



Policy Number:

EMPLOYMENT PRACTICES 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 the statements made in the **Application** for this insurance which are incorporated herein, and subject to all terms, conditions and limitations of this policy (hereinafter "Policy"), the **Insured** and **Insurer** agree:

Section I. INSURING AGREEMENT

- A. 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 applicable Discovery Period) and reported to the **Insurer** pursuant to Section VII.

Section II. COSTS OF DEFENSE AND SETTLEMENTS

- A. The **Insured** shall not incur **Costs of Defense**, admit liability, offer to settle, or agree to any settlement in connection with any **Employment Practices Claim** without the 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 **Insurer's** written consent shall not be covered under this Policy.
- B. Notwithstanding Section II.A. above, if all **Insureds** are able to settle all **Employment Practices Claims** that are subject to a single 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 an **Employment Practices Claim**, and the **Insured** shall only retain defense counsel as is mutually agreed upon with the **Insurer**. The **Company** may at its option tender the defense of an **Employment Practices Claim** to the **Insurer**. A tender of the defense of an **Employment Practices Claim** shall not be made more than ninety (90) days following the reporting of the **Employment Practices Claim** to the **Insurer** pursuant to Section VII. Upon a tender of the defense of an **Employment Practices Claim**, the **Insurer** shall assume the duty to defend.
- D. The **Insurer** shall at all times have the right to effectively associate with the **Insured** in the investigation, defense and settlement of an **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 an **Employment Practices Claim**, provided such **Employment Practices Claim** is covered by this Policy. Any advancement shall be on the condition that:
- (1) if it is established that the **Insurer** has no liability under this Policy for the **Employment Practices Claim**, the **Insured** shall repay the **Insurer** upon demand all **Costs of Defense** advanced;
 - (2) the appropriate Retention has been satisfied; provided, however, this Retention condition shall not apply in the event of the **Financial Insolvency** of the **Company**;
 - (3) any amounts advanced by the **Insurer** shall serve to reduce the aggregate Limit of Liability stated in Item 3 of the Declarations until the **Insurer** is in fact repaid; and
 - (4) the **Insured** and the **Insurer** have agreed upon the portion of the **Costs of Defense** attributable to a covered **Employment Practices Claim** against any **Insured**; however, if no agreement, the **Insurer** shall pay (excess of the Retention) what it determines to be fair and reasonable until a different allocation is negotiated or is otherwise established.

Section III. 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 or any EEOC (or similar governmental body) notice of charge of any kind if made prior to the Inception Date of this Policy (or subsequent lawsuit arising therefrom).
- C. "**Company**" shall mean the **Corporation** and any **Subsidiary**.
- D. "**Corporation**" shall mean the entity named in Item 1 of the Declarations.
- E. "**Costs of Defense**" shall mean reasonable and necessary legal fees, costs and expenses incurred in the investigation, defense or appeal of any **Claim**, including the costs of an appeal bond, attachment bond or similar bond (but the **Insurer** shall not have any obligation to apply for or furnish such bonds); provided, however, **Costs of Defense** shall not include salaries, wages, overhead or benefit expenses associated with any **Insured**.
- F. "**Directors**" and "**Officers**" shall mean all persons who were, now are, or shall be **Directors** and/or **Officers** (or foreign equivalent) 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**, acting solely in his or her capacity as such. Any person leased to the **Company**, any person hired by 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 past, present or future **Employee** of the **Company** or an **Outside Entity**, or any applicant for employment with the **Company** or an **Outside Entity** alleging an **Employment Practices Wrongful Act**. **Employment Practices Claim** shall also mean a **Claim** brought by or on behalf of any customer or client of the **Company** alleging discrimination, sexual harassment or violation of an individual’s civil rights relating to such discrimination or sexual harassment.
- 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) discrimination;
 - (6) employment-related misrepresentations;
 - (7) employment-related libel, slander, defamation, or invasion of privacy;
 - (8) failure to grant tenure;
 - (9) failure to provide an adequate workplace, or employment policy or procedure for **Employees**;
 - (10) imposing mandatory arbitration of an **Employment Practices Claim** by an employer;
 - (11) improper denial of time off or vacation time to an **Employee**;
 - (12) improper disciplinary action of an **Employee**;
 - (13) improper performance review of an **Employee**;
 - (14) improper transfer, change of position or change of work hours or shift of an **Employee**;
 - (15) improper treatment of an **Employee** for their actions as a whistleblower;
 - (16) negligent evaluation of an **Employee**;
 - (17) negligent release of medical information of an **Employee**;
 - (18) **Retaliation** against an **Employee**;
 - (19) sexual or workplace harassment of any kind;
 - (20) violation of the Equal Pay Act;

- (21) wrongful deprivation of career opportunity of an **Employee**, including defamatory statements made in connection with an **Employee** reference;
- (22) wrongful dismissal, discharge or termination of employment, whether actual or constructive, of an **Employee**;
- (23) wrongful failure to promote, transfer or employ; and
- (24) 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 of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the **Company**.

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

M. **"Insured Person"** shall mean **Directors, Officers and Employees**, or any Director, Officer or **Employee** arising out of their service as a director, officer, trustee or governor of an **Outside Entity**, but only if such service is at the written request of the **Company**.

N. **"Insurer"** shall mean the **Company** stated in Item 8 of the Declarations.

O. **"Loss"** shall mean compensatory damages (including back pay and front pay), punitive or exemplary damages, the multiple portion of any multiplied damage award, judgments, settlements, pre- and post-judgment interest, and **Costs of Defense**. It is understood and agreed that the enforceability of the foregoing coverage shall be governed by such applicable law which most favors coverage for punitive or exemplary damages or the multiple portion of any multiplied damage award.

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 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**; or **(6)** matters which may be deemed uninsurable under the law pursuant to which this Policy shall be construed.

P. **"Management Control"** shall mean: **(1)** owning interests representing more than fifty percent (50%) of the voting, appointment or designation power for the selection of a majority of the Board of **Directors** of a **Corporation**, the management committee members of a joint venture or partnership, or the members of the management board of a limited liability **Company**; or **(2)** having 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 or any for-profit **Company** but only if such for-profit entity is added by endorsement to this Policy.

R. **"Policy Period"** shall mean the period from the Inception Date of this Policy to the Expiration Date of this Policy as set forth in Item 2 of the Declarations, or its earlier termination if applicable.

S. **"Pollutants"** shall mean any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on any list of hazardous substances issued by, the United States

Environmental Protection Agency or any state, county, municipality or locality counterpart thereof. Such substances shall include, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials. **Pollutants** shall also mean any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products and any noise.

- T. **"Pollution"** shall mean the actual, alleged or threatened discharge, release, 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 Employment Practices Wrongful Acts"** shall mean **Employment Practices Wrongful Acts** which are the same, related or continuous, or **Employment Practices Wrongful Acts** which arise from a common nucleus of facts. An **Employment Practices Claim** can allege **Related Employment Practices Wrongful Acts** regardless of whether such **Employment Practices Claims** involve the same or different **Claimants**, **Insureds** or legal causes of action.
- V. **"Retaliation"** shall mean an **Employment Practices Wrongful Act** of an **Insured** 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 or any other law relating to **Employee** rights; **(3)** the filing of any **Claim** under the Federal False Claims Act or any other federal, state, local or foreign "whistle-blower" law; or **(4)** **Employee** strikes.
- W. **"Subsidiary"** shall mean:
- (1)** any for-profit organization of which the **Company** has **Management Control** ("Controlled Entity") on or before the inception of the **Policy Period** either directly or indirectly through one or more other Controlled Entities;
 - (2)** automatically any for-profit organization whose securities are not publicly traded and whose assets total less than ten percent (10%) of the total consolidated assets of the **Company** as of the inception date of this Policy which the **Company** first had **Management Control** during the **Policy Period**, either directly or indirectly, through one or more other Controlled Entities. The **Corporation** shall provide the **Insurer** with full particulars of the new **Subsidiary** before the end of the **Policy Period**; or
 - (3)** an organization which the **Company** first had **Management Control** of during the Policy Period (other than a for-profit organization described in paragraph **(2)** above), either directly or indirectly through one or more other Controlled Entities, but only upon the condition that within 90 days of its becoming a **Subsidiary**, the **Corporation** shall have provided the **Insurer** with full particulars of the new **Subsidiary** and agreed to any additional premium or amendment of the provisions of this Policy required by the **Insurer** relating to such new **Subsidiary**. Further, coverage as shall be afforded to the new **Subsidiary** is conditioned upon the **Corporation** paying when due any additional premium required by the **Insurer** relating to such new **Subsidiary**.
 - (4)** An organization becomes a **Subsidiary** when the **Company** has **Management Control** of such **Subsidiary**, either directly or indirectly, through one or more of its Controlled Entities. An organization ceases to be a **Subsidiary** when the **Company** ceases to have **Management Control** in such **Subsidiary**, either directly, or indirectly through one or more of its Controlled Entities.

- (5) In all events, coverage as is afforded under this Policy with respect to an Employment Practices **Claim** made against any **Subsidiary** and/or any **Insured Person** in their capacity as such with the **Subsidiary** shall only apply to Employment Practice Wrongful Acts committed or allegedly committed after the effective time the **Company** obtained **Management Control** of such **Subsidiary**, and prior to the effective time that the **Company** no longer has **Management Control** over such **Subsidiary**.

Section IV. 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 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) the deliberate fraudulent or criminal acts of an **Insured**; provided, however, this exclusion shall only apply when it is finally adjudicated that such conduct occurred;

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

- (i) the **Employment Practices Wrongful Act** of an **Insured Person** shall not be imputed to any other **Insured Person**; and
- (ii) only the **Employment Practices 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 or attributable to any **Employment Practices Wrongful Act, Related Employment Practices Wrongful Act** or any fact, circumstance or situation which has been the subject of any notice or **Employment Practices Claim** given under any other policy of which this Policy is a renewal or replacement;

C. alleging, arising out of, based upon 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 Item 7 of the Declarations, or any Employment Practices Wrongful Act or **Related Employment Practices 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 tangible 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. for any **Claim** alleging, arising out of, based upon, or attributable to the refusal, failure or inability of any **Insured** to pay wages or overtime pay for services rendered (hereinafter, "Earned Wages") (as opposed to tort-based back pay or front pay damages) or for improper payroll deductions taken by any **Insured** from any **Employee** or purported **Employee**, including, but not limited to, (i) any unfair business practice **Claim** alleged because of the failure to pay Earned Wages, or (ii) 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 or attributable to an **Employment Practice Wrongful Act** of any **Insured Person** serving as a director, officer, trustee or governor of 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 or 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 alleged financial **Loss** to the **Company**, its security holders or its creditors;
- J. for any **Employment Practices 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 an **Outside Entity** occurring prior to the date such entity became a **Subsidiary** or was merged with the **Company**, would constitute **Related Employment Practices 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 or attributable to any actual or alleged contractual liability or obligation of the **Company** or an **Insured Person** under any 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 Practice Claim** to the extent liability does not arise under such contract or agreement; and,
- L. alleging, arising out of, based upon or attributable to, directly or indirectly resulting from, or in consequence of, or in any way involving, any obligation pursuant to any worker's compensation, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law.

Section V. Limit of Liability

- A. The **Insurer** shall be liable to pay **Loss** in excess of the applicable Retention amount stated in Item 4 of the Declarations up to the Limit of Liability stated in Item 3 of the Declarations.
- B. **Costs of Defense** shall be part of, and not in addition to, the Limit of Liability stated in Item 3 of the Declarations. Such **Costs of Defense** shall serve to reduce the Limit of Liability.
- C. The liability of the **Insurer** for all **Loss** arising from any and all **Claims** first made and reported pursuant to Section VII of the Policy shall be the amount stated in Item 3 of the Declarations which shall be the 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 VI. Retention

- A. One Retention shall apply to **Loss** arising from each **Employment Practices Claim** alleging the same **Employment Practice Wrongful Acts**. The **Company** shall be responsible for, and shall hold the **Insurer** harmless from, any amount within the Retention.
- B. More than one **Employment Practices Claim** involving the same **Employment Practices Wrongful Act** or **Related Employment Practices Wrongful Acts** of one or more **Insureds** shall be considered a single **Claim**, and only one Retention 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 any such **Employment Practices Wrongful Act** or **Related Employment Practices Wrongful Acts** were reported under this Policy or any other policy providing similar coverage.

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 Employment Practices 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** or during the Discovery 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 **Employment Practices 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 Employment Practices 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, Item 8 of the Declarations.

Section VIII. Discovery Period

- A. In the event the **Insurer** or the **Corporation** refuses to renew this Policy, the **Corporation** 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 an **Employment Practices 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.

- 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 Item 3 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 **Corporation** at any time by written notice to the **Insurer**. Upon cancellation by the **Corporation**, the **Insurer** shall retain the customary short rate portion of the premium, unless this Policy is converted to Run-Off pursuant to Section IX.D. wherein the entire premium for this Policy shall be deemed earned.

(2) This Policy may only be cancelled by the **Insurer** if the **Corporation** does not pay the premium when due.

(3) If the **Insurer** elects not to renew this Policy, the **Insurer** shall provide the **Corporation** 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 **Directors** and **Officers** 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**.

- C. 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**.

- D. Conversion to Run-Off Coverage

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

(1) this Policy shall only apply to an **Employment Practices Claim** 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.

E. 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.

F. 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 **Employment Practices 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 **Employment Practices 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**.

G. Priority of Payments

- (1) In the event of **Financial Insolvency**, or the refusal of the **Corporation** 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:

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

H. Subrogation

In the event of any payment under this Policy, the **Insurer** shall be subrogated to all of the **Insureds'** rights of recovery and the **Company** and **Insured Persons** shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents as may be necessary to enable the **Insurer** to effectively bring suit in the name of any **Insured Person** or the **Company**.

I. Dispute Resolution

In the event any dispute arises in connection with this Policy that cannot be resolved, the **Insurer** and the **Insured** shall participate in a non-binding mediation in which the **Insurer** and the **Insured** shall attempt in good faith to resolve such dispute. Either the **Insured** or the **Insurer** shall have the right to commence a judicial proceeding or, if the parties agree, a binding arbitration, to resolve such dispute. However, no judicial proceeding or arbitration shall be commenced until termination of the mediation and until at least 90 days has passed from the termination of the mediation. Each party will bear its own legal fees and expenses. The costs and expenses of a mediation, or an arbitration, shall be split equally by the parties.

J. Assignment

Assignment of interest under this Policy shall not bind the **Insurer** until its consent is endorsed hereon.

K. 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.

L. 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.

M. **Corporation Represents Insured**

By acceptance of this Policy, the **Corporation** 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.

N. Representative of the **Insurer**

Ironshore Insurance Services, LLC, One State Street Plaza, 8th Floor, New York, NY 10004 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 an **Employment Practices Claim** shall be given pursuant to Section VII of this Policy.

O. Service of Suit

In the event of the failure of the **Insurer** to pay any amount **Claimed** to be due hereunder, the **Insurer** at the request of the **Insured**, will submit to the jurisdiction of any court of competent jurisdiction within the United States. Nothing in this condition constitutes or shall be understood to constitute a waiver of the right of the **Insurer** to commence an action in any court of competent jurisdiction within the United States, 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.

Service of process in any such suit may be made upon Ironshore Insurance Services, LLC, One State Street Plaza, 8th Floor, New York, NY 10004. In any suit instituted against the **Insurer** upon this Policy the **Insurer** will abide by the final decision of such court or of any appellate court in the event of any appeal.

Pursuant to any statute of any state, territory or district of the United States which makes provision therefore, the **Insurer** hereby designates the Superintendent, Commissioner or Director of Insurance, or other officer specified for that purpose in the statute, or his or her successor or successors in office, as its true and lawful attorney upon whom may be served lawful process in any action, suit or proceeding instituted by or on behalf of the **Insured** or any beneficiary hereunder arising out of this Policy, and hereby designates the above named Ironshore Insurance Services, LLC, One State Street Plaza, 8th Floor, New York, NY 10004 as the entity to whom said officer is authorized to mail such process or a true copy thereof.

P. Other Insurance

All **Loss** payable under this Policy shall be specifically excess of and will not contribute with any other valid insurance (whether collectible or not), including, but not limited to, any other insurance under which there is a duty to defend, unless such other insurance is specifically stated to be and was underwritten as excess insurance to this particular Policy. This Policy will not be subject to the terms of any other insurance.

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. Headings

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

Secretary

President