

## Employment Practices Liability Endorsement

# Employment Practices Insurance Claims First Made and Reported Endorsement

This Employment Practices Liability coverage provides essential protection against claims arising out of harassment, discrimination or wrongful termination made by employees, past employees or by applicants for employment. You will not be covered for claims involving these disputes under other policies such as Business Package, General Liability, Property, Automobile Liability, Workers Compensation and Excess Liability. We strongly suggest that you carefully consider purchasing this coverage. You could be exposing your business to a serious financial loss.

**NOTICE: This Coverage is Provided on a Claims Made and Reported Basis.** Except to such extent as may otherwise be provided herein, the coverage afforded under this insurance endorsement is limited to liability for only those covered **Claims** that are first made against an Insured and reported to us in accordance with the notice/reporting provisions set forth in this endorsement. **LIMIT OF LIABILITY** shall be reduced and may be completely exhausted by payment of Defense Costs. Please review the coverage afforded under this insurance endorsement carefully.

The consideration for our issuing this endorsement is the payment of Premium; in issuing the endorsement, we have relied upon all statements made to us in the **Application** and any attachments and all other information provided to us. The **Application** and attachments are incorporated herein and form a part of this endorsement

Throughout this endorsement the words “**you**” and “**your**” refer to the **Named Insured** shown in the Schedule.

Under this endorsement the words “**we**”, “**us**” and “**our**” refer to the Underwriters providing this insurance.

The word “Insured” means any person or organization qualifying as such under **WHO IS INSURED**.

**READ THIS ENDORSEMENT CAREFULLY TO DETERMINE THE EXTENT OF COVERAGE. IMPORTANT: THIS IS A CLAIMS FIRST MADE AND REPORTED ENDORSMENT WHICH INCLUDES COSTS OF DEFENSE WITHIN THE LIMIT OF LIABILITY.**

### **I. COVERAGE: WHAT IS COVERED**

- A.** We will pay **Loss** amounts that an **Insured** is legally obligated to pay on account of a **Claim** because of an **Insured Event** to which this endorsement applies. However, the amount we will pay is limited as described in the **LIMIT OF LIABILITY** and **DEDUCTIBLE** sections of this endorsement.
- B.** This endorsement applies only if:
- (1) A **Claim** is first made against an **Insured** in accordance with **WHEN COVERAGE IS PROVIDED**;
  - (2) The **Claim** is reported in accordance with **WHEN COVERAGE IS PROVIDED** and **CONDITIONS** section **VIII.A. Duties in the event of a Claim**;
  - (3) A **Claim** is first made against an **Insured** in accordance with **WHERE COVERAGE IS PROVIDED**; and
  - (4) A **Claim** is first made against an **Insured** based upon an **Insured Event** or a **Third Party Insured Event** that first occurred after the Prior Acts Date set forth in the Schedule.
- C. Defense.** We have the right and duty to defend any **Claim** for an **Insured Event** or a **Third Party Insured Event**, made or brought against any Insured to which this endorsement applies. We have the right to choose counsel to defend a **Claim** that we are covering. We have no duty to provide other services or take other actions. Our duty to defend any **Claim** ends when the **LIMIT OF LIABILITY** that

applies has been exhausted, and in such event, the **Named Insured** shall, upon notice from us, promptly take over control of the defense.

We have the right to investigate and to settle any **Claim** for an **Insured Event** or a **Third Party Insured Event**, in the manner and to the extent that we believe is proper, contingent upon the consent of the **Named Insured** as defined in this endorsement. This includes the right to agree to post a notice of compliance, provided such notice does not contain an admission of liability.

You may take over control of any outstanding **Claim** previously reported to us only if we both agree that you should, if required under law or if a court orders you to do so.

If your **LIMIT OF LIABILITY** is exhausted, we will notify you of all outstanding **Claims** so that you can take over control of their defense. We will help to transfer control to you.

- D. During the transfer of control.** We agree to take whatever steps are necessary to continue the defense of any outstanding **Claim** and avoid a default judgment during the transfer of control to you. If we do so, you agree to pay reasonable expenses that we incur for taking such steps after the **LIMIT OF LIABILITY** is exhausted.
- E. Duty to pay.** We have the duty to pay any **Loss** (after you pay the applicable deductible) that results from any **Claim** for an **Insured Event** or **Third Party Insured Event**, made or brought against any **Insured** to which this endorsement applies. Our duty to pay ends when the applicable **LIMIT OF LIABILITY** has been exhausted. We will not pay more than the applicable **LIMIT OF LIABILITY**.

We have the duty to pay **Defense Costs** incurred (after you pay the applicable deductible) for the defense of any **Claim** that is controlled by us. Any payment of **Defense Costs** is included in the **LIMIT OF LIABILITY**, it is not in addition to the **LIMIT OF LIABILITY**.

- F. Recommended Settlements.** As respects any **Claim** for which we recommend that a settlement offer be accepted but you do not give your consent to such settlement, and the **Claim** later results in a judgment or settlement in excess of the recommended settlement, our liability for **Loss** on account of such **Claim** shall not exceed the recommended settlement amount plus **Defense Costs** incurred as of the date we recommended the settlement. This provision shall not apply unless the total **Loss**, including the recommended settlement, would exceed the applicable Limits of Liability amounts.

## **II. DEFINITIONS**

- A. Application** means each and every signed **Application**, any attachments to such **Applications**, other materials submitted therewith and incorporated therein and any other such documents submitted in connection with the underwriting of this endorsement or the underwriting of any other employment practices liability endorsement issued by us, or any of our affiliates, of which this endorsement is a renewal, replacement or which succeed it in time.
- B. Claim(s)** means a written complaint or written charge made against an **Insured** or a written demand made against an **Insured** in which damages are alleged or where specific charges of **Discrimination, Harassment, Inappropriate Employment Conduct** and/or **Inappropriate Third Party Conduct** are brought.

**Claim** includes a civil action, suit or administrative proceeding, to which any Insured must submit or to which any **Insured** submits with our consent.

But **Claim** shall not mean any labor or grievance arbitration subject to a collective bargaining agreement; or any complaint, writ or other proceeding in which an **Insured** is alleged to have committed or engaged in a criminal offense or violation of a federal, state or local penal law.

- C. Defense Costs** means those reasonable and necessary expenses that result from the investigation, settlement or defense of a specific **Claim** including attorney fees and expenses, the cost of legal proceedings, the cost of appeal bonds, the cost of bonds to release property being used to secure a legal obligation (but only for bond amounts within the **LIMIT OF LIABILITY** that applies). We have no obligation to furnish any bonds.

The following are not **Defense Costs**: costs incurred by any Insured before notice is provided to us; salaries and expenses of your employees, including in-house and/or coverage attorneys, salaries and expenses of our employees, or our in-house or coverage attorneys or the fees and expenses of independent adjusters we hire.

- D. Discrimination** means termination of the employment relationship, a demotion, a 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, national origin, or any other basis prohibited by federal, state or local law occurring on or after the Prior Acts Date as shown in the Schedule.

This endorsement covers retaliation claims based on unlawful discrimination occurring on or after the Prior Acts Date as shown on the Schedule Page, except as excluded in **EXCLUSIONS: WHAT IS NOT COVERED** section IX.

- E. Employee** means an individual whose labor or service is engaged by and directed by the **Named Insured**, or any covered entity. This includes volunteers, part time, seasonal and temporary **Employees** as well as any individual employed in a supervisory, managerial or confidential position. Independent contractors and subcontractors are not **Employees** unless they are dedicated agents or representatives of an **Insured**. **Employees** who are leased to another employer are not **Employees**.

- F. Harassment** means 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, where such harassment occurs on or after the Prior Acts Date as shown in the Schedule and is based on a factor or category prohibited by law (including sex, race, age, national origin, disability, etc.), that (1) explicitly or implicitly are made a condition of employment, (2) are used as a basis for employment decisions, or (3) create a work environment that interferes with performance.

- G. Inappropriate Employment Conduct** means any of the following occurring on or after the Prior Acts Date as shown in the Schedule:

1. actual or constructive termination of an employment relationship in a manner which is alleged to have been against the law or wrongful or in breach of an implied employment contract or breach of the covenant of good faith and fair dealing in the employment contract;
2. allegations of wrongful demotion, or wrongful discipline;
3. allegations of misrepresentation made by an **Employee**, a former **Employee** or an applicant for employment which arise from an **Insured's** employment decision to hire, fire, promote or demote;
4. allegations of infliction of emotional distress, mental injury, mental anguish, shock, sickness, disease or disability made by an **Employee**, a former **Employee** or an applicant for employment which arise from an **Insured's** employment decision to hire, fire, promote or demote;
5. allegations of false imprisonment, detention or malicious prosecution made by an **Employee**, a former **Employee** or an applicant for employment which arise from the **Insured's** an employment decision to hire, fire, promote or demote;
6. allegations of libel, slander, defamation of character or any invasion of right of privacy made by an **Employee**, a former **Employee** or an applicant for employment which arise from an **Insured's** employment decision to hire, fire, promote or demote; or
7. other personal injury allegations made by an **Employee**, a former **Employee** or an applicant for employment which arise from an **Insured's** employment decision to hire, fire, promote or demote.

**Inappropriate Employment Conduct** shall not include any allegations other than those set forth

above.

- H. Inappropriate Third Party Conduct** means actual or alleged acts of discrimination or harassment by an Insured against any natural person who is not an Employee. Inappropriate Third Party Conduct shall not include actual or alleged acts of assault or battery. Inappropriate Third Party Conduct shall not include any actual or alleged violations of Title III of the Americans with Disabilities Act ("the Act").
- I. Insured Event** means actual or alleged acts of **Discrimination, Harassment, and/or Inappropriate Employment Conduct**, by an **Insured** against an **Employee** or former **Employee** or applicant for employment with an **Insured** entity occurring on or after the Prior Acts Date as shown in the Schedule. **Insured Event** shall not include **Claims** for actual or alleged violation of any federal, state or local wage and hour laws or regulations.
- J. Laundry List Notification** means any attempt by an **Insured** to report multiple matters under this endorsement in a summary fashion that does not comply with **CONDITIONS** section **VIII. A. or B.** By way of example, a **Laundry List Notification** may consist of a report by an **Insured** that lists purported potential claimants, either in the absence of a **Claim**, or in the absence of an oral complaint.
- K. Loss** means damages, judgments (including prejudgment and post judgment interest awarded against an **Insured** on that part of any judgment paid by us), settlements, we authorize or agree to, statutory attorney fees and **Defense Costs**.  
However, **Loss** does not include anything specifically excluded in **EXCLUSIONS: WHAT IS NOT COVERED** section **IX**, or any of the following:
1. salary or wages of the **Insured**;
  2. non-monetary relief (this provision does not apply to Defense Costs where non-monetary relief is sought for alleged **Harassment, Discrimination, Inappropriate Employment Conduct**);
  3. payment of insurance plan benefits by or on behalf of retired **Employees**, or that to which a claimant would have been entitled as an **Employee** had any **Insured** provided the claimant with a continuation of insurance;
  4. liquidated damages where there is a finding of wilfulness;
  5. costs incurred by an **Insured** to modify or adapt any building or property in order to make such building or property more accessible or accommodating to any disabled person; costs associated with eliminating non-essential duties from the job description of a disabled person; costs associated with providing a disabled person with reasonable workplace accommodations; and costs associated with lost productivity by an employer as the result of making a reasonable workplace accommodation for a disabled person;
  6. matters which may be deemed uninsurable according to the law under which this endorsement is construed;
  7. amounts owed under federal, state or local wage and hour laws;
  8. amounts owed under a contract of employment;
  9. commissions, bonuses, profit sharing or benefits pursuant to a contract of employment, including but not limited to vacation, holiday, and/or sick pay;
  10. severance payments or obligations to make payments;
  11. amounts that are sought or deemed to be owed under partnership, stock or other ownership agreements;
  12. fines, penalties and taxes; or

13. punitive or exemplary damages.

- L. **One Insured Event** means (1) one or more covered allegations of **Discrimination, Harassment** and/or **Inappropriate Employment Conduct** which are related by an unbroken chain of events or (2) class action or multiple claimant or multiple plaintiff suits arising out of related **Insured Events**.
- M. **One Third Party Insured Event** means one or more covered allegations of **Inappropriate Third Party Conduct** which are related by an unbroken chain of events.
- N. **Third Party Insured Event** means actual or alleged acts of **Inappropriate Third Party Conduct** by an **Insured** against any natural person who is not an **Employee** of any **Insured**.
- O. **Subsidiary** means any organization more than 50% owned by the Named Insured listed in the **Application**.

### III. WHEN COVERAGE IS PROVIDED

- A. This endorsement applies only to **Claims** arising out of an **Insured Event** or a **Third Party Insured Event**, first made or brought during the **Endorsement Period** and which are reported to us in accordance with the endorsement's notice provisions as set forth in **CONDITIONS** section **VIII. A. Duties in the Event of a Claim**. **Claims** are considered to be first made when it is first served or received by the **Insured**.
- B. All **Claims** because of **One Insured Event** or a **Third Party Insured Event**, will be considered to have been made or brought on the date that the first of those **Claims** was first made or brought.
- C. Limited Reporting Period: means the thirty (30) day period after the endorsement ends, during which **Claims** because of **Insured Events** which happen or commence during the **Endorsement Period** and are reported in accordance with section **I.** and **VIII.** of the endorsement can be made.
- D. Extended Reporting Period. If you cancel this endorsement or this endorsement is non-renewed, you shall have the right to buy an Extended Reporting Period Endorsement providing an extended reporting period of up to twelve (12) months from the end of the Endorsement Period, or the effective date of cancellation, whichever is earlier, in exchange for your payment of an additional premium. You do not have this right, however, if we cancel for nonpayment of premium.

The Extended Reporting Period Endorsement will not be issued unless we receive a written request for it within thirty (30) days after this endorsement is cancelled or non-renewed, nor will it take effect unless the additional Premium is paid within thirty (30) days after this endorsement is cancelled or non-renewed. Once that Premium is paid the endorsement may not be cancelled and the additional Premium will be fully earned.

The additional premium for a 12 month Extended Reporting Period will be one hundred percent (100%) of the premium charged for the last Endorsement Period.

However, the Extended Reporting Period will not apply to any **Claim** if other insurance you buy covers you or would cover you if its limits of coverage had not been exhausted.

Coverage under the Extended Reporting Period is with respect to **Claims** first made against an **Insured** during the Endorsement Period or Extended Reporting Period and first reported by an **Insured** during the Extended Reporting Period, provided always that **Claims** reported during the Extended Reported Period are limited to **Insured Events** or a **Third Party Insured Event**, which happen or commence before the original Endorsement Period ends by either cancellation or non-renewal and which are otherwise covered by this endorsement.

The **LIMIT OF LIABILITY** that applies at the end of the Endorsement Period is not renewed or increased and the Limits, as shown in the Schedule, shall not be increased in any way by the Limited Reporting Period or the addition of the Extended Reporting Period.

- E. If, during the Endorsement Period, any of the following changes occur:
- a. the acquisition of an **Insured**, or of all or substantially all of its assets, by another entity, or the merger or consolidation of an **Insured** into or with another entity such that the **Insured** is not the surviving entity; or
  - b. the obtaining by any person, entity or affiliated group of persons or entities of the right to elect, appoint or designate over fifty percent (50%) of the directors of an **Insured**

coverage under this endorsement with respect to such **Insured** will continue in full force and effect with respect to **Claims** for **Insured Events** or a **Third Party Insured Event**, committed before such change, but coverage with respect to such **Insured** will cease with respect to **Claims** for **Insured Events** or a **Third Party Insured Event**, committed after such change. After any such change, this endorsement may not be cancelled, regardless of **CONDITIONS** section **VIII.F**. Cancellation, and the entire Premium for the endorsement will be deemed fully earned.

#### **IV. WHERE COVERAGE IS PROVIDED**

This endorsement covers **Claims** made and **Insured Events** or a **Third Party Insured Event**, occurring anywhere in the United States of America or its territories.

#### **V. WHO IS INSURED**

- A. **Individual.** If you are shown in the Schedule as an individual, You are **Insured** but only for the conduct of a law firm of which you are the sole owner.
- B. **Corporation.** If you are shown in the Schedule as a corporation or organization other than a partnership or joint venture, you are an **Insured**. Your stockholders are also **Insureds**, but only with respect to their liability as your stockholders.
- C. **Partnership.** If you are shown in the Schedule as a partnership, you are an **Insured**. Your partners are also **Insureds**, but only for the conduct of your law firm.  
  
However, no person or organization is covered for the conduct of any current or past partnership not named in the Schedule.
- D. **Other.** If you are a Limited Liability Corporation (LLC), or a Limited Liability Partnership ('LLP') of the Named Insured and you are shown in the Schedule as 'Other' you are an **Insured**. Your members, partners and shareholders are also **Insureds** but only with respect to the conduct of your law firm.
- E. **Employees.** Your **Employees**, executive officers, directors and your trustees are **Insureds** only for the conduct of your law firm within the scope of their employment. Your **Employee's** status as an **Insured** will be determined as of the date of the **Discrimination, Harassment, Inappropriate Employment Conduct**, or a **Third Party Inappropriate Employment Conduct**, which caused an **Insured Event** or a **Third Party Insured Event**,.

- F. **Mergers and Acquisitions.** Any law firm that you newly acquire, form or merge with while this endorsement is in effect and that is not listed in the Schedule of this endorsement, that has less than 10% of the total number of your **Employees** as of the inception date of this endorsement shall be an **Insured** at the time of such acquisition, merger or formation if you own at least fifty one percent (51%) of it. Within thirty (30) days of acquisition, merger or formation, the **Insured** shall give us written notice as to all such law firms. If you acquire, form or merge with any law firms that has more than 10% of the total number of your **Employees** as of the inception date of this endorsement, such law firm is also an **Insured** if you own at least fifty one (51%) of it; provided, however, no such law firm is covered for more than forty five (45) days or the remainder of the Endorsement Period, whichever is less, from the date acquired, merged or formed unless we agree to cover such acquisition or newly formed law firm within such forty five (45) day period in consideration of an additional Premium to be determined by us. Notwithstanding the foregoing, any acquired or formed law firm is neither covered for **Loss** that results from an **Insured Event** or a **Third Party Insured Event**, that happened or first commenced before the **Insured** acquired or

formed it; nor for **Loss** covered under any other insurance.

## VI. LIMIT OF LIABILITY

- A. The amount shown at Item 1 (a) in the Schedule as the “Each Insured Event Limit” is the most we will pay for **Claims** first made or brought during the Endorsement Period for **Loss** that results from any **One Insured Event** regardless of the number of **Claims**.
- B. The amount shown at Item 1 (b) in the Schedule as the “Aggregate Limit of Liability” is the most we will pay for the combined total of all **Claims** first made or brought during the Endorsement Period for **Loss** that result from all **Insured Events**.
- C. The amount shown at Item 1 (a) in the Schedule is the most we will pay for the combined total of all **Claims** first made or brought during the Policy Period for **Loss** that results from all **Insured Events**, and **Third Party Insured Events**.

If this Endorsement Period is extended, the Limits, as shown in the Schedule shall not in any way increase. For purposes of the **LIMIT OF LIABILITY**, any endorsement extension is considered to be part of and not in addition to the former Endorsement Period.

## VII. DEDUCTIBLE

Our obligation to pay under this endorsement applies only to covered amounts in excess of any Deductible amount that the insured must pay, as shown in the Schedule, and the **LIMIT OF LIABILITY** will not be reduced by the amount of such Deductible.

The Deductible amount will apply separately to each **Claim** made, however, it will only apply once to all **Claims** arising out of any **One Insured Event** or a **Third Party Insured Event** regardless of the number of claimants who allege damages.

If, prior to terminating or demoting an **Employee** the **Insured** consults with and follows the advice of the EPL hotline and/or a labor law attorney approved by our Authorized Representatives, as shown in Item 2 of the Schedule, then the **Insured's** Deductible is reduced by 50% in the event the **Insured** faces a **Claim** involving such termination or demotion.

## VIII. CONDITIONS

We have no duty to provide coverage under this endorsement unless there has been full compliance with all the conditions contained in this endorsement.

### A. **Duties in the event of a Claim**

- 1. You must see to it that we are notified as soon as practicable but in no event more than thirty days (30) after any **Insured** who is a principal, partner, officer, director, trustee, in house counsel, Employee(s) within the HR Risk Management department or **Employee(s)** with personnel and risk management responsibilities, becomes aware that a **Claim** has been made. Your notification should include:
  - (a) the identity of the person(s) alleging **Discrimination, Harassment, Inappropriate Employment Conduct** and/or **Inappropriate Third Party Conduct**;
  - (b) the identity of any Insured(s) who allegedly committed the **Discrimination, Harassment, Inappropriate Employment Conduct** and/or **Inappropriate Third Party Conduct**;
  - (c) the identity of any witnesses to the alleged **Discrimination, Harassment, Inappropriate Employment Conduct** and/or **Inappropriate Third Party Conduct**; and
  - (d) the date(s) an **Insured Event** or a **Third Party Insured Event** took place.

2. You and any other **Insured** must:
  - (a) immediately send us copies of any demands, notices, summonses or legal papers received in connection with the **Claim**;
  - (b) authorize us to obtain statements, records and other information;
  - (c) co-operate with us in the investigation or defense of the **Claim**; and
  - (d) assist us or in the enforcement of any right against any person or organization which may be liable to an Insured because of **Loss** to which this endorsement may also apply.
3. No **Insured** will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense **without** our consent. Subsequent payments that are deemed by us as having been prejudiced by any such voluntary payment will also be the sole responsibility of the **Insured**.

**B. Report of a Potential Claim**

Solely at an **Insured's** option, an **Insured** may within the Endorsement Period report an oral complaint by an **Employee**, former **Employee** or applicant for employment alleging **Discrimination, Harassment and/or Inappropriate Employment Conduct**. If such report is received by us within the Endorsement Period then any **Claim** subsequently arising from such oral complaint will be deemed to be made on the date such report was received. Such report must include the identity of the person(s) making the oral complaint. In no event, however, is an **Insured** entitled to coverage under this endorsement based on a Laundry List Notification.

**C. Legal Action Against Us**

1. No person or organization has the right under this endorsement:
  - (a) to join us as a party or otherwise bring us into a suit asking for damages from an **Insured**; or
  - (b) to sue us on this endorsement unless all of its terms have been fully complied with.
2. A person or organization may sue us to recover on an agreed settlement or on final judgment against an **Insured** obtained after an actual trial, but we will not be liable for damages that are not payable under the terms of this endorsement or that are in excess of the applicable **LIMIT OF LIABILITY**. An agreed settlement means a settlement and release of liability signed by us, an **Insured** and the claimant's legal representative.

**D. Other Insurance**

This endorsement shall be deemed primary insurance in connection with covered **Claims** by **Employees** against an Insured because of an **Insured Event**. In connection with any other covered **Claim**, this Endorsement shall apply in excess of all indemnity rights of an **Insured** and in excess of any other valid or collectible insurance available to any **Insured**. Nothing herein is intended to make this endorsement subject to the terms, conditions and limitations of any other insurance, and nothing herein is intended to limit our or any Insured's right to contribution or indemnity from any other party, insurer or indemnitor.

**E. Premium**

1. The Premium shown in the Schedule is for the Endorsement Period shown in the Schedule.



2. This endorsement Premium is fully earned.

**F. Cancellation**

You may only cancel this endorsement by mailing to us written notice stating when such cancellation shall be effective. We may cancel this endorsement for those reasons noted in the applicable statute, by mailing to the Named Insured at the address shown in the Schedule, written notice stating when, not less than forty-five (45) days thereafter, or ten (10) days in the event of non-payment of Premium, such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The effective date and hour of cancellation as stated in the notice shall become the end of the Endorsement Period. Delivery of such written notice shall be equivalent to mailing.

**G. Representations**

By accepting this endorsement you agree:

1. all statements in the **Application** and any attachments as well as all other information provided to us are true and complete and shall be deemed material to the acceptance of the risk or the hazard assumed by us under this endorsement;
2. those statements are based upon representations you made to us;
3. we have issued this endorsement in reliance upon your representations;
4. in the event that any statement or representation in the **Application** is untrue, this Endorsement in its entirety shall be void at inception and of no effect whatsoever; and
5. to disclose any material facts you become aware of between the time that the **Application** for this endorsement is signed and the endorsement inception date.

The truth of any statement or representation in the **Application** shall be determined without regard to whether any **Insured** knew the **Application** contained such untrue statement or representation.

**H. When We Do Not Renew**

If we decide not to renew this endorsement, we will mail or deliver to the **Named Insured** shown in the Schedule, written notice of the non-renewal not less than forty-five (45) days before the expiration date.

If notice is mailed, proof of mailing will be sufficient notice of non-renewal.

**I. Transfer Of Rights Of Recovery Against Others to Us**

If any Insured has rights to recover all or part of any payments we have made under this endorsement, those rights are transferred to us; the **Insured** must do nothing after a Loss to impair them. At our request, any **Insured** will bring suit or transfer those rights to us and help us to enforce them.

**J. Bankruptcy**

Bankruptcy or insolvency of any **Insured** or of an **Insured's** estate will not relieve us of our obligations under this endorsement, except as excluded in **EXCLUSIONS: WHAT IS NOT COVERED** section IX.

**K. False Or Fraudulent Claims**

If any **Insured** shall proffer any **Claim** knowing the same to be false or fraudulent as regards amount or otherwise, this endorsement will become void in its entirety and all coverage hereunder shall be forfeited.

**IX. EXCLUSIONS: WHAT IS NOT COVERED**

- A. Worker's Compensation/ERISA/FLSA/NRLA/WARN/COBRA/OSHA.** This endorsement does not cover any **Loss** arising out of any **Claim** alleging violation of any: i) worker's compensation, disability benefits or unemployment compensation law, social security and other employment benefits law; ii) the Employee Retirement Income Security Act of 1974 Public Law 93-406; iii) the Fair Labor Standards Act (except the Equal Pay Act); (iv) the National Labor Relations Act; (v) the Worker Adjustment and Retraining Notification Act; (vi) the Consolidated Omnibus Budget Reconciliation Act of 1985; (vii) the Occupational Safety and Health Act; (viii) any other federal, state or local statute or law similar to any statute or law described in (i) through (vii) of this exclusion; provided, however, this exclusion shall not apply to any **Claim** for any actual or alleged retaliatory treatment of the claimant on account of the claimant's exercise of rights pursuant to such statute, law, rule or regulation.
- B. Contractual Liability.** This endorsement does not cover any **Loss** based upon, arising out of, directly or indirectly in connection with, related to, or in any way involving any **Claim** any **Insured** is obligated to pay by reason of the assumption of another's liability for an **Insured Event** in a contract or agreement. This exclusion will not apply to liability for damages because of an **Insured Event** or a **Third Party Insured Event** that any **Insured** would have without the contract or agreement.
- C. Consequential Loss.** This endorsement does not cover any **Loss** resulting from or attributable to any allegations made by or solely for the benefit of a claimant's domestic partner, spouse, child, parent, brother or sister.
- D. Wage and Hour Law.** This endorsement does not cover any **Loss** arising out of a claim based upon, arising out of, directly or indirectly in connection with, related to or in any way alleging violation of any state or local wage and hour law, however, in the event such **Claim** also alleges an **Insured Event** otherwise covered by this endorsement, notwithstanding the provisions of section **I.D. Defense**, and subject to all other terms, conditions and exclusion contained in this endorsement, we agree to pay loss solely for that portion of the claim involving such **Insured Event**.
- E. Stock Options.** This endorsement does not cover any **Loss** resulting from or attributable to stock options, including, without limitation, 1) the failure to grant stock options and/or 2) amounts attributable to unvested stock options which options did not vest because of the actual or alleged wrongful termination of an **Employee**.
- F. Fraud and Collusion.** This endorsement does not cover any **Loss** based upon, arising out of, directly or indirectly in connection with, related to, or in any way involving any **Claim** alleging fraud, collusion, dishonest, criminal or malicious acts by or at the direction of an **Insured**. Without limiting the foregoing, we will pay **Defense Costs** incurred relating to allegations of fraud, collusion, dishonest, criminal or malicious acts to defend an innocent **Insured** named in such **Claim** so long as such **Claim** also contains allegations against that innocent **Insured** involving an **Insured Event** or a **Third Party Insured Event** otherwise covered by this endorsement.
- G. Prior Notice.** This endorsement does not cover any **Loss** arising out of **Insured Events** that have been the subject of any notice given under any other endorsement prior to the inception date of this endorsement.
- I. Punitive Damages.** This endorsement does not cover any **Loss** arising out of any fines, penalties, punitive damages, exemplary damages or any additional damages resulting from the multiplication of compensatory damages (referred to herein collectively as "Punitive Damages"), except that if a suit is brought against the Named **Insured** on a **Claim** falling within the coverage hereof, seeking both compensatory and Punitive Damages, then we will afford a defense to such action, without liability, however, for such Punitive Damages; provided further, that our obligation to provide such defense for Punitive Damages shall terminate when the **Claim** for compensatory damages in such action is terminated or paid through judgment or settlement and, in no event, shall we afford a defense for Punitive Damages after the Limit of Liability for compensatory damages has been paid.
- J. Prior Knowledge.** This policy does not cover any **Loss** arising out of **Insured Events** or **Third Party Insured Event** of which any **Insured** who is a principal, partner, officer, director, trustee, in-house counsel, **Employee(s)** within the HR or Risk Management department or **Employee(s)** with personnel

and risk management responsibilities was aware by actual knowledge of the facts or circumstances of such **Insured Event** or a **Third Party Insured Event** prior to the Prior Knowledge Date, as shown in the Schedule.

- K. Prior Acts Date.** This endorsement does not cover any **Loss** arising out of any **Insured Events** or **Third Party Insured Events**, that first occurred on or before the Prior Acts Date as set forth in the Schedule. For the purposes of this exclusion, related **Insured Events** and **Third Party Events** are excluded if the first related **Insured Event** or **Third Party Events** took place or is alleged to have taken place prior to the Prior Acts Date.

## EMPLOYMENT PRACTICES LIABILITY ENDORSEMENT

**NOTICE: THIS ENDORSEMENT IS ON A CLAIMS-MADE AND REPORTED BASIS AND APPLIES ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR THE EXTENSION PERIOD – IF APPLICABLE – AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD. COVERAGE IS ALSO SUBJECT TO THE PRIOR ACTS DATE AND PRIOR KNOWLEDGE DATE NOTED. AMOUNTS INCURRED AS CLAIMS EXPENSES UNDER THIS ENDORSEMENT SHALL REDUCE AND MAY EXHAUST THE LIMIT OF LIABILITY AND ARE SUBJECT TO THE DEDUCTIBLE.**

Item 1.	<b>Limits of Liability</b> (includes defense cost):	
	Per Claim/Event Limit	100,000
	Aggregate	300,000
Item 2.	<b>Deductible</b> (Includes defense costs):	
	Per claim	5,000
Item 3.	<b>Prior Acts Date:</b> (RDI)	
Item 4.	<b>Prior Knowledge Date:</b> (RDI)	

# Nuclear Incident Exclusion Clause - Liability - Reinsurance (U.S.A.)

(Approved by Lloyd's Underwriters' Fire and Non-Marine Association)

- (1) This reinsurance does not cover any loss or liability accruing to the Reassured as a member of, or subscriber to, any association of insurers or reinsurers formed for the purpose of covering nuclear energy risks or as a direct or indirect reinsurer of any such member, subscriber or association.
- (2) Without in any way restricting the operation of paragraph (1) of this Clause it is understood and agreed that for all purposes of this reinsurance all the original policies of the Reassured (new, renewal and replacement) of the classes specified in Clause II of this paragraph (2) from the time specified in Clause III in this paragraph (2) shall be deemed to include the following provision (specified as the Limited Exclusion Provision).

## Limited Exclusion Provision.\*

- I. It is agreed that the policy does not apply under any liability coverage, to: 

{	<i>injury, sickness, disease, death or destruction</i>	with respect to which an
	bodily injury or property damage	

 insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability.
  - II. Family Automobile Policies (liability only), Special Automobile Policies (private passenger automobiles, liability only), Farmers Comprehensive Personal Liability Policies (liability only), Comprehensive Personal Liability Policies (liability only) or policies of a similar nature; and the liability portion of combination forms related to the four classes of policies stated above, such as the Comprehensive Dwelling Policy and the applicable types of Homeowners Policies.
  - III. The inception dates and thereafter of all original policies as described in II above, whether new, renewal or replacement, being policies which either
    - (a) become effective on or after 1st May, 1960, or
    - (b) become effective before that date and contain the Limited Exclusion Provision set out above;provided this paragraph (2) shall not be applicable to Family Automobile Policies, Special Automobile Policies, or policies or combination policies of a similar nature, issued by the Reassured on New York risks, until 90 days following approval of the Limited Exclusion Provision by the Governmental Authority having jurisdiction thereof.
- (3) Except for those classes of policies specified in Clause II of paragraph (2) and without in any way restricting the operation of paragraph (1) of this Clause, it is understood and agreed that for all purposes of this reinsurance the original liability policies of the Reassured (new, renewal and replacement) affording the following coverages:

Owners, Landlords and Tenants Liability, Contractual Liability, Elevator Liability, Owners or Contractors (including railroad) Protective Liability, Manufacturers and Contractors Liability, Product Liability, Professional and Malpractice Liability, Storekeepers Liability, Garage Liability, Automobile Liability (including Massachusetts Motor Vehicle or Garage Liability)

shall be deemed to include, with respect to such coverages, from the time specified in Clause V of this paragraph (3), the following provision (specified as the Broad Exclusion Provision):

## Broad Exclusion Provision.\*

It is agreed that the policy does not apply:

- I. Under any Liability Coverage, to 

{	<i>injury, sickness, disease, death or destruction</i>
	bodily injury or property damage

  - (a) with respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability;  
or
  - (b) resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) the insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

- II. Under any Medical Payments Coverage, or under any Supplementary Payments Provision relating to *immediate medical or surgical relief*, first aid, to expenses incurred with respect to *bodily injury, sickness, disease or death* resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization
- III. Under any Liability Coverage, to *injury, sickness, disease, death or destruction* resulting from the hazardous properties of nuclear material, if
- (a) the nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of, an insured or (2) has been discharged or dispersed therefrom;
- (b) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
- (c) the *injury, sickness, disease, death or destruction* arises out of the furnishing of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories, or possessions or Canada, this exclusion (c) applies only to *injury to or destruction of property at such nuclear facility*.
- IV. As used in this endorsement:
- "hazardous properties"** include, radioactive, toxic or explosive properties; **"nuclear material"** means source material, special nuclear material or byproduct material; **"source material"**, **"special nuclear material"**, and **"byproduct material"** have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof; **"spent fuel"** means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor; **"waste"** means any waste material (1) containing by product material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof; **"nuclear facility"** means
- (a) any nuclear reactor,
- (b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste,
- (c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,
- (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations; **"nuclear reactor"** means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;
- with respect to injury to or destruction of property, the word "injury" or "destruction", includes all forms of radioactive contamination of property.*
- "property damage"** includes all forms of radioactive contamination of property.
- V. The inception dates and thereafter of all original policies affording coverages specified in this paragraph (3), whether new, renewal or replacement, being policies which become effective on or after 1st May, 1960, provided this paragraph (3) shall not be applicable to
- (i) Garage and Automobile Policies issued by the Reassured on New York risks.
- or
- (ii) statutory liability insurance required under Chapter 90, General Laws of Massachusetts, until 90 days following approval of the Broad Exclusion Provision by the Governmental Authority having jurisdiction thereof.
- (4) Without in any way restricting the operation of paragraph (1) of this Clause, it is understood and agreed that paragraphs (2) and (3) above are not applicable to original liability policies of the Reassured in Canada and that with respect to such policies this Clause shall be deemed to include the Nuclear Energy Liability Exclusion Provisions adopted by the Canadian Underwriters' Association or the Independent Insurance Conference of Canada.

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\*NOTE. The words printed in italics in the Limited Exclusion Provision and in the Broad Exclusion Provision shall apply only in relation to original liability policies which include a Limited Exclusion Provision or a Broad Exclusion Provision containing those words.

(Wherever the word "Reassured" appears in this clause, it shall be deemed to mean "Reassured," "Reinsured," "Company," or whatever other word is employed throughout the text of the reinsurance agreement to which this clause is attached to designate the company or companies reinsured.)

AMENDMENT TO THE BROAD FORM NUCLEAR EXCLUSION  
(DEFINITION OF WASTE)

It is agreed that the definition of "**Waste**" contained in the Nuclear Energy Liability Exclusion (Broad Form) is amended to read as follows:

"**Waste**" means any material

- (a) containing **by-product material** other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its **source material** content, and
- (b) resulting from the operation by any person or organization of any **nuclear facility** included under the first two paragraphs of the definition of "**nuclear facility**."

## **WAR AND TERRORISM EXCLUSION (Casualty Treaty Reinsurance)**

Notwithstanding any provisions to the contrary within this reinsurance agreement or any endorsement thereto, it is agreed that this reinsurance agreement excludes all actual or alleged losses, liabilities, damages, injuries, defence costs, costs or expense(s) directly or indirectly arising out of, contributed by, caused by, resulting from, or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence of the loss:

1. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, revolution, rebellion, insurrection, uprising, military or usurped power, confiscation by order of any public authority or government de jure or de facto, martial law;
2. riots, strikes, or civil commotion; or
3. any act of terrorism.

For purposes of this endorsement, an act of terrorism means an activity that (1) involves a violent act or the unlawful use of force or an unlawful act dangerous to human life, tangible or intangible property or infrastructure, or a threat thereof; and (2) appears to be intended to (i) intimidate or coerce a civilian population, or (ii) disrupt any segment of the economy of a government de jure or de facto, state, or country; or (iii) overthrow, influence, or affect the conduct or policy of any government de jure or de facto by intimidation or coercion; or (iv) affect the conduct of a government de jure or de facto by mass destruction, assassination, kidnapping or hostage-taking.

This endorsement also excludes from coverage all actual or alleged losses, liabilities, damages, injuries, defence costs, costs, or expenses directly or indirectly arising out of, contributed by, caused by, resulting from, or in connection with any action taken in controlling, preventing, suppressing, retaliating against, or responding to (1), (2) and/or (3) above.

If the Reinsurers allege that by reason of this exclusion any actual or alleged losses, liabilities, damages, injuries, defence costs, costs or expenses is not covered by this reinsurance agreement the burden of proving the contrary shall be upon the Reassured.

In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

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