



THIS IS A CLAIMS-MADE COVERAGE ENDORSEMENT.

PLEASE NOTE THAT DEFENSE COSTS ARE CONTAINED WITHIN THE LIMIT OF LIABILITY AND THE DEDUCTIBLE. THIS MEANS THAT THE LIMIT OF LIABILITY AND THE DEDUCTIBLE SPECIFIED IN THE SUPPLEMENTAL DECLARATIONS OF THIS EPL COVERAGE ENDORSEMENT SHALL BE REDUCED, AND MAY BE COMPLETELY EXHAUSTED, BY DEFENSE COSTS. IN THE EVENT THAT THE LIMIT OF LIABILITY IS EXHAUSTED, THE INSURER SHALL NOT BE LIABLE FOR DEFENSE COSTS OR FOR ANY DAMAGES, JUDGMENTS OR SETTLEMENTS.

EMPLOYMENT PRACTICES LIABILITY INSURANCE COVERAGE ENDORSEMENT – NEW YORK

Throughout this Coverage Endorsement (hereinafter referred to as “EPL Coverage Endorsement”), the words “you” and “your” refer to the “named insured(s)” shown in the Supplemental Declarations of this EPL Coverage Endorsement and any other person(s) or organization(s) qualifying as a “named insured” under this EPL Coverage Endorsement. The words “we”, “us” and “our” refer to the company providing this insurance.

The word “insured” means any person or organization qualifying as such under SECTION III. WHO IS AN INSURED.

Other words and phrases that appear in “quotations” have special meaning. Refer to SECTION VII. DEFINITIONS.

The terms and conditions of the Cancellation Clause of the Common Policy Conditions, BP 00 03 are hereby incorporated herein and shall apply to coverage as is afforded by this EPL Coverage Endorsement, unless specifically stated otherwise in an endorsement(s) attached hereto.

SECTION I. WHAT IS COVERED

A. Insuring Agreement

1. “We” shall pay those “losses” arising out of “your” “wrongful employment act” against “your” “employees”, to which this insurance applies. The “wrongful employment act” must commence or take place after the “original inception date”, but before the end of the “EPL coverage period”. A “claim” or “suit” for a “wrongful employment act” must be first made against “you” during the “EPL coverage period” or any Extended Reporting Period and reported to “us” pursuant to the terms of this EPL Coverage Endorsement.
2. A “claim” or “suit” by a person or organization seeking damages will be deemed to have been first made when “we” receive written notice of the “claim” or “suit” from “you” or a third party. A claim will also be deemed reported on the date such notice is received by “us”. “Claims” reported to “us” alleging the same or related “wrongful employment acts” shall be considered

reported to “us” at the time and during the “EPL coverage period” when the first such “claim” was reported.

3. Notwithstanding the above, in the event a “claim” is filed against, sent or delivered to, or received by “you” prior to the “EPL coverage period” but notice of which is received by “us” during the “EPL coverage period” coverage under this “EPL coverage period” shall only apply (subject to the other terms and conditions of this EPL Coverage Endorsement) only as follows:
 - (a) If at the time the “claim” was filed against, sent or delivered to, or received by “you”, there was in existence at that time a valid and collectible liability insurance policy, providing substantially similar coverage as is provided by this EPL Coverage Endorsement, issued to “you” by “us” of which this policy is a renewal (hereinafter referred to as the “Former Policy”), then coverage shall be afforded under this EPL Coverage Endorsement in an amount not greater than the amount of coverage which would have been

provided for the “claim” under the “Former Policy” if notice of the “claim” had been received by “us” during the policy period of such “Former Policy”. The foregoing sentence may result in (but not be limited to): (1) reducing the Aggregate EPL Limit of Liability available for such a “claim” to the available limit of liability applicable to the “Former Policy”; (2) increasing the applicable deductible amount to that deductible amount applicable to the “Former Policy”; or (3) reducing or eliminating coverage due to exclusions or other restrictions appearing in the “Former Policy” but eliminated, in part or in whole, in this EPL Coverage Endorsement; and

- (b) If at the time the “claim” was filed against, sent or delivered to, or received by “you”, a Former Policy was not existence, no coverage shall be afforded under this EPL Coverage Endorsement for such “claim.”

B. Defense

1. “We” have the right and duty to defend and appoint an attorney to defend any “claim” or “suit” brought against any “insured” for a “wrongful employment act” to which this insurance applies, even if the “claim” or “suit” is groundless, false or fraudulent. “You” shall have the option to consent to “our” appointment of an attorney, which consent shall not be unreasonably withheld.
2. “We” have the right to investigate and settle any “claim” or “suit” that “we” believe is proper. “You” shall be entitled to effectively associate in the defense of any “claim” and consent to a settlement of any “claim”, which consent shall not be unreasonably withheld.
3. “We” shall pay all reasonable costs “we” ask the “insured” to incur while helping “us” investigate or defend a “claim” or “suit”. “We”, however, will not pay more than \$100 per day for earnings lost by the “insured” because of time taken off from work.
4. “We” shall pay premiums for appeal bonds, or bonds to release property being used to secure a legal obligation, for a covered “suit”. “We” shall only pay, however, for bonds valued up to “our” Aggregate EPL Limit of Liability. “We” shall have no obligation to appeal or to obtain these bonds.
5. Payments for “defense costs” are included within the Aggregate EPL Limit of Liability. They are not in addition to the Aggregate EPL Limit of Liability. “Our” duty to defend or to make payment of any “claim” or “suit” pursuant to paragraphs 1-4 above, ends after the Aggregate EPL Limit of Liability has been exhausted by payment of “loss”, including “defense costs”.

6. “We” shall pay all interest on that amount of any judgment within the Aggregate EPL Limit of Liability:
 - a. which accrues after entry of judgment; and
 - b. before “we” pay, offer to pay, or deposit in court that part of the judgment within the Aggregate EPL Limit of Liability.

These interest payments shall be in addition to and not part of “our” Aggregate EPL Limit of Liability.

C. Transfer of Control

1. “You” may take over control of any outstanding “claim” or “suit” previously reported to “us”, but only if “we”, in “our” sole discretion, decide that you should, or if a court orders “you” to do so.
2. Notwithstanding subsection 1 of this Clause C, in all events, if the Aggregate EPL Limit of Liability is exhausted, “we” will notify “you” of all outstanding “claims” or “suits” and “you” will take over control of the defense. “We” will help transfer control of the “claims” and “suits” to “you”.
3. “We” shall take whatever steps are necessary to continue the defense of any outstanding “claim” or “suit” and avoid a default judgment during the transfer of control to “you”. If “we” do so, “we” shall not waive or give up any of “our” rights. “You” shall pay all reasonable expenses “we” incur for taking such steps after the Aggregate EPL Limit of Liability is exhausted.

SECTION II. EXCLUSIONS—WHAT IS NOT COVERED

This insurance does not apply to:

A. Profit or Advantage

Any liability arising out of the gaining of any profit or advantage to which an “insured” was not legally entitled. However, to the extent that a “claim” or “suit” is otherwise covered under this EPL Coverage Endorsement, we will defend a “claim” or “suit” asserting that an “insured” gained a profit or advantage to which the “insured” was not legally entitled, until such time as the “insured” is determined to have gained a profit or advantage to which the “insured” was not legally entitled;

B. Criminal Acts

Any liability arising out of any dishonest, fraudulent, criminal, or malicious act by or at the direction of any “insured”. However, to the extent that a “claim” or “suit” is otherwise covered under this EPL Coverage Endorsement we will defend a “claim” or “suit” asserting a dishonest, fraudulent, criminal or malicious act until such time as the “insured” is determined to have committed such dishonest, fraudulent, criminal or malicious act;

The “wrongful employment act(s)” of an “insured” shall not be imputed to any other “insured” for the purpose of determining the applicability of the foregoing exclusions A and B.

C. “Property Damage”

Any liability arising out of “property damage”;

D. “Bodily Injury”

Any liability arising out of “bodily injury”;

E. Worker’s Compensation, Social Security and Unemployment, Disability and Retirement Benefits

Any liability arising out of any obligation pursuant to any worker’s compensation, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law. This exclusion, however, shall not apply to “loss” arising from a “claim” or “suit” for “retaliation”. This exclusion, however, shall not apply to “loss” arising from a “claim” or “suit” for “retaliation”;

F. Contractual Liability

Any liability arising out of any actual or alleged contractual liability of any “insured” under any express contract or agreement. This exclusion, however, shall not apply to the extent any liability does not arise under such express contract or agreement;

G. ERISA, COBRA, WARN, OSHA and NLRA

Any liability arising out of the “insured’s” failure to fulfill any responsibility, duty or obligation imposed by the Employment Retirement Income Security Act of 1974 (ERISA), Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Workers’ Adjustment and Retraining Notification Act, Public Law 100-379 (1988) (WARN), Occupational Safety and Health Act (OSHA), National Labor Relations Act of 1947 (NLRA), any rules or regulations of the foregoing promulgated thereunder, and amendments thereto or any similar provisions of any federal, state, or local statutory or common law. This exclusion, however, shall not apply to “loss” arising from a “claim” or “suit” for “retaliation”.

This exclusion, however, shall not apply to “loss” arising from a “claim” or “suit” for “retaliation”;

H. FLSA

Any liability arising out of any obligation under the Fair Labor Standards Act, or any violations 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 (except the Equal Pay Act). This exclusion, however, shall not apply to “loss” arising from a “claim” or “suit” for “retaliation”. This exclusion, however, shall

not apply to “loss” arising from a “claim” or “suit” for “retaliation”;

Any liability arising out of claims for unpaid wages or overtime pay for hours actually worked or labor actually performed by any “employee” of the “insured”, for improper payroll deductions or any violations 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.

I. Non-Monetary Relief

That part of any “claim” or “suit” seeking any non-monetary relief, including but not limited to: (1) injunctive relief; (2) declaratory relief; (3) disgorgement; (4) job reinstatement; (5) costs or expenses incurred in accommodating any disabled person, pursuant to the Americans with Disabilities Act or 1990 (ADA), including amendments to that law or similar federal, state or local statutory or common law; (6) any liability or costs incurred in connection with any educational, sensitivity or other corporate program, policy or seminar relating to a “claim” or “suit” alleging discrimination or other “wrongful employment act”; or (7) other equitable remedies, including as to all of the above, the cost of compliance therewith; provided, however, if such request for non-monetary relief is part of an otherwise covered “claim” or “suit”, “we” will not seek to allocate “defense costs” for the portion of the “claim” or “suit” seeking non-monetary relief;

J. Certain “Insureds”

Any “claim” or “suit” brought by any “insured”. This exclusion, however, shall not apply to a “claim” or “suit” brought by an “employee” of the “insured”, other than an “employee” who is or was a director of the “insured”;

K. Prior Knowledge

Any liability arising out of incidents, circumstances or “wrongful employment acts”, which an “insured”, prior to the “original inception date” as shown in the Supplemental Declarations of this EPL Coverage Endorsement, had knowledge or which an “insured” could have reasonably foreseen might result in a “claim” or “suit”;

L. Prior Notice

Any liability arising out of the facts alleged, or to the same or “related wrongful employment acts” alleged or contained in any “claim” or “suit” which has been reported, or in any circumstances of which notice has been given, under any policy of which this EPL Coverage Endorsement is a renewal or replacement or which it may succeed in time;

M. Securities Holder

Any “claim” or “suit” brought by a securities holder of the “insured” in their capacity as such, whether di-

rectly, derivatively on behalf of the “insured”, or by class action;

N. Outside Boards

Any liability arising out of any actual or alleged act or omission of an “insured” serving in any capacity, other than as a director, officer or “employee” of the “insured” entity.

SECTION III. WHO IS AN INSURED

A. Individual

If “you” are shown in the Supplemental Declarations of this EPL Coverage Endorsement as an individual, “you” and “your” spouse are “insureds”, only for the conduct of a business of which “you” are the sole owner.

B. Corporation

If “you” are shown in the Supplemental Declarations of this EPL Coverage Endorsement as a corporation or organization other than a partnership or joint venture, “you” and “your” “subsidiaries” are “insureds”.

C. Partnership or Joint Venture

If “you” are shown in the Supplemental Declarations of this EPL Coverage Endorsement as a partnership or joint venture, “you” are an “insured”. “Your” partners or co-venturers and their spouses are also “insureds”, but only for the conduct of “your” business.

D. “Employees”

“Your” “employees”, executive officers and directors are “insureds”, only for the conduct of “your” business within the scope of their employment or their duties as executive officers or directors.

E. Extensions

1. Subject otherwise to the terms hereof, this EPL Coverage Endorsement shall cover “loss” arising from any “claims” or “suits” made against the estates, heirs, or legal representative of deceased individual “insureds”, and the legal representatives of individual “insureds”, in the event of incompetency, who were individual “insureds” at the time the “wrongful employment acts”, upon which such “claims” or “suits” are based, were committed.
2. Subject otherwise to the terms hereof, this EPL Coverage Endorsement shall cover “loss” arising from all “claims” and “suits” made against the lawful spouse (whether such status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world) of an individual “insured”, including a “claim” or “suit” that seeks damages recoverable from marital community property, property jointly held by the individual “insured” and the spouse, or

property transferred from the individual “insured” to the spouse; provided, however, that this extension shall not afford coverage for a “claim” or “suit” arising out of any “wrongful employment act” of the spouse, but shall apply only to “claims” or “suits” arising out of any “wrongful employment acts” of an individual “insured”, subject to this EPL Coverage Endorsement’s terms, conditions and exclusions.

3. Subject otherwise to the terms hereof, during the “EPL coverage period” and any extended reporting period, an individual covered by “you” EPL Coverage Endorsement during such affiliation shall continue to be covered under this EPL Coverage Endorsement and any extended reporting period after such affiliation has ceased for such individual’s covered “Wrongful Employment Acts” during such affiliation.

SECTION IV. LIMIT OF LIABILITY (including “defense costs”)

- A. The Aggregate EPL Limit of Liability shown in the Supplemental Declarations of this EPL Coverage Endorsement and the information contained in this section limits the most “we” shall pay for all “loss” arising out of “claims” and “suits” first made against “insureds” during the “EPL coverage period”, “Automatic Extended Reporting Period” or Extended Reporting Period regardless of:
 1. the number of persons or organizations covered by this EPL Coverage Endorsement; or
 2. the number of “claims” made or “suits” brought; or
 3. the length of the “EPL coverage period”.
- B. The Aggregate EPL Limit of Liability is the most “we” shall pay for all “losses” covered under this EPL Coverage Endorsement, including amounts incurred for “defense costs”.
- C. The Aggregate EPL Limit of Liability for the “Automatic Extended Reporting Period” and the Extended Reporting Period shall be part of, and not in addition to the Aggregate EPL Limit of Liability for the “EPL coverage period”. Where “Termination of Coverage” is due only to a decrease in the Aggregate EPL Limit of Liability, the Aggregate EPL Limit of Liability for the Extended Reporting Period, if elected, shall be no greater than the amount of such decrease. In such instance, the Aggregate EPL Limit of Liability provided for the Extended Reporting Period shall replace, and shall not be in addition to, the limit of liability provided for the “Automatic Extended Reporting Period”.
- D. All “claims” and “suits” arising from the same or “related wrongful employment acts” shall be treated as arising out of a single “wrongful employment act”.

- E. All “claims” or “suits” arising out of one “wrongful employment act” shall be deemed to be made on the date that the first such “claim” is made or “suit” is brought. All “claims” asserted in a “class action suit” will be treated as arising out of a single “wrongful employment act”.
- F. Any “claim” or “suit” which is made subsequent to the “EPL coverage period”, “Automatic Extended Reporting Period” or Extended Reporting Period which, pursuant to Section VI, Clause D(3) and (4) is considered made during the “EPL coverage period”, “Automatic Extended Reporting Period” or Extended Reporting Period shall also be subject to the one Aggregate EPL Limit of Liability stated in the Supplemental Declarations of this EPL Coverage Endorsement.

SECTION V. DEDUCTIBLE

“You” shall be responsible for the deductible amount shown in the Supplemental Declarations of this EPL Coverage Endorsement with respect to each “claim” and “suit” and “you” may not insure against it. A single deductible amount shall apply to “loss” arising from all “claims” and “suits” alleging the same “wrongful employment act” or “related wrongful employment acts”. Expenses “we” incur in investigating, defending and settling “claims” and “suits” are included in the deductible. The deductible is not included within the Aggregate EPL Limit of Liability.

SECTION VI. CONDITIONS

“We” have no duty to provide coverage under this EPL Coverage Endorsement, unless there has been full compliance with all the Conditions contained in this EPL Coverage Endorsement.

A. Assignment

The interest of any “insured” is not assignable. “You” cannot assign or transfer “your” interest in this EPL Coverage Endorsement without “our” written consent attached to the EPL Coverage Endorsement.

B. Bankruptcy or Insolvency

“Your” bankruptcy, insolvency or inability to pay, will not relieve “us” from the payment of any “claim” or “suit” covered by this EPL Coverage Endorsement.

Under no circumstances will “your” bankruptcy, insolvency, or inability to pay require “us” to drop down, in any way replace, or assume any of “your” obligations with respect to the Deductible provisions of this EPL Coverage Endorsement.

C. Coverage Territory

“We” cover “wrongful employment acts” in the United States of America, its territories and possessions, Puerto Rico, or Canada, but only if the “claim” is made and the “suit” is brought for such “wrongful employment act” in the United States of America, its territories and possessions, Puerto Rico, or Canada.

D. Duties in the Event of an Incident, “Claim” or “Suit”

1. If, during the “EPL coverage period”, incidents or events occur which “you” reasonably believe may give rise to a “claim” or “suit” for which coverage may be provided hereunder, such belief being based upon either written notice from the potential claimant or the potential claimant’s representative; or notice of a complaint filed with EEOC, DOL or OFCCP (or similar federal, state or local agency); or upon a contemporaneously made memorandum of an oral “claim”, allegation or threat, “you” shall give written notice to “us” as soon as practicable and either:
 - a. anytime during the “EPL coverage period”, the “Automatic Extended Reporting Period” or the Extended Reporting Period (if applicable); or
 - b. within thirty (30) days after the end of the “Automatic Extended Reporting Period” or Extended Reporting Period, as long as such “claim” or “suit” is reported no later than thirty (30) days after the date such “claim” or “suit” was first made against an “insured”.
2. If a “claim” is made or a “suit” is brought against any “insured”, “you” must:
 - a. Immediately record the specifics of the “claim” or “suit” and the date received; and
 - b. Provide “us” with written notice, as described in subsection 3. below, as soon as practicable.
3. Such written notice of “claim” or “suit” shall contain:
 - a. The identity of the person(s) alleging a “wrongful employment act”;
 - b. The identity of the “insured(s)” who allegedly were involved in the incidents or events;
 - c. The date the alleged incidents or events took place; and
 - d. The written notice or contemporaneously prepared memorandum referred to above.

If written notice is given to “us” during the “EPL coverage period”, “Automatic Extended Reporting Period” or Extended Reporting Period, pursuant to the above requirements, then any “claim” or “suit” which is subsequently made against any “insureds” and reported to “us” alleging, arising out of, based upon or attributable to such circumstances or alleging any “related

wrongful employment act” to such circumstances, shall be considered made at the time such notice of such circumstances was first given.

4. If notice of a “claim” is given by “you” or on “your” behalf or if written notice is given by or on behalf of the injured party or any other claimant, to one of “our” licensed agents in the state of New York with particulars sufficient to identify “you”, then such notice shall be deemed notice to “us”.
5. Failure to give any notice of “claim” required to be given by this coverage within the prescribed time shall not invalidate any “claim” made by “you” or by any other claimant if it shall be shown not to have been reasonably possible to give notice within the prescribed time and that notice was given as soon as was reasonably possible.
6. If “you” submit written notice of a “claim” or “suit”, pursuant to this Clause D, then any “claim” or “suit” that may subsequently be made against an “insured” and reported to “us” alleging the same or a “related wrongful employment act” to the “claim” or “suit” for which such notice has been given shall be deemed, for the purpose of this insurance, to have been first made during the “EPL coverage period” in effect at the time such written notice was first submitted to “us”.
7. “You” and any other “insured” must:
 - a. Immediately send “us” copies of any demands, notices, summonses or legal papers received in connection with any “claim” or “suit”;
 - b. Authorize “us” to obtain records and other information;
 - c. Cooperate with “us” in the investigation, settlement or defense of the “claim” or “suit”;
 - d. Assist “us”, upon “our” request, in the enforcement of any right against any person or organization which may be liable to the “insured” because of injury or damage to which this insurance may also apply;
 - e. Take no action, or fail to take any required action, that prejudices the rights of the “insureds” or “us” with respect to such “claim” or “suit”.
8. No “insureds” will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense without “our” prior written consent.

E. Transfer of Rights of Recovery Against Others to “Us”

“You” may be able to recover all or part of a “loss” from someone other than “us”. “You”, therefore, shall do all that is possible after a “loss” to preserve any such right of recovery. If “we” make a payment under this EPL Coverage Endorsement, that right of recovery shall belong to “us”. “You” shall do whatever is necessary, including signing documents, to help “us” obtain that recovery.

F. Extended Reporting Period

1. In the event that (i) “you” or “we” shall cancel or refuse to renew this EPL Coverage Endorsement, or (ii) there is a decrease in the limit of liability, a reduction of coverage, an increase to the deductible or self-insured retention, a new exclusion, or any other change in coverage that is less favorable to “you” (herein referred to as “Termination of Coverage”), then, solely with respect to the coverage terminated under this EPL Coverage Endorsement and except as indicated below, “you” shall have the right to a period of sixty (60) days after the effective date of “Termination of Coverage” (herein referred to as the “Automatic Extended Reporting Period”) at no additional premium in which to give to “us” written notice of “claims” first made or “suits” first brought against the “insureds” during said “Automatic Extended Reporting Period” for any “wrongful employment acts” which take place after the “original inception date” and before the end of the “EPL coverage period” and are otherwise covered by this EPL Coverage Endorsement. The “Automatic Extended Reporting Period” shall be void ab initio if the Extended Reporting Period becomes effective. For the purposes of determining the length of the Extended Reporting Period, the “Automatic Extended Reporting Period” shall be included.
2. In the event of “Termination of Coverage” then, solely with respect to the coverage terminated under this EPL Coverage Endorsement and except as indicated below, “you” shall have the right, upon payment of an additional premium of 75% of the full annual premium applicable to this EPL Coverage Endorsement, to buy an Extended Reporting Period Endorsement, providing an Extended Reporting Period of one (1) year following the effective date of “Termination of Coverage”, in which to give “us” written notice of “claims” first made or “suits” first brought against the “insureds” during said Extended Reporting Period for any “wrongful employment acts” which take place after the “original inception date” and before the end of the “EPL coverage period” and are otherwise covered by this EPL Coverage Endorsement.

Within thirty (30) days of the effective date of "Termination of Coverage" for cancellation or non-renewal only, "we" shall mail or deliver to "you" a written advice of the amount of the required additional premium; however, if this policy is canceled by "us" for non-payment of premium or fraud on the part of "you", "we" shall not be required to provide such premium quotation unless requested by "you".

"Your" right to an Extended Reporting Period Endorsement shall terminate, however, unless "you" request it in writing and pay the additional premium due not later than the later of: (1) sixty (60) days after the effective date of "Termination of Coverage"; or (2) thirty (30) days after "we" have mailed or delivered to "you" a written advice of the amount of the required additional premium, if "we" are obligated to give such written notice.

3. The Extended Reporting Period Endorsement cannot be canceled by either party, except for nonpayment of premium. The additional premium for the Extended Reporting Period shall be fully earned at the inception of the Extended Reporting Period and this EPL Coverage Endorsement cannot be cancelled after such additional premium is paid. If "we" do not receive the written request as required, "you" may not exercise this right at a later date.
4. This insurance, provided during the Extended Reporting Period, is excess over any other valid and collectible insurance that begins or continues in effect after the Extended Reporting Period Endorsement becomes effective, whether the other insurance applies on a primary, excess, contingent, or any other basis.
5. In the event of cancellation by "us" for the non-payment of premium, any monies received by "us" as payment for the Extended Reporting Period shall be first applied to such premium owing for the policy. The Extended Reporting Period will not take effect until the premium owing for the policy is paid in full and the premium owing for the Extended Reporting Period is paid promptly when due.

Notwithstanding the forgoing, in the event that (i) "we" shall cancel for nonpayment of premium or fraud on the part of "you", and (ii) at the effective date of such "Termination of Coverage" "we" have provided this coverage to "you" on a claims-made basis without interruption for less than one (1) year, then "you" shall not have the right to elect and purchase the Extended Reporting Period Endorsement. For purposes of this paragraph, "Automatic Extended Reporting Period" coverage shall not be considered as time when "we" provided "you" this coverage.

6. Any other "insured" shall have the right to purchase an Extended Reporting Period Endorsement to the extent of "Termination of Coverage" as respects only himself, if: (i) "you" have been placed in liquidation or bankruptcy or permanently cease operations; and (ii) "you" or a designated trustee does not purchase the Extended Reporting Period Endorsement; and (iii) within one hundred twenty (120) days of the "Termination of Coverage" "we" have received from such other "insured" a written request for such Extended Reporting Period Endorsement. If such other "insured" does not pay the required additional premium when due, then such Extended Reporting Period Endorsement shall be void ab initio.
7. In the event of a "Transaction", as defined in Clause G below, the "named insured" shall have the right, within thirty (30) days before the end of the "EPL coverage period", to request an offer from "us" of an Extended Reporting Period (with respect to "wrongful employment acts" which take place after the "original inception date" and prior to the effective time of the "Transaction"). We shall offer such Extended Reporting Period pursuant to such terms, conditions, and premium as we may reasonably decide. In the event of a "Transaction", the right to an Extended Reporting Period shall not otherwise exist except as indicated in this paragraph.

G. Change in Control of "Named Insured"

If during the "EPL coverage period":

1. the "named insured" shall consolidate with or merge into, or sell all or substantially all of its assets to any other person or entity or group of persons or entities acting in concert; or
2. any person or entity or group of persons or entities acting in concert shall acquire an amount of the outstanding securities representing more than fifty (50%) percent of the voting power for the election of directors or General Partners of the "named insured" (in the event the "named insured" is a Partnership), or acquires the voting rights of such an amount of such securities; or
3. a General Partner of the "named insured" (in the event the "named insured" is a partnership) withdraws, resigns or is terminated;

(any of the above events herein referred to as the "Transaction"),

then this EPL Coverage Endorsement shall continue in full force and effect as to "wrongful employment acts" occurring after the "original inception date" and prior to the effective time of the "Transaction", but there shall be no coverage afforded by any provision of this EPL Coverage Endorsement for any actual or alleged "wrongful employment acts" occurring after

the effective time of the “Transaction”. This EPL Coverage Endorsement may not be canceled after the effective time of the “Transaction” and the entire premium for this EPL Coverage Endorsement shall be deemed earned as of such time. “You” shall also have the right to an offer by “us” of an Extended Reporting Period described in Clause F of this EPL Coverage Endorsement.

“You” shall give “us” written notice of the “Transaction” as soon as practicable, but not later than thirty (30) days after the effective date of the “Transaction”.

H. Legal Action Against “Us”

No one may bring an action against “us” unless there has been full compliance with all the terms of this EPL Coverage Endorsement and the amount of “your” obligation to pay has been finally determined either by:

1. judgment against “you” which remains unsatisfied at the expiration of thirty (30) days from the service of notice of entry of the judgment upon “you” and upon “us”; or
2. written agreement of “you”, the claimant and “us”.

Any person or organization or legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this EPL Coverage Endorsement to the extent of the insurance afforded by this EPL Coverage Endorsement. “We” may not be impleaded by “you” or “your” legal representative in any legal action brought against “you” by any person or organization.

I. Other Insurance

Unless expressly written to be excess over other applicable insurance, it is intended that the insurance provided by this EPL Coverage Endorsement shall be primary.

J. EPL Coverage Endorsement Changes

This EPL Coverage Endorsement contains all the agreements between “you” and “us” concerning this insurance. The first “named insured” in the Supplemental Declarations of this EPL Coverage Endorsement is authorized to request changes in this EPL Coverage Endorsement. This EPL Coverage Endorsement can only be changed by a written endorsement “we” issue and make part of this EPL Coverage Endorsement.

K. Representations

Any and all relevant provisions of this EPL Coverage Endorsement may be voidable by “us” in any case of

fraud, intentional concealment, or misrepresentation of material fact by any “insured”.

L. Special Rights and Duties of the “Named Insured”

“You” agree that when there is more than one person and/or entity covered under this EPL Coverage Endorsement, the “named insured” in the Supplemental Declarations of this EPL Coverage Endorsement shall act on behalf of all “insureds” as to:

1. Giving of notice of a “claim” or “suit”;
2. Giving and receiving notice of cancellation or nonrenewal;
3. Payment of premiums and receipt of return premiums;
4. Acceptance of any endorsements issued to form a part of this EPL Coverage Endorsement; or
5. Purchasing or deciding not to purchase the Extended Reporting Period Endorsement.

M. Headings

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

SECTION VII. DEFINITIONS

- A. “Bodily injury” means physical injury, sickness, or disease, including death resulting therefrom.
- B. “Claim” means a written demand for money. The term “claim” shall also mean an Equal Employment Opportunity Commission (EEOC), Department of Labor (DOL) or Office of Federal Contract Compliance Program (OFCCP) (or similar federal, state or local agency) proceeding or investigation commenced by the filing of a notice of charges, service of a complaint or similar document of which notice has been given to “you”. However, in no event, shall the term “claim” include any labor or grievance proceeding, which is subject to a collective bargaining agreement.
- C. “Class Action Suit” means any suit seeking certification or certified as a class action by a federal or state court.
- D. “Defense Costs” means reasonable and necessary fees, costs and expenses consented to by “us” resulting solely from the investigation, adjustment, defense and appeal of a “claim” or “suit” against “you”.
- E. “Employee” means an individual whose labor or service is engaged by and directed by “you” for remuneration, whether such individual is in a supervisory, co-worker or subordinate position or otherwise, including any part-time, seasonal, and temporary “em-

ployees". Independent contractors and individuals who are leased to the "insured" are not "employees".

- F. "Loss(es)" means damages (including front pay and back pay), judgments, settlements, pre-judgment interest on that part of any judgment paid by "us", statutory attorney fees, and "defense costs"; however, "loss" shall not include: (1) civil or criminal fines or penalties imposed by law; (2) punitive or exemplary damages; (3) the multiplied portion of multiplied damages; (4) taxes; (5) any amount for which the "insureds" are not financially liable or which are without legal recourse to the "insureds"; (6) employment related benefits, stock options, perquisites, deferred compensation or any other type of compensation other than salary, wages or bonus compensation; or (7) matters which may be deemed uninsurable under the law pursuant to which this EPL Coverage Endorsement shall be construed.
- G. "Named Insured" means the person or organization designated in the Supplemental Declarations page of this EPL Coverage Endorsement.
- H. "Original inception date" refers to the date specified in the Supplemental Declarations of this EPL Coverage Endorsement.
- I. "EPL coverage period" means the period commencing on the effective date shown in the Supplemental Declarations of this EPL Coverage Endorsement. This period ends on the earlier of the expiration date or the effective date of "Termination of Coverage" of this EPL Coverage Endorsement. If "you" became an "insured" under this EPL Coverage Endorsement after the effective date, the "EPL coverage period" begins on the date "you" became an "insured".
- J. "Property Damage" means physical injury to, or destruction of, tangible property including the loss of use of thereof, or loss of use of tangible property, which has not been physically injured or destroyed.
- K. "Related Wrongful Employment Act(s)" means "wrongful employment acts" which are the same, related or continuous, or "wrongful employment acts" which arise from a common nucleus of facts. "Claims" or "suits" can allege "related wrongful employment acts", regardless of whether such "claims" or "suits" involve the same or different claimants, "insureds" or legal causes of actions.
- L. "Retaliation" means a "wrongful employment act" of an "insured" alleged to be in response to, the actual or attempted exercise by an "employee" of any right that such "employee" has under the law. Provided, however, "retaliation" shall not include the "wrongful employment act" of an "insured" alleged to be in response to the threat of or the actual filing of any claim or suit under the Federal False Claims Act or any other federal state, local or foreign "whistleblower law".

M. "Subsidiary" means:

1. Any for-profit organization which, on or before the inception of the "EPL coverage period", is more than 50% owned by the "named insured", either directly or indirectly through one or more of its "subsidiaries"; or
2. A for-profit organization which becomes a "subsidiary" during the "EPL coverage period", but only upon the condition that within 90 days of its becoming a "subsidiary", the "named insured" shall have provided "us" with full particulars of the new "subsidiary" and agreed to any additional premium or amendment of the provisions of this EPL Coverage Endorsement required by "us" relating to such new "subsidiary". Further, coverage as shall be afforded to the new "subsidiary" is conditioned upon the "named insured" paying when due any additional premium required by "us" relating to such new "subsidiary".

An organization becomes a "subsidiary" when the "named insured" owns more than fifty (50%) percent ownership interest in such "subsidiary", either directly, or indirectly through one or more of its "subsidiaries". An organization ceases to be a "subsidiary" when the "named insured" ceases to own more than a fifty (50%) percent ownership in such "subsidiary", either directly, or indirectly through one or more of its "subsidiaries".

In all events, coverage as is afforded under this EPL Coverage Endorsement with respect to a "claim" made or "suit" brought against any "subsidiary" or an "insured" of any "subsidiary", shall only apply to "wrongful employment act(s)" commenced or allegedly commenced after the effective time that such "subsidiary" became a "subsidiary", and prior to the time that such "subsidiary" ceased to be a "subsidiary".

- N. "Suit" means a civil proceeding or an administrative proceeding seeking money damages, and includes an arbitration, mediation or any other alternative dispute resolution procedure seeking such damages, to which the "insured" must submit or may submit with "our" consent. "Suit" shall not include any civil proceeding or administrative proceeding arising from any labor or grievance dispute which is subject to a collective bargaining agreement.
- O. "Whistleblower law" means a statute, rule or regulation, which protects an employee against discrimination from his or her employer, if the employee discloses or threatens to disclose to a superior or any governmental agency; or who gives testimony relating to, any action with respect to the employer's operations, which may be a violation of public policy as reflected in legislation, administrative rules, regulations or decisions, judicial decisions, and professional codes of ethics.

- P. "Wrongful Employment Act(s)" means any actual or alleged:
1. wrongful dismissal, discharge or termination (either actual or constructive), including breach of an implied contract;
 2. harassment (including sexual harassment, whether quid pro quo, hostile work environment or otherwise);
 3. discrimination (including but not limited to discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy or disability); provided, however, discrimination shall not include discrimination based on disparate treatment.
 4. "retaliation" (including lockouts);
 5. employment-related misrepresentation(s) to "your" "employee" or applicant for employment with "you";
 6. employment-related libel, slander, humiliation, mental anguish, infliction of emotional distress, defamation, or invasion of privacy;
 7. wrongful failure to employ or promote;
 8. wrongful deprivation of career opportunity, wrongful demotion or negligent "employee" evaluation, including the giving of negative or defamatory statements in connection with an "employee" reference;
 9. wrongful discipline;
 10. failure to grant tenure;
 11. failure to provide or enforce adequate or consistent corporate policies and procedures relating to any "wrongful employment act";
 12. negligent supervision or hiring by an "insured", relating to any of the above;
 13. violation of an individual's civil rights relating to any of the above.

Notwithstanding the foregoing, with respect to "claims" subject to New York Law, "we" shall not be liable to make any payment for "loss", other than "defense costs", in connection with a "claim" made against "you" for any harassment, intentional discrimination or civil rights violations of any law, rule or statute of New York, if a final adjudication determines that such harassment, intentional discrimination or civil rights violation by "you" actually occurred; provided, however, that the "Wrongful Employment Act(s)" of any "insured(s)" shall not be imputed to any other "insured" for the purposes of determining the applicability of the foregoing exclusion.