

## EP AS 0001 09 10

**THIS IS A CLAIMS MADE AND REPORTED POLICY WITH COSTS OF DEFENSE INCLUDED IN THE LIMIT OF LIABILITY. COVERAGE APPLIES ONLY TO THOSE CLAIMS THAT ARE FIRST MADE DURING THE POLICY PERIOD AND REPORTED DURING THE POLICY PERIOD OR ANY DISCOVERY PERIOD, IF APPLICABLE. WORDS PRINTED IN BOLD FACE, OTHER THAN CAPTIONS, ARE DEFINED IN THE POLICY. VARIOUS PROVISIONS IN THIS POLICY RESTRICT COVERAGE. PLEASE READ THE ENTIRE POLICY CAREFULLY.**

### EMPLOYMENT PRACTICES LIABILITY INSURANCE POLICY

In consideration of the payment of the premium and in reliance upon all statements made and information furnished to the **Insurer** shown in the Declarations, including those furnished in the **Application**, and subject to all terms, conditions and limitations of this Policy, the **Insureds** and **Insurer** agree:

#### Section I. INSURING AGREEMENT

The **Insurer** shall pay on behalf of an **Insured** all **Loss** which an **Insured** shall be legally obligated to pay as a result of an **Employment Practices Claim** first made against an **Insured** during the **Policy Period** or any Discovery Period and reported pursuant to **Section VII**.

#### Section II. DEFINITIONS

- A. **"Application"** shall mean each and every signed application submitted to the **Insurer** for consideration of insurance together with 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. **"Application"** shall also mean any public documents filed by the **Company** within the past 36 months with any federal, state, local or foreign governmental entity.
- B. **"Claim"** shall mean a civil, criminal, governmental, regulatory, administrative, or arbitration proceeding made against any **Insured** seeking monetary or non-monetary relief and commenced by the service of a complaint or similar pleading, the return of an indictment, or the receipt or the filing of a notice of charges or similar document, including any proceeding initiated against any **Insured** before the U.S. Equal Employment Opportunity Commission ("EEOC"), or any similar governmental body, or other written demand for monetary or non-monetary relief made against any **Insured**. However, in no event shall the term **"Claim"** include any labor or grievance proceeding which is subject to a collective bargaining agreement.
- C. **"Company"** shall mean the entity or organization identified as the Named Insured in the Declarations and any **Subsidiary**, and in the event of a bankruptcy, shall include the **Company** and any **Subsidiary** as a debtor in possession, if any, as such term is used in Chapter 11 of the United States Bankruptcy Code.
- E. **"Costs of Defense"** shall mean reasonable and necessary legal fees, costs and expenses incurred with the **Insurer's** consent in the investigation, defense or appeal of any **Claim**, including the costs of an appeal bond, attachment bond or similar bond, but will not include the obligation to apply for or furnish such bonds. **Costs of Defense** shall not include any salaries, wages, overhead, benefits or benefit expenses associated with any **Insured**. **Costs of Defense** shall not include any fees, costs or expenses incurred prior to the date that a **Claim** is first reported to the **Insurer**.
- F. **"Directors"** and **"Officers"** shall mean all persons who were, now are, or shall be duly elected or appointed directors and/or officers of the **Company**.
- G. **"Domestic Partner"** shall mean any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Company**.
- H. **"Employee"** shall mean any past, present or future employee of the **Company**, including any part-time, seasonal or temporary employee or any applicant for employment, solely in his or her capacity as such. Any

person leased to the **Company** and any person hired by written contract to perform work for the **Company**, or who is an independent contractor for the **Company**, shall also be an **Employee**, but only if the **Company** indemnifies the person in the same manner as is provided to the **Company's** permanent employees.

I. "**Employment Practices Claim**" shall mean any **Claim** brought by or on behalf of any **Employee** alleging an **Employment Practices Wrongful Act** or any **Claim** alleging **Third Party Discrimination**.

J. "**Employment Practices Wrongful Act**" shall mean:

- 1) adverse or unfair reprimand of an **Employee**;
- 2) denial of interview or position;
- 3) denial of training to an **Employee**;
- 4) derogatory or disparaging remarks to an **Employee**;
- 5) violation of any federal, state or local law concerning 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 Pregnancy Discrimination Act of 1978, the Civil Rights Act of 1866, the Family and Medical Leave Act of 1993, the Older Workers Benefit Protection Act of 1990, the Equal Pay Act, the Lilly Ledbetter Fair Pay Restoration Act of 2009, or any rule or regulation promulgated thereunder, or any amendments thereto;
- 6) employment-related misrepresentations or omissions;
- 7) employment-related libel, slander, or defamation;
- 8) failure to grant tenure;
- 9) failure to provide an adequate employment policy or grievance procedure for **Employees**;
- 10) failure to provide training, mentoring, or advancement opportunities to an **Employee**;
- 11) improper discipline of an **Employee**;
- 12) improper performance review of an **Employee**;
- 13) improper transfer, change of position or change of work hours or shift of an **Employee**;
- 14) improper treatment of an **Employee** for their actions as a whistleblower;
- 15) negligent evaluation of an **Employee**;
- 16) negligent release of medical information of an **Employee**;
- 17) **Retaliation** against an **Employee**;
- 18) sexual or other workplace harassment of any kind;
- 19) wrongful deprivation of career opportunity of an **Employee**, including defamatory statements made in connection with an **Employee** reference;
- 20) wrongful dismissal, discharge or termination of employment, whether actual or constructive;
- 21) negligent hiring, discipline, supervision or retention;
- 22) breach of any oral, written, or implied employment contract;
- 23) invasion of privacy;
- 24) false imprisonment;
- 25) infliction of emotional distress;
- 26) failure or refusal to provide equal treatment or opportunities;
- 27) wrongful failure to promote, transfer or employ; or
- 28) violation of an **Employee's** civil rights relating to any of the above.

K. "**Financial Insolvency**" shall mean the **Company** becoming a debtor in possession, or the appointment, pursuant to state or federal law, of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the **Company**.

L. "**Insured**" shall mean any **Insured Person** and the **Company**.

M. "**Insured Person**" shall mean:

- 1) any past, present or future duly elected or appointed director or officer, or member of the Board of Managers, of the **Company**;
- 2) **Employees** of the **Company** for whom the **Company** requests coverage at the time the **Claim** is made;
- 3) any managing member or manager of any **Company** organized as a limited liability company;
- 4) those persons serving in a functionally equivalent role as above for the **Company** or any **Subsidiary** operating or incorporated outside the United States;
- 5) any individual identified above who, at the specific written request of the **Company**, is serving as a director, officer, trustee, regent or governor, or in an equivalent executive position, of an **Outside Entity**.

- N. **"Insurer"** shall mean the insurance company identified on the Declarations.
- O. **"Loss"** shall mean compensatory damages (including back pay and front pay), statutory attorneys' fees, pre- and post-judgment interest, and **Costs of Defense**, in excess of the Retention. **Loss** shall also include punitive or exemplary damages, and the multiple portions of any multiplied damage award, judgments or settlements to the extent insurable under the law of any applicable jurisdiction most favorable to insurability.
- Loss** shall not include: (1) civil or criminal fines or penalties imposed by law; (2) taxes; (3) any amount for which an **Insured** is not financially liable or which is without legal recourse to the **Insured**; (4) employment-related benefits of any kind, including, but not limited to, stock, stock options, commissions, profit sharing, termination payments, severance, perquisites, deferred compensation or any other type of compensation other than back pay, front pay or bonus compensation; (5) any liability or costs incurred by any **Insured** to modify any buildings or property in order to make a building or property more accessible or accommodating to any disabled person, or any liability or costs incurred in connection with any educational, sensitivity or other corporate program, policy, seminar or monitoring (including, but not limited to any consulting fees paid to any law firm) relating to or arising out of an **Employment Practices Claim**; (6) any portion of damages, judgments or settlements arising out of any **Claim** alleging that the **Company** paid an inadequate price or consideration for the purchase of securities or other ownership interest; (7) contractually owed amounts; or (8) matters which are uninsurable under the law pursuant to which this Policy shall be construed..
- P. **"Management Control"** shall mean that the **Company** has either:
- 1) an ownership interest of more than fifty percent (50%) that entitles the **Company**; or
  - 2) the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of an organization,
- to elect, appoint or designate a majority of the Board of Directors of a corporation, the management committee of a **Joint Venture** or partnership or the management board of a limited liability company.
- Q. **"Outside Entity"** shall mean any not-for-profit entity classified as such by the Internal Revenue Code or any for-profit entity, but only if such for-profit entity is specifically added by written endorsement to this Policy.
- R. **"Policy Period"** shall mean the policy period as set forth in the Declarations, or its earlier termination if applicable.
- S. **"Pollutant"** means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to:
- 1) smoke, vapor, soot, fumes, acids, alkalis, chemicals, metals, lead or materials containing lead, silica, radon, mold or asbestos;
  - 2) hazardous, toxic or radioactive matter or nuclear radiation;
  - 3) waste, which includes material to be recycled, reconditioned or reclaimed; or
  - 4) any other pollutant as defined by applicable federal, state or local statutes, regulations, rulings or ordinances.
- T. **"Pollution"** shall mean the actual, alleged or threatened discharge, release, migration, escape or disposal of **Pollutants** into or on real or personal property, water or the atmosphere. **Pollution** also means any direction or request that the **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so.
- U. **"Related Wrongful Acts"** shall mean **Wrongful Acts** which are the same or continuous and which arise from a common nucleus of facts, regardless of whether such **Wrongful Acts** are alleged by way of a single or multiple **Claims** under this Policy or any other policy in effect prior to the inception of this **Policy Period**.
- V. **"Retaliation"** shall mean an **Employment Practices Wrongful Act** relating to or alleged to be in response to any of the following activities:
- 1) the disclosure or threat of disclosure by an **Employee** to a superior or to any governmental agency of any act by an **Insured** which act is alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder;
  - 2) the actual or attempted exercise by an **Employee** of any right that such **Employee** has under law, including rights under worker's compensation laws, the Family and Medical Leave Act, the Americans with Disabilities Act, Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act, the Occupational Safety and Health Act, or any other law relating to employee rights;

3) the filing of any claim under the Federal False Claims Act, the Sarbanes-Oxley Act of 2002 or any other federal, state, local or foreign "whistleblower" law; or **Employee** strikes.

W. "**Subsidiary**" shall mean any entity in which the **Company** owns, directly or indirectly, more than fifty percent (50%) of the voting stock:

- 1) on or before the inception date of this Policy;
- 2) subsequent to the inception date of this Policy by reason of being created or acquired by the **Company** after such date, provided that the created or acquired entity's total assets do not exceed twenty-five percent (25%) of the total consolidated assets of the **Company** as of the inception date of this Policy; or
- 3) subsequent to the inception date of this Policy by reason of being created or acquired by the **Company** other than as described in (2) above, if the **Company**, within ninety (90) days of such creation or acquisition, provides the **Insurer** with written notice thereof and agrees to any premium adjustment and/or coverage revision that may be required by the **Insurer**.

X. "**Third Party Discrimination**" shall mean any actual or alleged discrimination, including harassment, or civil rights violation by an **Insured** against any non-**Employee**.

Y. "**Wrongful Act**" shall mean any actual or alleged **Employment Practices Wrongful Act** or **Third Party Discrimination** by an **Insured** in their capacity as such.

### Section III. Exclusions

The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Employment Practices Claim** made against any **Insured**:

A. alleging, arising out of, based upon, relating to, or attributable to:

- 1) an **Insured** gaining any profit, advantage or remuneration to which an **Insured** was not legally entitled; provided however, this exclusion shall only apply when it is finally adjudicated that such conduct occurred; or
- 2) any deliberately fraudulent or dishonest act or any willful violation of any statute, rule or law, or deliberate criminal acts of an **Insured**; provided however, this exclusion shall only apply if it is finally adjudicated that such conduct occurred;

Provided, however, for purposes of determining the applicability of Exclusions III.A. 1) and 2) above it is understood and agreed that:

- a) the **Wrongful Act** of an **Insured Person** shall not be imputed to any other **Insured Person**; and
- b) only the **Wrongful Act** of any past, present or future chairman of the board, president, chief executive officer, or chief financial officer of the **Company** shall be imputed to the **Company**.

B. alleging, arising out of, based upon, relating to, attributable to, directly or indirectly resulting from or in consequence of, or in any way involving any **Wrongful Act, Related Wrongful Acts** or any fact, circumstance or situation which has been the subject of any **Employment Practices Claim** or notice or circumstance reported under any other policy of which this Policy is a renewal, replacement, or which this Policy may succeed in time;

C. alleging, arising out of, based upon, relating to, or attributable to any pending or prior civil, criminal, administrative or investigative proceeding, or EEOC notice of charge of any kind involving the **Company** and/or any **Insured Person** as of the Pending and Prior Date stated in the PENDING AND PRIOR LITIGATION DATE section of the Declarations, or any **Wrongful Act** or **Related Wrongful Acts** or any fact, circumstance or situation underlying or alleged in such proceeding or notice of charge;

D. for any actual or alleged:

- 1) bodily injury, sickness, disease, or death of any person; or
- 2) damage to or destruction of any property, including the loss of use thereof.

E. for violation of any of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, and any rules or regulations of the foregoing promulgated thereunder, and amendments thereto or any similar federal, state, local or foreign statutory law or common law; provided, however, this exclusion shall not apply to an **Employment Practices Claim** for **Retaliation** or an alleged violation of the Equal Pay Act;

F. alleging, arising out of, based upon, relating to, or attributable to any alleged violation of any federal, state or local wage and hour law, including but not limited to: the refusal, failure or inability of any **Insured** to pay wages or overtime pay for services rendered (herein, "Earned Wages") (as opposed to tort-based or statutory back pay or

front pay damages for discrimination), for improper payroll deductions taken by any **Insured** from any **Employee** or purported **Employee**, any unfair business practice claim or any tort arising out of the failure to pay Earned Wages, or any **Claim** seeking Earned Wages because any **Employee** or purported **Employee** was improperly classified or mislabeled as "exempt".

- G. alleging, arising out of, based upon, relating to, or attributable to a **Wrongful Act** of any **Insured Person** serving in any capacity for any entity other than the **Company** or an **Outside Entity**, even if such service is at the direction of the **Company**, unless otherwise specifically added by written endorsement to this Policy;
- H. which is brought by or on behalf of the **Company**, or any **Officer** or **Employee** who is or was a member of the Board of Directors (or equivalent governing body) of the **Company**;
- I. alleging, arising out of, based upon, relating to, attributable to, directly or indirectly resulting from, or in consequence of, or in any way involving, **Pollution**, including but not limited to, any **Claim** for financial loss to the **Company**, its security holders or its creditors;
- J. for any **Wrongful Act** of a **Subsidiary** or an **Insured Person** of such **Subsidiary** or any entity that merges with the **Company** or an **Insured Person** of such entity that merges with the **Company** occurring:
  - 1) prior to the date such entity becomes a **Subsidiary** or is merged with the **Company**;
  - 2) subsequent to the date such entity became a **Subsidiary** or was merged with the **Company** which, together with a **Wrongful Act** occurring prior to the date such entity became a **Subsidiary** or was merged with the **Company**, would constitute **Related Wrongful Acts**; or
  - 3) subsequent to the date the **Company** ceased to have, directly or indirectly, **Management Control** of such **Subsidiary**;
- K. alleging, arising out of, based upon, relating to, or attributable to any actual or alleged contractual liability or obligation of the **Company** or an **Insured Person** under any express written contract, agreement, employment contract or employment agreement to pay money, wages or any employee benefits of any kind. This exclusion shall not apply to an **Employment Practices Claim** to the extent liability does not arise under such contract or agreement; and,
- L. alleging, arising out of, based upon, relating to, or attributable to, or directly or indirectly resulting from, or in consequence of, or in any way involving, any obligation pursuant to any worker's compensation, medical benefits, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law, including any medical or insurance benefits to which an **Employee** allegedly was entitled or would have been entitled had the **Company** provided the **Employee** with a continuation or conversion of insurance, provided however, this exclusion shall not apply to a **Claim** for **Retaliation**;

Except as expressly stated in Exclusion A. b), no conduct of any **Insured Person** will be imputed to any other **Insured Person** to determine the application of any of the above **Exclusions**.

#### **Section IV. Limit of Liability**

- A. The **Insurer** shall be liable to pay **Loss** resulting from a covered **Claim** in excess of the applicable Retention amount stated in the RETENTION section of the Declarations, up to the Limit of Liability stated in the LIMITS OF INSURANCE section of the Declarations.
- B. **Costs of Defense** shall be part of, and not in addition to, the Limit of Liability stated in the LIMITS OF INSURANCE section of the Declarations. Such **Costs of Defense** shall serve to reduce and may totally exhaust the Limit of Liability.
- C. The liability of the **Insurer** for all **Loss** arising from any and all **Claims** combined shall be the amount stated in the LIMITS OF INSURANCE section of the Declarations which shall be the maximum aggregate Limit of Liability of the **Insurer** for the **Policy Period** and **Discovery Period**, if applicable, regardless of the time of payment or the number of **Claims**.

#### **Section V. Retention**

- A. The applicable Retention specified in the RETENTION section of the Declarations shall be a condition precedent, and must be paid by the **Company**, before the **Insurer** has any payment obligation, and shall apply to all covered **Loss**, including **Costs of Defense**.
- B. One Retention shall apply to **Loss** arising from each **Employment Practices Claim** alleging the same **Wrongful Act** or **Related Wrongful Acts**. The **Company** shall be responsible for any amount within the Retention.
- C. More than one **Claim** involving the same **Wrongful Act** or **Related Wrongful Acts** of one or more **Insureds** shall be considered a single **Claim**, and only one Retention and one **Limit of Liability** shall be applicable to such single **Claim**. All such **Claims** constituting a single **Claim** shall be deemed to have been made on the earlier of the following dates: (1) the earliest date on which any such **Claim** was first made; or (2) the earliest date on which the notice of circumstance involving any such **Wrongful Act** or **Related Wrongful Acts** was reported under this Policy or any other policy providing similar coverage.

## Section VI. COSTS OF DEFENSE AND SETTLEMENTS

- A. The **Insured** shall not incur **Costs of Defense**, or admit liability, offer to settle, or agree to any settlement in connection with any **Employment Practices Claim** without the express prior written consent of the **Insurer**, which consent shall not be unreasonably withheld. The **Insured** shall provide the **Insurer** with all information, documents, reports and particulars it may reasonably request in order to reach a decision as to such consent. Any **Loss** resulting from any admission of liability, agreement to settle, or **Costs of Defense** incurred prior to the written consent of the **Insurer**, shall not be covered hereunder.
- B. Notwithstanding **Section VI.A.** above, if all **Insureds** are able to settle all **Employment Practices Claims** that are subject to an applicable Retention for an amount that, together with the **Costs of Defense**, does not exceed the applicable Retention, the **Insured** may agree to such a settlement without the prior written consent of the **Insurer**.
- C. The **Insured**, and not the **Insurer**, shall have the duty to defend all **Employment Practices Claims**, provided that the **Insured** shall only retain counsel as is mutually agreed in writing with the **Insurer**. The **Company** may at its option tender to the **Insurer** the defense of an **Employment Practices Claim**, however in no event shall such tender of the defense relieve the **Company** of its obligation to pay the applicable Retention in connection with the **Employment Practices Claim**. Upon such a tender of the defense of an **Employment Practices Claim**, the **Insurer** shall assume the duty to defend. Such a tender of the defense of an **Employment Practices Claim** may not be made more than 30 days following notice of the **Employment Practices Claim**, or if greater than 30 days, solely at the discretion of the **Insurer**, pursuant to **Section VII**.
- D. The **Insurer** shall at all times have the right, but not the duty, to associate with the **Insured** in the investigation, defense or settlement of any **Employment Practices Claim** to which coverage under this Policy may apply. The **Insured** shall cooperate with the **Insurer** and provide the **Insurer** such information as it may reasonably require in the investigation, defense or settlement of any **Employment Practices Claim**.
- E. If an **Employment Practices Claim** made against any **Insured** includes both covered and uncovered allegations, damages, defendants, wrongful acts, or fees or expenses, the **Insured** and the **Insurer** agree that there shall be an allocation between covered and uncovered **Loss**. The **Insured** and the **Insurer** shall use their best efforts to agree upon a fair and proper allocation between covered and uncovered **Loss**, taking into account the relative legal and financial exposures, and the relative benefits obtained by each **Insured** as a result of the covered and uncovered matters and/or such benefits to an uninsured party using the same measure. If the **Insured** and the **Insurer** are unable to agree on the amount of the allocation, then the **Insurer** shall pay only those amounts (excess of the Retention amount) which the **Insurer** deems to be fair and equitable until a different amount shall be agreed upon or determined pursuant to the terms of this Policy and the above stated standards.
- F. The **Insurer** shall advance **Costs of Defense** prior to the final disposition of any **Claim**, provided such **Claim** is covered by this Policy. Any advancement shall be on the condition that:
  - 1) the appropriate Retention has been satisfied, provided, however, this condition shall not apply in the event of the **Financial Insolvency** of the **Company**;
  - 2) any amounts advanced by the **Insurer** shall serve to reduce the Limit of Liability stated in the LIMITS OF INSURANCE section of the Declarations to the extent they are not in fact repaid;

- 3) the **Insured** and the **Insurer** have agreed upon the portion of the **Costs of Defense** attributable to covered **Claims** against the **Insureds**; provided, however, if no agreement, the **Insurer** shall pay **Costs of Defense** as specified in item E above.
- 4) in the event it is finally established that the **Insurer** has no liability under the Policy for such **Claim**, the **Insured** will repay the **Insurer** all **Costs of Defense** advanced by virtue of this provision.

#### Section VII. Notice of Claim

- A. The **Insured** shall, as a condition precedent to their rights under this Policy, give the **Insurer** notice in writing of any **Claim** which is made during the **Policy Period** or Discovery Period. Such notice shall be given as soon as practicable but in no event later than thirty (30) days after the end of the **Policy Period** or Discovery Period, if applicable. If notice is provided pursuant to this Section, any **Claim** subsequently made against an **Insured** and reported to the **Insurer** alleging, arising out of, based upon or attributable to the prior noticed **Claim** or alleging any **Related Wrongful Acts**, shall be considered related to the prior **Claim** and made at the time notice of the prior **Claim** was first provided.
- B. If during the **Policy Period** the **Company** or an **Insured** shall become aware of any circumstances which may reasonably be expected to give rise to an **Employment Practices Claim** being made against an **Insured** and shall give written notice to the **Insurer** of the circumstances, the **Wrongful Act** allegations anticipated and the reasons for anticipating such a **Claim**, with full particulars as to dates, persons and entities involved, then a **Claim** which is subsequently made against such **Insured** and reported to the **Insurer** alleging, arising out of, based upon or attributable to such circumstances or alleging any **Related Wrongful Acts**, shall be considered made at the time notice of such circumstances was given. Notice of any such subsequent **Employment Practices Claim** shall be given to the **Insurer** as soon as practicable.
- C. In addition to furnishing the notice as provided in **Section VII**, the **Insured** shall, as soon as practicable, furnish the **Insurer** with copies of reports, investigations, pleadings and other papers in connection therewith.
- D. Notice to the **Insurer** as provided in **Section VII** shall be given to the **Insurer** identified in, and at the address set forth in the Notices to Insurer section of the Declarations.

#### Section VIII. Discovery Period

- A. In the event the **Insurer** or the **Company** refuses to renew this Policy, the **Company** shall have the right, upon payment of one hundred percent (100%) of the annual premium, (or if the **Policy Period** is other than annual, one hundred percent (100%) of the annualized premium), to an extension of the coverage provided by this Policy with respect to any **Claim** first made against any **Insured** during the period of twelve (12) months after the end of the **Policy Period** and reported to the **Insurer** pursuant to the provisions of this Policy, but only with respect to a **Wrongful Act** committed or alleged to have been committed before the end of the **Policy Period**. This twelve (12) month period shall be referred to in this Policy as the Discovery Period.
- B. As a condition precedent to the right to purchase the Discovery Period, the total premium for this Policy must have been paid and a written request, together with payment of the appropriate premium for the Discovery Period, must be provided to the **Insurer** no later than thirty (30) days after the end of the **Policy Period**, at which time the premium shall be deemed fully earned.
- C. The fact that the coverage provided by this Policy may be extended by virtue of the purchase of the Discovery Period shall not in any way increase the Limit of Liability stated in the LIMITS OF INSURANCE section of the Declarations. For purposes of the Limit of Liability, the Discovery Period is considered to be part of, and not in addition to, the **Policy Period**.

#### Section IX. General Conditions

##### A. Cancellation or Non-Renewal

- 1) This Policy may be cancelled by the **Company** at any time by written notice to the **Insurer**. Upon cancellation by the **Company**, the **Insurer** shall retain the customary short rate portion of the premium, unless this Policy is converted to Run-Off pursuant to **Section IX.E**. wherein the entire premium for this Policy shall be deemed earned.
- 2) This Policy may only be cancelled by the **Insurer** if the **Company** does not pay the premium when due.
- 3) If the **Insurer** elects not to renew this Policy, the **Insurer** shall provide the **Company** with no less than sixty (60) days advance notice thereof.

## B. Application

It is agreed by the **Company** and the **Directors** and **Officers** that the particulars and statements contained in the **Application** and any information provided therewith (which shall be on file with the **Insurer** and be deemed attached hereto as if physically attached hereto) are the basis of this Policy and are to be considered as incorporated in and constituting a part of this Policy. It is further agreed by the **Company** and the **Insured Persons** that the statements in the **Application** or in any information provided therewith are their representations, that they are material and that this Policy is issued in reliance upon the truth of such representations. Knowledge of any **Insured Person** of a misstatement or omission in the **Application** shall not be imputed to any other **Insured Person** for purposes of determining the validity of this Policy as to such other **Insured Person**, against whom this policy shall not be rescinded. Only knowledge of the chairman of the board, chief executive officer, chief operating officer, president, chief financial officer, general counsel, director of human resources or equivalent position or risk manager of a misstatement or omission in the **Application** shall be imputed to the **Company** for purposes of determining coverage under this Policy.

## C. Separation of Interests

Except with respect to Limits of Liability and any rights and duties assigned in this Policy to the **Company**, this insurance applies as if each **Insured** were the only **Insured** and separately to each **Insured** against whom a **Claim** is made. Any misrepresentation, act or omission that is in violation of a term, duty or condition under this Policy by one **Insured Person** shall not by itself affect coverage for another **Insured Person** under this Policy. However, this condition shall not apply to the **Company** or any **Insured Person** who is the chairman of the board, chief executive officer, chief operating officer, president, chief financial officer, general counsel, director of human resources or equivalent position or risk manager of the **Company** which committed the misrepresentation, act or omission referenced above.

## D. Action Against the Insurer

- 1) No action shall be taken against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy, and until the obligation of the **Insured** to pay shall have been finally determined by an adjudication against the **Insured** or by written agreement of the **Insured**, 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 an **Insured** nor shall the **Insurer** be impleaded by any **Insured** or their legal representative in any such **Claim**.

## E. Conversion to Run-Off Coverage

If, during the **Policy Period**, a transaction occurs wherein another entity gains control of the **Company** through the ownership of more than fifty percent (50%) of the voting stock of the **Company**, or the **Company** merges into another entity or consolidates with another entity such that the **Company** is not the surviving entity, then:

- 1) this Policy shall only apply to a **Wrongful Act** actually or allegedly committed on or before the effective date of such transaction; and
- 2) the entire premium for this Policy shall be deemed earned as of the date of such transaction.

## F. Outside Entity Provision

In the event an **Employment Practices Claim** is made against an **Insured Person** arising out of their service as a director, officer, trustee or governor of an **Outside Entity**, coverage as may be afforded under this Policy shall be excess of any indemnification provided by the **Outside Entity** and any insurance provided to the **Outside Entity** which covers its directors, officers, trustees or governors.

## G. Coverage Extensions

- 1) Lawful Spouse or **Domestic Partner** Provision  
The coverage provided by this Policy shall also apply to the lawful spouse or **Domestic Partner** of an **Insured Person**, but only for an **Employment Practices Claim** arising out of any actual or alleged **Wrongful Act** of such **Insured Person**.
- 2) Worldwide Provision  
The coverage provided under this Policy shall apply worldwide. The term **Directors** and **Officers** is deemed to include individuals who serve in equivalent positions in foreign **Subsidiaries**.
- 3) Estates and Legal Representatives
  - a) The coverage provided by this Policy shall also apply to the estates, heirs, legal representatives or assigns of any **Insured Person** in the event of their death, incapacity or bankruptcy, but only for an **Employment Practices Claim** arising out of any actual or alleged **Wrongful Act** of such **Insured**



**Person.**

- b) In the event a bankruptcy proceeding shall be instituted by or against the **Company**, the resulting debtor-in-possession (or equivalent status outside the United States of America) shall be deemed to be the **Company**.

**H. Priority of Payments**

In the event of **Financial Insolvency**, or the refusal of the **Company** to indemnify or advance the indemnification of an **Insured Person** and there is **Loss** arising from one or more covered **Employment Practices Claim** for which payment is due under this Policy, the **Insurer** shall:

- 1) first pay such **Loss** for which coverage is provided under this Policy to an **Insured Person**; then
- 2) with respect to whatever remaining amount of the Limit of Liability is available after payment pursuant to Section G.1) above, pay such **Loss** for which coverage is provided under this Policy to the **Company**.

**I. Subrogation**

In the event of any payment under this policy, the **Insurer** shall be subrogated to the extent of such payment to all the **Company's** and the **Insured's** rights of recovery thereof, and the **Company** and the **Insured** shall execute all papers required and shall do everything that may be reasonably necessary to secure such rights, including the execution of such documents necessary to enable the **Insurer** to effectively bring suit in the name of the **Company** or the **Insured**. In no event, however, shall the **Insurer** exercise its rights of subrogation against an **Insured Person** under this policy unless a final adjudication or binding arbitration adverse to the **Insured Person** in the underlying proceeding establishes that such **Insured Person** committed a deliberate criminal or deliberate fraudulent act, or such **Insured Person** has been determined, upon a final adjudication or binding arbitration adverse to the **Insured Person**, to have obtained any profit or advantage to which such **Insured Person** was not legally entitled.

**J. Choice of Law**

All matters arising hereunder including questions related to the validity interpretation, performance and enforcement of this Policy shall be determined in accordance with the law and practice of the State of New York notwithstanding New York's conflicts of law rules.

**K. Assignment**

This Policy and any and all rights hereunder are not assignable without the prior written consent of the **Insurer**, which consent shall be in the sole and absolute discretion of the **Insurer**.

**L. Conformity to Statute**

Any terms of this Policy which are in conflict with the terms of any applicable laws are hereby amended to conform to such laws.

**M. Entire Agreement**

By acceptance of this Policy, all **Insureds** and the **Insurer** agree that this Policy (including the Declarations, **Application** submitted to the **Insurer** and any information provided therewith) and any written endorsements attached hereto constitute the entire agreement between the parties. The terms, conditions and limitations of this Policy can be waived or changed only by written endorsement.

**N. Company Represents Insured**

By acceptance of this Policy, the **Company** shall be designated to act on behalf of all **Insureds** for all purposes including, but not limited to, the giving and receiving of all notices and correspondence, the cancellation or non-renewal of this Policy, the payment of premiums, and the receipt of any return premiums that may be due under this Policy.

**O. Representative of the Insurer**

American Safety Insurance Services, Inc., (100 Galleria Parkway, Suite 700, Atlanta, GA 30339) shall act on behalf of the **Insurer** for all purposes including, but not limited to, the giving and receiving of all notices and correspondence, provided, however, notice of **Claims** shall be given pursuant to Section VII of the Policy.

**P. Other Insurance**

All amounts payable under this Policy will be specifically excess of, and will not contribute with, any other valid and collectible insurance, including but not limited to any insurance under which there is a duty to defend, unless

such other insurance is specifically excess of this Policy. This Policy will not be subject to the terms of any other insurance policy.

**Q. Bankruptcy**

Bankruptcy or insolvency of the **Company** or any **Insured Person** shall not relieve the **Insurer** of any of its obligations under this Policy.

**R. Premiums**

The Named Insured shown in the Declarations:

- 1) Is responsible for the payment of all premiums; and
- 2) Will be the payee for any return premiums.

**S. Headings**

The descriptions in the headings of this Policy form no part of the terms and conditions of the coverage under this Policy.

**T. Dispute Resolution**

In the event any dispute arises in connection with this Policy that cannot be resolved by agreement, prior to commencing a judicial proceeding or arbitration, the **Insured** may submit the dispute to binding mediation in which the **Insurer** and the **Insured** shall attempt in good faith to resolve such dispute in accordance with the American Arbitration Association's ("AAA") then-prevailing Commercial Mediation Rules. In the event the **Insured** does not elect to engage in binding mediation or such binding mediation does not result in a settlement of the subject dispute or difference, either the Insured or the **Insurer** shall have the right to commence a judicial proceeding or, if the parties agree, a binding arbitration under the then-prevailing AAA Commercial Arbitration Rules, to resolve such dispute no earlier than sixty (60) days after such mediation concludes unsuccessfully. The costs and expenses of mediation, or arbitration, shall be split equally by the parties.