

Renewal of Number



SCOTTSDALE INSURANCE COMPANY®

Policy Number

EES

Home Office:

One Nationwide Plaza • Columbus, Ohio 43215

Administrative Office:

8877 North Gainey Center Drive • Scottsdale, Arizona 85258

1-800-423-7675

A STOCK COMPANY

EMPLOYMENT PRACTICES LIABILITY POLICY DECLARATIONS

THIS POLICY COVERS ONLY CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR, IF ELECTED, THE EXTENDED REPORTING PERIOD AND REPORTED TO THE INSURER PURSUANT TO THE TERMS AND CONDITIONS OF THE POLICY. PLEASE READ THIS POLICY CAREFULLY.

THE LIMITS OF LIABILITY AVAILABLE TO PAY INSURED LOSS SHALL BE REDUCED BY AMOUNTS INCURRED FOR DEFENSE COSTS UNLESS OTHERWISE PROVIDED HEREIN. AMOUNTS INCURRED FOR DEFENSE COSTS AND LOSS SHALL ALSO BE APPLIED AGAINST THE RETENTION AMOUNTS.

TERMS THAT APPEAR IN BOLDFACE CAPS HAVE SPECIAL MEANING. PLEASE REFER TO THE DEFINITIONS SECTION OF THIS POLICY.

<p>Item 1. NAMED INSURED and Mailing Address:</p>
<p>Principal Address, if different from mailing address:</p>
<p>Agent Name and Address: Euclid Executive Liability Managers 234 Spring Lake Drive Itasca, IL 60143 Agent Number: 12545</p>
<p>Item 2. POLICY PERIOD: From to 12:01 A.M. Standard Time at Principal Address shown above.</p>
<p>Item 3. Limits of Liability:</p> <p>a. \$ each EMPLOYMENT PRACTICES CLAIM</p> <p>b. \$ each THIRD-PARTY CLAIM (applicable only if THIRD-PARTY Coverage is elected)</p> <p>c. \$ maximum aggregate for the POLICY PERIOD</p> <p>THIRD-PARTY Coverage Elected: <input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Item 4. Retention:</p> <p>a. \$ each EMPLOYMENT PRACTICES CLAIM</p> <p>b. \$ each THIRD-PARTY CLAIM</p>
<p>Item 5.</p> <p>PENDING AND PRIOR LITIGATION DATE:</p> <p>CONTINUITY DATE:</p>
<p>Item 6. Premium: \$</p>
<p>Item 7. Extended Reporting Period: Twelve (12) months in consideration of 150% of the premium as provided in the EXTENDED REPORTING PERIOD section of the POLICY.</p>

Item 8. Endorsements Effective at Inception of POLICY:

UTS COVPG - (12-09) Cover Page

UTS-9g (5-96) Service Of Suit Clause

Item 9. Notice of CLAIM shall be given to: Scottsdale Insurance Company

Claims Department

Professional Liability Unit

8877 North Gainey Center Drive, Scottsdale, AZ 85258

These Declarations, together with the **APPLICATION**, this **POLICY**, and any written endorsement(s) attached thereto, shall constitute the contract between the **INSURED** and the **INSURER**.

SPECIMEN

EMPLOYMENT PRACTICES LIABILITY INSURANCE POLICY

In consideration of the payment of premium, in reliance on the **APPLICATION** and subject to the Declarations, and terms and conditions of this **POLICY**, the **INSURER** and the **INSUREDS** agree as follows:

A. INSURING AGREEMENT

The **INSURER** shall pay the **LOSS** of the **INSUREDS** which the **INSUREDS** have become legally obligated to pay by reason of an **EMPLOYMENT PRACTICES CLAIM** first made against the **INSUREDS** during the **POLICY PERIOD** or, if purchased, the Extended Reporting Period, and reported to the **INSURER** pursuant to the **NOTIFICATION** section of the **POLICY**, for an **EMPLOYMENT PRACTICES WRONGFUL ACT** taking place prior to the end of the **POLICY PERIOD**.

In the event **THIRD-PARTY** Coverage is affirmatively elected in **Item 3.** of the Declarations, the **INSURER** shall pay the **LOSS** of the **INSUREDS** which the **INSUREDS** have become legally obligated to pay by reason of a **THIRD-PARTY CLAIM** first made against the **INSUREDS** during the **POLICY PERIOD** or, if purchased, the Extended Reporting Period, and reported to the **INSURER** pursuant to the **NOTIFICATION** section of the **POLICY**, for a **THIRD-PARTY WRONGFUL ACT** taking place prior to the end of the **POLICY PERIOD**.

B. TERRITORY

Coverage under this **POLICY** shall extend to **WRONGFUL ACTS** taking place or **CLAIMS** made anywhere in the world.

All premiums, limits, retentions, **LOSS** and other amounts under this **POLICY** are expressed and payable in the currency of the United States. If judgment is rendered, settlement is denominated or another element of **LOSS** under this **POLICY** is stated in a currency other than United States dollars, payment under this **POLICY** shall be made in United States dollars at the rate of exchange published in the Wall Street Journal on the date the judgment becomes final or payment of the settlement or other element of **LOSS** is due.

C. DEFINITIONS

Whenever used in this **POLICY**, the terms that appear below in **BOLDFACE CAPS** shall have the meanings set forth in this **DEFINITIONS** section of the **POLICY**. All definitions shall apply equally to the singular and plural forms of the respective words.

1. **APPLICATION** means all applications, including any attachments thereto, and all other information and materials submitted by or on behalf of the **INSUREDS** to the **INSURER** in connection with the **INSURER** underwriting this **POLICY** or any policy of which this **POLICY** is a renewal or replacement. All such applications, attachments, information, materials and documents are deemed attached to and incorporated into this **POLICY**.
2. **CLAIM** means any:
 - a. **EMPLOYMENT PRACTICES CLAIM**; or
 - b. **THIRD-PARTY CLAIM**.
3. **CONTINUITY DATE** means the Continuity Date set forth in **Item 5.** of the Declarations.
4. **DEFENSE COSTS** means reasonable and necessary legal costs, charges, fees and expenses incurred by any of the **INSUREDS** in defending **CLAIMS** and the premium for appeal, attachment or similar bonds arising out of covered judgments, but with no obligation to furnish such bonds

and only for the amount of such judgment that is up to the applicable Limit of Liability. **DEFENSE COSTS** do not include salaries, wages, fees, overhead or benefit expenses of or associated with officers or **EMPLOYEES** of the **INSURED ENTITY**.

5. **EMPLOYEE** means any person who was, now is or shall become:
- a. a full-time or part-time employee of the **INSURED ENTITY**, including voluntary, seasonal, and temporary employees;
 - b. any individual who applies for employment with the **INSURED ENTITY**;
 - c. any natural person who is a leased employee, but only to the extent such individual performs work or services for or on behalf of the **INSURED ENTITY**; and
 - d. any **INDEPENDENT CONTRACTOR**.

6. **EMPLOYMENT PRACTICES CLAIM** means:

- a. a written demand against an **INSURED** for damages or other relief;
- b. a civil, judicial, administrative, regulatory or arbitration proceeding or a formal governmental investigation against an **INSURED** seeking damages or other relief, commenced by the service of a complaint or similar pleading, including any appeal therefrom; or
- c. a civil proceeding against an **INSURED** before the Equal Employment Opportunity Commission or any similar federal, state or local governmental body, commenced by the filing of a notice of charges, investigative order or similar document;

brought by or on behalf of any **EMPLOYEE** as a result of an **EMPLOYMENT PRACTICES WRONGFUL ACT**.

EMPLOYMENT PRACTICES CLAIM does not include civil, judicial, administrative, regulatory or arbitration proceeding or formal investigation under the jurisdiction of the National Labor Relations Board or pursuant to the National Labor Relations Act or similar provisions of any common or statutory federal, state or local law against an **INSURED**.

7. **EMPLOYMENT PRACTICES WRONGFUL ACT** means any actual or alleged:

- a. violation of any common or statutory federal, state, or local law prohibiting any kind of employment-related discrimination;
- b. harassment, including any type of sexual or gender harassment as well as racial, religious, sexual orientation, pregnancy, disability, age, or national origin-based harassment, or unlawful workplace harassment, including bullying in the workplace and workplace harassment by any non-employee;
- c. abusive or hostile work environment;
- d. wrongful discharge or termination of employment, whether actual or constructive;
- e. breach of an actual or implied employment contract;
- f. wrongful deprivation of a career opportunity, wrongful failure or refusal to employ or promote, or wrongful demotion;
- g. employment-related defamation, libel, slander, disparagement, false imprisonment, misrepresentation, malicious prosecution, or invasion of privacy;
- h. wrongful failure or refusal to adopt or enforce workplace or employment practices, policies or procedures, solely as respects employment-related discrimination or harassment;
- i. wrongful discipline;

- j. employment-related wrongful infliction of emotional distress, mental anguish, or humiliation;
 - k. **RETALIATION**;
 - l. negligent evaluation; or
 - m. negligent hiring or negligent supervision of others in connection with a. through l. above, but only if employment-related and claimed by or on behalf of any **EMPLOYEE** and only if committed or allegedly committed by any of the **INSUREDS** in their capacity as such.
8. **INDEPENDENT CONTRACTOR** means any natural person who performs labor or service for the **INSURED ENTITY** on a full-time basis pursuant to a written contract or agreement, where such labor or service is under the exclusive direction of the **INSURED ENTITY**. The status of a natural person as an **INDEPENDENT CONTRACTOR** shall be determined as of the date of an alleged **WRONGFUL ACT**.
9. **INSURED ENTITY** means:
- a. the **NAMED INSURED**; and
 - b. any **SUBSIDIARY**.
10. **INSURED PERSONS** means all persons who were, now are or shall become:
- a. a director or officer of the **INSURED ENTITY**;
 - b. any **EMPLOYEE**; and
 - c. the functional equivalent of a director, officer or **EMPLOYEE** in the event the **INSURED ENTITY** is incorporated or domiciled outside the United States.
11. **INSURED** means:
- a. the **INSURED ENTITY** and includes any such organization as a debtor-in-possession or the bankruptcy estate of such entity under United States bankruptcy law or an equivalent status under the law of any other jurisdiction; and
 - b. any **INSURED PERSONS**.
12. **INSURER** means the insurance company providing this insurance.
13. **INTERRELATED WRONGFUL ACTS** means all **WRONGFUL ACTS** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of facts, circumstances, situations, events, transactions or causes.
14. **JOINT VENTURE ENTITY** means any entity in which the **NAMED INSURED**, or a **SUBSIDIARY** has an exact fifty percent (50%) ownership of the interests of such entity and where, pursuant to a written joint venture agreement, the **NAMED INSURED** or **SUBSIDIARY** solely controls the management and operations of such joint venture entity.
15. **LOSS** means the damages, judgments, settlements, front pay and back pay, pre-judgment or post judgment interest awarded by a court, and **DEFENSE COSTS** incurred by any of the **INSUREDS**. **LOSS** does not include:
- a. taxes, fines or penalties;
 - b. matters uninsurable under the laws pursuant to which this **POLICY** is construed;
 - c. punitive or exemplary damages, liquidated damages awarded by a court pursuant to a violation of the Equal Pay Act, the Age Discrimination in Employment Act or the Family Medical Leave Act, all as amended, or any rules or regulations promulgated thereunder, or similar provisions of any common or statutory federal, state or local law, or the multiple portion of

- any multiplied damage award, except to the extent that such punitive, exemplary, or liquidated damages or the multiple portion of any multiplied damage award are insurable under the internal laws of any jurisdiction which most favors coverage for such damages and which has a substantial relationship to the **INSUREDS**, the **INSURER**, this **POLICY** or the **CLAIM** giving rise to such damages;
- d. the cost of any remedial, preventative or other non-monetary relief, including without limitation any costs associated with compliance with any such relief of any kind or nature imposed by any judgment, settlement or governmental authority;
 - e. amounts owed under any actual or implied employment contract, partnership, stock or other ownership agreement, or any other type of contract;
 - f. disability, social security, workers compensation, medical insurance, retirement or pension benefit payments, or settlement amounts representing benefit payments;
 - g. the costs to modify or adapt any building or property to be accessible or accommodating, or to be more accessible or accommodating, to any disabled person;
 - h. the cost of creating or reinstating employment;
 - i. any amount owed as wages to any **EMPLOYEE**, other than front pay or back pay; or
 - j. any amount for which the **INSURED** is not financially liable or legally obligated to pay.
16. **NAMED INSURED** means the entity first named in **Item 1.** of the Declarations.
17. **PENDING AND PRIOR LITIGATION DATE** means the Pending and Prior Litigation Date set forth in **Item 3.3.** of the Declarations.
18. **POLICY** means, collectively, the Declarations, the **APPLICATION**, this policy form and any endorsements.
19. **POLICY PERIOD** means the period from the effective date and hour of the inception of this **POLICY** to the **POLICY** expiration date and hour as set forth in **Item 2.** of the Declarations, or its earlier cancellation date and hour, if any.
20. **RETALIATION** means any actual or alleged response of any of the **INSUREDS** to:
- a. the disclosure or threat of disclosure by an **EMPLOYEE** to a superior or to any governmental agency of any act by any of the **INSUREDS** where such act is alleged to be a violation of any federal, state, local or foreign law, whether common or statutory, or any rule or regulation promulgated thereunder;
 - b. the actual or attempted exercise by an **EMPLOYEE** of any right that such **EMPLOYEE** has under law, including rights under any worker's compensation law, the Family and Medical Leave Act, the Americans with Disabilities Act or any other law relating to employee rights;
 - c. the filing of any claim under the Federal False Claims Act or any similar federal, state, local or foreign "whistleblower" law or "whistleblower" provision of any law; or
 - d. any legally-protected **EMPLOYEE** work stoppage or slowdown.
21. **SPOUSE** means any natural person qualifying as a:
- a. spouse;
 - b. domestic partner;
 - c. registered domestic partner; or
 - d. party to a civil union

as may be recognized and defined under the provision of any applicable federal, state or local law.

22. SUBSIDIARY means:

a. any entity of which more than fifty percent (50%) of the outstanding securities representing the present right to vote for the election of such entity's directors or managers are owned by the **NAMED INSURED**, directly or indirectly, if such entity:

(1) was so owned on or prior to the inception date of this **POLICY**; or

(2) becomes so owned after the inception date of this **POLICY** and as set forth in **CONDITION 5. NEWLY MERGED, ACQUIRED OR FORMED ENTITIES** section of this **POLICY**; and

b. any **JOINT VENTURE ENTITY**:

(1) formed on or prior to the inception date of this **POLICY**; or

(2) formed after the inception date of this **POLICY** and as set forth in **CONDITION 5. NEWLY MERGED, ACQUIRED OR FORMED ENTITIES** section of this **POLICY**.

23. TAKEOVER means:

a. the acquisition by any person or entity of more than fifty percent (50%) of the outstanding securities of the **NAMED INSURED** representing the present right to vote for the election of directors; or

b. the merger or consolidation of the **NAMED INSURED** into another entity such that the **NAMED INSURED** is not the surviving entity.

24. THIRD-PARTY means any natural person who is a customer, vendor, service provider, client, or other business invitee of the **INSURED ENTITY**; provided, however, **THIRD-PARTY** shall not include any **EMPLOYEE**.

25. THIRD-PARTY CLAIM means:

a. a written demand against an **INSURED** for damages or other relief; or

b. a civil judicial, administrative or arbitration proceeding against an **INSURED** seeking damages or other relief, commenced by the service of a complaint or similar pleading, including any appeal therefrom;

brought by or on behalf of any **THIRD-PARTY** as a result of a **THIRD-PARTY WRONGFUL ACT**.

26. THIRD-PARTY WRONGFUL ACT means any actual or alleged:

a. harassment of a **THIRD-PARTY**, including but not limited to any type of sexual or gender harassment as well as racial, religious, sexual orientation, pregnancy, disability, age, or national origin-based harassment; or

b. discrimination against a **THIRD-PARTY**, including but not limited to any such discrimination on account of race, color, religion, age, disability or national origin.

27. WRONGFUL ACT means:

a. **EMPLOYMENT PRACTICES WRONGFUL ACT**; or

b. **THIRD-PARTY WRONGFUL ACT**.

D. EXCLUSIONS

The **INSURER** shall not be liable for **LOSS** on account of any **CLAIM**:

1. for actual or alleged bodily injury, sickness, disease or death of any person, or damage to or destruction of any tangible or intangible property including loss of use thereof, whether or not such property is physically injured; provided, however, this exclusion shall not apply to mental anguish, emotional distress or humiliation;
2. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
 - a. any **WRONGFUL ACT**, fact, circumstance or situation which has been the subject of any written notice given under any other policy of which this **POLICY** is a renewal or replacement or which it succeeds in time; or
 - b. any other **WRONGFUL ACT** whenever occurring which, together with a **WRONGFUL ACT** which has been the subject of such notice, would constitute **INTERRELATED WRONGFUL ACTS**;
3. for any actual or alleged violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, 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, all as amended, or any rules or regulations promulgated thereunder, or similar provisions of any common or statutory federal, state or local law; provided, however, this exclusion does not apply to any such **CLAIM** alleging violations of the Equal Pay Act or **RETALIATION**;
4. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
 - a. any actual or alleged violation of the Fair Labor Standards Act and any amendments thereto;
 - b. any actual or alleged violation of any federal, state or local law, rules, regulations or orders of the foregoing, promulgated thereunder, and any amendments thereto, governing or relating to the payment of wages, other earnings, tips or compensation, reimbursement of expenses, improper deductions, wage statements, overtime, on-call time, rest or meal periods, minimum wages or the classification of employees, or purported employees, for the purpose of determining their eligibility for compensation under such law(s), rule(s), regulation(s) or order(s); or
 - c. unfair business practices, unfair competition, violation of public policy, unjust enrichment or conversion relating to the payment of wages, other earnings, tips or compensation, reimbursement of expenses, improper deductions, wage statements, overtime, on-call time, rest or meal periods, minimum wages or the classification of employees, or purported employees, for the purpose of determining their eligibility for compensation;

However, this exclusion does not apply to any such **CLAIM** alleging violations of the Equal Pay Act or **RETALIATION**;
5. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, or in consequence of any **THIRD-PARTY WRONGFUL ACT** in any way involving unsolicited faxes, unsolicited electronic mail, unsolicited telephone calls or any other unsolicited communications. This exclusion shall include actual or alleged violations of Telephone Consumer Protection Act of 1991, Junk Fax Prevention Act of 2005, or CAN-SPAM Act of 2003, all as amended, or any rules, regulations or guidelines promulgated thereunder, or any similar local, state or federal law, including non-U.S. laws.
6. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any obligation the **INSURED** assumes in any contract or agreement other than an employment contract. This exclusion does not apply to liability for **LOSS** the **INSURED** would have in the absence of such contract or agreement;

7. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any dishonest, deliberately fraudulent or criminal act; provided, however this exclusion shall not apply unless and until there is a final judgment against such **INSURED** as to such conduct. If such excluded conduct is established through a final judgment, the **INSURED** shall reimburse the **INSURER** for any **DEFENSE COSTS**;
8. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any **WRONGFUL ACT** actually or allegedly committed subsequent to a **TAKEOVER**;
9. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
 - a. any **WRONGFUL ACT** committed prior to the date the **SUBSIDIARY** formed or subsequent to the date such entity ceased to be a **SUBSIDIARY**; or
 - b. any **WRONGFUL ACT** committed while an entity was a **SUBSIDIARY**, together with a **WRONGFUL ACT** actually or allegedly committed prior to the date the **SUBSIDIARY** formed, would constitute **INTERRELATED WRONGFUL ACTS**;
10. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
 - a. any prior or pending litigation or administrative or regulatory proceeding, demand letter or formal or informal governmental investigation or inquiry, including without limitation any investigation by the United States Department of Labor or the United States Equal Employment Opportunity Commission, filed or pending on or before the **PENDING AND PRIOR LITIGATION DATE**; or
 - b. any fact, circumstance, situation, transaction or event underlying or alleged in such litigation or administrative or regulatory proceeding, demand letter or formal or informal governmental investigation or inquiry, including any investigation by the United States Department of Labor or the United States Equal Employment Opportunity Commission;
11. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any **WRONGFUL ACT**, fact, circumstance, or situation which any of the **INSURED PERSONS** who were, now are, or shall be directors, officers, managers or supervisory employees, had knowledge of prior to the **CONTINUITY DATE** where such **INSURED PERSONS** had reason to believe at the time that such known **WRONGFUL ACT** could reasonably be expected to give rise to such **CLAIM**; or
12. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving, any actual or alleged responsibility, obligation or duty of any **INSURED** pursuant to any workers compensation, unemployment insurance, social security, disability benefits or pension benefits or similar law; provided, however, this exclusion shall not apply to any such **CLAIM** alleging **RETALIATION**.

No **WRONGFUL ACT** of one or more **INSUREDS** shall be imputed to any other **INSUREDS** for the purpose of determining the applicability of any of the above exclusions.

E. DEFENSE AND SETTLEMENT

1. It shall be the duty of the **INSURER** and not the duty of the **INSUREDS** to defend any **CLAIM**. Such duty shall exist even if any of the allegations are groundless, false or fraudulent. The **INSURER'S** duty to defend any **CLAIM** shall cease when the Limits of Liability have been exhausted by the payment of **LOSS** including **DEFENSE COSTS**.
2. The **INSURER** may make any investigation it deems necessary however, the **INSURER** will not settle or compromise a **CLAIM** or suit without the **INSURED'S** written consent. If consent is

refused and the **INSURED** elects to contest the **CLAIM** or continue legal proceedings, then the **INSURER'S** liability for the **CLAIM** will not exceed the amount for which the **CLAIM** could have been settled, and **DEFENSE COSTS** incurred up to the date of the **INSURED'S** refusal, plus seventy percent (70%) of all **LOSS** and **DEFENSE COSTS** incurred after the **INSURED'S** refusal to consent to a settlement offer acceptable to the **INSURER** and the claimant. In no event shall the **INSURER'S** liability under this **POLICY** for **LOSS** and **DEFENSE COSTS** exceed the remaining portion of the aggregate Limit of Liability. The **INSURED** shall be solely responsible for thirty percent (30%) of all **LOSS** in excess of the amount of the settlement offer acceptable to the **INSURER** and the claimant, and thirty percent (30%) of all **DEFENSE COSTS** incurred after the date of the **INSURED'S** refusal.

3. The **INSUREDS** agree not to settle or offer to settle any **CLAIM**, incur any **DEFENSE COSTS** or otherwise assume any contractual obligation or admit any liability with respect to any **CLAIM** without the prior written consent of the **INSURER**, such consent not to be unreasonably withheld. The **INSURER** shall not be liable for any settlement, **DEFENSE COSTS**, assumed obligation or admission to which it has not consented. The **INSUREDS** shall promptly send to the **INSURER** all settlement demands or offers received by any **INSURED** from the claimant(s).
4. The **INSUREDS** agree to provide the **INSURER** with all information, assistance and cooperation which the **INSURER** reasonably requests and agree that, in the event of a **CLAIM**, the **INSUREDS** will do nothing that shall prejudice the position of the **INSURER** or its potential or actual rights of recovery. The **INSURED'S** cooperation is a condition precedent to all rights under this **POLICY**.

F. LIMITS OF LIABILITY AND RETENTIONS

1. The liability of the **INSURER** shall apply only to that part of **LOSS** which is excess of the Retention amount, as shown in **Item 4.** of the Declarations. Such Retention shall be borne uninsured by the **INSUREDS** and at their own risk. If different parts of a single **CLAIM** are subject to different applicable Retentions, the applicable Retentions will be applied separately to each part of such **LOSS**, but the sum of such Retentions shall not exceed the largest applicable Retention.
2. As shown in **Item 3.** of the Declarations, the following Limits of Liability of the **INSURER** shall apply:
 - a. The amount set forth in **Item 3.a.** shall be the limit of liability for the payment of **LOSS** arising out of **each EMPLOYMENT PRACTICES CLAIM.**
 - b. The amount set forth in **Item 3.b.** shall be the limit of liability for the payment of **LOSS** arising out of **each THIRD-PARTY CLAIM** if **THIRD-PARTY** Coverage is affirmatively elected in **Item 3.** of the Declarations.
 - c. The amount set forth in **Item 3.c.** of the Declarations shall be the maximum aggregate limit of liability for the **POLICY PERIOD** and the Limits of Liability set forth in **3.a.** and **3.b.** shall be a part of and not in addition to the maximum aggregate limit of liability set forth in **Item 3.c.** for the **POLICY PERIOD.**
3. All **CLAIMS** arising out of the same **WRONGFUL ACT** and all **INTERRELATED WRONGFUL ACTS** shall be deemed to be a single **CLAIM**, and such **CLAIM** shall be deemed to have been made at the earliest of the following times, regardless of whether such date is before or during the **POLICY PERIOD:**
 - a. the time at which the earliest **CLAIM** involving the same **WRONGFUL ACT** or **INTERRELATED WRONGFUL ACTS** is first made; or
 - b. the time at which the **CLAIM** involving the same **WRONGFUL ACT** or **INTERRELATED WRONGFUL ACTS** shall be deemed to have been made pursuant to the **NOTIFICATION** section of the **POLICY.**

4. Payments of **LOSS** by the **INSURER** shall reduce the Limit(s) of Liability under this **POLICY**. **DEFENSE COSTS** are part of, and not in addition to, the Limit(s) of Liability, and payment of **DEFENSE COSTS** reduces the Limit(s) of Liability. If such Limit(s) of Liability are exhausted by payment of **LOSS**, the obligations of the **INSURER** under this **POLICY** are completely fulfilled and extinguished.

G. NOTIFICATION

1. The **INSUREDS** shall, as a condition precedent to their rights to payment under this **POLICY**, give to the **INSURER** written notice of any **CLAIM** made against the **INSUREDS** as soon as practicable, but in no event later than sixty (60) days after such **CLAIM** is first made against the **INSUREDS**, or the expiration of the **POLICY PERIOD**, whichever is later. If any **CLAIM** is first made against the **INSURED** during the Extended Reporting Period, if purchased, written notice to the **INSURER** must be given as soon as practicable, but in no event later than sixty (60) days after such **CLAIM** is first made against the **INSUREDS**, or the end of the Extended Reporting Period, whichever is earlier.
2. If, during the **POLICY PERIOD** or the Extended Reporting Period, any of the **INSUREDS** first becomes aware of a specific **WRONGFUL ACT** which may reasonably give rise to a future **CLAIM** covered under this **POLICY**, and if the **INSUREDS**, during the **POLICY PERIOD** or the Extended Reporting Period, if purchased, give written notice to the **INSURED** as soon as practicable of:
 - a. a description of the **WRONGFUL ACT** allegations anticipated;
 - b. the identity of the potential claimants;
 - c. the circumstances by which the **INSUREDS** first became aware of the **WRONGFUL ACT**;
 - d. the identity of the **INSUREDS** allegedly involved;
 - e. the consequences which have resulted or may result; and
 - f. the nature of the potential monetary damages and non-monetary relief; then any **CLAIM** made subsequently arising out of such **WRONGFUL ACT** shall be deemed to have been made at the time such written notice was received by the **INSURER**. No coverage is provided for fees, expenses and other costs incurred prior to the time such **WRONGFUL ACT** results in a **CLAIM**.
3. Notice to the **INSURER** shall be given to the address specified in **Item 9**. of the Declarations for this **POLICY**.

H. EXTENDED REPORTING PERIOD

1. If this **POLICY** is cancelled or is not renewed by the **INSURER**, for reasons other than non-payment of premium or if the **NAMED INSURED** elects to cancel or not to renew this **POLICY**, then the **NAMED INSURED** shall have the right, upon payment of an additional premium calculated at that percentage shown in **Item 7**. of the Declarations of the total premium for this **POLICY**, to purchase an extension of the coverage granted by this **POLICY** with respect to any **CLAIM** first made during the period of time set forth in **Item 7**. of the Declarations after the effective date of such cancellation or, in the event of a refusal to renew, after the **POLICY** expiration date, but only with respect to any **WRONGFUL ACT** committed before such date.
2. As a condition precedent to the right to purchase the Extended Reporting Period, the total premium for the **POLICY** must have been paid. Such right to purchase the Extended Reporting Period shall terminate unless written notice, together with full payment of the premium for the Extended Reporting Period, is received by the **INSURER** within thirty (30) days after the effective date of cancellation, or, in the event of a refusal to renew, within thirty (30) days after the **POLICY** expiration date. If such notice and premium payment is not so given to the **INSURER**, there shall be no right to purchase the Extended Reporting Period.

3. In the event of the purchase of the Extended Reporting Period, the entire premium shall be deemed earned at the commencement of the Extended Reporting Period.
4. The Extended Reporting Period shall not in any way increase or reinstate the limit of the **INSURER'S** liability under this **POLICY**.

I. **CONDITIONS**

1. **CANCELLATION**

By acceptance of this **POLICY**, the **INSUREDS** hereby confer to the **NAMED INSURED** the exclusive power and authority to cancel this **POLICY** on their behalf. The **NAMED INSURED** may cancel this **POLICY** in its entirety by surrender thereof to the **INSURER**, or by mailing written notice to the **INSURER** stating when thereafter such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation shall be the date the **INSURER** received such notice or any later date specified in the notice, and such effective date shall become the end of the **POLICY**. Delivery of such written notice shall be equivalent to mailing.

This **POLICY** may be cancelled by the **INSURER** only for nonpayment of premium, by mailing written notice to the **NAMED INSURED** stating when such cancellation shall be effective, such date to be not less than ten (10) days from the date of the written notice. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **POLICY PERIOD**. Delivery of such written notice by the **INSURER** shall be equivalent to mailing. If the foregoing notice period is in conflict with any governing law or regulation, then the notice period shall be deemed to be the minimum notice period permitted under the governing law or regulation.

If this **POLICY** is cancelled, the **INSURER** shall retain the pro rata proportion of the premium therefore. Payment or tender of any unearned premium by the **INSURER** shall not be a condition precedent to the effectiveness of cancellation.

2. **CHANGES AND ASSIGNMENT**

No person or organization shall have any right under this **POLICY** to join the **INSURER** as a party to any action against the **INSUREDS** to determine their liability, nor shall the **INSURER** be impleaded by the **INSUREDS** or their legal representative.

No change in, modification of, or assignment of interest under this **POLICY** shall be effective except when made by a written endorsement to this **POLICY** which is signed by an authorized representative of the **INSURER**.

3. **OTHER INSURANCE**

If any **LOSS** covered under this **POLICY** is covered under any other valid and collectable insurance, then this **POLICY** shall be specifically excess of and will not contribute with such other insurance, including but not limited to any such other insurance under which there is a duty to defend, unless such other insurance is specifically stated to be excess over the Limit of Liability of this **POLICY**.

4. **NEWLY MERGED, ACQUIRED OR FORMED ENTITIES**

This **POLICY** is issued and the premium computed on the basis of the information contained in the **APPLICATION**.

a. If, during the **POLICY PERIOD**, the **NAMED INSURED**:

- (1) merges with another entity such that the **NAMED INSURED** is the surviving entity; or
- (2) acquires or forms a **SUBSIDIARY** or **JOINT VENTURE ENTITY**;

and whose **EMPLOYEES** do not increase the total number of **EMPLOYEES** of the **INSURED ENTITY** at the time of merger, acquisition or formation by more than twenty-five percent (25%), then;

such entity shall be deemed an **INSURED ENTITY** if there is no other available coverage similar to this **POLICY**. No coverage will be provided under this **POLICY** for **WRONGFUL ACTS** committed prior to the date the entity was so merged, acquired or formed.

b. If, during the **POLICY PERIOD**, the **NAMED INSURED**:

(1) merges with another entity such that the **NAMED INSURED** is the surviving entity; or

(2) acquires or forms a **SUBSIDIARY** or **JOINT VENTURE ENTITY**;

and whose **EMPLOYEES** increase the total number of **EMPLOYEES** of the **INSURED ENTITY** at the time of merger, acquisition or formation by more than twenty-five percent (25%), then;

such entity will qualify as an **INSURED ENTITY** subject to the following:

- (a) The **NAMED INSURED** shall provide Notice to the **INSURER** within ninety (90) days of the merger, acquisition or formation of the entity.
- (b) Coverage under this provision is afforded only until the ninetieth (90th) day after merger, acquisition or formation of the entity that an **INSURED ENTITY** merged, acquired or formed, or the end of the **POLICY PERIOD**, whichever is earlier. However, such coverage under this ninety (90) day grace period will only apply if no other coverage similar to this **POLICY** is available to the newly merged, acquired or formed entity.
- (c) No coverage will be provided under this **POLICY** for **WRONGFUL ACTS** committed prior to Notice being provided to the **INSURER**.
- (d) The **NAMED INSURED** shall provide to the **INSURER** such information as the **INSURER** may request with regard to the newly merged, acquired or formed entity.
- (e) Upon receipt of such Notice and any applicable additional information, the **INSURER** may provide the **NAMED INSURED** with a quotation for coverage for such entity. If the **NAMED INSURED** fails within thirty (30) days following receipt of such quotation to pay any additional premium or agree to any additional coverage conditions as set forth in such quotation, coverage otherwise afforded by this section for such newly merged, acquired or formed entity shall terminate upon expiration of the aforementioned ninety (90) day coverage period. If the **INSURER** chooses not to provide a quote for such newly merged, acquired or formed entity, then any coverage afforded by this provision shall terminate ninety (90) days after merger, acquisition or formation of the entity.
- (f) Coverage does not apply to **WRONGFUL ACTS** of the newly merged, acquired or formed **INSURED ENTITY** taking place prior to the date it was merged, acquired or formed unless the **INSURER** endorses written consent for such coverage to this **POLICY**.

5. REPRESENTATIONS

It is warranted that the particulars and statements contained in the **APPLICATION** are the basis of this **POLICY** and are to be considered as incorporated into and constituting a part of this **POLICY**.

By acceptance of this **POLICY**, the **INSUREDS** agree that:

- a. the statements in the **APPLICATION** are their representations, that such representations shall be deemed material to the acceptance of the risk or the hazard assumed by the **INSURER** under this **POLICY**, and that this **POLICY** is issued in reliance upon the truth of such representations; and
- b. in the event the **APPLICATION**, including materials submitted or required to be submitted therewith, contains any misrepresentation or omission made with the intent to deceive, or contains any misrepresentation or omission which materially affects either the acceptance of the risk or the hazard assumed by the **INSURER** under this **POLICY**, this **POLICY**, shall be void ab initio with respect to any **INSUREDS** who had knowledge of such misrepresentation or omission.

6. ESTATES, LEGAL REPRESENTATIVES AND SPOUSES

The estates, heirs, legal representatives, assigns and **SPOUSES** of natural persons who are **INSUREDS** shall be considered **INSUREDS** under this **POLICY**; provided, however, coverage is afforded to such estates, heirs, legal representatives, assigns and **SPOUSES** only for a **CLAIM** arising solely out of their status as such and, in the case of a **SPOUSE**, where the **CLAIM** seeks damages from marital community property, jointly held property or property transferred from the natural person who is an **INSURED** to the **SPOUSE**. No coverage is provided for any **WRONGFUL ACT** of an estate, heir, legal representative, assign or **SPOUSE**. All of the terms and conditions of this **POLICY** including, without limitation, the Retentions applicable to **LOSS** incurred by natural persons who are **INSUREDS** shall also apply to **LOSS** incurred by such estates, heirs, legal representatives, assigns or **SPOUSES**.

7. SOLE AGENT

By acceptance of this **POLICY**, the **NAMED INSURED** agrees to act on behalf of all **INSUREDS**, and the **INSUREDS** agree that the **NAMED INSURED** will act on their behalf, with respect to:

- a. the giving of all notices to the **INSURER**;
- b. the receiving of notices from the **INSURER**;
- c. the agreement to and acceptance of endorsements;
- d. the payment of the premium; and
- e. the receipt of any return premium.

8. ALTERNATIVE DISPUTE RESOLUTION

The **INSUREDS** and the **INSURER** shall submit any dispute or controversy arising out of or relating to this **POLICY** or the breach, termination or invalidity thereof to the alternative dispute resolution ("ADR") process described in this subsection.

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

There shall be two choices of ADR process: **(1)** non-binding mediation administered by any mediation facility to which the **INSURER** and the **INSURED** mutually agree, in which the **INSURED** and the **INSURER** shall try in good faith to settle the dispute by mediation in accordance with the then-prevailing commercial mediation rules of the mediation facility; or **(2)** arbitration submitted to any arbitration facility to which the **INSURED** and the **INSURER** mutually agree, 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,

and insurance issues relevant to the matters in dispute. In the event of arbitration, the decision of the arbitrators shall be final and binding and provided to both parties, and the award of the arbitrators shall not include attorneys' fees or other costs. In the event of mediation, either party shall have the right to commence arbitration in accordance with this section; provided, however, that no such arbitration shall be commenced until at least sixty (60) days after the date the mediation shall be deemed concluded or terminated. In all events, each party shall share equally the expenses of the ADR process.

ADR process may be commenced in the state indicated in **Item 1.** of the Declarations as the principal address of the **NAMED INSURED.** The **NAMED INSURED** shall act on behalf of each and every **INSURED** in connection with any ADR process under this section.

9. SUBROGATION

In the event of any payments under this **POLICY,** the **INSURER** shall be subrogated to the extent of such payment to all of the **INSUREDS'** rights of recovery against any person or entity. The **INSUREDS** shall execute all papers required and shall do everything that may be necessary to secure and preserve such rights, including the execution of such documents as are necessary to enable the **INSURER** effectively to bring suit or otherwise pursue subrogation in the name of the **INSUREDS,** and shall provide all other assistance and cooperation which the **INSURER** may reasonably require.

10. ACTION AGAINST INSURER

Except as provided in condition **8. ALTERNATIVE DISPUTE RESOLUTION** above, no action shall lie against the **INSURER** unless, as a condition precedent thereto, there shall have been compliance with all of the terms of this **POLICY.**

11. ENTIRE AGREEMENT

By acceptance of this **POLICY,** the **INSUREDS** agree that this **POLICY** embodies all agreements existing between them and the **INSURER** or any of their agents relating to this insurance. Notice to any agent 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 terms of this **POLICY** or otherwise, nor shall the terms be deemed waived or changed except by written endorsement or rider issued by the **INSURER** to form part of this **POLICY.**