



**DECLARATIONS  
EMPLOYMENT PRACTICES LIABILITY INSURANCE COVERAGE  
CLAIMS MADE AND REPORTED**

**THIS IS A CLAIMS MADE AND REPORTED POLICY. SUBJECT TO ITS TERMS, THIS POLICY APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE INSUREDS DURING THE POLICY PERIOD OR THE EXTENDED REPORTING PERIOD, IF APPLICABLE, PROVIDED SUCH CLAIM IS REPORTED IN WRITING TO THE INSURER AS SOON AS PRACTICABLE. WITHOUT NEGATING THE FOREGOING REQUIREMENTS, SUCH NOTICE OF CLAIM MUST ALSO BE REPORTED NO LATER THAN 60 DAYS AFTER THE END OF THE POLICY PERIOD OR, IF APPLICABLE, THE EXTENDED REPORTING PERIOD. AMOUNTS INCURRED AS DEFENSE COSTS SHALL REDUCE AND MAY EXHAUST THE LIMIT OF LIABILITY AND ARE SUBJECT TO THE RETENTIONS. PLEASE READ THIS POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT. THE APPLICATION FORM AND ATTACHMENTS ARE HEREBY ATTACHED AND MADE A PART OF THIS POLICY.**

These Declarations along with the completed and signed **Application** and the Policy with endorsements shall constitute the contract between the Insureds and the Insurer.

**Insurer:** Beazley Insurance Company, Inc.

**Policy Number:**

**1. NAMED INSURED:**

ORGANIZATION STRUCTURE:

- Sole Proprietor    Partnership    Corporation    Joint Venture

**2. POLICY PERIOD:**

**From:**

**To:**

Both dates at 12.01 a.m. Local Time at the Address stated in Item 3.

**3. ADDRESS:**

**4. LIMIT OF LIABILITY (INCLUDES DEFENSE COSTS):**

- (a) Any **One Insured Event** Limit
- (b) Any **One Third Party Insured Event** Limit
- (c) Additional Defense Limit
- (d) Aggregate Limit of Liability

**5. SELF INSURED RETENTION (INCLUDES DEFENSE COSTS):**

- Any **One Insured Event**
- Any **One Third Party Insured Event**

**6. PRIOR KNOWLEDGE DATE:**

**7. THIRD PARTY RETROACTIVE DATE:**

**8. PREMIUM:**

**9. NOTICES:**

(a) Authorized Claims Representative:

Kissel & Pesce LLP  
 555 White Plains Rd  
 5<sup>th</sup> Floor  
 Tarrytown, NY 10591  
 Attn: Jeffrey Hirsch

(b) All Other Notices:

Beazley Insurance Company, Inc.  
 20 Stanford Drive  
 Farmington, CT 06032  
 Tel: (860) 677-3700  
 Fax: (860) 679-0247

**10. TERRORISM COVERAGE:**

Coverage Purchased:

Yes  No

If "Yes", Terrorism Coverage Premium:

\$

**11. EXTENDED REPORTING PERIOD:**

(a) Premium for Extended Reporting Period:

% of the total premium as for the Policy

(b) Length of Extended Reporting Period:

**12. ENDORSEMENTS EFFECTIVE AT INCEPTION:**



The Insurer has caused this Policy to be signed and attested by its authorized officers, but it shall not be valid unless also signed by another duly authorized representative of the Insurer.

\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
President

SPECIMEN

## EMPLOYMENT PRACTICES LIABILITY INSURANCE CLAIMS MADE AND REPORTED

**NOTICE: This Coverage is Provided on a Claims Made and Reported Basis.** Except to such extent as may otherwise be provided herein, the coverage afforded under this insurance policy is limited to liability for only those covered **Claims** that are first made against an Insured and reported to us (in accordance with the provisions regarding notice) while the insurance is in force. The **LIMIT OF LIABILITY** shall be reduced and may be completely exhausted by payment of **Defense Costs**. Please review the coverage afforded under this insurance policy carefully and discuss the coverage hereunder with your insurance agent or broker.

In consideration of the payment of Premium, this policy covers **Discrimination, Harassment, Retaliation, Inappropriate Employment Conduct** and/or, if purchased, **Inappropriate Third Party Conduct** liability within the terms, conditions, limitations and exclusions set forth in this policy. It has been issued in reliance upon all statements made to us in the **Application** and any attachments and all other information provided to us. The **Application** is incorporated herein and forms a part of this policy.

Throughout this policy the words “you” and “your” refer to the Named Insured shown in the Declarations.

Under this policy the words “we”, “us” and “our” refer to the Insurer providing this insurance.

The word “Insured” means any person or organization qualifying as such under **WHO IS INSURED**.

**READ THIS POLICY CAREFULLY TO DETERMINE THE EXTENT OF COVERAGE. IMPORTANT: THIS IS A CLAIMS FIRST MADE AND REPORTED POLICY THAT INCLUDES DEFENSE COSTS WITHIN THE LIMIT OF LIABILITY.**

### I. **COVERAGE: WHAT IS COVERED**

- A. We will pay **Loss** amounts that an Insured is legally obligated to pay on account of a **Claim** because of an **Insured Event**, provided such **Claim** is first made during the Policy Period or, if applicable, the Extended Reporting Period, and reported in writing to us as soon as practicable but in no event later than sixty (60) days after any Insured who is a principal, partner, officer, director, trustee, in-house counsel, **Employee(s)** within the Human Resources or Risk Management department or **Employee(s)** with personnel and risk management responsibilities, becomes aware that a **Claim** has been made. Without negating the foregoing requirements, such notice of **Claim** must also be reported no later than sixty (60) days after the end of the Policy Period or, if applicable, the Extended Reporting Period. The amount we will pay is limited as described in the **LIMIT OF LIABILITY** and **SELF INSURED RETENTION** sections of this policy.

**B.** If the Declarations Page indicates that the Insured purchased coverage for **Inappropriate Third Party Conduct**, then we will pay **Loss** amounts that an Insured is legally obligated to pay on account of a **Claim** because of a **Third Party Insured Event**, provided such **Claim** is first made during the Policy Period or, if applicable, the Extended Reporting Period, and reported in writing to us as soon as practicable but in no event later than sixty (60) days after any Insured who is a principal, partner, officer, director, trustee, in-house counsel, **Employee(s)** within the Human Resources or Risk Management department or **Employee(s)** with personnel and risk management responsibilities, becomes aware that a **Claim** has been made. Refer to Section VIII.A. for full details of your duties in the event of a **Claim**. However, the amount we will pay is limited as described in the **LIMIT OF LIABILITY** and **SELF INSURED RETENTION** sections of this policy.

**C.** This policy applies only if:

1. A **Claim** is first made against an Insured in accordance with **WHEN COVERAGE IS PROVIDED**;
2. The **Claim** is first reported in accordance with **WHEN COVERAGE IS PROVIDED** and **CONDITIONS** section **VIII.A** Duties in the event of a **Claim**; and
3. A **Claim** is first made against an Insured in accordance with **WHERE COVERAGE IS PROVIDED**.

**D. Defense.** We have the right and duty to defend any **Claim** for an **Insured Event** or, if purchased, a **Third Party Insured Event** made or brought against any Insured to which this policy applies. We will give consideration to your preference for defense counsel; however the final decision rests with us. We have no duty to provide other services or take other actions. Our duty to defend any **Claim** ends when the **LIMIT OF LIABILITY** that applies has been exhausted, and in such event, the Named Insured shall, upon notice from us, promptly take over control of the defense.

We have the right to investigate and to settle any **Claim** for an **Insured Event** or, if purchased, a **Third Party Insured Event**, in the manner and to the extent that we believe is proper, contingent upon the consent of the Named Insured as defined in this policy. This includes the right to agree to post a notice of compliance, provided such notice does not contain an admission of liability.

You may take over control of any outstanding **Claim** previously reported to us only if we both agree that you should, if required under law or if a court orders you to do so.

If your **LIMIT OF LIABILITY** is exhausted, we will notify you of all outstanding **Claims** so that you can take over control of their defense. We will help to transfer control to you.

**E. During the transfer of control.** We agree to take whatever steps are necessary to continue the defense of any outstanding **Claim** and avoid a default judgment during the

transfer of control to you. If we do so, you agree to pay reasonable expenses that we incur for taking such steps after the **LIMIT OF LIABILITY** is exhausted.

- F. Duty to pay.** We have the duty to pay any **Loss** that results from any **Claim** for an **Insured Event** or, if purchased, a **Third Party Insured Event** made or brought against any Insured to which this policy applies. Our duty to pay ends when the applicable **LIMIT OF LIABILITY** has been exhausted. We will not pay more than the applicable **LIMIT OF LIABILITY**.

We have no duty to recognize or pay **Defense Costs** incurred without our prior consent. Any payment of **Defense Costs** is included in the **LIMIT OF LIABILITY**; it is not in addition to the **LIMIT OF LIABILITY**.

- G. Recommended Settlements.** As respects any **Claim** for which we recommend that a settlement offer be accepted but you do not give your consent to such settlement, and the **Claim** later results in a judgment or settlement in excess of the recommended settlement, our liability for **Loss** on account of such **Claim** shall not exceed: 1) the recommended settlement amount plus **Defense Costs** incurred as of the date we recommended the settlement; plus 2) 70% of covered **Loss** excess of the recommended settlement (subject to the **LIMIT OF LIABILITY**) so long as 30% of such excess is borne by the Insured at its own risk and uninsured. This provision shall not apply unless the total **Loss**, including the recommended settlement, would exceed the applicable Retention amount.

## II. EXCLUSIONS: WHAT IS NOT COVERED

- A. Worker's Compensation/ERISA/FLSA/NLRA/WARN/COBRA/OSHA.** This policy does not cover any **Loss** arising out of any **Claim** alleging violation of any: i) worker's compensation, disability benefits or unemployment compensation law, social security and other employment benefits law; ii) the Employee Retirement Income Security Act of 1974 Public Law 93-406; iii) the Fair Labor Standards Act of 1938 (except the Equal Pay Act); (iv) the National Labor Relations Act; (v) the Worker Adjustment and Retraining Notification Act, Public Law 100-379 (1988); (vi) the Consolidated Omnibus Budget Reconciliation Act of 1985; (vii) the Occupational Safety and Health Act of 1970 (29 U.S.C. 651, et seq.); (viii) any statute, law or regulation similar to any statute, law or regulation described in (i) through (vii) of this exclusion; or (ix) any amendments to or regulations promulgated under any statute, law or regulation described in (i) through (vii) of this exclusion; provided, however, this exclusion shall not apply to any **Claim** for **Retaliation**.
- B. Contractual Liability.** This policy does not cover any **Loss** based upon, arising out of, directly or indirectly in connection with, related to, or in any way involving any **Claim** any Insured is obligated to pay by reason of the assumption of another's liability for an **Insured Event** or, if purchased, a **Third Party Insured Event** in a contract or agreement. This exclusion will not apply to liability for damages because of an **Insured Event** or, if purchased, a **Third Party Insured Event** that any Insured would have without the

- contract or agreement. This policy also does not cover any **Claims** for liability under any agreement governing the terms of the labor or service of an **Independent Contractor**, temporary worker or leased **Employee**.
- C. Strikes and Lockouts.** This policy does not cover any **Loss** based upon, arising out of, directly or indirectly in connection with, related to, or in any way involving any **Claim** arising out of a lockout, strike, picket line, replacement or other similar actions resulting from labor disputes, collective bargaining agreements or labor negotiations.
- D. Consequential Loss.** This policy does not cover any **Loss** resulting from or attributable to any allegations made by or solely for the benefit of a claimant's domestic partner, spouse, child, parent, brother or sister.
- E. Wage and Hour Law.** This policy does not cover any **Loss** arising out of a **Claim** alleging violation of any **Wage and Hour Law**, however, in the event such **Claim** also alleges an **Insured Event** otherwise covered by this policy, notwithstanding the provisions of section I.D. Defense, and subject to all other terms, conditions and exclusions contained in this policy, we agree to pay **Loss** solely for that portion of the **Claim** involving such **Insured Event**.
- F. Fraud and Collusion.** This policy does not cover any **Loss** based upon, arising out of, directly or indirectly in connection with, related to, or in any way involving any **Claim** alleging fraud or collusion by an Insured. Without limiting the foregoing, we will pay **Defense Costs** incurred relating to allegations of fraud and collusion to defend an innocent Insured named in such **Claim** so long as such **Claim** also contains allegations against that innocent Insured involving an **Insured Event** or, if purchased, a **Third Party Insured Event** otherwise covered by this policy.
- G. Price Discrimination.** This policy does not cover any **Loss** for **Inappropriate Third Party Conduct** alleging price discrimination, or other violation of any antitrust or unfair trade practices law.
- H. Prior Knowledge.** This policy does not cover any **Loss** arising out of **Insured Events** or, if purchased, **Third Party Insured Events** of which any Insured who is a principal, partner, officer, director, trustee, in-house counsel, **Employee(s)** within the HR or Risk Management department or **Employee(s)** with personnel and risk management responsibilities was aware by actual knowledge of the facts or circumstances of such **Insured Events** or, if purchased, a **Third Party Insured Event** prior to the Prior Knowledge Date, as shown in the Declarations.
- I. Prior Notice.** This policy does not cover any **Loss** arising out of **Insured Events** or, if purchased, **Third Party Insured Events** that have been the subject of any notice given under any other policy prior to the inception date of this policy.

- J. Property Damage/Bodily Injury.** This policy does not cover any **Loss** for damage to, or destruction of, loss of, or loss of use of any tangible property; or for or arising out of bodily injury, sickness, disease or death or any person; provided; however, that this exclusion shall not apply to that portion of a **Claim** for an **Insured Event** or, if purchased, a **Third Party Insured Event**, seeking **Loss** for emotional distress, loss of reputation, mental anguish, or humiliation otherwise covered by this policy.

### III. WHEN COVERAGE IS PROVIDED

- A. Claims** are considered to be first made on the date the **Claim** is first commenced by the claimant and not the date any Insured is served or first receives notice of a **Claim**.

All **Claims** because of **One Insured Event** or, if purchased **One Third Party Insured Event**, will be considered to have been made on the date that the first of those **Claims** was first made.

- B. Extended Reporting Period.** If you or we non-renew this policy or if we cancel this policy, an Extended Reporting Period equal to the period of time set forth in Item 11(b) of the Declarations can be added by means of an Extended Reporting Period Endorsement along with the payment of the additional Premium set forth in Item 11(a) of the Declarations.

The Extended Reporting Period Endorsement will not be issued unless we receive a written request for it within thirty (30) days after this policy is cancelled or non-renewed, nor will it take effect unless the additional Premium is paid within thirty (30) days after this policy is cancelled or non-renewed. Once that Premium is paid the endorsement may not be cancelled and the additional Premium will be fully earned.

Different renewal Premium or Self Insured Retention or Limits of Liability or changes in policy language shall not constitute non-renewal by us.

However, the Extended Reporting Period will not apply to any **Claim** if other insurance you buy covers you or would cover you if its limits of coverage had not been exhausted.

Coverage under the Extended Reporting Period is with respect to **Claims** first made against an Insured during the Extended Reporting Period and first reported by an Insured in accordance with Section VIII.A.1., provided always that **Claims** reported during the Extended Reported Period are limited to **Insured Events** or, if purchased, **Third Party Insured Events** which happen before the original Policy Period ends by either cancellation or non-renewal and which are otherwise covered by this policy.

The **LIMIT OF LIABILITY** that applies at the end of the Policy Period is not renewed or increased and the Limits, as shown in the Declarations, shall not be increased in any way by the addition of the Extended Reporting Period, if purchased.

C. If, during the Policy Period, any of the following changes occur:

1. the acquisition of an Insured, or of all or substantially all of its assets, by another entity, or the merger or consolidation of an Insured into or with another entity such that the Insured is not the surviving entity; or
2. the obtaining by any person, entity or affiliated group of persons or entities of the right to elect, appoint or designate over fifty percent (50%) of the directors of an Insured;

coverage under this policy will continue in full force and effect with respect to **Claims for Insured Events** or, if purchased, **Third Party Insured Events** committed before such change, but coverage will cease with respect to **Claims for Insured Events** or, if purchased, **Third Party Insured Events** committed after such change. After any such change, this policy may not be cancelled, regardless of **CONDITIONS** section **VIII.E** Cancellation, and the entire Premium for the policy will be deemed fully earned.

#### IV. WHERE COVERAGE IS PROVIDED

This policy covers **Claims for Insured Events** or, if purchased, **Third Party Insured Events** that happen anywhere in the world.

#### V. WHO IS INSURED

- A. Individual.** If you are shown in the Declarations as an individual, you and your spouse are Insureds but only for the conduct of a business of which you are the sole owner.
- B. Corporation.** If you are shown in the Declarations as a corporation or organization other than a partnership or joint venture, you are an Insured. Your stockholders are also Insureds, but only with respect to their liability as your stockholders.
- C. Partnership or Joint Venture.** If you are shown in the Declarations as a partnership or joint venture, you are an Insured. Your partners or co-venturers and their spouses are also Insureds, but only for the conduct of your business.

However, no person nor organization is covered for the conduct of any current or past partnership or joint venture not named in the Declarations.

- D. Employees.** Your **Employees**, executive officers, directors and your trustees are Insureds. Your **Employee's** status as an Insured will be determined as of the date of the **Discrimination, Harassment, Retaliation, Inappropriate Employment Conduct** and/or, if purchased, **Inappropriate Third Party Conduct**, which caused an **Insured Event** or, if purchased, a **Third Party Insured Event**.

- E. Mergers and Acquisitions.** Any organization that you newly acquire, form or merge with while this policy is in effect that has less than 20% of the total number of your **Employees**

as of the inception date of this policy shall be an Insured at the time of such acquisition, merger or formation if you own at least fifty one percent (51%) of it. Within thirty (30) days prior to the expiration of the policy, the Insured shall give us written notice as to all such organizations. If you acquire, form or merge with any organization that has more than 20% of the total number of your **Employees** as of the inception date of this policy, such organization is also an Insured if you own at least fifty one (51%) of it; provided, however, no such organization is covered for more than forty five (45) days or the remainder of the Policy Period, whichever is less, from the date acquired, merged or formed unless we agree to cover such acquisition or newly formed organization within such forty five (45) day period in consideration of an additional Premium to be determined by us. Notwithstanding the foregoing, any acquired or formed organization is neither covered for **Loss** that results from an **Insured Event** or, if purchased, a **Third Party Insured Event** that happened or first commenced before the Insured acquired or formed it; nor for **Loss** covered under any other insurance.

This provision does not apply to a partnership or joint venture. Nor does it apply to any organization once it is shown in the Declarations of this policy.

## VI. LIMIT OF LIABILITY

- A. The amount shown at Item 4(a) in the Declarations is the most we will pay for **Claims** first made or brought during the Policy Period for **Loss** that results from any **One Insured Event** regardless of the number of **Claims**.
- B. The amount shown at Item 4(b) in the Declarations is the most we will pay for **Claims** first made or brought during the Policy Period for **Loss** that results from any **One Third Party Insured Event**, regardless of the number of **Claims**.
- C. The amount shown at Item 4(c) in the Declarations is the Additional Defense Limit we will pay for **Defense Costs** incurred in the defense of **Claims**. **Defense Costs** shall apply first to and reduce the Additional Defense Limit which shall be in addition to, and not part of, the Aggregate Limit of Liability. The Additional Defense Limit is applicable to **Defense Costs** only and upon exhaustion of the Additional Defense Limit, **Defense Costs** incurred thereafter shall be part of and not in addition to the Aggregate Limit of Liability and payment of **Defense Costs** reduces and may exhaust the Aggregate Limit of Liability. Notwithstanding the foregoing, if the Aggregate Limit of Liability is exhausted by the payment of **Loss**, other than **Defense Costs**, or tendered to the Named Insured, the Additional Defense Limit shall also be deemed exhausted and no further **Defense Costs** will be paid.
- D. The amount shown at Item 4(d) in the Declarations is the most we will pay for the combined total of all **Claims** first made or brought during the Policy Period for **Loss** that results from all **Insured Events** and **Third Party Insured Events** including **Defense Costs** incurred after the Additional Defense Limit has been exhausted.

If this Policy Period is extended, the Limits, as shown in the Declarations shall not in any way increase. For purposes of the **LIMIT OF LIABILITY**, any policy extension is considered to be part of and not in addition to the former Policy Period.

## VII. SELF INSURED RETENTION

Our obligation to pay under this policy applies only to the amount of **Loss** in excess of any Self Insured Retention amount, as shown in the Declarations, and the **LIMIT OF LIABILITY** will not be reduced by the amount of such Self Insured Retention.

The Self Insured Retention amount will apply separately to each **Claim** made, however, it will only apply once to all **Claims** arising out of any **One Insured Event** or, if purchased, any **One Third Party Insured Event** regardless of the number of claimants who allege damages.

## VIII. CONDITIONS

We have no duty to provide coverage under this policy unless there has been full compliance with all the conditions contained in this policy.

### A. Duties in the event of a Claim

1. You must see to it that we or our Authorized Representatives, as shown in the Declarations, receive notice in writing as soon as practicable, but in no event more than sixty (60) days after any Insured who is a principal, partner, officer, director, trustee, in-house counsel, **Employee(s)** within the HR or Risk Management department or **Employee(s)** with personnel and risk management responsibilities, becomes aware that a **Claim** has been made. Without negating the foregoing requirements, such notice of **Claim** must also be reported no later than sixty (60) days after the end of the Policy Period or, if applicable, the Extended Reporting Period. Your notification should include:
  - (a) The identity of the person(s) alleging **Discrimination, Harassment, Retaliation, Inappropriate Employment Conduct** and/or, if purchased, **Inappropriate Third Party Conduct**;
  - (b) the identity of any Insured(s) who allegedly committed the **Discrimination, Harassment, Retaliation, Inappropriate Employment Conduct** and/or, if purchased, **Inappropriate Third Party Conduct**;
  - (c) the identity of any witnesses to the alleged **Discrimination, Harassment, Retaliation, Inappropriate Employment Conduct** and/or, if purchased, **Inappropriate Third Party Conduct**; and
  - (d) the date(s) an **Insured Event** or, if purchased, a **Third Party Insured Event** took place.

2. You and any other Insured must:
  - (a) immediately send us or our Authorized Representatives, as shown in the Declarations, copies of any demands, notices, summonses or legal papers received in connection with the **Claim**;
  - (b) authorize us or our Authorized Representatives, as shown in the Declarations, to obtain statements, records and other information;
  - (c) co-operate with us or our Authorized Representatives, as shown in the Declarations, in the investigation or defense of the **Claim**; and
  - (d) assist us or our Authorized Representatives, as shown in the Declarations, in the enforcement of any right against any person or organization which may be liable to an Insured because of **Loss** to which this policy may also apply.
3. No Insureds will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent. Subsequent payments that are deemed by us as having been prejudiced by any such voluntary payment will also be the sole responsibility of the Insured.

We have no liability to pay costs that you incur prior to providing notice in accordance with this Section, nor shall any such costs be permitted to erode the Self-Insured Retention that may be applicable.

#### **B. Report of a Potential Claim**

Solely at an Insured's option, an Insured may within the Policy Period report an oral complaint:

1. by an **Employee**, former **Employee** or applicant for employment alleging **Discrimination, Harassment and/or Inappropriate Employment Conduct**; or
2. by a natural person who is not an **Employee** of any Insured alleging **Inappropriate Third Party Conduct**.

If such report is received by us or our Authorized Representatives, as shown in the Declarations, within the Policy Period then any **Claim** subsequently arising from such oral complaint will be deemed to be made on the date such report was received. Such report must include the identity of the person(s) making the oral complaint.

In the event a matter that was previously reported to us in accordance with this Section VIII. B. becomes a **Claim** for which you seek coverage under this policy, you must report such **Claim** in accordance with Section VIII. A. above, even if you have previously reported in connection with this Section VIII. B.

In respect of potential claims, costs incurred prior to notice in accordance with this policy will not be applied against the Self-Insured Retention, nor shall we have any obligation to pay such pre-notice costs that might otherwise be covered by the policy.

### C. Legal Action Against Us

1. No person or organization has the right under this policy:
  - (a) to join us as a party or otherwise bring us into a suit asking for damages from an Insured; or
  - (b) to sue us on this policy unless all of its terms have been fully complied with.
2. A person or organization may sue us to recover on an agreed settlement or on final judgment against an Insured obtained after an actual trial, but we will not be liable for damages that are not payable under the terms of this policy or that are in excess of the applicable **LIMIT OF LIABILITY**. An agreed settlement means a settlement and release of liability signed by us, an Insured and the claimant's legal representative.

### D. Other Insurance

This policy shall be deemed to be primary with the following exceptions: this policy shall apply only as excess insurance over, and shall not contribute with any fiduciary liability insurance or other insurance which applies to any **Claim** for any violation of ERISA as well as insurance which applies to any **Claim** against an **Independent Contractor** or leased or temporary **Employee** or for **Inappropriate Third Party Conduct**. Nothing herein shall be construed to make this policy subject to the terms, conditions and limitations of any other insurance.

### E. Cancellation

You may cancel this policy by surrendering the policy to us or by mailing to us written notice stating when such cancellation shall be effective. We may not cancel this policy for any reason other than non-payment of Premium by mailing to the Named Insured at the address shown in the Declarations, written notice stating when, not less than ten (10) days thereafter, such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The effective date and hour of cancellation as stated in the notice shall become the end of the Policy Period. Delivery of such written notice shall be equivalent to mailing. The notice of cancellation shall state the reason for cancellation.

If you cancel, earned Premium shall be computed on a short rate basis. The Premium shall be deemed fully earned if any **Claim** under this policy is reported to us on or before the date of cancellation. If we cancel, earned Premium shall be computed pro rata. Premium adjustment may be made at the time cancellation becomes effective, but payment or tender of unearned Premium is not a condition of cancellation.

## F. Representations

By accepting this policy you agree:

1. all statements in the **Application** and any attachments as well as all other information provided to us are accurate and complete;
2. those statements are based upon representations you made to us; and
3. those representations are material to our acceptance of this risk and we have issued this policy in reliance upon the truth of your representations.

In the event that any statement or representation in the **Application** is untrue, and the person who signed the **Application** knew that such statement or representation was untrue, this policy shall not afford coverage, but only with respect to the Insured organization and the person who signed the **Application**.

## G. When We Do Not Renew / Renewal

If we decide not to renew this policy, we will mail or deliver to the Named Insured shown in the Declarations, written notice of the non-renewal not less than sixty (60) days before the expiration date. The notice of nonrenewal shall state the reason for nonrenewal.

If notice is mailed, proof of mailing will be sufficient notice of non-renewal.

## H. Transfer Of Rights Of Recovery Against Others to Us

If any Insured has rights to recover all or part of any payments we have made under this policy, those rights are transferred to us; the Insured must do nothing after a **Loss** to impair them. At our request, any Insured will bring suit or transfer those rights to us and help us to enforce them.

## I. Bankruptcy

Bankruptcy or insolvency of any Insured or of an Insured's estate will not relieve us of our obligations under this policy.

## J. Valuation and Currency

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 reached 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 **Loss** is due.

## K. Headings

The description in the headings and subheadings are solely for convenience, and form no part of the terms and conditions of coverage.

## L. Alteration and Assignment

No change in, modification of, or assignment of interest under this policy shall be effective except when made by written endorsement to the policy, which is issued by us. You agree that this policy constitutes the entire agreement between the Insureds and us. Notice to or knowledge possessed by either party or any agent, broker or other person acting for you or us shall not effect a waiver of or estop you or us from asserting any rights under the policy.

## IX. DEFINITIONS

**A. Application** means each and every signed **Application**, any attachments to such **Applications**, other materials submitted therewith or incorporated therein and any other such documents submitted in connection with the underwriting of this policy or the underwriting of any other employment practices liability policy issued by the Insurer, or any of its affiliates, of which this policy is a renewal, replacement or which succeed it in time.

**B. Claim(s)** means a written complaint or written charge made against an Insured or a written demand made against an Insured in which damages are alleged, injunctive relief is sought, or where specific charges of **Discrimination, Harassment, Retaliation, Inappropriate Employment Conduct** and/or, if purchased, **Inappropriate Third Party Conduct** are brought.

**Claim** includes:

1. a civil action, suit or administrative proceeding;
2. a written request to toll or waive a statute of limitations;
3. an administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document, including, but not limited to, a proceeding before the Equal Employment Opportunity Commission or any similar governmental agency; provided that in the context of an audit conducted by the Office of Federal Contract Compliance Programs, **Claim** shall be limited to a Notice of Violation or Order to Show Cause or a written demand for monetary or injunctive relief;

4. an arbitration or mediation or other alternative dispute resolution proceeding if you are obligated to participate in such proceeding or if you agree to participate in such proceeding with our consent; or
5. a criminal proceeding commenced by the return of an indictment or similar pleading.

**Claim** shall not mean any labor or grievance arbitration subject to a collective bargaining agreement.

**C. Defense Costs** means those reasonable and necessary legal fees and expenses that result from the investigation, settlement, defense or appeal of a specific **Claim** including attorney fees and expenses, the cost of legal proceedings, the cost of expert consultants and witnesses, the cost of appeal, injunction, attachment or supersedeas bonds, the cost of bonds to release property being used to secure a legal obligation (but only for bond amounts within the **LIMIT OF LIABILITY** that applies). We have no obligation to furnish any bonds.

The following are not **Defense Costs**:

1. salaries and expenses of our **Employees**, including in-house and/or coverage attorneys, salaries and expenses of any Insured's **Employees** or the fees and expenses of independent adjusters we hire; or
2. amounts incurred prior to giving notice to us or our Authorized Representatives, as shown in the Declarations.

**D. Discrimination** means any actual or alleged termination of the employment relationship, demotion, failure or refusal to hire or promote, denial of an employment benefit or the taking of any adverse or differential employment action because of race, color, religion, age, sex, disability, pregnancy, sexual orientation, national origin, or any other basis prohibited by federal, state or local law.

**E. Employee** means an individual whose labor or service is currently or has formerly been engaged by and directed by the Named Insured, or any covered entity. This includes applicants for employment, volunteers, part time, seasonal and temporary **Employees** as well as any individual employed in a supervisory, managerial or confidential position and **Independent Contractors**. **Employees** who are leased to another employer are not **Employees**.

**F. Harassment** means any actual or alleged unwelcome sexual or non-sexual advances, requests for sexual or non-sexual favors or other verbal, visual or physical conduct of a sexual or non-sexual nature, where such **Harassment** is based on a factor or category prohibited by law (including sex, race, age, national origin, disability, etc.), that 1. explicitly or implicitly are made a condition of employment, 2. are used as a basis for employment

decisions, or 3. create a hostile, intimidating or offensive work environment or that interfere with performance.

**G. Inappropriate Employment Conduct** means any of the following:

1. actual or constructive termination of an employment relationship in a manner which is alleged to have been against the law or wrongful or in breach of an implied employment contract or breach of an express written employment contract (other than a collective bargaining agreement);
2. actual or alleged wrongful: demotion, evaluation, deprivation of a career opportunity or discipline;
3. actual or alleged misrepresentation in connection with an employment decision;
4. actual or alleged violation of the Family Medical Leave Act;
5. actual or alleged false imprisonment, detention or malicious prosecution in connection with an employment decision;
6. actual or alleged libel, slander, defamation of character or any invasion of right of privacy in connection with an employment decision; or
7. actual or alleged failure to: employ or promote, train, create or enforce adequate workplace or employment policies and procedures, or grant tenure or seniority.

**Inappropriate Employment Conduct** shall not include any allegations other than those set forth above.

**H. Inappropriate Third Party Conduct** means actual or alleged acts of discrimination or harassment by an Insured against any natural person who is not an **Employee** of any Insured occurring on or after the Third Party Retroactive Date as shown in the Declarations. **Inappropriate Third Party Conduct** shall not include actual or alleged acts of assault or battery.

**I. Independent Contractor** means any natural person **Independent Contractor** who performs labor or service solely for you on a full-time basis pursuant to a written contract or agreement, where such labor or service is under your exclusive direction. The status of an individual as an **Independent Contractor** shall be determined as of the date of an alleged **Insured Event** or, if purchased, **Third Party Insured Event**.

**J. Insured Event** means actual or alleged acts of **Discrimination, Harassment, Retaliation** and/or **Inappropriate Employment Conduct**, by an Insured against an **Employee** or former **Employee** or applicant for employment with an Insured entity.

**Insured Event** shall not include **Claims** for actual or alleged violation of any federal, state or local **Wage and Hour Laws** or regulations.

- K. Loss** means money which an Insured is legally obligated to pay as a result of a **Claim** including compensatory damages, judgments (including pre-judgment and post-judgment interest awarded against an Insured on that part of any judgment paid by us), settlements, statutory attorney fees, **Defense Costs** and punitive, exemplary and multiple damages where insurable by law.

However, **Loss** does not include anything specifically excluded in **EXCLUSIONS: WHAT IS NOT COVERED** section II., or any of the following:

1. non-monetary relief (this provision does not apply to **Defense Costs** where non-monetary relief is sought for alleged **Harassment, Discrimination, Inappropriate Employment Conduct** and/or, if purchased, **Inappropriate Third Party Conduct**);
2. costs incurred by an Insured to modify or adapt any building or property in order to make such building or property more accessible or accommodating to any disabled person; costs associated with eliminating non-essential duties from the job description of a disabled person; costs associated with providing a disabled person with reasonable workplace accommodations; and costs associated with lost productivity by an employer as the result of making a reasonable workplace accommodation for a disabled person;
3. payment of insurance plan benefits by or on behalf of retired **Employees**, or that to which a claimant would have been entitled as an **Employee** had any Insured provided the claimant with a continuation of insurance;
4. liquidated damages where there is a finding of wilfulness;
5. civil or criminal fines, sanctions, liquidated damages (other than those awarded under the Age Discrimination in Employment Act or the Equal Pay Act); payroll or other taxes or other matters that may be deemed uninsurable according to the law under which this policy is construed;
6. amounts owed under federal, state or local **Wage and Hour Laws**;
7. commissions, bonuses, profit sharing or benefits including but not limited to medical, stock options, vacation, holiday, and/or sick pay;
8. severance pay;
9. damages determined to be owing under an express written contract of employment or obligation to make payments, including consequential and liquidated damages;

10. future salary, wages, bonus, commissions and/or benefits resulting from a settlement of a **Claim**, judgment, order or award that results in the rehiring, promotion or reinstatement of an **Employee**;
  11. awards, costs, judgments, or orders resulting from a finding of contempt of court or violation of a court order or administrative decree; or
  12. any payment, incentive, or other compensation that is granted in the form of securities of an Insured or is based on the value of securities of an Insured.
- L. **One Insured Event** means (1) one or more covered allegations of **Discrimination, Harassment, Retaliation** and/or **Inappropriate Employment Conduct** which are related by an unbroken chain of events or (2) class action or multiple claimant or multiple plaintiff suits arising out of related **Insured Events**.
- M. **One Third Party Insured Event** means one or more covered allegations of **Inappropriate Third Party Conduct** that are related by an unbroken chain of events.
- N. **Retaliation** means any actual or alleged **Discrimination, Harassment** and/or **Inappropriate Employment Conduct** against an **Employee** on account of such **Employee's** exercise or attempted exercise of rights protected by law, refusal to violate any law, disclosure or threat to disclose to a superior or to any governmental agency alleged violations of the law, or on account of the **Employee** having assisted or testified in or cooperated with a proceeding or investigation regarding alleged violations of law.
- O. **Third Party Insured Event** means actual or alleged acts of **Inappropriate Third Party Conduct** by an Insured against any natural person who is not an **Employee** of any Insured occurring on or after the Third Party Retroactive Date as shown in the Declarations.
- P. **Wage and Hour Law** means any federal, state or local law governing or related to the payment of wages including the payment of overtime, on-call time or minimum wages or the classification of **Employees** for the purpose of determining **Employees'** eligibility for compensation under such law(s).