

ENDORSEMENT

[Print Coverage Section description on Endorsements]

Effective date of
this endorsement: [Transaction Effective Date]

Company: [Carrier name]

Endorsement No. [Endorsement number that is calculated
when form fill-ins are entered]

To be attached to and
form a part of Policy No. [Formatted Policy Number]

Issued to: [Account Name]

EPL ENHANCEMENT ENDORSEMENT

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In consideration of the premium charged, it is agreed that solely with respect to this Employment Practices Liability Coverage Section ("this coverage section"), the following shall apply:

1. DELETE HAMMER CLAUSE FOR CLAIMS BROUGHT IN CANADA

- A. With respect to any **Claim** made and maintained in the jurisdiction of Canada, Section 5, Investigation and Settlement, of the General Terms and Conditions is amended to read as follows:

The Company may make any investigation it deems necessary and may, with the written consent of the **Insured**, make any settlement of a **Claim** it deems expedient.

- B. With respect to any **Claim** made and maintained in any jurisdiction outside of Canada, Section 5, Investigation and Settlement, of the General Terms and Conditions is deleted and replaced with the following:

The Company may make any investigation it deems necessary and may, with the consent of the **Insured**, make any settlement of any **Claim** it deems expedient. If any **Insured** withholds consent to any settlement acceptable to the claimant and the Company (a "Proposed Settlement"), the Company's liability for all **Loss**, including **Defense Costs**, on account of such **Claim** shall not exceed:

- (i) the amount of the Proposed Settlement plus **Defense Costs** incurred up to the date of the **Insured's** refusal to consent to the Proposed Settlement of such **Claim**; plus
- (ii) seventy percent (70%) of any **Loss**, including **Defense Costs**, in excess of the amount referenced in paragraph (i) above, incurred in connection with such **Claim**; subject in all events to the applicable Deductible Amount and the available Limit of Liability for such **Claim**. The remaining thirty percent (30%) of any **Loss**, including **Defense Costs**, in excess of the amount referenced in paragraph (i) above shall be borne by the **Insured** uninsured and at its own risk, notwithstanding anything to the contrary contained in Subsection 10 Arbitration and Allocation, of this Employment Practices Liability Coverage Section.

Notwithstanding the foregoing and solely with respect to a Proposed Settlement, the terms of subparagraphs (i) and (ii) of this Section 5 shall not apply until such Proposed Settlement exceeds the applicable Deductible Amount stated in Item 4 of the Declarations of this coverage section.

2. ADD LOSS PREVENTION CONSULTANT SERVICES

In order to assist the **Insured** in reducing its exposure to covered **Loss** under this coverage section, the Company will contribute to the cost of the following loss prevention services:

- (i) Legal compliance audits of the **Insured's** human resources policies and practices, including but not limited to the development or review of employee handbooks, employment applications, harassment policies and complaint procedures, affirmative action plans, and corrective action, discharge and discipline policies;
- (ii) Training programs including but not limited to such topics as equal employment opportunity obligations, maintaining hostile-free work environments (including how to internally investigate and appropriately remedy claims of discrimination), managing diversity, and handling corrective action and discharge issues, all with a focus on loss prevention;
- (iii) Advice and counseling on matters which have the potential to become a **Claim** under the employment practices liability coverage afforded by this policy;
- (iv) Use of certain pre-approved labor economists and statisticians, in conjunction with panel counsel, to assess adverse impact issues in the work force.

provided, however, that such contribution shall take the form of a return premium of [Enter number and percent sign, i.e. 25%.] of the cost of such employment practices loss prevention services, but such contribution shall also be subject to a maximum amount equal to 10% of the **Policy Period** premium.

All loss prevention services shall be provided by a loss prevention services provider approved by the Company.

3. ADD BILATERAL EXTENDED REPORTING PERIOD

Subsection 4, Extended Reporting Period, is deleted in its entirety and replaced by the following:

Bilateral Extended Reporting Period

If coverage hereunder is terminated or non-renewed for any reason other than for nonpayment of premium, the **Parent Organization** and any **Insured** shall have the right, upon payment of the additional premium set forth in Item 7(A) of the Declarations for this coverage section, to an extension of the coverage granted by this policy for the period set forth in Item 7(B) of the Declarations (Extended Reporting Period) for this coverage section following the effective date of termination or non-renewal, but only for any **Wrongful Act** committed, attempted, or allegedly committed or attempted prior to the effective date of termination or non-renewal. This right of extension shall lapse unless written notice of such election, together with payment of the additional premium due, is received by the Company within 30 days following the effective date of termination or non-renewal. Any **Claim** made during the Extended Reporting Period shall be deemed to have been made during the immediately preceding **Policy Period**.

4. ADD PUNITIVE DAMAGES COVERAGE

Subsection 16, Definitions, is amended by deleting the definition of **Loss** and replacing it with the following:

Loss means the total amount which any **Insured** becomes legally obligated to pay on account of each **Claim** and for all **Claims** in each **Policy Period** and the Extended Reporting Period, if exercised, made against them for **Wrongful Acts** for which coverage applies, including, but not limited to, damages, judgments, settlements, costs, pre and post judgment interest, and **Defense Costs**. **Loss** does not include:

- (i) any amount not indemnified by the **Insured Organization** for which the **Insured** is absolved from payment by reason of any covenant, agreement or court order;
- (ii) the future salary or **benefits** of a claimant who has been or shall be hired, promoted or reinstated to employment, whose employment has been or shall be continued or whose salary or **Benefits** have been increased pursuant to a settlement, order or other resolution;
- (iii) salary, wages and/or commission payable to a claimant for services performed for any **Insured Organization** while employed with any **Insured Organization**
- (iv) matters uninsurable under the law pursuant to which this coverage section is construed; or
- (v) fines or penalties imposed by law. However, fines or penalties shall not include:
 - (a) punitive or exemplary damages,
 - (b) liquidated damages awarded pursuant to the Age Discrimination in Employment Act or the Equal Pay Act both of the United States of America, or
 - (c) the multiple portion of any multiplied damage award.

((a), (b), and (c) above collectively referred to as "Specified Damages"). It is agreed that the law of the jurisdiction most favorable to the insurability of such Specified Damages shall control for the purpose of resolving any dispute between the Company and the **Insured** regarding whether the damages specified in subsection (v)(a), (b) and (c) above are insurable under this coverage section, provided that such jurisdiction:

- is where those damages were awarded or imposed;
- is where any **Wrongful Act** occurred for which such damages were awarded or imposed;
- is where any **Insured Organization** is incorporated or has its principal place of business, or
- is where the Company is incorporated or has its principal place of business.

5. ADD BROADER RETALIATORY TREATMENT FOR EXCLUSION 5 (c)

Subsection 5, Exclusions, part (c) is amended to read as follows:

- (c) for an actual or alleged violation of the responsibilities, obligations or duties imposed in the United States by the Employee Retirement Income Securities Act of 1974 (except Section 510), the Fair Labor Standards Act (except the Equal Pay Act), the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act, rules or regulations promulgated thereunder and amendments thereto or similar provisions of any federal, state or local statutory or common law of the United States. However, this exclusion shall not apply to any **Claim** for any retaliatory treatment of any claimant because of any claimant's actual or alleged protected lawful activity under the Fair Labor Standards Act, the Occupational Safety and Health Act, the Employee Retirement Income Securities Act of 1974, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act or the Consolidated Omnibus Budget Reconciliation Act of 1985;

6. ADD SPOUSAL COVERAGE

- A. It is agreed that if a **Claim** against an **Insured Person** includes a claim against the **Insured Person's** lawful **Spouse** or **Common Law Partner**, solely by reason of such person's status as a **Spouse** or **Common Law Partner**, or such **Spouse's** or **Common Law Partner's** ownership interest in property which the claimant seeks as recovery for an alleged **Wrongful Act** of such **Insured Person**, all loss which the **Spouse** or **Common Law Partner** becomes legally obligated to pay on account of the **Claim** shall be treated for the purposes of this policy as **Loss** which the **Insured Person** becomes legally obligated to pay on account of the **Claim** made against such **Insured Person**. All limitations, conditions, provisions and other terms of coverage (including the Deductible Amount) applicable to the **Insured Person's Loss** shall also be applicable to such **Spousal** or **Common Law Partner** loss. The coverage extension afforded by this Endorsement shall not apply to the extent any **Claim** alleges any act or omission by the **Insured Person's Spouse** or **Common Law Partner**.
- B. Subsection 16, Definitions, is amended by adding the following definitions:
- Spouse** means either of a man or woman who:
- (a) are married to each other, or
 - (b) have together entered into a marriage that is voidable or void, in good faith on the part of the person asserting the relationship.
- Common Law Partner** means either of two (2) persons who have:
- (a) cohabited continuously in a conjugal relationship outside marriage for a period of at least one (1) year, or
 - (b) cohabited continuously in a conjugal relationship of some permanence outside marriage if they are the natural or adoptive parents of a child.

7. INCREASE ACQUISITION THRESHOLD

Subsection 12, Changes In Exposure Acquisition or Creation of Another Organization, is amended by deleting the second paragraph only, and inserting the following:

If the fair value of all cash, securities, assumed indebtedness and other consideration paid by the **Insured Organization** for any such acquisition or creation exceeds [A NUMBER]% of the total assets of the **Parent Organization** as reflected in the **Parent Organization's** most recent audited consolidated financial statements, the **Parent Organization** shall give written notice of such acquisition or creation to the Company as soon as practicable together with such information as the Company may require and shall pay any reasonable additional premium required by the Company.

8. AMEND REPRESENTATIONS AND SEVERABILITY

Section 15, Representations and Severability is deleted in its entirety and replaced by the following:

In granting coverage to any one of the **Insureds**, the Company has relied upon the declarations and statements in the written application for this coverage section and upon any declarations and statements in the original written application submitted to another insurer in respect of the prior coverage incepting as of the Continuity Date set forth in Item 9 of the Declarations for this coverage section. All such declarations and statements are the basis of such coverage and shall be considered as incorporated in and constituting part of this coverage section.

However, in the event that such written application contains any misrepresentations made with the actual intent to deceive or contains misrepresentations which materially affect either the acceptance of the risk or the hazard assumed by the Company under this coverage section, then no coverage shall be afforded for any **Claim** based upon, arising from or in consequence of any such misrepresentations with respect to:

- (1) any **Insured Person** who knew of such misrepresentations (whether or not such **Insured Person** knew such written application contained such misrepresentations) or any **Insured Organization** to the extent it indemnifies any such **Insured Person**; or
- (2) any **Insured Organization** if any past or present director of human resources, chief executive officer, chief financial officer, in-house general counsel (or any equivalent position to any of the foregoing) of the **Parent Organization** knew of such misrepresentations (whether or not such individual knew such written application contained such misrepresentations).

Solely with respect to **Loss** incurred by the **Insured Persons** for which the **Insured Organization** either is not legally permitted, or fails or refuses solely by reason of **Financial Impairment**, to indemnify the **Insured Persons**, the Company shall not be entitled under any circumstances to rescind this policy.

9. ADD DEFENSE COVERAGE FOR EXCLUDED BREACH OF U.S. CONTRACTS

Subsection 6, Exclusions, is amended by adding the following exclusion:

- 6 ([insert letter of alphabet]) which constitutes **Loss** for an actual or alleged breach of any written employment contract. This exclusion shall not apply to the extent the **Insured** would have been liable for such **Loss** in the absence of such written employment contract. This exclusion applies only to **Claims** made, commenced and conducted in the territorial limits and jurisdiction of the United States of America

10. ADD EMPLOYMENT CONTRACT VALUATION DISPUTE EXCLUSION

Subsection 6, Exclusions, is further amended by adding the following exclusion:

6 ([Add letter for next section]) on account of any **Claim** which is based upon, arising from or in consequence of any dispute with respect to the valuation of a written employment contract or agreement.

11. ADD NON MONETARY DAMAGES COVERAGE

Subsection 16, Definitions, shall be amended by deleting the definition of **Claim** in its entirety and replacing it with the following:

Claim means:

- i) a written demand for monetary damages or non-monetary relief, including a written demand for reinstatement, reemployment, re-engagement or injunctive relief,
- ii) a civil proceeding commenced by the service of a statement of claim, complaint or similar pleading, including any appeal there from,
- iii) an arbitration proceeding pursuant to an employment contract, policy or practice of an **Insured Organization**, commenced by the receipt by an **Insured** of a demand for arbitration or similar document, or any other external alternative dispute resolution proceeding commenced by receipt by an **Insured** of a demand for an alternative dispute resolution or similar document, or
- iv) a formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document,

which is brought and maintained by or on behalf of any past, present or prospective employee(s) of the **Insured Organization** against any **Insured** for any **Wrongful Act** in connection with any actual or alleged wrongful dismissal, discharge or termination of employment, breach of any oral or written employment contract or quasi-employment contract, employment-related misrepresentation, violation of employment discrimination laws (including workplace or sexual harassment), wrongful failure to employ or promote, wrongful discipline, wrongful deprivation of a career-opportunity, failure to grant tenure, negligent evaluation, invasion of privacy, employment-related defamation or employment-related wrongful infliction of emotional distress.

12. ADD THIRD PARTY LIABILITY COVERAGE

- A. The Deductible Amount in Item 4 of the Declarations is amended by deleting it and replacing it to read in its entirety as follows:

Deductible Amount:

Third Party Claims: \$[Enter deductible]

All other **Claims:** \$[Enter deductible.]

B. Subsection 1, Insuring Clause is amended to read as follows:

The Company shall pay on behalf of the **Insured** all **Loss** for which the **Insured** becomes legally obligated to pay on account of any **Claim** (including such **Claim** brought in Canada for a breach or alleged breach of any oral or written employment contract or quasi-employment contract) or **Third Party Claim** first made against the **Insured** during the **Policy Period** or, if exercised, during the Extended Reporting Period, for a **Wrongful Act** committed, attempted or allegedly committed or attempted, by an **Insured** before or during the **Policy Period**.

C. Subsection 16, Definitions, is amended by adding the following definition:

Third Party Claim means any:

- (i) written demand first received by an **Insured** for monetary damages or non-monetary relief including injunctive relief,
- (ii) civil proceeding commenced by the service of a statement of claim, complaint or similar pleading,
- (iii) arbitration proceeding commenced by the receipt by an **Insured** of a demand for arbitration or similar document, or any other external alternative dispute resolution proceeding commenced by the receipt by an **Insured** of a demand for an alternative dispute resolution or similar document, or
- (iv) administrative, regulatory or tribunal proceeding commenced by the filing of a complaint, the issuance of a notice of charge, formal investigative order or similar document,

which is brought and maintained by or on behalf of a customer, vendor, service provider or other business invitee of an **Insured Organization** against any **Insured** for any **Wrongful Act**, including any appeal therefrom, in connection with any actual or alleged discrimination or harassment of such customer, vendor, service provider or other business invitee or violation of such customer's, vendor's, service provider's or other business invitee's civil rights relating to such discrimination or harassment.

Third Party Claim also means a written request first received by an **Insured** to toll or waive a statute of limitations relating to a potential **Third Party Claim** as described in C (i) through C (iv) above.

Provided, however, that a **Third Party Claim** does not include any demand or proceeding for any **Wrongful Act** in connection with any actual or alleged price or other discrimination or violation of any antitrust statute or other law designed to protect competition.

13. AMEND TERMINATION OF POLICY OR COVERAGE SECTION
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Subsection 11, Termination of Policy or Coverage Section of the General Terms and Conditions of this policy, is deleted in its entirety and replaced by the following:

This policy or any coverage section shall terminate at the earliest of the following times:

- a) cancellation of this policy from the Company in the event of non-payment of premium.
- b) upon the receipt by the Company of written notice of termination from the **Parent Organization**.
- c) upon expiration of the **Policy Period** as set forth in Item 2 of the Declarations of this policy, or
- d) at such time as may be agreed upon by the Company and the **Parent Organization**.

The Company shall refund the unearned premium computed at customary pro-rata rates if this policy or any coverage section is terminated by the **Parent Organization**.

14. ADD WORKPLACE VIOLENCE EXPENSE COVERAGE WITH SUBLIMIT
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Solely with respect to this Employment Practices Liability Coverage Section, the following shall apply:

- A. Subsection 1, Insuring Clause, of this coverage section, shall be amended to add the following Insuring Clause:

Workplace Violence Expense Coverage

The Company shall reimburse the **Parent Organization** for **Workplace Violence Expenses** incurred by an **Insured Organization** resulting from any **Workplace Violence**; provided that the Company's maximum aggregate liability for all **Workplace Violence Expenses** shall not exceed [Sub-Limit], which amount is part of, and not in addition to, the Company's maximum aggregate Limit of Liability as set forth in Item 2 of the Declarations for this coverage section.

- B. No Deductible Amount shall apply to the **Workplace Violence Expense Coverage**.
- C. For the purposes of this endorsement, exclusion 5(g) of subsection 5, Exclusions, of this coverage section is deleted and replaced with the following:

(g) based upon, arising from, or in consequence of bodily injury, mental anguish, emotional distress, humiliation, sickness, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof whether or not it is damaged or destroyed; provided that this shall not apply to emotional distress, mental anguish or humiliation resulting from any **Wrongful Act** in connection with any actual or alleged wrongful dismissal, discharge or termination of employment, breach of any oral or written employment contract or quasi-employment contract, employment-related misrepresentation, violation of employment discrimination laws (including workplace and sexual harassment), wrongful failure to employ or promote, wrongful discipline, wrongful deprivation of a career opportunity, failure to grant tenure, negligent evaluation, invasion of privacy, employment-related defamation or employment-related wrongful infliction of emotional distress;

- D. Solely with respect to the **Workplace Violence Expense Coverage** as set forth in paragraph (1) of this endorsement, the first, second and fourth paragraphs of subsection 3, Defense Provisions, are hereby deleted and do not apply to such **Workplace Violence Expense Coverage**.

- E. Subsection 16, Definitions, is amended by adding the following definitions:

Workplace Violence means any intentional and unlawful act:

- (i) of deadly force involving the use of lethal weapon; or
- (ii) the threat of deadly force involving the display of a lethal weapon,

which occurs on or in the **Premises** and which did or could result in bodily injury or death to an **Insured Person**.

Workplace Violence Expenses means the reasonable fees and expenses, or cost of:

- (i) an independent security consultant for ninety (90) days following the date **Workplace Violence** occurs;
- (ii) an independent public relations consultant for ninety (90) days following the date **Workplace Violence** occurs;
- (iii) a counseling seminar for all employees conducted by an independent consultant following a **Workplace Violence**;
- (iv) independent security guard services for up to fifteen (15) days; and
- (v) an independent forensic analyst.

Premises means the buildings, facilities or properties occupied by an **Insured Organization** in conducting its business.

- F. For the purposes of this endorsement, no coverage will be available under this coverage section for:

- (a) any **Workplace Violence** which occurs at any location other than the **Premises**;

- (b) **Loss** arising from declared or undeclared war, civil war, insurrection, riot, civil commotion, rebellion or revolution, military, naval or usurped power, governmental intervention, expropriation or nationalization;
- (c) legal costs, judgments and settlements incurred as the result of any claim, suit or judicial action brought against an **Insured Organization** in connection with **Workplace Violence**; or
- (d) **Loss** resulting from the use or threat of force or violence occurring on the Premises for the purpose of demanding money, securities or property.

G. For the purposes of this endorsement, the following provision is added to this coverage section:

Coordination of Coverage

Any **Workplace Violence Expenses** covered pursuant to the terms of this endorsement and the Workplace Violence Coverage Section of this policy, if purchased, shall be first covered under the Workplace Violence Coverage Section of this policy, subject to its terms, conditions, and limitations.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

ALL OTHER TERMS AND CONDITIONS REMAINED UNCHANGED.

Authorized Representative