

THIS POLICY APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD. CLAIMS MUST BE REPORTED TO THE COMPANY IN ACCORDANCE WITH SECTION VI. DEFENSE COSTS ARE WITHIN THE LIMITS OF LIABILITY.

PLEASE REVIEW THE POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.

Terms in bold face type have the special meaning. See the definitions sections of this Policy.

The Insurer and the **Insureds** agree as follows, in consideration of the payment of the premium and in reliance upon all statements made in the **Application** furnished to the Insurer designated in the Declarations, a stock insurance corporation, hereafter called the "Insurer."

## I. INSURING AGREEMENT

The Insurer shall pay on behalf of the **Insureds** that **Loss** resulting from any **Claim** first made against the **Insureds** during the **Policy Period** or the Extended Reporting Period, if applicable, by an **Employee** or an applicant for employment for a **Wrongful Employment Practice** provided that such **Claim** is reported to the Insurer in accordance with Section VI.

## II. DEFINITIONS

**Application** means all signed applications, any attachments to such applications, other materials submitted therewith or incorporated therein, and any other documents submitted in connection with the underwriting of this Policy by the Insurer, or any other policy underwritten by the Insurer or its affiliates of which this Policy is a direct or indirect renewal or replacement.

**Claim** means:

1. a written demand for monetary or non-monetary relief;
2. a civil proceeding in a court of law or equity or an alternative dispute resolution process seeking monetary or non-monetary relief; or
3. an administrative or regulatory proceeding including an investigation by a regulatory or administrative agency, such as the Equal Employment Opportunity Commission or its state or local equivalent, against any **Insured** for a **Wrongful Employment Practice** and any appeal from such **Claim**.

**Claim** also includes a written request received by the **Insured Entity** to toll or waive a statute of limitations in connection with a **Potential Claim**.

However, **Claim** does not include any:

- a. labor or grievance arbitration or other proceeding pursuant to a collective bargaining agreement,
- b. audit conducted by the Office of Federal Contract Compliance Programs unless a Notice of Violation or Order to Show Cause or written demand for monetary relief or injunctive relief has been issued.

A **Claim** is deemed made as set forth in Section VI, **REPORTING/DATE OF CLAIM/INTERRELATED CLAIM CLAUSE**, paragraph 3, **When a Claim is Deemed Made**.

**Defense Costs** means reasonable and necessary fees, costs and expenses, consented to by the Insurer and incurred by the **Insureds** in the investigation, adjustment, defense or appeal of any covered **Claim**, and includes premium for appeal bonds, attachment bonds or similar bonds arising out of a covered judgment. The Insurer has no obligation to provide such bonds. **Defense Costs** shall not include salaries, wages, fees, overhead or benefit expenses associated with the directors, officers, partners and employees of the **Insured Entity**.

**Domestic Partner** means any person qualifying as such under any federal, state or local laws or under the **Insured Entity's** employee benefit plans.

**Employees** mean all past, present or future full-time, part-time, seasonal and temporary employees, including any volunteers, of the **Insured Entity** and employees leased to the **Insured Entity**. **Employee** also includes any natural person who is contracted to perform work for the **Insured Entity** as an independent contractor, but only if:

1. such independent contractor has a written contract with the **Insured Entity**, entered into prior to the alleged **Wrongful Employment Practice**, designating him or her as an independent contractor, and under which the **Insured Entity** is obligated to provide employment practices liability insurance or to indemnify for any **Wrongful Employment Practice**; or
2. the **Insured Entity** is obligated pursuant to any applicable law or regulation to provide indemnification to such independent contractor for **Wrongful Employment Practices**.

**Employment Related Benefits** means perquisites, fringe benefits, deferred compensation or payments (including insurance premiums) in connection with an employee benefit plan, **Stock Benefits** and any other payment to or for the benefit of an employee arising out of the employment relationship. **Employment Related Benefits** shall not include salary, wages, commissions, or non-deferred cash incentive compensation.

**ERISA or any Similar Act** means the Employee Retirement Income Security Act of 1974, as amended, or any similar common or statutory law of the United States, Canada or their states, territories or provinces or any other jurisdiction anywhere in the world.

**Executive** means any past, present or future:

1. duly elected or appointed director, officer, trustee or governor of a corporation, management committee member of a joint venture or **Manager** of a limited liability company, general partner of an entity structured as a limited partnership, or partnership manager of a general partnership; or
2. official in an **Insured Entity** organized and operated in a **Foreign Jurisdiction** who is holding a position that is equivalent to an executive position listed in 1.

**Foreign Jurisdiction** means any jurisdiction, other than the United States or any of its territories or possessions.

**Insured** means any **Insured Person** or the **Insured Entity**.

**Insured Entity** means the **Named Insured** and any **Subsidiary** including any such entity as a debtor in possession under United States bankruptcy law or an equivalent status under the law of any other country.

**Insured Person** means any **Executive** or **Employee** of the **Insured Entity**.

**Interrelated Wrongful Employment Practices** means any **Wrongful Employment Practices** which are logically or causally connected by reason of any common fact, circumstance, situation, transaction or event.

**Loss** means damages (including back pay and front pay), settlements, judgments (including any award of pre-judgment and post-judgment interest) and **Defense Costs** for which any **Insured** is legally obligated to pay on account of a covered **Claim**. **Loss** shall include liquidated damages awarded pursuant to the Age Discrimination in Employment Act or the Equal Pay Act, punitive, exemplary or multiple damages, if insurable, to the fullest extent permitted by any applicable law. Where the **Insureds** reasonably determine that punitive, exemplary or multiple damages are insurable under any applicable law, the Insurer shall not challenge that determination of insurability.

However, **Loss** does not include:

1. civil or criminal fines, penalties, taxes, sanctions or forfeitures, imposed on an **Insured** whether pursuant to law, statute, regulation or court rule;
2. compensation earned by the claimant in the course of employment but unpaid by the **Insured**, including salary, wages, commissions, bonus or incentive compensation;
3. any amounts for which an **Insured** is liable due to breach of any written contract of employment;
4. amounts representing medical or insurance premiums or benefit claim payments;
5. except as provided above with respect to punitive, exemplary, liquidated or the multiple portion of any multiplied damages, matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed;
6. future salary, wages or commissions of a claimant who is hired, promoted or reinstated to employment pursuant to a settlement of, order in, or other resolution of any **Claim**; or

## 7. Employment Related Benefits.

**Management Control** means:

1. owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of: the Board of Directors of a corporation; the management committee members of a joint venture; or the members of the management board of a limited liability company, general partner of an entity structured as a limited partnership, or partnership manager of a general partnership; or
2. having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of an **Insured Entity**, to elect, appoint or designate a majority of: the Board of Directors of a corporation; the management committee of a joint venture; or the management board of a limited liability company, general partner of an entity structured as a limited partnership, or partnership manager of a general partnership.

**Manager** means any natural person manager, member of the Board of Managers or equivalent executive of an **Insured Entity** that is a limited liability company.

**Named Insured** means the company named in Item 1 of the Declarations, including such company as a debtor in possession under United States bankruptcy law or an equivalent status under the law of any other country.

**Policy Period** means the period from the effective date of this Policy to the Policy expiration date stated in Item 2 of the Declarations, or its earlier cancellation date.

**Pollutants** means any substance exhibiting hazardous characteristics as is or may be defined or identified on any list of hazardous substances issued by the United States Environmental Protection Agency or any state, local or foreign counterpart. **Pollutants** also means, without limitation, any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste (including materials to be recycled, reconditioned or reclaimed), as well as any air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos, or asbestos products or any noise.

**Potential Claim** means an allegation of a **Wrongful Employment Practice** which does not constitute a **Claim** but may reasonably give rise to a future **Claim** provided that the allegation is lodged by the potential claimant with any member of the in-house general counsel, risk management or human resources departments of any **Insured Entity**.

**Stock Benefits** means

1. any offering plan or agreement between the **Insured Entity** and any employee which grants stock, stock warrants or stock options of the **Insured Entity** to any such employee, including but not limited to grants of stock options, restricted stock, stock warrants, performance stock shares, or any other compensation or incentive granted in the form of securities of the **Insured Entity**; or
2. any payment or instrument the amount or value of which is derived from the value of securities of the **Insured Entity**, including but not limited to stock appreciation rights or phantom stock plans or arrangements.

**Stock Benefits** shall not include employee stock ownership plans or employee stock purchase plans.

**Subsidiary** means any entity in which the **Named Insured** has **Management Control**, directly or indirectly through one or more other **Subsidiaries**,

1. on or before the effective date of this Policy; or
2. after the effective date of this Policy by reason of being created or acquired by the **Insured Entity** after such date, if and to the extent coverage with respect to the entity is afforded pursuant to Section XV.1.

**Takeover** means:

1. the acquisition by another entity or person, or group of entities or persons acting in concert, of:
  - a. the ownership or control of voting stock of the **Named Insured** resulting in such entity, person or group owning or controlling more than 50% of the voting stock of the **Named Insured**, or
  - b. assets of the **Named Insured** resulting in such entity, person or group owning more than 50% of the total consolidated assets of the **Named Insured** as of the date of the **Named Insured's** most recent audited consolidated financial statement prior to such acquisition;

2. the merger of the **Named Insured** into another entity such that the **Named Insured** is not the surviving entity; or
3. the consolidation of the **Named Insured** with another entity.

**Wrongful Employment Practice** means any actual or alleged error, misstatement, misleading statement, act, omission, neglect or breach of duty committed or attempted by the **Insured Persons** in their capacity as such or by the **Insured Entity** constituting or related to:

1. wrongful dismissal or discharge or termination of employment, whether actual or constructive;
2. employment-related misrepresentation;
3. violation of any federal, state or local laws (whether common-law or statutory) concerning employment or discrimination in employment, including but not limited to the Americans with Disabilities Act of 1992, the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1866 and the Sarbanes-Oxley Act of 2002;
4. sexual harassment or other unlawful harassment;
5. wrongful deprivation of career opportunity, failure to grant tenure, demotion, or failure to employ or promote;
6. wrongful discipline;
7. retaliation.
8. negligent evaluation of employees;
9. failure to adopt adequate workplace or employment policies and procedures;
10. employment-related libel or slander, humiliation or invasion of privacy; or
11. with respect to any of the foregoing items (1) through (10) of this definition: negligent hiring, retention, training or supervision, failure to provide or enforce adequate or consistent corporate policies and procedures, or violation of an individual's civil rights;
12. Any other employment related workplace torts.

### III. EXCLUSIONS

The Insurer shall not be liable to pay any **Loss** under this Policy in connection with any **Claim** made against the **Insureds**:

#### 1. **Bodily Injury/Property Damage**

for any actual or alleged bodily injury (including death), sickness, disease of any person, or damage to or destruction of any tangible property including loss of use except that this exclusion shall not apply to allegations of emotional distress, humiliation or mental anguish;

#### 2. **Violation of Law**

for any actual or alleged violation of:

- a. (i) **ERISA or any Similar Act**, (ii) the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), as amended, or (iii) any other federal, state or local statutory law or common law anywhere in the world governing any employee benefit program, policy, plan or arrangement of any type, including but not limited to laws governing retirement or pension benefit programs, welfare plans, insurance plan, employee stock option ownership or employee stock purchase plans or deferred compensation programs;
- b. any law governing workers' compensation, unemployment insurance, social security, disability benefits or any other similar federal, state or local statutory or regulatory law or common law anywhere in the world;
- c. the Occupational Safety and Health Act of 1970 (OSHA), as amended, or any other federal, state or local statutory or regulatory law or common law anywhere in the world governing workplace safety and health;
- d. the Fair Labor Standards Act (except the Equal Pay Act), as amended, or any other federal, state or local statutory law or common law anywhere in the world governing wage, hour and payroll policies;
- e. the Workers' Adjustment and Retraining Notification Act, Public Law 100-379 (1988), as amended, or any other federal, state or local statutory or regulatory law or common law anywhere

- in the world governing an employer's obligation to notify or bargain with others in advance of any facility closing or mass layoff.
- f. the National Labor Relations Act, as amended, or any other federal, state or local statutory or regulatory law or common law anywhere in the world governing employees' rights and the employers duties with respect to unions, bargaining, strikes, boycotts, picketing, lockouts or collective activities.

However, this exclusion shall not apply to any **Claim** alleging retaliation or wrongful dismissal or discharge or termination of employment whether actual or constructive, because of a claimant's exercise of a right pursuant to any such laws;

3. **Prior Notice**

based upon or arising out of:

- a. any **Wrongful Employment Practice** or any matter, fact, circumstance, situation, transaction, or event, notice of which was given by an **Insured** under any policy of which this Policy is a direct renewal or replacement ; or
- b. any other **Wrongful Employment Practice** whenever occurring, which, together with a **Wrongful Employment Practice** described in a. above, would constitute **Interrelated Wrongful Employment Practices**;

4. **Prior or Pending**

based upon or arising out of or constituting:

- a. civil proceeding in a court of law or equity or arbitration;
- b. administrative or regulatory proceeding including an investigation by a regulatory or administrative agency;
- c. any notice of violation or order to show cause or written demand for monetary relief or injunctive relief resulting from an audit conducted by the Office of Federal Contract Compliance Programs; against any of the **Insureds** which was pending on or prior to the Prior or Pending Date set forth in Item 8 of the Declarations or any fact, circumstance, situation, transaction or event underlying or alleged in such demand, proceeding, investigation, order or arbitration;

5. **Pollution**

based upon or arising out of: any nuclear reaction, radiation or contamination, or any actual, alleged or threatened discharge, release, escape, or disposal of, or exposure to, **Pollutants**; any request, direction or order that any of the **Insureds** test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to or assess the effect of **Pollutants** or nuclear reaction, radiation or contamination, or any voluntary decision to do so; or any actual or alleged property damage, or bodily injury, sickness, disease or death of any person resulting from any of the aforementioned matters. However, this exclusion shall not apply to any **Claim** alleging retaliation or wrongful dismissal or discharge or termination of employment whether actual or constructive, because of a claimant's exercise of a right pursuant to any such laws;

6. **Assumed Liability**

based upon or arising out of the **Insured's** assumption of the liability of others in any oral or written contract or agreement, unless such liability would have attached to an **Insured** in the absence of such agreement;

7. **Prior Wrongful Employment Practices of Subsidiaries**

based upon or arising out of:

- a. any **Wrongful Employment Practice** by **Insured Persons** of any **Subsidiary** or by such **Subsidiary**, occurring before the date such entity became a **Subsidiary**, or

- b. any other **Wrongful Employment Practice** whenever occurring, which, together with a **Wrongful Act** described in a. above, would constitute **Interrelated Wrongful Employment Practices**.
8. **Non-Monetary Relief**

The Insurer shall not be liable to pay that portion of **Loss**, other than **Defense Costs**, which constitutes:

- a. the cost of any non-monetary relief, including without limitation any costs associated with compliance with any injunctive relief of any kind or nature imposed by any judgment or settlement;
- b. the costs associated with providing any reasonable accommodations required by, made as a result of, or to conform with the requirements of the Americans With Disabilities Act and any amendments thereto or any similar federal, state or local statute, regulation, or common laws.

#### IV. LIMITS OF LIABILITY/RETENTION

1. **Aggregate Limit of Liability**

The Limit of Liability stated in Item 6 of the Declarations is the aggregate limit of the Insurer's liability for all **Loss** under this Policy arising out of all **Claims** first made against all **Insureds** during the **Policy Period** and the Extended Reporting Period (if applicable). The Limit of Liability for the Extended Reporting Period shall be part of and not in addition to the Limit of Liability for the **Policy Period**. Further, a **Claim** which is made subsequent to both the **Policy Period** and the Extended Reporting Period (if applicable) and which pursuant to Section VI. is considered made during the **Policy Period** or Extended Reporting Period shall also be subject to the one aggregate Limit of Liability stated in Item 6 of the Declarations.

**Defense Costs** are part of **Loss** and as such are subject to the Limit of Liability for **Loss**.

2. **Retention**

The Insurer shall only be liable for the amount of **Loss** arising from each **Claim** which is in excess of the applicable Retention amount stated in Item 7 of the Declarations. The Retention amount shall apply to **Loss** arising from each **Claim** and from all **Claims** alleging the same **Wrongful Employment Practice** or **Interrelated Wrongful Employment Practices**. The Retention shall be uninsured. The Insurer will have no obligation to pay all or any portion of any applicable retention.

#### V. SETTLEMENT/DEFENSE OF CLAIMS/ALLOCATION OF LOSS/ADVANCEMENT OF DEFENSE COSTS

1. **Settlement/Insurer's Consent**

The **Insureds** shall not admit or assume any liability, incur any **Defense Costs**, consent to any judgment, agree to any settlement or make any settlement offer without the Insurer's prior written consent, such consent not to be unreasonably withheld. The Insurer shall not be liable for any **Loss** incurred by an **Insured** to the extent the **Loss** results from such **Insured** admitting liability, incurring any **Defense Costs**, consenting to any judgment, agreeing to any settlement or making any settlement offer without the Insurer's prior written consent. The **Insureds** agree that they shall not knowingly take any action which increases the Insurer's exposure for **Loss** under this Policy. Should the **Insured** be unwilling to settle a **Claim** that the claimant and the Insurer are willing to settle, the Insurer shall continue to be liable for any **Loss** in connection with such **Claim**, but not in excess of the amount for which the **Claim** could have been settled, plus all **Defense Costs** incurred up to the date of the **Insured's** refusal to consent to such settlement.

Notwithstanding the above, if the **Insureds** are able to settle all **Claims** which are subject to a single Retention for an aggregate amount, including **Defense Costs**, not exceeding such Retention, the Insurer's consent shall not be required for the settlement of such **Claims**.

2. **Defense of Claims**

The **Insureds** and not the Insurer have the duty to defend any **Claim**. The **Insureds** may select defense counsel but such selection is subject to the Insurer's written consent, and such consent will not be unreasonably withheld. The Insurer shall be entitled to associate in the defense and the negotiation of any settlement of any **Claim** that involves or appears reasonably likely to involve the Insurer.

### 3. **Allocation of Loss**

If a **Claim** made against the **Insureds** includes both covered and uncovered matters or if a **Claim** is made against **Insureds** who are extended coverage therefor and others who are not extended coverage therefor, the **Insureds** agree that there must be an allocation between insured and uninsured loss. The **Insureds** and the Insurer shall exert their best efforts to agree upon a fair and proper allocation between insured and uninsured loss.

### 4. **Conditions for Advancement of Defense Costs**

The Insurer, on behalf of the **Insureds**, shall advance **Defense Costs** on a current basis but in no event later than ninety (90) days after the receipt by the Insurer of itemized defense bills in excess of the applicable Retention. However, advancement of **Defense Costs** shall be subject to the following conditions:

- a. if the **Insureds** and the Insurer agree on an allocation of insured and uninsured **Defense Costs**, the Insurer shall advance the amount of insured **Defense Costs**;
- b. if the **Insureds** and the Insurer cannot, after exerting their best efforts, agree on an allocation of insured and uninsured **Defense Costs**, the Insurer then shall advance the percentage of **Defense Costs** which the Insurer states to be fair and proper until a different allocation is agreed upon or determined pursuant to the provisions of this Policy and applicable law;
- c. the **Insureds** shall provide a written undertaking satisfactory to the Insurer to repay the Insurer any **Defense Costs** finally established not to be insured; and
- d. any allocation or advancement of **Defense Costs** shall not apply to or create any presumption with respect to the allocation of other **Loss**.

## VI. **REPORTING/DATE OF CLAIM/INTERRELATED CLAIM CLAUSE**

### 1. **Notice of Claim**

The **Insureds** shall, as a condition precedent to the obligations of the Insurer under this Policy, give written notice to the Insurer of a **Claim** as soon as practicable after any the chair of the board, president, chief executive officer, chief financial officer, chief operating officer, partner, in-house general counsel, risk manager or director of human resources of any **Insured Entity** first becomes aware of such **Claim**, but in no event later than thirty (30) days after the end of the **Policy Period** or the Extended Reporting Period, if applicable.

### 2. **Notice of Potential Claim**

If during the **Policy Period** or the Extended Reporting Period, if applicable, any past, present or future chair of the board, president, chief executive officer, chief financial officer, chief operating officer, partner, in-house general counsel, risk manager or director of human resources of any **Insured Entity** first becomes aware of a **Potential Claim**, and during such period an **Insured** gives written notice to the Insurer of:

- a. the names of any potential claimants and a description of the **Wrongful Employment Practice** which forms the basis of their **Potential Claim**,
- b. the identity of the specific **Insureds** allegedly responsible for such specific **Wrongful Employment Practice**,
- c. the consequences which have resulted or may result from such specific **Wrongful Employment Practice**,
- d. the nature of the potential monetary damages or non-monetary relief which may be sought in consequence of such specific **Wrongful Employment Practice**, and
- e. the circumstances by which **Insureds** first became aware of such specific **Wrongful Employment Practice**,

then any **Claim** otherwise covered pursuant to this Policy which is subsequently made and which arises out of such **Wrongful Employment Practice** shall be deemed to have been first made against the **Insureds** and reported to the Insurer by the **Insureds** at the time such written notice was received by the Insurer. No coverage is provided for fees and expenses incurred prior to the time such notice results in a **Claim**.

### 3. **When a Claim is Deemed Made**

Except as provided in 2 above, a **Claim** shall be deemed made:

- a. in the case of a written demand for monetary or non-monetary relief, on the earlier of the **Insured's** or Insurer's receipt of notice of such demand;
- b. in the case of a civil proceeding in a court of law or equity or arbitration, on the date of service upon or other receipt by any **Insured** of a complaint against the **Insured** in such proceeding or arbitration;
- c. in the case of an administrative or regulatory proceeding including an investigation by a regulatory or administrative agency, on the earliest of the date of service upon or other receipt by the **Insured** of a written notice or subpoena from the regulatory or investigating authority.

### 4. **Interrelated Claims**

More than one **Claim** involving the same **Wrongful Employment Practice** or **Interrelated Wrongful Employment Practices** shall be considered as one **Claim** which shall be deemed to have been first made on the earlier of:

- a. the date on which the earliest such **Claim** was first made, or
- b. the first date valid notice was given by the **Insureds** to the Insurer under this Policy of any **Wrongful Employment Practice** or under any prior policy of any **Wrongful Employment Practice** or any fact, circumstance, situation, event or transaction which underlies any such **Claim**.

### 5. **To Whom Notices are Sent**

The **Insureds** shall give written notice to the Insurer under this Policy as specified in Item 4 of the Declarations. If mailed, the date the Insurer receives such notice shall constitute the date such notice was given. Proof of mailing shall be sufficient proof of notice.

## **VII. EXTENDED REPORTING PERIOD**

### 1. **Optional Extended Reporting Period**

If the Insurer or the **Insured** terminates or non-renews this Policy, the **Insured** shall have the right to purchase, upon payment of an additional premium determined as described in Item 5b of the Declarations, an extension of this Policy in which to report **Claims** first made during such Extended Reporting Period, provided such reporting is done in accordance with paragraph VI 1 and 2, and provided further that such **Claim** or circumstance must arise out of a **Wrongful Employment Practice** committed before the earlier of the end of the **Policy Period** or the effective date of any **Takeover**.

This period shall be referred to as the Extended Reporting Period.

### 2. **Payment of Extended Reported Premium**

As a condition precedent to the right to purchase the Extended Reporting Period, the total premium for this Policy must have been paid. The right to purchase the Extended Reporting Period shall end unless the Insurer receives written notice of the **Named Insured's** election to purchase the Extended Reporting Period and full payment of the premium for such period within 30 days after the end of the **Policy Period**.

### 3. **Non-Cancelable/Premium Fully Earned**



If the Extended Reporting Period is purchased, it is non-cancelable and the entire premium shall be deemed fully earned at its commencement without any obligation by the Insurer to return any portion thereof.

4. **No Separate Limit**

There is no separate or additional Limit of Liability for the Extended Reporting Period.

**VIII. CANCELLATION**

1. **Insurer's Right to Cancel**

The Insurer shall not cancel this Policy except for non-payment of any premium when due. The Insurer shall provide to the **Named Insured** written notice of such cancellation stating when, not less than 15 days thereafter, such cancellation shall be effective, except that non-payment of premium due at inception of this Policy will result in the policy being cancelled effective as of the inception date.

2. **Named Insured's Right to Cancel**

The **Insureds** grant the exclusive authority to cancel this Policy to the **Named Insured**. The **Named Insured** may cancel this Policy by providing the Insurer written notice stating when thereafter such cancellation shall be effective. The mailing or delivery of such notice shall be sufficient. The unearned premium shall be computed in accordance with customary short rate provisions and premium adjustment may be made at the time cancellation is effected or as soon as practicable.

**IX. TERRITORY**

Coverage shall apply to **Claims** made and **Wrongful Employment Practices** committed worldwide.

**X. APPLICATION**

The **Insureds** represent and acknowledge that the statements contained in the **Application** and any materials submitted or required to be submitted therewith (which shall be maintained on file by the Insurer and be deemed attached to and incorporated into this Policy as if physically attached), are true and:

- (i) are the basis of this Policy and are to be considered as incorporated into and constituting a part of this Policy; and
- (ii) shall be deemed material to the acceptance of this risk or the hazard assumed by the Insurer under this Policy.

This Policy is issued in reliance upon the truth of such representations.

In the event the statements, representations or information in the **Application**, including materials submitted or required to be submitted therewith, contain any misrepresentation or omission, this Policy shall be void from inception as to the **Insured** who knew as of the effective date of the Policy, the facts that were misrepresented or omitted, whether or not such person knew of such untruthful disclosure in the **Application**. With respect to this paragraph,

- a. the knowledge of any person who signed the **Application** shall be imputed to all other **Insured Persons**;
- b. except as set forth in c. below, the knowledge of any person who did not sign the **Application** shall not be imputed to any other **Insureds**; and
- c. the knowledge of any past, present or future chair of the board, president, chief executive officer, chief financial officer, chief operating officer, the in-house general counsel or the head of the human resources department shall be imputed to the **Insured Entity** if such person knew of the misrepresentation or omission as of effective date of the Policy.

**XI. OTHER INSURANCE**

If any **Loss** resulting from any **Claim** is insured under any other insurance, this Policy shall apply only as excess over any other valid and collectible insurance unless such other insurance is written only as specific excess insurance over the limit of liability provided by this Policy. This Policy shall specifically be excess of any other

valid and collectible insurance pursuant to which any other insurer has a duty to defend a **Claim** for which this Policy may be obligated to pay **Loss**.

## **XII. ESTATES, LEGAL REPRESENTATIVES AND SPOUSES**

The estates, heirs, legal representatives, assigns, spouses and any **Domestic Partner of Insured Persons** shall be considered **Insureds** under this Policy; provided, however, coverage is afforded to such estates, heirs, legal representatives, assigns, spouses and **Domestic Partners** only for a claim arising solely out of their status as such and, in the case of a spouse or **Domestic Partner**, where such claim seeks damages from marital community property, jointly held property or property transferred from the **Insured Person** to the spouse or **Domestic Partner**. No coverage is provided for any act, error or omission of an estate, heir, legal representative, assign, spouse or **Domestic Partner**. All terms and conditions of this Policy, including without limitation the Retention, applicable to **Loss** incurred by the **Insured Person** shall also apply to **Loss** incurred by such estates, heirs, legal representatives, assigns, spouses and **Domestic Partners**.

## **XIII. NO ACTION AGAINST INSURER**

1. No action shall be taken against the Insurer unless, as a condition precedent, there shall have been full compliance with all the provisions of this Policy nor until the amount of the **Insureds'** obligation to pay shall have been finally determined either by final and nonappealable judgment against the **Insureds** after trial or by written agreement of the **Insureds**, the claimant and the Insurer.
2. No person or organization shall have any right under this Policy to join the Insurer as a party to any **Claim** against the **Insureds** to determine the **Insureds'** liability, nor shall the Insurer be impleaded by the **Insureds** or their legal representatives in any such **Claim**.

## **XIV. ASSIGNMENT OF INTEREST**

Assignment of interest under this Policy shall not bind the Insurer unless its consent is endorsed to this Policy.

## **XV. COVERAGE FOR NEW SUBSIDIARIES**

1. If, after the effective date of this Policy, the **Insured Entity** first has **Management Control** of any entity, then such entity and any subsidiaries, directors, officers, trustees, employees, members or general partners of such entity who otherwise would thereby become an **Insured** shall be covered under this Policy, subject to its terms and conditions, provided that if, as a result of such entity and its subsidiaries becoming **Insureds**, the total number of all **Employees** increases by more than 10% over the number of employees of the **Insured Entities** as of the inception date of this Policy, then the Insurer, at its sole option upon submission of such information as the Insurer may require, and payment of any additional premium or amendment of the provisions of the Policy, may agree to provide coverage for such subsidiaries, directors, partners, trustees, officers or employees.
2. There shall be no coverage under this Policy for any **Wrongful Employment Practice** by such entity, or by any persons or entities considered to be **Insureds** pursuant to Section XV.1 above, where such **Wrongful Employment Practice** occurred in whole or in part before the effective date of such acquisition or merger or for any **Wrongful Employment Practice** occurring on or after such date which, together with any **Wrongful Employment Practices** occurring before such date, would be considered **Interrelated Wrongful Employment Practices**.

## **XVI. CHANGE OF STATUS OF INSUREDS**

### **1. Takeover of the Named Insured**

In the event of a **Takeover** of the **Named Insured**, coverage under this Policy shall continue until this Policy is otherwise terminated, but only with respect to **Claims** for **Wrongful Employment Practices** occurring before the effective date of the **Takeover**, unless (i) the Insurer is notified in writing of the **Takeover** prior to the **Takeover** effective date and agrees in writing to provide coverage for **Wrongful Employment Practices** occurring on or after such effective date, and (ii) the **Named Insured** accepts

any special terms, conditions, exclusions or additional premium charge required by the Insurer. This Policy may not be canceled after the effective time of the **Takeover** and the entire premium for this Policy shall be deemed earned as of such time. The **Named Insured** shall also have the right to an offer by the Insurer of an Extended Reporting Period described in Section VII of this Policy.

## 2. Cessation or Takeover of Subsidiary

If any organization ceases to be a **Subsidiary** there shall be no coverage under this Policy for any **Wrongful Employment Practice** by such organization or any **Insured Person** of such organization occurring after the date such organization ceased to be a **Subsidiary**.

In the event of a **Takeover** of a **Subsidiary**, coverage under this Policy shall continue until this Policy is otherwise terminated, but only with respect to **Claims** for **Wrongful Employment Practices** occurring before the effective date of the **Takeover**, unless (i) the Insurer is notified in writing of the **Takeover** prior to the **Takeover** effective date and agrees in writing to provide coverage for **Wrongful Employment Practices** occurring on or after such effective date, and (ii) the **Insured Entity** accepts any special terms, conditions, exclusions or additional premium charge required by the Insurer.

## XVII. ASSISTANCE AND COOPERATION

Each **Insured** shall give the Insurer full cooperation and shall furnish the Insurer with copies of reports, investigations, pleadings, and all related papers, and such other information, assistance and cooperation as the Insurer may reasonably request. The **Insureds** shall do nothing which in any way increases the Insurer's exposure under this Policy or in any way prejudices the Insurer's potential or actual rights of recovery.

## XVIII. SUBROGATION AND RECOVERY

To the extent it pays any **Loss**, the Insurer shall be subrogated to all the **Insureds'** rights of recovery therefore. The **Insureds** shall execute all papers necessary to secure such rights, including executing any documents necessary to enable the Insurer effectively to bring suit in their name, and shall take no action which impairs the Insurer's rights of subrogation or recovery.

## XIX. NOTICES TO THE NAMED INSURED

Any notices to the **Named Insured** under this Policy shall be provided to the **Named Insured** at the last known address and to its insurance agent or broker. If properly mailed, the date of mailing shall constitute the date such notice was given.

## XX. CHANGES

Notice to or knowledge possessed by any agent or other person acting on behalf of the Insurer shall not effect a waiver or a change in any part of this Policy or stop the Insurer from asserting any right under the provisions of this Policy, nor shall the provisions be waived or changed except by written endorsement issued to form a part of this Policy.

## XXI. COMPANY AUTHORIZATION

The **Insureds** agree that the **Named Insured** will act on behalf of the **Insureds** with respect to giving of all notice to the Insurer (except notices provided in Section VI.1 or 2), the receipt of notices from the Insurer, the payment of the premiums, the receipt of any return premiums that may become due under this Policy, and the agreement to and acceptance of endorsements.

## XXII. ENTIRE AGREEMENT

The **Insureds** agree that this Policy, including the **Application** and any materials submitted or required to be submitted therewith, and any written endorsement attached, constitute the entire contract existing between them and the Insurer or any of its agents relating to this insurance.

**XXIII. BANKRUPTCY**

Bankruptcy or insolvency of any **Insured Entity** or any **Insured Person** shall not relieve the Insurer of any of its obligations hereunder.

**XXIV. ALTERNATIVE DISPUTE RESOLUTION PROCESS**

All disputes or differences between the **Insured** and Insurer which may arise under or in connection with this Policy, whether arising before or after termination of this Policy, including any determination of the amount of **Loss**, shall be submitted to the alternative dispute resolution ("**ADR**") process set forth in this Section.

Either the Insurer or an **Insured** may elect the type of **ADR** process discussed below; provided, however, that such **Insured** shall have the right to reject the Insurer's choice of the type of **ADR** process at any time prior to its commencement, in which case such **Insured's** choice of **ADR** process shall control.

The Insurer and each and every **Insured** agrees that there shall be two choices of **ADR** process: (1) non-binding mediation administered by the American Arbitration Association, in which the Insurer and any such **Insured** shall try in good faith to settle the dispute by mediation under or in accordance with its then-prevailing Commercial Mediation Rules; or (2) arbitration submitted to the American Arbitration Association in accordance with its then-prevailing Commercial Arbitration Rules, in which the arbitration panel shall consist of three disinterested individuals. In either mediation or arbitration, the mediator or arbitrators shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. The mediator or arbitrators shall also give due consideration to the general principles of the law of the state where the **Named Insured** is incorporated in the construction or interpretation of the provisions of this Policy. In the event of arbitration, the decision of the arbitrators shall be final and binding and provided to both parties, and the arbitrators' award shall not include attorney's fees or other costs. In the event of mediation, either party shall have the right to commence a judicial proceeding, provided, however, that no such judicial proceeding shall be commenced until the mediation shall have been terminated and at least 60 days shall have elapsed from the date of the termination of the mediation. In all events, each party shall share equally the expenses of the **ADR** process.

Either choice of **ADR** process may be commenced in New York or Illinois or in the state indicated in the Declarations as the mailing address for the **Named Insured**.

**XXV. HEADINGS**

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

**XXVI. VALUATION**

All premiums, limits, retentions, **Loss** and other amounts under this policy are expressed and payable in United States of America currency. If any judgment, settlement or any part of **Loss** is expressed or calculated in any other currency, payment of such **Loss** due under this Policy will be made in the currency of the United States of America, at the rate of exchange published in The Wall Street Journal on the date the Insurer's obligation to pay such **Loss** is established, or, if not published on that date, on the date of next publication.

IN WITNESS WHEREOF, the Insurer has caused this Policy to be executed by its Chairman and Secretary, but this Policy shall not be binding upon us unless completed by the attachment of the Declarations.

Chairman

Secretary

