposed by:
1. any workers' compensation law, disability benefits law, unemployment compensation law, social security, or other employment benefits law;
  2. the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, the National Labor Relations Act, or any similar federal, state, or local law, regulations promulgated thereunder, any amendments thereto, or any other law based on the same violations;
  3. any **Wage and Hour Law** or
  4. any **Immigration Practices Law** (except the Equal Pay Act or under Insuring Clause I.C.),
- provided, however, this exclusion shall not apply to a **Claim** for **Retaliation**.
- E. Actual or alleged violation(s) of the Employee Retirement Income Security Act of 1974 ("ERISA"), or any violation of any federal, state, local, or foreign statutory law or common law that governs the same topic or subject, and any rules, regulations, and amendments thereto, or for an **Insured's** failure or refusal to establish, contribute to, pay for, insure, maintain, provide benefits pursuant to, or enroll or maintain the enrollment of an **Insured Person** or dependent in, any employee benefit plan, fund or program, including contracts or agreements which are not subject to the provisions of ERISA; provided, however, this exclusion shall not apply to a **Claim** for **Retaliation**.
- F. Any of the **Insured Persons** serving in an **Outside Executive Position**:
1. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any **Wrongful Act** occurring prior to the date such **Insured Person** began serving in an **Outside Executive Position** if any **Insured Persons**, as of such date, knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim** under this Endorsement; or
  2. by, on behalf of, or for the benefit of the **Outside Entity**, or one or more of the **Outside Entity's** directors, officers, trustees, or equivalent executives.
- G. Liability of others assumed by an **Insured** under any contract or agreement, oral or written, except to the extent that the **Insured** would have been liable in the absence of such contract or agreement.
- H. Breach of an express written employment agreement, or under any policy or procedure providing for payment in the event of separation from employment unless an **Insured** would have been liable in the absence of such contract or agreement; provided, however, that this exclusion shall not apply to **Defense Costs** incurred in connection with such **Claim**.

- I. Actual or alleged violation of the responsibilities, duties, or obligations imposed on an **Insured** under any **Wage and Hour Law**; provided, however, that in the event such **Claim** also alleges a **Wrongful Act** otherwise covered by this Endorsement and notwithstanding the provisions of Clause VI. and subject to all other terms, conditions, and exclusions contained in this Endorsement, this exclusion does not apply to **Loss** solely applicable to that portion of the **Claim** alleging such otherwise covered **Wrongful Act**.
- J. For purposes of Claims under Insuring Clause I.C., actual or alleged violations of any **Immigration Practices Law**:
  - 1. if any **Executive Officer** was aware of such alleged violation(s) of or non-compliance with such **Immigration Practices Law** prior to the Endorsement Period; or
  - 2. upon a judgment, final adjudication, or admission of a violation of any **Immigration Practices Law**.
- K. For purposes of Claims under Insuring Clause I.D., actual or alleged violations of the Occupational Safety and Health Act or a state-specific occupational safety and health law or regulation if any **Executive Officer** was aware of such alleged violation(s) of or non-compliance with the Occupational Safety and Health Act or a state-specific occupational safety and health law or regulation prior to the Endorsement Period.
- L. War, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.
- M. Any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss, including without limitation, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to the foregoing. For the purpose of this Endorsement an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.
- N. Payment of a **Claim** would expose us to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, law or regulations of the European Union, United Kingdom or United States of America.
- O. Ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.
- P. Or which, in whole or in part, alleges **Discrimination** based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving the coronavirus disease 2019 (COVID-19) or any other disease caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV 2) (previously known as 2019-nCoV), or any disease caused by any mutation or variation of SARS-CoV 2.

For the purpose of determining the applicability of any of the Exclusions above, no **Wrongful Act** shall be imputed to any other natural person, and only the **Wrongful Acts** of any past, present, or future chief executive officer or chief financial officer of the **Named Insured** shall be imputed to the **Insured Organization**.

#### SECTION IV – LIMITS OF LIABILITY

- A. The amount shown under the Endorsement Aggregate Limit of Liability in the Supplemental Declarations shall be our maximum aggregate limit of liability under this Endorsement.
- B. The Employment Practices Liability limit of liability in the Supplemental Declarations is the aggregate limit of liability payable under Clause I.A., and is part of and not in addition to the Endorsement Aggregate

Limit of Liability.

- C. The Employment Practices Liability – Third Party Wrongful Acts limit of liability in the Supplemental Declarations is the aggregate limit of liability payable under Clause I.B., and is part of and not in addition to the Endorsement Aggregate Limit of Liability.
- D. The Immigration Practices Defense Costs sublimit of liability in the Supplemental Declarations is the aggregate sublimit of liability payable under Clause I.C., and is part of and not in addition to the Endorsement Aggregate Limit of Liability.
- E. The OSHA Coverage sublimit of liability in the Supplemental Declarations is the aggregate sublimit of liability payable under Clause I.D., and is part of and not in addition to the Endorsement Aggregate Limit of Liability.
- F. The payment of **Defense Costs** reduces and may exhaust the applicable limit of liability and Endorsement Aggregate Limit of Liability.
- G. More than one **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim** made at the earliest of the following dates:
  - 1. the date at which the earliest **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** is first made; or
  - 2. the date at which the **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to have been made pursuant to Clause VII.B.
- H. Any **Claims** having as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally or logically connected facts, circumstances, situations, events, transactions or causes shall be deemed a single **Claim** made at the earliest of the following dates:
  - 1. the date on which the **Claim** shall be deemed to have been first made, commenced, or received pursuant to Clause VII.B.;
  - 2. the date on which the **Claim** is first made.
- I. If the Endorsement Aggregate Limit of Liability is exhausted, our obligations under this Endorsement shall be completely fulfilled and extinguished.

## SECTION V – RETENTION

We shall be liable for only that part of **Loss** arising from a **Claim** or incident which is in excess of the retention set forth in the Supplemental Declarations. In the event more than one of the Insuring Clauses are applicable to a **Claim** or incident, each Retention set forth in the Supplemental Declarations shall be applied separately to that part of the **Loss** resulting from such **Claim** or incident; however, the total Retention as finally determined shall in no event exceed the largest of the Retentions applicable to Insuring Clauses that are applicable to such **Claim** or incident.

## SECTION VI – DEFENSE, COOPERATION, SETTLEMENT AND SUBROGATION

- A. We shall have the right and duty to defend any **Claim**, including the right to select defense counsel, even if any of the allegations are groundless, false, or fraudulent; provided, however, that we shall not be obligated to defend or to continue to defend any **Claim** after the applicable limit of liability set forth in the Supplemental Declarations is exhausted.
- B. You agree to:

1. provide us with such information, assistance, and cooperation as we or defense counsel may reasonably request,
2. assist us in the investigation, settlement, and defense of **Claims**,
3. enforce all rights of contribution or indemnity against any person or entity which may be liable to you, and
4. attend hearings and trials, assist in securing and giving evidence, and obtaining the attendance of witnesses.

You further agree that, after a **Claim** has been made, you will not take any action which may in any way increase our exposure under this Endorsement. The failure to comply with the foregoing shall not impair the rights of any other **Insureds** under this Endorsement.

- C. The **Insureds** shall not settle any **Claim**, select any defense counsel, incur any **Defense Costs**, admit or assume any liability, stipulate to any judgment or otherwise assume any contractual obligation without our prior written consent, which shall not be unreasonably withheld. We shall not be liable for any settlement, **Defense Costs**, assumed obligation, admission, or stipulated judgment to which we have not consented or for which the **Insureds** are not legally obligated as a result of a **Claim** for a **Wrongful Act**.
- D. We may, with the consent of the **Insureds**, settle or compromise any **Claim** as we deem expedient. If the **Insureds** withhold consent to a settlement or compromise acceptable to the claimant and recommended by us, then our liability for such **Claim** shall not exceed:
1. the amount for which the **Claim** could have settled or compromised and the **Defense Costs** incurred as of the date such settlement or compromise was recommended by us to the **Insureds**; plus
  2. 80% of any **Loss** incurred after the date such settlement or compromise was recommended by us to the **Insureds**, with the remaining 20% of such **Loss** to be borne by the **Insureds** at their own risk and uninsured or the applicable limit of liability whichever is less.
- E. In the event of any payment under this Endorsement, we shall be subrogated to the **Insureds**' rights of recovery against any person or entity. The **Insureds** shall execute all papers required and shall do everything that may be necessary to secure and preserve such rights including the execution of such documents as are necessary to enable us effectively to bring suit in their name, and shall provide all other assistance and cooperation which we may reasonably require.

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Notwithstanding the foregoing, we agree to waive our rights of subrogation against any of the **Insured Persons**, except where a final non-appealable adjudication in the underlying action adverse to the relevant **Insured Person(s)** establishes that the relevant **Insured Person(s)** committed a deliberately fraudulent or deliberately criminal act or omission.

## SECTION VII – NOTIFICATION

- A. In the event any **Executive Officer** becomes aware that a **Claim** has been made against any **Insured(s)**, the **Insureds** shall, as a condition precedent to payment under this Endorsement, give us notice in writing of such **Claim** as soon as practicable but in no event later than 30 days after the end of the **Endorsement Period** or the last day of the **Optional Extension Period**, if purchased. A **Claim** is considered made when it is received by or served on any **Insured**. Notice of a **Claim** must include the following information:
1. how, when and where the **Wrongful Act** took place;
  2. the names and addresses of any potential claimants and witnesses;
  3. the nature of any injury arising out of such **Wrongful Act**;

4. any demands, notices, summonses or legal papers received in connection with the **Claim**.
- B. If any **Executive Officer** becomes aware of a specific fact, circumstance or situation which could reasonably give rise to a **Claim** during the **Endorsement Period** and gives written notice to us of the above information, along with:
1. the specific fact, circumstance or situation;
  2. the consequences which have resulted or may result therefrom; and
  3. the circumstances by which the **Executive Officer** first became aware thereof;
- then any **Claim** made subsequently arising out of such fact, circumstance, or situation shall be deemed for the purposes of this Endorsement to have been made at the time such notice was first given.
- We shall have no obligation to cover any amounts, including any legal fees or expenses, incurred prior to the time such circumstances become a **Claim**.
- C. The Insureds shall give notice to us in writing of any **Work Related Fatality, Serious Work Related Incident or OSHA Citation** in accordance with Clause I.D.
- D. All notices under any provision of this Endorsement must be made in writing and delivered by electronic mail, prepaid express courier, certified mail or fax. Notices given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee.

#### **SECTION VIII – OPTIONAL EXTENSION PERIOD**

- A. If this Endorsement is cancelled by the **Named Insured** or if the **Named Insured** or we nonrenew this Endorsement, then the **Named Insured** shall have the right, upon payment of an additional premium calculated at one hundred percent (100%) of the total annual premium for this Endorsement, to an extension of the coverage granted by this Endorsement with respect to any **Claim** first made during the one (1) year period of time after the end of the **Endorsement Period**, but only with respect to any **Wrongful Act** committed or any conduct undertaken on or after the **Retroactive Date** and before the effective date of cancellation or nonrenewal.
- B. As a condition precedent to the right to purchase the **Optional Extension Period**, the total premium for this Endorsement must have been paid. The right to purchase the **Optional Extension Period** shall terminate unless written notice together with full payment of the premium for the **Optional Extension Period** is given to us within 30 days after the effective date of cancellation or nonrenewal. If such notice and premium payment is not so given to us, there shall be no right to purchase the **Optional Extension Period**.
- C. In the event of the purchase of the **Optional Extension Period**, the entire premium for the **Optional Extension Period** shall be deemed earned at its commencement.
- D. The exercise of the **Optional Extension Period** shall not in any way increase the limit(s) of liability.

#### **SECTION IX – OTHER INSURANCE**

This Endorsement shall apply in excess of any other existing valid and collectible insurance policy including any self-insured retention or deductible portion thereof, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other policy is written only as specific excess insurance over the limits of liability of this Endorsement.

#### **SECTION X – ALLOCATION**

If both **Loss** covered by this Endorsement and non-covered loss are incurred, either because the **Claim** includes both covered and non-covered matters and/or covered and non-covered parties, then such covered **Loss** and non-covered loss shall be allocated as follows:

- A. 100% of **Defense Costs** shall be allocated to covered **Loss**; and
- B. Settlements, judgments, verdicts, awards and costs shall be allocated between covered **Loss** and non-covered loss based upon the relative legal and financial exposures of, and the relative benefits obtained in connection with the resolution of the **Claim** as between the **Insureds'** or non-**Insureds'** exposure to non-covered loss, and the **Insureds'** exposure to covered **Loss**. In making such allocation determination, the **Insureds** and we agree to use our best efforts to determine a fair and proper allocation. In the event that an allocation cannot be agreed to, then we shall make an interim payment of the amount of **Loss** that the parties agree is not in dispute until a final amount is agreed upon or judicially determined.

#### **SECTION XI – ACTION AGAINST US**

No action shall lie against us unless, as a condition precedent thereto, the **Insureds** shall have fully complied with all of the terms of this Endorsement and the amount of the **Insureds'** obligation to pay shall have been fully and finally determined either by judgment against them or by written agreement between them, the claimant and us. Nothing contained herein shall give any person or organization any right to join us as a party to any **Claim** against the **Insureds** to determine their liability, nor shall we be impleaded by the **Insureds** or their legal representative in any **Claim**.

#### **SECTION XII – ENTIRE AGREEMENT**

By acceptance of this Endorsement, the **Insureds** agree that this Endorsement embodies all agreements existing between them and us or any of their agents relating to this insurance. Notice to any agent or knowledge possessed by any agent or other person acting on behalf of us shall not effect a waiver or a change in any part of this Endorsement or estop us from asserting any right under the terms of this Endorsement, nor shall the terms be waived or changed except by written endorsement or rider issued by us to form a part of this Endorsement.

#### **SECTION XIII – TERRITORY**

- A. The United States of America (including its territories and possessions) and Puerto Rico; or
- B. Anywhere in the world with respect to the activities of a person whose place of employment is in the territory described in paragraph A. above, while he or she is away for a short time on your business, provided that the insured's responsibility to pay damages is determined in a suit on the merits (or any type of civil proceeding described under the definition of **Claim**) in and under the substantive law of the United States of America (including its territories and possessions) or Puerto Rico.

#### **SECTION XIV – VALUATION AND CURRENCY**

All premiums, limits, retentions, and **Loss** under this Endorsement are expressed in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of **Loss** under this Endorsement is stated in a currency other than United States dollars or if **Defense Costs** are due in a currency other than United States dollars, payment under this Endorsement shall be made, at the **Insureds** election, either:

- A. in United States dollars; or
- B. in the foreign jurisdiction at issue and in the foreign currency at issue, to the extent legally permissible.

The rate of exchange published in the Wall Street Journal on the date the judgment becomes final or payment of the settlement or other element of **Loss** is due or the date **Defense Costs** are due shall be used to calculate erosion of the limits of liability and retentions of this Endorsement.

#### **SECTION XV – BANKRUPTCY**

Bankruptcy or insolvency of the **Insureds** shall not relieve us of our obligations nor deprive us of our rights or defenses under this Endorsement. If a liquidation or reorganization proceeding is commenced by the **Insured Organization** (whether voluntarily or involuntarily) under Title 11 of the United States Code (as amended), or any similar state, local or foreign law, then, in regard to a covered **Claim** under this Endorsement, we and the **Insureds** hereby agree not to oppose or object to any efforts by us or any of the **Insureds** to obtain relief from any stay or injunction applicable to the proceeds of this Endorsement as a result of the commencement of such liquidation or reorganization proceeding.

#### **SECTION XVI – RECOVERY CLAUSE**

In the event we recover amounts they have paid under this Endorsement, we will reinstate the Limit(s) of Liability of this Endorsement to the extent of such recovery, less their costs incurred in administering and obtaining such recovery. We assume no duty to seek a recovery of any amounts paid under this Endorsement.

#### **SECTION XVII – AUTHORIZATION**

By acceptance of this Endorsement, the **Named Insured** agrees to act on behalf of the **Insureds** with respect to the giving and receiving of any notice provided for in this Endorsement, the payment of premiums and the receipt of any return premiums that may become due under this Endorsement, and the agreement to and acceptance of endorsements, and the **Insureds** agree that the **Named Insured** shall act on their behalf.

#### **SECTION XVIII – HEADINGS**

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

#### **SECTION XIX – Antistacking**

In the event any incident, event or related incidents or events, giving rise to a **Claim** or **Loss** triggers coverage under this Endorsement and any other endorsement issued by us, our liability under this Endorsement and such other endorsements combined shall not exceed the amount of the largest **Endorsement Aggregate Limit of Liability** or applicable sublimits of liability.