

EMPLOYMENT-RELATED PRACTICES LIABILITY

NOTICE: THIS IS A CLAIMS MADE AND REPORTED POLICY. COVERAGE IS LIMITED TO LIABILITY FOR CLAIMS FIRST MADE AGAINST YOU AND REPORTED TO US WHILE THE COVERAGE IS IN FORCE. NO COVERAGE EXISTS FOR CLAIMS FIRST MADE AGAINST THE INSURED AND REPORTED TO US AFTER THE END OF THE POLICY PERIOD OR THE AUTOMATIC REPORTING PERIOD UNLESS, AND TO THE EXTENT, AN EXTENDED REPORTING PERIOD APPLIES. PLEASE REVIEW THE POLICY CAREFULLY AND DISCUSS POLICY COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.

THE LIMITS OF LIABILITY AVAILABLE TO PAY FOR LOSS, INCLUDING JUDGMENTS OR SETTLEMENTS, MAY BE REDUCED BY DEFENSE COSTS TO THE EXTENT PROVIDED HEREIN. THE RETENTION AMOUNT SHALL BE APPLIED TO ALL LOSS, INCLUDING DEFENSE COSTS.

In consideration of the payment of the premium and in reliance upon the statements contained in the **“Application”** and the materials submitted in connection therewith, **we** agree to this Policy as a contract with **you**.

Throughout the Policy, the words **you** and **your** refer to the **“Named Insured(s)”** shown in the Declarations and any other person(s) or organization(s) qualifying as an **“Insured”** under this Policy. The words **we**, **us**, **our** and **Insurer** refer to the Company providing this insurance.

Other words and phrases that appear in boldface and are enclosed in quotations have special meaning. Refer to **SECTION VIII. DEFINITIONS**.

SECTION I. INSURING AGREEMENT— WHAT IS COVERED

A. We shall pay those amounts the “Insured” is legally required to pay as “Loss” by reason of a “Claim” alleging a “Wrongful Act” to which this insurance applies if the “Claim” for a “Wrongful Act” is first made against you and reported to us during the “Policy Period” or any extended reporting period we agree to provide under this Policy.

B. Defense

- 1. We** have the right and duty to defend and appoint an attorney to defend any **“Claim”** brought against any **“Insured”** for a **“Wrongful Act”** to which this insurance applies even if the **“Claim”** is frivolous, without merit or fraudulent. If more than one **“Insured”** is involved in a **“Claim”**, the **Insurer** may, in its sole discretion, appoint separate attorneys for one or more of such **“Insureds”** if there is a material (actual or potential) conflict of interest among any such **“Insureds”**. **Our** duty to defend any **“Claim”** ends after the applicable Limits of Liability have been exhausted by payment of **“Loss”**.
- 2. The Insurer** shall not seek to allocate, but rather will pay one hundred (100%) percent of, **“Defense Costs”** incurred by an **“Insured”** on account of a **“Claim”** that includes covered and uncovered matters, unless provided for in the jurisdiction in which the Claim was asserted.
- 3. At your** request **we** shall defend any criminal proceeding brought against an **“Insured”**, subject to the applicable criminal proceeding sub-limit of liability under **Section IV.A**, until there has been a final adjudication of guilt with respect to the charges against **you** not subject to with respect to the charges against you not subject to further appeal. Any **“Defense Costs”** incurred therein shall be included within and serve to reduce **our** Limits of Liability. **Our** defense of any criminal proceeding shall not serve to render **us** liable for any other **“Loss”** incurred in connection with such criminal proceeding, and **we** shall retain the right to withdraw from such defense. Regardless of whether **you** request that **we** defend a criminal proceeding, **we** shall defend any **“Claim”** brought against an **“Insured”** which alleges the same or similar **“Wrongful Act(s)”** as such criminal proceeding.
- 4. We** have the right to investigate and settle any **“Claim”** in the manner and to the extent that **we** believe is proper, however, **we** will not settle any **“Claim”** without **your** consent. If **you** refuse to consent to the settlement of a **“Claim”** recommended by **us**, **Section IV.G**. will operate to limit the **Insurer’s** liability in connection with such **“Claim”**.
- 5. We** shall pay as **“Loss”** all reasonable costs **we** ask the **“Insured”** to incur while helping **us** investigate or defend a **“Claim”**. Per diem earnings lost by the **“Insured”** because of time taken off from work helping **us** investigate or defend a **“Claim”** shall also be paid as **“Loss”**, however, **we** will not pay more than \$250 per day for such lost earnings.

6. **We** shall pay as “**Loss**” premiums for appeal bonds, or bonds to release property being used to secure a legal obligation, if required in a “**Claim**” **we** defend. **We** shall only pay, however, for bonds valued up to our applicable Limits of Liability. **We** shall have no obligation to appeal or to obtain these bonds. **We** shall pay as **Loss** the costs assessed against an “**Insured**” in a “**Claim**” **we** defend.
7. Payments of “**Defense Costs**” are part of any “**Loss**”.
However, “**Defense Costs**” are not included within and will not serve to reduce **our** Limits of Liability until “**Loss**” exceeds the Retention. Payments of “**Defense Costs**” shall cease when “**Loss**” exceed one hundred (100%) percent of the applicable Limit of Liability.
8. Within the Limits of Liability **we** shall pay all interest on that amount of any judgment:
 - a. Which accrues after entry of judgment; and
 - b. Before **we** pay, offer to pay, or deposit in court that part of a judgment within **our** applicable Limits of Liability.

We shall not pay interest which accrues prior to entry of any judgment.

C. Coverage Territory and Valuation

1. Where legally permissible, **we** shall cover “**Wrongful Act(s)**” occurring 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 of America. If judgment is rendered, settlement is denominated or another element of “**Loss**” under this Policy is in a currency other than United States of America 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 final judgment is reached, the amount of the settlement is agreed upon or the other element of “**Loss**” is due, respectively.

D. Transfer Of Control

1. **You** may take over control of any outstanding “**Claim**” previously reported to **us** only if **we** both agree that **you** should, or if a court orders **you** to do so or if **you** refuse to consent to a settlement of the “**Claim**” as described in **Section IV.G**.
2. If the Limits of Liability are exhausted, **we** will notify **you** of all outstanding “**Claim(s)**” so that **you** can take over control of the defense. **We** will help transfer control to **you**. **We** shall 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, **we** shall not waive or give up any of **our** rights. **You** shall pay all reasonable expenses **we** incur for taking such steps.

SECTION II. EXCLUSIONS—WHAT IS NOT COVERED

This insurance does not apply to:

- A. **Property Damage**. Any “**Claim**” arising out of “**Property Damage**”;
- B. **Bodily Injury**. Any “**Claim**” arising out of “**Bodily Injury**”.
This exclusion does not apply to that portion of any “**Claim**” concerning emotional distress, mental anguish or humiliation arising from a “**Wrongful Act**”;
- C. **Contractual Liability**. Any “**Claim**” for liability assumed by the “**Insured**” under any contract or agreement. This exclusion, however, shall not apply to any liability the “**Insured**” would have in the absence of the contract or agreement;
- D. **Specific Statutes**. Any “**Claim**” arising out of the “**Insured’s**” actual or alleged failure to fulfill any duty or obligation imposed, or to refrain from any action prohibited by:
 1. the Employee Retirement Income Security Act of 1974 (ERISA);
 2. the Comprehensive Omnibus Budget Reconciliation Act of 1985 (COBRA);

3. the Workers' Adjustment and Retraining Notification Act, Public Law 100-379 (1988) (WARN);
 4. the Occupational Safety and Health Act (OSHA);
 5. the National Labor Relations Act of 1947 (NLRA);
 6. the Labor Management Relations Act (LMRA);
 7. the Federal Employers' Liability Act (FELA);
 8. the Railway Labor Act (RLA); and
 9. any similar federal, state or local statutory law or ordinance, or common law, any amendments thereto, and any rules or regulations promulgated thereunder; however, this exclusion shall not apply to any **"Claim"** for actual or alleged **"Retaliation"** on account of the claimant's exercise of rights pursuant to any such law;
- E. Labor Disputes.** Any **"Claim"** arising out of a lockout, strike, picket line, replacement or other similar action, resulting from labor disputes, labor negotiations, or collective bargaining agreements; however, this exclusion shall not apply to any **"Claim"** for actual or alleged **"Retaliation"** on account of the claimant's exercise of rights pursuant to any law governing such labor activities;
- F. Workers' Compensation.** Any **"Claim"** arising out of any workers' compensation, disability insurance or benefits, medical insurance or benefits, severance, social security benefits, wage payment, or unemployment compensation law; however, this exclusion shall not apply to any **"Claim"** for actual or alleged **"Retaliation"** on account of the claimant's exercise of rights pursuant to any such law;
- G. Accommodations.** Any costs or expenses incurred by an **"Insured"** to make the **"Named Insured(s)"** premises accessible to or otherwise accommodate persons with disabilities as required by the Americans with Disabilities Act of 1990 (ADA) or similar federal, state, or local statutory law or ordinance, or common law, any amendments thereto, or any regulations promulgated thereunder;
- H. Non-Monetary Relief.** Any **"Claim"** solely seeking, or that portion of any **"Claim"** seeking, non-monetary relief including injunctive or declaratory relief, as well as the cost of implementing any such relief including, but not limited to, employment-related education or training, job reinstatement, or other equitable remedies;
- I. Prior Knowledge & Claim.** Any **"Claim"** arising out of incidents or circumstances of which any **"Insured"** had knowledge of and which any **"Insured"** could reasonably foresee might result in a **"Claim"**, or any asserted or pending **"Claim"**, prior to the Policy effective date shown in the Declarations;
- J. Prior Notice Circumstances.** Any **"Claim"** arising out of incidents or circumstances which have been the subject of any written notice given under any policy of which this Policy is a direct or indirect renewal or replacement, or any other policy which preceded this Policy.
- K. Written Employment Contract.** Any **"Claim"** arising out of any written employment contract;
- L. Leasing Companies.** Any **"Claim"** by or against any person or entity that supplies **"Leased Workers"** to you;
- M. Wage and Hour Laws.** Any **"Claim"** based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving or connected to, any private, governmental or administrative complaint or lawsuit for violation of federal, state, or local C laws or regulations, including, but not limited to, any request for monetary or non-monetary compensation or benefits that may be owed to one or more past or present **"Employees"**.
- N. Third-Party Wrongful Act.** Any **"Claim"** arising out of a **"Third-Party Wrongful Act"**. No **"Wrongful Act"** of any individual **"Insured"** nor any fact pertaining to any individual **"Insured"** shall be imputed to any other individual **"Insured"** for the purposes of determining the applicability of Exclusion I. above.

SECTION III. WHO IS AN INSURED

- A. Individual.** If **you** are shown in the Declarations as an individual, **you** and **your** spouse or “**Domestic Partner**” are “**Insured(s)**”, 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 “**Insured(s)**”, but only for liability resulting from the conduct of **your** business.
- 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 or “**Domestic Partners**” are also an “**Insured**”, but only for liability resulting from the conduct of **your** business.
- D. Limited Liability Company.** If **you** are shown in the Declarations as a limited liability company, **you** are an “**Insured**”. **Your** members and their spouses or “**Domestic Partners**” are also “**Insured(s)**”, but only with respect to the conduct of **your** business.
- E. Heirs, Executors, Administrators, Assigns and Legal Representatives.** **Your** heirs, executors, administrators, assigns and legal representatives are “**Insured(s)**”, but only for liability resulting from the conduct of **your** business and only in the event of **your** death, incapacity or bankruptcy.
- F. Subsidiaries.** Any subsidiary in which **you** own greater than fifty (50%) percent is an “**Insured**” as long as the subsidiary is listed on the “**Application**” for coverage and is in a like kind business as that of the first “**Named Insured**” in the Declarations.
- G. Acquisitions.** Any organization that **you** acquire or form while this Policy is in effect is an “**Insured**” if **you** own greater than fifty (50%) percent of it, but no such organization will be covered under this Policy for more than ninety (90) days from the date that **you** acquire or form it, or for the remainder of the “**Policy Period**”, whichever is less, unless **you** have notified **us** in writing of such acquisition or formation and **we** have agreed, by written endorsement to this Policy, to provide such coverage. There will be no coverage for any “**Claim**” or “**Loss**” that arises out of a “**Wrongful Act**” that happened or commenced before **you** acquired or formed such organization, or for any “**Claim**” or “**Loss**” in which such organization is covered under any other insurance.
- H. Employee(s).** **Your** “**Employee(s)**” and directors and officers are an “**Insured**” only for the conduct of **your** business on **your** behalf within the scope of their duties as such. An “**Employee**”, director or officer will only be an “**Insured**” if he/she was **your** “**Employee**”, director or officer on the date of the alleged “**Wrongful Act**”.

SECTION IV. LIMITS OF LIABILITY

- A.** The limits shown in the Declarations to this Policy and the information contained in this section state the most **we** shall pay as “**Loss**” regardless of the number of:
1. Persons or organizations covered by this Policy; or
 2. “**Claim(s)**” made.
- B.** The Aggregate Limit of Liability is the most **we** shall pay for all “**Loss**” covered under this Policy.
- C.** Subject to the Aggregate Limit, the each “**Wrongful Act**” limit is the most **we** shall pay for all “**Loss**” that results from a single “**Wrongful Act**”.

- D. All **“Claim(s)”** arising from continuous, related, or repeated **“Wrongful Act(s)”** shall be treated as arising out of one **“Wrongful Act”**. Only the Policy in effect when the first such **“Claim”** involving such continuous, related, or repeated **“Wrongful Act(s)”** or is made shall respond to all such **“Claim(s)”**.
- E. All **“Claim(s)”** arising from continuous, related, or repeated **“Wrongful Act(s)”** shall be deemed to be made on the date that the first such **“Claim”** is made.
- F. The Limits of Liability of this Policy apply separately to each consecutive annual period and to any remaining period of less than twelve (12) months, starting with the beginning of the **“Policy Period”** shown in the Declarations, unless the Policy Period is extended after issuance for an additional period of less than twelve (12) months. In that case, the additional period shall be deemed part of the last preceding period for purposes of determining the Limits of Liability.
- G. If **you** refuse to consent to a settlement of any **“Claim”** acceptable to a claimant and recommended by **us**, and **you** elect to contest or continue any legal proceedings, then **our** liability in connection with such **“Claim”** shall not exceed the amount for which the **“Claim”** could have been settled, including **“Defense Costs”** incurred with **our** consent up to the date of such refusal, plus seventy-five (75%) percent of the amount of any **“Loss”** in excess of such amount up to the applicable Limit of Liability. The remaining twenty-five (25%) percent of such **“Loss”** shall be carried by **you** at **your** own risk and be uninsured.

SECTION V. RETENTION

You shall be responsible for the Retention amount shown in the Declarations and **you** may not insure against it. Expenses **we** incur in investigating, defending, and settling any **“Claim”** will be applied toward the Retention. However, such expenses will not include salaries and costs of **our** or **your** employees, employed attorneys and adjusters. The Retention shall apply separately to each **“Wrongful Act”**, or continuous, related, or repeated **“Wrongful Act(s)”**. The Retention is not included within the Limits of Liability.

SECTION VI. CONDITIONS

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

- A. **Assignment.** The insurable interest and rights of any **“Insured”** are not assignable. **You** cannot assign or transfer **your** insurable interest and rights in this Policy without **our** written consent attached to the Policy.
- B. **Bankruptcy or Insolvency.** **Your** bankruptcy, insolvency or inability to pay, or the insolvency of **your** estate, will not relieve **us** from **our** obligation to pay any **“Claim”** otherwise covered by this Policy. Under no circumstances will **your** bankruptcy, insolvency, inability to pay or insolvency of **your** estate require **us** to drop down, in any way replace, or assume any of **your** obligations with respect to **your** Retention.
- C. **Reporting Requirements In The Event Of An Incident or Potential Claim.**
 - 1. If, during the **“Policy Period”**, incidents or events occur which **you** reasonably believe may give rise to a **“Claim”** for which coverage may be provided hereunder, **you** may, during the **“Policy Period”** or any applicable Extended Reporting Period, give written notice to **us**. Such written notice shall contain:
 - a. The identity of the person(s) alleging a **“Wrongful Act”**;
 - b. The identity of the **“Insured(s)”** who allegedly were involved in the incidents or events;
 - c. The date the alleged incidents or events took place;
 - d. The date the insured first became aware of the circumstances; and
 - e. The reason the **“Insured”** anticipates a **“Claim”** may arise from such circumstances.

2. If **you** submit written notice containing items **a.** through **e.** above, then any **“Claim”** subsequently made against an **“Insured”** arising out of such incidents or events shall be deemed, for the purpose of this insurance, to have been first made during the **“Policy Period”** in effect at the time such written notice was submitted to **us**.

D. Reporting Requirements and Duties When a Claim is Made

1. If a **“Claim”** is made against any **“Insured”**, **you** must:
 - a. Immediately record the specifics of the **“Claim”** and the date received; and
 - b. Notify **us** as soon as practicable.

You must see to it that **we** receive written notice of this **“Claim”** as soon as practicable, but in no event after the expiration of the **“Policy Period”**.
2. **You** and any other **“Insured”** must:
 - a. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with any Claim:
 - b. Authorize **us** to obtain records and other information:
 - c. Cooperate with **us** in the investigation, settlement or defense of any **“Claim”**; and
 - d. Assist **us**, upon **our** request, in the enforcement of any right against any person or organization which may be liable to the **“Insured”** because of injury or damage to which this insurance may also apply.
3. No **“Insured”** will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense without **our** prior consent.

E. Written Notices to Us. All written notices provided for in this Policy shall be in writing and addressed to the **Insurer** as shown on the **Notices To Insurance Company For Claims** section of the Declarations.

F. Transfer Of Rights Of Recovery Against Others To Us. **You** may be able to recover all or part of **“Loss”** from someone other than **us**. **You**, therefore, shall do all that is possible after **“Loss”** is incurred to preserve any such right of recovery. If **we** make a payment under this Policy, that right of recovery shall belong to **us**. **You** shall do whatever is necessary, including signing documents, to help **us** obtain that recovery. **We** shall be entitled to such recovery only after **you** have been fully compensated.

G. Automatic Reporting Period

1. Subject to all of the terms and conditions set forth in this paragraph, **you** have an Automatic Reporting Period of sixty (60) days, starting with the end of the **“Policy Period”**. The coverage under this Policy will then be available for any **“Claim”** first made during such Automatic Reporting Period which arises out of **“Wrongful Act(s)”** which take place prior to the end of the **“Policy Period”** and are otherwise covered by the Policy.
2. This Automatic Reporting Period does not extend the **“Policy Period”** or change the scope of coverage provided. **We** will consider any **“Claim”** first made or brought during the Automatic Reporting Period to have been made on the last date on which this insurance was in effect.
3. The Automatic Reporting Period will apply only if there is a **“Termination of Coverage”**. Coverage under the Automatic Reporting Period may not be canceled.
4. The remaining available Limits of Liability that apply at the end of the **“Policy Period”** are not renewed or increased for **“Claim(s)”** first made or brought during the Automatic Reporting Period.
5. The Automatic Reporting Period, however, will not apply to any **“Claim”** if other insurance covers the **“Claim”** or would cover the **“Claim”** if its limits of coverage had not been exhausted.

H. Extended Reporting Period

1. If there is a **“Termination of Coverage”**, **you** shall have the right to purchase additional coverage providing an Extended Reporting Period of up to three (3) years, starting upon the expiration of the Automatic Reporting Period. Coverage under the Extended Reporting Period will be limited to **“Claim(s)”** first made during such Extended Reporting Period which arise out of **“Wrongful Act(s)”** that take place

prior to the end of the “**Policy Period**” and are otherwise covered by the Policy. **You** do not have this right, however, if **we** cancel the Policy for non-payment of premium.

2. The additional premium for the Extended Reporting Period coverage shall be calculated in accordance with our rules and rates. **We** will not charge more than two hundred (200%) percent of the annual premium from the last “**Policy Period**”.
3. To obtain Extended Reporting Period coverage **you** must request it in writing within sixty (60) days after the “**Policy Period**” ends and pay the premium when due. If **you** do so, an Extended Reporting Period cannot be canceled. If **we** do not receive the written request and payment as required, **you** may not exercise this right at a later date.
4. The Limits of Liability that apply at the end of the “**Policy Period**” are not renewed or increased by the issuance of any optional Extended Reporting Period, unless a Reinstatement of Aggregate Limit of Liability Endorsement is issued.

If the Aggregate Limit of Liability indicated in the Declarations has decreased during the “**Policy Period**” by payment of “**Claims**” first made while the Policy is in effect, then upon the effective date of the Extended Reporting Period Endorsement **we** will reinstate the Aggregate Limit of Liability by the amount incurred up to that time for such “**Claims**”. The reinstated Aggregate Limit of Liability will only apply to “**Claims**” first made against **you** during the Extended Reporting Period. Once reinstated, the Aggregate Limit of Liability for the Extended Reporting Period will be equal to the Aggregate Limit of Liability that was in effect at the inception of the Policy.

5. This insurance, provided during the Extended Reporting Period, is excess over any other valid and collectible insurance that begins or continues in effect after the Extended Reporting Period becomes effective, whether the other insurance applies on a primary, excess, contingent, or any other basis.
6. Where the optional Extended Reporting Period applies solely due to a “**Termination of Coverage**” based upon a change in coverage terms less favorable to the “**Insured**”, the Extended Reporting Period shall apply only to the extent of such less favorable coverage terms.

I. Legal Action Against Or By Us.

1. No one can sue **us** to recover under this Policy unless there has been full compliance with all the terms of this Policy.
2. A person or organization may sue **us** to recover up to the Limits of Liability under this Policy only after **your** “**Claim**” has been decided by:
 - a. A trial, after which a final judgment has been entered; or
 - b. A written settlement agreement signed by the party making the “**Claim**” and **us**.
3. No person or organization has the right to join **us** as a party or otherwise bring us into a “**Claim**” asking for “**Loss**” from an “**Insured**”.
4. In the event of failure of the **Insurer** to pay the amount claimed to be due hereunder, the **Insurer** will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this condition constitutes or should be understood to constitute a waiver of the **Insurer’s** rights to commence an action in any court of competent jurisdiction in the United States or to remove an action to a United States District Court or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such action may be made upon **your** chairman of the board, chief executive officer, managing director or general counsel (or functional equivalent of any of the foregoing), and that in any such action instituted against the **Insurer** related to this Policy, the **Insurer** will abide by the final nonappealable decision of such court or of any appellate court in the event of an appeal.

J. Other Insurance. If any part of “**Loss**” is insured under this Policy and any other current or prior policy, this Policy will be excess over any other valid and collectible insurance available to the “**Insured**”, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as a specific excess insurance over the limits of liability provided by this Policy.

K. Policy Changes. This Policy contains all the agreements between **you** and **us** concerning this insurance. The first “**Named Insured**” in the Declarations is authorized to request changes in this Policy. This Policy can only be changed by a written endorsement **we** issue and is made part of this Policy.

L. Representations and Covenants. The “**Insured(s)**” represents the statements in the “**Application**” are true, accurate and complete. The “**Insured(s)**” further acknowledge(s) that this Policy is issued by the Company in reliance upon such statement.

M. Special Rights And Duties Of First Named Insured.

You agree that when there is more than one person or entity covered under this Policy, the first “**Named Insured**” in the Declarations shall act on behalf of all “**Insured(s)**” as to:

1. Giving and receiving notice of cancellation;
2. Payment of premiums and receipt of return premiums;
3. Acceptance of any endorsements to this Policy; or
4. Purchasing or deciding not to purchase the Extended Reporting Period Endorsement.

N. Acquisition of Named Insured

If during the “**Policy Period**” (a) the “**Named Insured**” is acquired by merger into or consolidation with another entity, or (b) another entity, or person(s) or group of entities acquires more than fifty (50%) percent of the “**Named Insured**”, then the premium shall become fully earned and coverage under this Policy shall continue until the expiration of the “**Policy Period**”, but only for any “**Claim**” first made during the “**Policy Period**” for “**Wrongful Act(s)**” which take place prior to such merger, consolidation or acquisition. **You** shall give written notice of such merger, consolidation or acquisition to **us** within sixty (60) days after such merger, consolidation or acquisition. Upon receipt of such notice, **we** shall promptly provide to **you** a quotation for an extension of coverage up to three years with respect to “**Claim(s)**” first made during such “**Policy Period**” for “**Wrongful Act(s)**” which take place prior to such merger, consolidation or acquisition (Run-Off Period). **You** shall agree, (a) to pay during the Run-off Period any additional premium required by **us**, (b) that any premium paid or to be paid under this Policy is deemed fully earned upon the inception of such coverage extension, and (c) to accept any additional terms and conditions required by **us**. The Limits of Liability that apply at the end of the “**Policy Period**” are not renewed or increased for any “**Claim**” first made and reported during this extension of coverage.

O. Representations and Severability

By acceptance of this Policy, the “**Insureds**” agree that 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 **Insurer** under this Policy, and that this Policy is issued in reliance upon the truth of such representations. Such written “**Applications**” for coverage shall be construed as a separate application for coverage by each “**Insured**”. With respect to the declarations and statements contained in such written applications for coverage, no statement in the “**Application**” or knowledge or information possessed by any “**Insured**” shall be imputed to any other “**Insured**” for the purpose of determining if coverage is available; however, knowledge or information possessed by **your** chairman of the board, chief executive officer, managing director or general counsel (or functional equivalent of any of the foregoing) may be imputed to the “**Named Insured(s)**”.

SECTION VII. CANCELLATION/NONRENEWAL

- A.** The first “**Named Insured**” shown in the Declarations may cancel this Policy by mailing or delivering to **us** advance written notice of cancellation.
- B.** **We** may cancel this Policy only for nonpayment of premium. If **we** so cancel, **we** will mail or deliver to the first “**Named Insured**”, at the address shown in the Declarations, written notice of cancellation at least (15) fifteen days before the effective date of said cancellation.
- C.** Notice of cancellation will state the effective date of cancellation. The “**Policy Period**” will end on that date.

- D. If this Policy is canceled, **we** will send the first **“Named Insured”** any premium refund due. If **we** cancel, to the extent any premium paid prior to nonpayment when due of the full premium shown in the Declarations exceeds the amount of premium payable through the effective date of cancellation, the refund will be pro rata. If the first **“Named Insured”** cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund. If notice is mailed, proof of mailing will be sufficient proof of notice.
- E. The Policy cannot be canceled by either party after the premium for an Extended Reporting Period or Run-Off Period is paid.
- F. If **we** decide not to renew this Policy, **we** will mail or deliver to the first **“Named Insured”** shown in the Declarations written notice of the nonrenewal not less than sixty (60) days before the expiration date. If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION VIII. DEFINITIONS

- A. **“Application”** means all signed applications and any attachments and materials submitted therewith for this Policy and for any policy in an uninterrupted series of policies issued by the **Insurer** of which this Policy is a renewal or replacement. All such applications, materials and information are deemed attached to and incorporated into this Policy.
- B. **“Bodily Injury”** means any actual or alleged physical injury, sickness, or disease, including death resulting therefrom.
- C. **“Claim(s)”** means:
 - 1. A written or oral demand or notice for monetary, non-monetary or injunctive relief;
 - 2. A civil, administrative or regulatory proceeding; or
 - 3. An arbitration, mediation, or any other alternative dispute resolution proceeding seeking Loss to which the **“Insured”** must submit or may submit with **our** prior consent, received by an Insured in which a **“Wrongful Act”** is alleged. **“Claim(s)”** include any appeal from the proceedings identified at b. and c. above.All Claims arising out of the Interrelated Wrongful Acts, shall constitute one Claim. The Claim is deemed to have been made on the date the first of such Claims was asserted against the Insured.
- D. **“Defense Costs”** means reasonable and necessary fees, costs and expenses incurred by or at the direction of the Insurer in the defense of a **“Claim”**, or a criminal proceeding if **we** exercise **our** option to defend a criminal proceeding brought against an **“Insured”**.
- E. **“Discrimination”** means the failure or refusal to hire, any failure to promote, any wrongful demotion or discharge, any wrongful failure to grant tenure, or any other wrongful treatment of persons based on their race, sex, gender identification, color, religion, sexual orientation or preference, marital status, pregnancy, age, national origin, mental or physical disability including a disability resulting from human immunodeficiency virus (HIV) or acquired immunodeficiency syndrome (AIDS), or any other status that is protected pursuant to any applicable federal, state, or local statute or ordinance which is employment-related.
- F. **“Domestic Partner”** means any person who qualifies as a domestic partner under the provisions of any federal, state, or local statute or regulation, or under the terms and provisions of any employee benefit or other program established by the **“Named Insured”**.
- G. **“Employee”** means an individual whose labor or service is engaged by and directed by the **“Insured”** for remuneration, including directors and officers. This includes part-time workers, seasonal workers, temporary workers, volunteers, interns, and management or supervisory workers. **“Leased Workers”** and independent

contractors are also included in the definition of **“Employee”**; provided that

1. all **“Leased Workers”** and independent contractors are under the supervision and control of the **“Insured”**, and
2. no other insurance coverage applies to such **“Leased Workers”** and independent contractors.

H. **“Harassment”** means:

1. unwelcome sexual advances, requests for sexual favors, or other verbal, visual or physical conduct of a sexual nature in the course of an **“Insured’s”** employment with **you**, creates an environment that interferes with the conduct of **your** business, or creates an intimidating, hostile, offensive or abusive environment; or
2. harassment of a non-sexual nature, including verbal, visual or physical conduct which creates an environment that interferes with the conduct of **your** business, or creates an intimidating, hostile, offensive or abusive environment.

I. **“Insured(s)”** means any person or organization qualifying as such under **SECTION III**, titled **WHO IS AN INSURED**.

J. **“Leased Workers”** means any worker leased by the **“Insured”** to perform duties related to the conduct of the **“Insured’s”** business pursuant to a written agreement between the **“Insured”** and a labor leasing firm.

K. **“Loss”** means a judgment, settlement, statutory attorney fees, **“Defense Costs”** and other costs associated with the investigation, defense, appeal and conclusion of any **“Claim”**, including but not limited to the reasonable costs **we** ask the **“Insured”** to incur, per diem earnings lost by the **“Insured”** because of time taken off from work helping us investigate or defend a **“Claim”**, compensatory damages, and liquidated, punitive, multiplied and exemplary damages (where insurable under applicable law), back pay and front pay. **“Loss”** does not include wage, salary, bonus and severance payments, stock options nor benefits, earned in the course of employment by an **“Employee”** but not paid by the **“Insured”**, nor does **“Loss”** include fines, taxes, penalties, the return, withdrawal or restitution of fees, expenses or charges, costs incurred as a result of any non-pecuniary or injunctive relief, or matters which are deemed uninsurable by law.

The law of the jurisdiction most favorable to the insurability of liquidated, punitive or exemplary damages shall control whether such damages are insurable, provided that such jurisdiction is where

1. Those damages were awarded or imposed;
2. Any **“Wrongful Act”** was committed for which such damages were awarded or imposed;
3. The **“Named Insured”** is incorporated or has its principal place of business; or
4. The **“Insurer”** is incorporated or has its principal place of business.

L. **“Named Insured”** means the individual(s) or organization(s) shown in the Declarations to this Policy.

M. **“Policy Period”** means the period commencing on the effective date shown in the Declarations. This period ends on the earlier of the expiration date of this Policy or **“Termination of Coverage”**.

N. **“Property Damage”** means actual or alleged physical injury to, or destruction of, tangible property including the loss of use of tangible property, or the loss of use of tangible property, which has not been physically injured or destroyed.

O. **“Retaliation”** means unlawful or abusive treatment resulting from an **“Employee’s”** exercise or attempted exercise of any rights under law.

P. **“Termination of Coverage”** means cancellation or nonrenewal of the Policy by **us** or by the **“Named Insured”** for any reason, or where there is a decrease in the Limits of Liability, an increase in the Retention, or

any other change in coverage less favorable to **you**. The offer of a renewal Policy with an increase in premium shall not be deemed a change in coverage less favorable to **you**.

- Q. “Third-Party Wrongful Act(s)”** means any of the following, whether actual or alleged, claimed by or on behalf of an existing or former client, customer, supplier, vendor, patient or business invitee, or any other person not an **“Employee”**, and only if committed or allegedly committed by any of the **“Insureds”** in their capacity as such, resulting from **“Discrimination”**, **“Harassment”**, defamation, failure to enforce policies, false imprisonment, invasion of privacy, libel/slander, malicious prosecution, misrepresentation, negligent hiring or supervision, promissory estoppels and intentional interference with contract, or wrongful discipline.
- R. “Wrongful Act(s)”** means any of the following, whether actual or alleged, and claimed by or on behalf of an existing or former **“Employee”** or an applicant for employment, and only if committed or allegedly committed by any of the **“Insureds”** in their capacity as such, resulting from employment-related **“Discrimination”**, **“Harassment”**, **“Wrongful Termination”**, or **“Retaliation”**, defamation, denial of training/seniority, failure to enforce policies, failure to hire, failure to grant tenure, false imprisonment, invasion of privacy, libel/slander, malicious prosecution, misrepresentation, negligent evaluation, negligent hiring or supervision, promissory estoppels and intentional interference with contract, violations of the Uniformed Services Employment and Reemployment Rights Act, violations of the Family Medical Leave Act, wrongful demotion, wrongful discipline or wrongful deprivation of career opportunity. **“Wrongful Acts” which share a common nexus of fact, series of acts or are causally connected shall be deemed Interrelated “Wrongful Acts”**. Interrelated **“Wrongful Acts” shall be deemed to have first occurred on the date the first of such acts occurred.**
- S. “Wrongful Termination”** means any actual or alleged wrongful dismissal, discharge or termination (either actual or constructive) of employment, including breach of an implied contract.