

EMPLOYMENT PRACTICES LIABILITY INSURANCE POLICY

CLAIMS MADE AND REPORTED POLICY

THIS IS A CLAIMS MADE AND REPORTED POLICY. Coverage is limited to only those **CLAIMS** that are first made against **YOU** and reported to **US** during the **POLICY PERIOD** or Extended Reporting Period, if applicable, as a result of any **EMPLOYMENT PRACTICES** which occurred prior to the end of the **POLICY PERIOD**. However, if the renewal policy is written by **US**, **YOU** will have sixty (60) days after the expiration date of this policy to report any **CLAIM** first made in this **POLICY PERIOD**.

INSURING AGREEMENT

WE will pay **DAMAGES** which **YOU** become legally obligated to pay and **CLAIM EXPENSE** as a result of **CLAIMS** first made against **YOU** for **EMPLOYMENT PRACTICES** and reported to **US** in writing during the **POLICY PERIOD** or Extended Reporting Period, if applicable, provided that:

1. the **EMPLOYMENT PRACTICES** giving rise to the **CLAIM** occurred on or after the **RETROACTIVE DATE** shown in the Declarations and before the end of the **POLICY PERIOD**;
2. notice of the **EMPLOYMENT PRACTICES** was not given nor required to be given to any prior insurer; and
3. prior to the inception date of the first policy issued to **YOU** by **US** and continuously renewed by **US**, **YOU** had no reasonable basis to believe that such **EMPLOYMENT PRACTICES** had been committed or that a **CLAIM** would be made against **YOU** alleging such **EMPLOYMENT PRACTICES**.

WE will pay **CLAIM EXPENSES** only, in excess of the amount of the **DEDUCTIBLE** and any Coinsurance Percentage for **CLAIMS** first made against **YOU** and reported to **US** in writing during the **POLICY PERIOD** or Extended Reporting Period, if applicable, alleging breach of any express contract of employment or any express obligation to make payments in the event of termination of employment. This **CLAIM EXPENSE** is part of and not in addition to the Limits of Liability stated on the Declarations.

WE will not be liable to pay **DAMAGES**, wages or salary, fines, penalties, taxes, compensation including severance pay, disgorgements or other similar relief or plaintiff's attorney fees, costs or expenses in connection with such **CLAIMS**.

DEFENSE

WE have the right and duty to defend any suit against **YOU** seeking **DAMAGES** because of **EMPLOYMENT PRACTICES** even if any of the allegations in the suit are groundless, false or fraudulent. **WE** have the right to appoint counsel and investigate any **CLAIM** or suit. However, **WE** will not settle or compromise a **CLAIM** or suit without **YOUR** written consent. If consent is refused and **YOU** elect to contest the **CLAIM** or continue legal proceedings, then **OUR** liability for the **CLAIM** will not exceed the amount for which the **CLAIM** could have been settled, and **CLAIM EXPENSE** incurred up to the date of **YOUR** refusal, plus seventy percent (70%) of all **DAMAGES** and **CLAIM EXPENSE** incurred after **YOUR** refusal to consent to a settlement offer acceptable to **US** and the claimant. In no event shall **OUR** liability under this policy for **DAMAGES** and **CLAIM EXPENSE** exceed the remaining portion of the Annual Aggregate Limit of Liability. **YOU** shall be solely responsible for thirty percent (30%) of all **DAMAGES** in excess of the amount of the settlement offer acceptable to **US** and the claimant, and thirty percent (30%) of all **CLAIM EXPENSE** incurred after the date of **YOUR** refusal.

If the allegations are excluded under this policy, there shall be no duty to defend such **CLAIM**.

WE are not obligated to pay any **DAMAGES** or **CLAIM EXPENSE** or defend any suit after the applicable limits of **OUR** liability have been exhausted by payment of **DAMAGES** or **CLAIM EXPENSE**.

WE have the right, but no duty, to appeal any judgment.

YOU, except at **YOUR** own cost and for **YOUR** own account, will not:

1. make any payment;
2. admit any liability;
3. settle any **CLAIM**;

4. assume any obligation; or
 5. incur any expense
- without **OUR** written consent.

If **YOU** give **US** a specific written request at the time a **CLAIM** is first made, **YOU** may select one of **OUR** panel of Employment Law attorneys.

SUPPLEMENTAL PAYMENTS

WE will pay, in addition to **OUR** Limits of Liability:

1. All costs taxed against **YOU** in any suit **WE** defend.
2. Interest only on that part of any judgment which does not exceed **OUR** Limit of Liability, which accrues after the entry of the judgment and before **WE** have paid, offered to pay or deposited in court that part of the judgment that does not exceed **OUR** Limit of Liability.
3. Premium on appeal bonds required in any suit **WE** defend and the cost of attachment or similar bonds.
4. Up to \$500 to each of **YOU** for each day or part of the day for **YOUR** attendance at a trial, hearing, arbitration proceeding, mediation or any other Alternative Dispute Resolutions at which **WE** request **YOUR** attendance. The maximum amount payable by **US** during the **POLICY PERIOD** shall not exceed \$5,000 in the aggregate. The **DEDUCTIBLE** provision of this policy will not apply to the expenditures **WE** incur under this provision.

TERRITORY

This policy applies to **EMPLOYMENT PRACTICES** which happen anywhere in the world, provided the **CLAIM** is first made and the suit is brought within the United States, its possessions and its territories or Puerto Rico under the substantive law of the United States of America (both federal and state), its possessions and its territories or Puerto Rico.

DEFINITIONS

Whenever used in this policy, the following words have these meanings:

1. **BODILY INJURY**—means injury to the human body, sickness or disease or illness sustained by any person, including resulting death at any time. **BODILY INJURY** does not include mental anguish related to **EMPLOYMENT PRACTICES**.

2. **CLAIM(S)**—means an oral or written notice from any **EMPLOYEE, LEASED WORKER, TEMPORARY WORKER**, volunteer or applicant for employment by **YOU** that it is their intention to hold **YOU** responsible for any **EMPLOYMENT PRACTICES**. **CLAIM(S)** also means **YOUR** knowledge of circumstances which could reasonably be expected to give rise to such notice. **YOU** must tell us of such **CLAIMS** or circumstances in writing during the **POLICY PERIOD** or Extended Reporting Period, if applicable. Notice includes, but is not limited to, service of suit, institution of arbitration proceedings or Alternative Dispute Resolutions. **CLAIMS** will also include **OUR** obligation to defend **YOU** for any civil proceeding in which fact finding will take place when it is the alleged result of **EMPLOYMENT PRACTICES** to which this policy applies. This includes any administrative proceedings established under applicable federal, state or local laws as may be applicable to **EMPLOYMENT PRACTICES**.

3. **CLAIM EXPENSE**—means expenditures including, but not limited to:
 - a. all expense of lawyers **WE** are required by law to pay to defend **YOU**;
 - b. costs of investigations;
 - c. experts;
 - d. court costs; and
 - e. other similar expenses **WE** incur in the investigation, adjustment, defense or appeal of a **CLAIM** or suit.

CLAIM EXPENSE does not include:

- (1) salary, charges or expenses of **OUR** regular **EMPLOYEES**; or
- (2) payments made under the Supplemental Payments provision of this policy.

4. **DAMAGES**—means a monetary judgment, award or settlement which **YOU** are legally obligated to pay arising from a covered **CLAIM**. **DAMAGES** include punitive damages, exemplary damages or any damages which are a multiple of compensatory damages awarded against **YOU**, including double or treble damages unless uninsurable under the applicable law most favoring coverage for such damages.

DAMAGES do not include:

- a. Civil or criminal fines, sanctions, restitution or penalties, whether pursuant to any civil or criminal law or statute;

- b. Amounts paid to **YOU** as fees, costs or expenses for services performed which are to be reimbursed or discharged as part of the judgment or settlement;
- c. Taxes;
- d. Equitable relief, declaratory relief or any other relief or recovery that is not seeking monetary judgment, award or settlement; or
- e. Any fees, costs or expenses, including but not limited to claimant/plaintiff attorney fees, related to equitable relief, injunctive relief, declaratory relief or any other relief or recovery that is not seeking a monetary judgment, award or settlement.

However, **DAMAGES** do include fees, costs and expenses related to any service of suit, institution of arbitration proceedings, alternative dispute resolution, civil proceedings in which fact finding will take place or administrative proceedings established under federal, state or local law as described in Definition 2. **CLAIM(S)** of the **DEFINITIONS** section of the policy.

- 5. **DEDUCTIBLE**—means the amount **YOU** must pay for **DAMAGES** and **CLAIM EXPENSE**.
- 6. **EMPLOYEE**—means a person:
 - a. employed by **YOU** for wages or salary, or formerly employed by **YOU** for wages or salary, but only for **CLAIMS** resulting from **EMPLOYMENT PRACTICES** committed within the scope of their employment by **YOU**;
 - b. who is a current or former member of **YOUR** board of directors;
 - c. who is a **TEMPORARY WORKER**, part time employee or volunteer, but only for **CLAIMS** resulting from **EMPLOYMENT PRACTICES** committed within the scope of their employment by **YOU**; or
 - d. who is an independent contractor pursuant to a written independent contractor agreement.
- 7. **EMPLOYMENT PRACTICES**—means any of the following actual or alleged practices:
 - a. wrongful refusal to employ an applicant for employment;
 - b. wrongful failure to promote or wrongful deprivation of career opportunity;
 - c. wrongful demotion, negligent evaluation, negligent reassignment or wrongful discipline;

- d. wrongful termination of employment, including retaliatory or constructive discharge;
- e. employment-related misrepresentation;
- f. harassment, coercion, discrimination or humiliation as a consequence of race, color, creed, national origin, marital status, medical condition, gender, age, physical appearance, physical and/or mental impairments, pregnancy, sexual orientation or sexual preference or any other protected class or characteristic established by any applicable federal, state or local statute;
- g. oral or written publication of material that slanders, defames, libels or violates or invades a right of privacy;
- h. **RETALIATION**; or
- i. **SEXUAL HARASSMENT**;

which is directed against any of **YOUR EMPLOYEES, LEASED WORKERS, TEMPORARY WORKERS, volunteers** or any applicant for employment by **YOU** and for which a **CLAIM**, suit, remedy or action is brought by any of **YOUR EMPLOYEES, LEASED WORKERS, TEMPORARY WORKERS, volunteers** or any applicant for employment by **YOU** and for which remedy is sought under EEOC, any federal, state or local statutory or common civil employment law.

- 8. **LEASED WORKER**—means a person leased to **YOU** by a labor-leasing firm under an agreement between **YOU** and the labor-leasing firm, to perform duties related to the conduct of **YOUR** business. **LEASED WORKER** does not include **TEMPORARY WORKER**.
- 9. **NAMED INSURED**—means the person, entity or organization named in Item 1. of the Declarations.
- 10. **POLICY PERIOD**—means the period of time stated in Item 2. of the Declarations or any shorter period resulting from policy cancellation.
- 11. **POLLUTANTS**—means any solid, liquid, gaseous, or thermal irritant or contaminant including smoke, vapor, soot, fumes, acid, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.
- 12. **RETALIATION**—means any actual or alleged adverse employment action by **YOU** against **YOUR EMPLOYEES, LEASED WORKERS, TEMPORARY WORKERS, volunteers** or any applicant for employment by **YOU** because they:

- a. oppose or report any alleged unlawful practice by any of **YOU**;
 - b. testify, assist or participate in any manner in an investigation or proceeding regarding any alleged unlawful practice by any of **YOU**; or
 - c. exercise a right protected by law.
13. **RETROACTIVE DATE**—means the date specified in the Declarations. This policy shall not apply to any **CLAIM** arising from an **EMPLOYMENT PRACTICE** which occurred prior to this date. If the term “Unlimited” is specified in the Declarations, it means that there is no time limitation of coverage for **YOU** based upon when the **EMPLOYMENT PRACTICES** occurred.
14. **SEXUAL HARASSMENT**—means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:
- a. submission to such conduct is made, either explicitly or implicitly, a term and condition of an individual’s employment;
 - b. submission to, or rejection of, such conduct is used as the basis for employment decisions affecting an individual; or
 - c. such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive work environment.
15. **SUBROGATION EXPENSES**—means expenditures including, but not limited to:
- a. all expense of lawyers **WE** are required by law to pay to defend **YOU**;
 - b. costs of investigations;
 - c. experts;
 - d. court costs; and
 - e. other similar expenses **WE** incur in the subrogation process.
16. **SUBSIDIARY**—means any business enterprise in which the **NAMED INSURED** owns more than fifty percent (50%) interest or fifty percent (50%) interest and voting control.
17. **TEMPORARY WORKER**—means a person who is furnished to **YOU** to substitute for a permanent **EMPLOYEE** on leave or to meet seasonal or short-term workload conditions.
18. **WE, US** and **OUR**—means the Company providing this insurance.
19. **YOU** and **YOUR**—means Insured and includes:
- a. the **NAMED INSURED**;
 - b. the entity named in the application that forms a part of this policy, but only for **CLAIMS** resulting from **EMPLOYMENT PRACTICES** committed within the scope of their employment by the **NAMED INSURED**;
 - c. any partnership, professional corporation, professional association, limited liability corporation or limited liability partnership:
 - (1) who becomes a partner, stockholder or **EMPLOYEE** of the **NAMED INSURED** during the **POLICY PERIOD**, but only for **CLAIMS** resulting from **EMPLOYMENT PRACTICES** committed within the scope of their employment by the **NAMED INSURED**; or
 - (2) who was formerly a partner, stockholder or **EMPLOYEE** of the **NAMED INSURED**, but only for **CLAIMS** that result from **EMPLOYMENT PRACTICES** committed within the scope of their employment by the **NAMED INSURED**;
 - d. any **EMPLOYEE** but only for work done within the scope of their employment for the **NAMED INSURED**;
 - e. the estate, heirs, executors, administrators, assigns and legal representatives of anyone listed in a., b., c. or d. above in the event of their death, incapacity, insolvency or bankruptcy, but only to the extent that they would otherwise be provided coverage under this policy;
 - f. a lawful spouse of a partner, stockholder or **EMPLOYEE** of the **NAMED INSURED**, but only for **CLAIMS** resulting from **EMPLOYMENT PRACTICES** committed by the partner, stockholder or **EMPLOYEE** within the scope of their employment by the **NAMED INSURED**; or
 - g. a **SUBSIDIARY**, but only if:
 - (1) it is acquired during the **POLICY PERIOD**, and the increase in the number of **YOUR EMPLOYEES** does not exceed twenty percent (20%) (compared to the number of **EMPLOYEES** at inception of the policy) due to the acquisition of the new business enterprise; or

- (2) **WE** specifically endorse the policy to include the new business enterprise.

EXCLUSIONS

This policy does not apply:

1. to any **CLAIM** based upon or arising out of any criminal or fraudulent acts committed by **YOU**. However, **WE** will defend such **CLAIM** until a judgment or other final adjudication by a trial court, jury or arbitration establishes that an **EMPLOYMENT PRACTICE** was criminal or fraudulent;
2. to any **CLAIM** arising out of **BODILY INJURY**, sickness or death of any person or damage to or loss of any tangible property;
3. to any **CLAIM** based on or arising out of **YOUR** capacity as an officer, director, partner, shareholder or **EMPLOYEE** of any entity other than the **NAMED INSURED**;
4. to any **CLAIM** arising out of **EMPLOYMENT PRACTICES** from services or advice rendered by **YOU** in connection with any business enterprise not shown on the Declarations;
5. to any **CLAIM** arising out of any circumstances due to nuclear reaction, radiation or contamination, regardless of cause;
6.
 - a. to any **CLAIM** arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **POLLUTANTS** at any time;
 - b. any loss, cost or expense arising out of any:
 - (1) request, demand or order that **YOU** test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize, or in any way respond to or assess the effects of **POLLUTANTS**; or
 - (2) **CLAIM** or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of **POLLUTANTS**;
7. to any **CLAIM** based on or arising out of **YOUR** capacity as a fiduciary under the Employee Retirement Income Security Act of 1974, its amendments and any regulation or order issued pursuant thereto, or to any other employee benefit plan;
8. to any circumstances for which **YOU** or **WE** may be held liable under the National Labor Relations Act of 1938 (NLRA), the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), the Occupational Safety and Health Act (OSHA), the Worker Adjustment and Retraining Notification Act (WARN), Social Security, any workers' compensation, unemployment compensation or disability benefits law or under any similar law. This exclusion shall not apply to any **CLAIM** arising from or in consequence of any actual or alleged retaliatory treatment of the claimant by **YOU** on account of the claimant's exercise of rights under such laws;
9. to any **CLAIM** or circumstance for which **YOU** or **WE** may be held liable arising out of violations of the Fair Labor Standards Act or any state or common law wage or hour law including, but not limited to, laws governing minimum wages, hours worked, overtime compensation and including any record keeping and reporting of records. This exclusion includes actions or **CLAIMS** brought by or on behalf of individuals or agencies seeking wages, fines, penalties, taxes, disgorgement or other affirmative relief or compensation, but does not include **CLAIMS** based on the Equal Pay Act or **RETALIATION**;
10. to any **CLAIM** arising from a breach of any express contract of employment or any express obligation to make payments in the event of termination of employment. However, **WE** will pay **CLAIM EXPENSES** only, in excess of the amount of the **DEDUCTIBLE** and any Coinsurance Percentage for **CLAIMS** first made against **YOU** and reported to **US** in writing during the **POLICY PERIOD** or Extended Reporting Period, if applicable, alleging breach of any express contract of employment or any express obligation to make payments in the event of termination of employment. This **CLAIM EXPENSE** is part of and not in addition to the Limits of Liability stated on the Declarations.

WE will not be liable to pay **DAMAGES**, wages or salary, fines, penalties, taxes, compensation including severance pay, disgorgements or other similar relief or plaintiff's attorney fees, costs or expenses in connection with such **CLAIMS**;
11. to any **CLAIM** arising from an obligation to pay **DAMAGES** by reason of the assumption of liability in any contract or agreement. This exclusion does not apply to liability for **DAMAGES** that **YOU** would have in the absence of the contract or agreement;

12. to any **CLAIM** arising from costs of complying with physical modifications to **YOUR** premises or any changes to **YOUR** usual business operations mandated by the Americans with Disabilities Act of 1990 including any amendments or similar federal, state or local law;
13. to any **CLAIM** arising from lockout, strike, picket line, related worker replacement(s) or other similar actions resulting from labor disputes or labor negotiations; or
14. to any **CLAIM** based upon or arising out of:
 - a. past **EMPLOYMENT PRACTICES** acts of a **SUBSIDIARY**, prior to the date such business enterprise became a **SUBSIDIARY** of the **NAMED INSURED**;
 - b. past **EMPLOYMENT PRACTICES** acts of a **SUBSIDIARY** acquired during the **POLICY PERIOD**, prior to the date such business enterprise became a **SUBSIDIARY** of the **NAMED INSURED**; or
 - c. **EMPLOYMENT PRACTICES** acts of a **SUBSIDIARY** occurring after the date such business enterprise ceases to be a **SUBSIDIARY** of the **NAMED INSURED**.

- b. persons or organizations who sustain **DAMAGES** payable under this policy; and/or
- c. suits brought on account of coverage afforded by the policy,

OUR liability is limited as follows:

1. The Limit of Liability stated in Item 4.(A) of the Declarations is the limit of **OUR** liability for all **DAMAGES** and **CLAIM EXPENSE** arising out of each **CLAIM** first made and reported in writing during the **POLICY PERIOD** or Extended Reporting Period, if any.
2. The Limit of Liability stated in Item 4.(B) of the Declarations is subject to the above provision respecting each **CLAIM** and is the maximum limit of **OUR** liability for each **POLICY PERIOD**. In no event will **OUR** total Limit of Liability be increased by any Extended Reporting Period.
3. **CLAIM EXPENSE** will be subtracted from the Limits of Liability first as it is incurred for each **CLAIM**. The remaining amount will be the amount available to pay **DAMAGES**.
4. Subject to the Limits of Liability, **WE** will only be liable to pay **DAMAGES** and **CLAIM EXPENSE** in excess of the **DEDUCTIBLE** stated in Item 5. of the Declarations, and in accordance with the Coinsurance Percentage stated in Item 6. of the Declarations, for each and every **CLAIM**. Each of **YOU** under the policy is individually liable for the payment of the **DEDUCTIBLE** and/or Coinsurance Percentage. In the event that **WE** expend funds for **DAMAGES** or **CLAIM EXPENSE** on **YOUR** behalf, **YOU** will reimburse **US** for such expenditures up to the amount of the **DEDUCTIBLE** and/or Coinsurance Percentage shown in the Declarations. Reimbursement of the **DEDUCTIBLE** and/or Coinsurance Percentage will be due within sixty (60) days from the date **WE** bill **YOU**.
5. One or more **CLAIMS** based on or arising out of the same **EMPLOYMENT PRACTICE** or a series of related **EMPLOYMENT PRACTICES** of one or more of **YOU** will be considered a single **CLAIM**. Unless otherwise endorsed, the **CLAIM** will be subject to the Limit of Liability in effect at the time such **CLAIM** was first reported to **US** in writing. Only one **DEDUCTIBLE** will apply to such **CLAIM**.

INNOCENT INSURED PROTECTION

Whenever coverage under any provision of this policy would otherwise be excluded, suspended or lost because of:

1. **EXCLUSIONS** 1. relating to any **CLAIM** based upon or arising out of any fraudulent or criminal **EMPLOYMENT PRACTICES** committed by **YOU**; or
2. concealment of a **CLAIM** by any of **YOU**,

WE agree that the coverage as would be afforded by this policy will apply to each of **YOU** who did not personally commit or participate in the **EMPLOYMENT PRACTICES** or agree to the concealment.

For coverage to apply, **YOU** must notify **US** of the **EMPLOYMENT PRACTICES** or concealment as soon as **YOU** first become aware of them.

LIMITS OF LIABILITY

Regardless of the number of:

- a. **YOU** who are insured under the policy;

NOTIFICATION

1. If during the **POLICY PERIOD** or the Extended Reporting Period, if applicable:

- a. **YOU** receive written or oral notice from any party that it is the intention of such party to hold **YOU** responsible for any **EMPLOYMENT PRACTICES**; or
- b. **YOU** become aware of circumstances which could reasonably be expected to give rise to such notice,

then **YOU** will tell **US** in writing as soon as practicable, but no later than the end of the **POLICY PERIOD** or Extended Reporting Period, if applicable. Any subsequent **CLAIM** made against **YOU** arising out of such **EMPLOYMENT PRACTICES** shall be deemed to have been made during the **POLICY PERIOD** or Extended Reporting Period, if applicable. No coverage for such **CLAIM** shall exist under any subsequent policy written by **US**. However, if the renewal policy is written by **US**, **YOU** will have sixty (60) days after the expiration date of this policy to report any **CLAIM** first made during this **POLICY PERIOD**.

2. In the event of any **CLAIM** occurring, written notice to **US** will be given by the person or firm(s) shown under Item 1. of the Declarations. Notice will be deemed to be received if sent by prepaid mail properly addressed to the address shown in Item 8. of the Declarations.

INSURED'S DUTIES IN THE EVENT OF CLAIM OR SUIT

1. In the event of a **CLAIM**, the **NAMED INSURED** must give **US** written notice of:
 - a. the specific **EMPLOYMENT PRACTICES**; and
 - b. the injury or damage which has or may result from the **EMPLOYMENT PRACTICES**; and
 - c. the names and addresses of the claimants or potential claimants; and
 - d. the circumstances by which **YOU** first became aware of such **EMPLOYMENT PRACTICES**.
2. If **CLAIM** is made or suit is brought against **YOU**, **YOU** will immediately forward to **US** every demand, notice, summons or other process received by **YOU** or **YOUR** representative.
3. **WE** will have full discretion in the handling of any **CLAIM**, and **YOU** will give full information and assistance as **WE** may reasonably require. **YOU** will cooperate with **US** and, at **OUR** request, consent to being examined and questioned by **OUR** representative, under oath, if necessary. At **OUR** request, **YOU** will

attend hearings, depositions and trials and will assist in effecting settlement, securing and giving evidence, and obtaining the attendance of witnesses. **YOU** will cooperate in the conduct of suits as well as in giving written statements to **OUR** representatives and defense counsel.

EXTENDED REPORTING PERIOD

Only the **NAMED INSURED** can exercise the option to purchase one of the Supplemental Extended Reporting Periods described in Paragraph 3. of this provision.

1. One or more Extended Reporting Periods described below will be provided if the policy is canceled or non-renewed or if **WE** renew or replace coverage with insurance that provides coverage on other than a Claims Made basis.
2. A Basic Extended Reporting Period is automatically provided without additional charge. This period begins at the end of the **POLICY PERIOD** and lasts for sixty (60) days. The Basic Extended Reporting Period does not apply to **CLAIMS** covered under any subsequent policy.
3. In addition, the **NAMED INSURED** may purchase one of the Supplemental Extended Reporting Periods described below if **YOU** are in compliance with all the terms and conditions of this policy:
 - a. A twelve (12) month Supplemental Extended Reporting Period for seventy-five percent (75%) of the full annual premium of this policy;
 - b. A twenty-four (24) month Supplemental Extended Reporting Period for one hundred twenty-five percent (125%) of the full annual premium of this policy; or
 - c. A thirty-six (36) month Supplemental Extended Reporting Period for one hundred seventy-five percent (175%) of the full annual premium of this policy.
4. Coverage for a Supplemental Extended Reporting Period must be added by endorsement for which an additional premium charge must be paid. Such period starts sixty (60) days after the end of the **POLICY PERIOD**.
5. The right to purchase a Supplemental Extended Reporting Period will terminate unless:
 - a. **WE** receive a written request for a Supplemental Extended Reporting Period; and

b. the additional premium is paid

within sixty (60) days of the end of the **POLICY PERIOD**.

The **NAMED INSURED'S** request must specify the length of the Supplemental Extended Reporting Period desired. Once in effect, Extended Reporting Periods may not be canceled.

6. An Extended Reporting Period does not extend the **POLICY PERIOD** or change the scope of coverage provided. Subject otherwise to the policy's terms, Limits of Liability, exclusions and conditions, the policy is extended to apply to **CLAIMS** first made against **YOU** and reported to **US** in writing during the Basic Extended Reporting Period or, if purchased, the Supplemental Extended Reporting Period, but only for **CLAIMS** due to **EMPLOYMENT PRACTICES** which happened on or after the **RETROACTIVE DATE** and on or before the expiration of the **POLICY PERIOD**.
7. Extended Reporting Periods do not reinstate or increase the policy's Limits of Liability. **CLAIMS** which are first made and reported during the Basic Extended Reporting Period or the Supplemental Extended Reporting Period, if it is in effect, will be deemed to have been made on the last day of the **POLICY PERIOD**.

CONDITIONS

1. **CANCELLATION**. This policy may be canceled by the **NAMED INSURED** by surrendering the policy to **US** or any of **OUR** authorized agents or by mailing written notice to **US** stating when the cancellation is to be effective. **WE** may cancel this policy only for non-payment of premium by mailing to the **NAMED INSURED** at the address shown on the Declarations a written notice stating when, not less than ten (10) days thereafter, such cancellation shall be effective.

The mailing of notice will be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation stated in the notice will become the end of the **POLICY PERIOD**. Delivery of written notice either by the **NAMED INSURED** or by **US** will be equivalent to mailing.

If the **NAMED INSURED** cancels, the refund will be the customary short rate proportion. **WE** will make the premium refund as soon as practicable after the date of cancellation. However, the premium refund is not a condition of cancellation.

Notice of cancellation will only be sent to the **NAMED INSURED** and will serve as notice to all of **YOU**.

2. **NONRENEWAL**. If **WE** do not renew this policy, **WE** will mail written notice to the **NAMED INSURED** at least sixty (60) days before the end of the **POLICY PERIOD**.
3. **ASSIGNMENT**. Assignment of interest under this policy will not bind **US** unless **WE** endorse the policy in writing assigning **YOUR** interest to another party.
4. **CHANGES**. The terms of this policy will not be waived or changed except by endorsement issued by **US** and made a part of this policy.
5. **MERGERS AND ACQUISITIONS**. All mergers and acquisitions with other firms occurring throughout the **POLICY PERIOD** must be reported to **US** in writing within sixty (60) days of the merger or acquisition, or the next anniversary of this policy, whichever is sooner. **WE** shall have the right to adjust the premium, terms, conditions and exclusions to reflect any shift in exposure created by such merger or acquisition. However, this condition does not apply to Definition 19. **YOU** and **YOUR**, Item g.(1).

If during the **POLICY PERIOD**:

- a. the **NAMED INSURED** merges into or consolidates with another entity such that the **NAMED INSURED** is not the surviving entity; or
- b. another entity, person or group of persons or entities, acting in concert acquires securities or voting rights which result in ownership or voting control by the other entity(ies) or person(s) of more than fifty percent (50%) of securities, voting rights or ownership of the **NAMED INSURED**,

then coverage under this policy will continue until the later of:

- (1) expiration of the **POLICY PERIOD**; or
- (2) any subsequent Extended Reporting Period,

but only with respect to **CLAIMS** for **EMPLOYMENT PRACTICES** taking place prior to such merger, consolidation or acquisition. Any Extended Reporting Period endorsement shown in (2) above shall require premium payment in full and is considered fully earned premium upon inception of the Extended Reporting Period endorsement. Any **CLAIM** made during the Extended Reporting Period shall be deemed to have been made during the **POLICY PERIOD** in which the merger, consolidation or acquisition occurred.

6. **CONFLICTING STATUTES.** Any part of this policy which is in conflict with the statutes of the state in which this policy is issued is amended to conform to such statutes.

7. **SUBROGATION CLAUSE.** **YOU** will transfer to **US** **YOUR** rights of recovery against any other party for any **DAMAGES** **WE** have paid on **YOUR** behalf. **YOU** must do everything necessary to secure these rights and do nothing that would jeopardize them.

WE will not exercise **OUR** right to recover against any of **YOU** unless the **DAMAGES** result from any dishonest, fraudulent, criminal, malicious or intentional **EMPLOYMENT PRACTICES** committed by **YOU**.

Any amount recovered from subrogation shall be apportioned as follows:

Any amount recovered shall first, be used for repayment of **SUBROGATION EXPENSES**; second, to any **DAMAGES** and/or **CLAIM EXPENSE** paid by **US**; third, to any **DAMAGES** and **CLAIM EXPENSE** paid by an excess insurer on **YOUR** behalf; fourth, to any **DAMAGES** and **CLAIM EXPENSE** paid by any other primary insurer on **YOUR** behalf; and last, to repayment of **YOUR DEDUCTIBLE**.

8. **SEVERABILITY CLAUSE.** The application and any supplements or addendums, copies of which are attached to this policy, and the Declarations are part of this policy. They are to be considered as incorporated in and constituting part of this policy. The particulars and statements contained in the application and any supplements or addendums and the conditions and exclusions set forth in this policy will be construed as a separate agreement with each of **YOU**. By acceptance of this policy, **YOU** agree that the statements in the application are **YOUR** representations, that they shall be deemed material and that this policy is issued upon the truth of such representations. Nothing in this provision will be construed to increase **OUR** Limits of Liability as set forth in the Declarations.

9. **OTHER INSURANCE.** If **YOU** have other insurance which applies to **CLAIMS** reported under this policy, **WE** will be excess of the amount of the applicable **DEDUCTIBLE** and any other valid and collectible insurance whether such other insurance is primary, pro

rata, contributory, excess, contingent or any other basis, unless such other insurance is written only as specific excess insurance over the Limit of Liability provided in this policy.

If a loss occurs involving two or more policies, each of which provides that its insurance will be excess, then each policy will contribute on a pro rata basis. This means that **WE** will pay no more than **OUR** percentage of the total amount of the insurance covering the **CLAIM**, less the **DEDUCTIBLE**. For example:

The limit of coverage under this policy is \$100,000. Another insurance policy with a limit of \$300,000 also covers a **CLAIM** covered by this policy. **WE** will not pay more than twenty-five percent (25%) ($\$100,000/\$400,000$) of the **DAMAGES** and **CLAIM EXPENSE**, less the **DEDUCTIBLE**.

10. **ACTION AGAINST US.** No action will lie against **US** unless **YOU** have fully complied with all the terms and Conditions of this policy prior to bringing the action.

11. **BANKRUPTCY.** In the event of **YOUR** bankruptcy or insolvency, **WE** will not be relieved of **OUR** obligations under the terms and conditions of this policy. In the event of **YOUR** bankruptcy or insolvency, **YOU** will notify **US** within sixty (60) days of the date of filing.

12. **SOLE AGENT.** By acceptance of this policy, the **NAMED INSURED** agrees to act on **YOUR** behalf with respect to:

- a. exercising the option to purchase an Extended Reporting Period;
- b. the giving and receiving of notice of **CLAIMS** or cancellation; and
- c. the payment of premiums that may become due under this policy.

Each of **YOU** agree that the **NAMED INSURED** will act on **YOUR** behalf.

13. **PREMIUM.** All premiums for this policy shall be computed in accordance with **OUR** rules, rates, rating plans, premiums and minimum premiums applicable to the insurance afforded herein.