

# OLD REPUBLIC INSURANCE COMPANY

## EMPLOYMENT PRACTICES LIABILITY INSURANCE POLICY

### Important Notice

This is a claims made policy that applies only to **Claims** first made during the **Policy Period** or the **Extended Reporting Period**, if exercised. **Defense Costs** shall be applied against the Retention, if applicable. **Defense Costs** paid by the Insurer shall reduce and may completely exhaust the Limit of Liability of the **Policy**.

**Please read the entire Policy carefully.**

In consideration of the payment of the premium and in reliance on all statements made and information furnished to Old Republic Insurance Company (herein, the "Insurer") in the **Application**, which is hereby made a part hereof, and subject to the Declarations and to all other terms of this **Policy**, the Insurer, the **Company** and the **Insured Persons** agree as follows:

### I. INSURING CLAUSES

#### A. Employment Practices Liability

The Insurer shall pay on behalf of the **Insureds Loss** which the **Insureds** become legally obligated to pay by reason of any **Employment Claim** first made against the **Insureds** during the **Policy Period** or any applicable **Extended Reporting Period** for any **Employment Practices Wrongful Acts**.

#### B. Third Party Discrimination Liability

The Insurer shall pay on behalf of the **Insureds Loss** which the **Insureds** become legally obligated to pay by reason of any **Third Party Discrimination Claim** first made against the **Insureds** during the **Policy Period** or any applicable **Extended Reporting Period** for any **Third Party Discrimination Wrongful Acts**.

### II. COVERAGE EXTENSIONS

#### A. Extended Reporting Period

If the **Insureds** or the Insurer refuse to renew this **Policy**, or terminate this **Policy** for a reason other than non-payment of premium, the **Insureds** shall have the right, upon payment of the additional premium described below, to an extension of the coverage granted by this **Policy** for the **Extended Reporting Period** set forth in Item 6. (b) of the Declarations immediately following the effective date of such nonrenewal or termination, but only with respect to **Claims** first made or deemed to be first made during the **Extended Reporting Period** for covered **Wrongful Acts** taking place prior to the effective date of such nonrenewal or termination. This right of extension shall lapse unless written notice of such election, together with payment of the additional premium due, is given by the **Insureds** to the Insurer within sixty (60) days following the effective date of termination or nonrenewal.

The premium due for such **Extended Reporting Period** shall equal that percentage of the **Annual Premium** as set forth in Item 6. (a) of the Declarations. The entire premium for such **Extended Reporting Period** shall be deemed fully earned and non-refundable upon payment, and the **Extended Reporting Period** is not cancellable by the Insurer or the **Insureds** except for non-payment of premium.

The **Insureds** shall not be entitled to elect the **Extended Reporting Period** under this Section II. A. if an **Extended Reporting Period** is elected pursuant to Section V. G. 2. of this **Policy**.

## B. Estates, Legal Representatives, Spouses and Domestic Partners

The estates, heirs, legal representatives, assigns, spouses and **Domestic Partners** of **Insured Persons** shall be considered an **Insured** under this **Policy**; but coverage is afforded to such estates, heirs, legal representatives, assigns, spouses and **Domestic Partners** only for a **Claim** arising solely out of their status as such and, in the case of a spouse or **Domestic Partner**, where such **Claim** seeks damages from marital community property, jointly held property or property transferred from the **Insured Person** to the spouse or **Domestic Partner**. No coverage is provided for any **Wrongful Act** of an estate, heir, legal representative, assign, spouse or **Domestic Partner**. All terms and conditions of this **Policy**, including without limitation the Retention, applicable to **Loss** incurred by the **Insured Person** shall also apply to loss incurred by such estates, heirs, legal representatives, assigns, spouses and **Domestic Partners**.

## III. DEFINITIONS

When used in this **Policy** either in the singular or the plural:

- A. **Annual Premium** means the original annualized premium and the fully annualized amount of any additional premiums charged by the Insurer for or during the **Policy Period** with respect to this **Policy**.
- B. **Application** means (1) the signed application for this **Policy** and any written materials attached thereto or submitted to the Insurer in connection with underwriting this **Policy**, and (2) any representations or warranties provided to the Insurer by or on behalf of the **Insureds** during the three (3) years immediately preceding this **Policy** relating to any policy of which this **Policy** is a direct or indirect renewal or replacement.
- C. **Benefits** means perquisites, fringe benefits, deferred compensation, payments for time off, or leave of absence, including but not limited to any payment (including insurance premiums) in connection with an employee benefit plan. **Benefits** includes any other payment to or for the benefit of an **Employee** arising out of the employment relationship but shall not include salary, wages, commissions, bonuses, non-deferred cash incentive compensation or **Stock Benefits**.
- D. **Claim** means:
  - 1. solely with respect to Insuring Clause A., any **Employment Claim**; and
  - 2. solely with respect to Insuring Clause B., any **Third Party Discrimination Claim**.
- E. **Company** means, collectively, the **Parent Company** and the **Subsidiaries**, including any such organization as a debtor in possession under United States bankruptcy law or an equivalent status under the law of any other country.
- F. **Defense Costs** means reasonable costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries, fees or benefits of the directors, officers or employees of the **Company**) incurred by the **Insureds** (1) in investigating, adjusting, defending or appealing **Claims** and the premium for appeal, attachment or similar bonds but without any obligation to apply for or furnish any such bonds, or (2) at the Insurer's request to assist the Insurer in investigating a **Claim**.
- G. **Domestic Partner** means any natural person qualifying as a domestic partner under either (1) the provisions of any applicable federal, state or local law, or (2) the provisions of any formal program established by the **Company**.
- H. **Employee** means any natural person whose service or labor was, now is, or shall become engaged and directed by a **Company**, including any part-time, leased, seasonal or temporary employee, intern or volunteer. An **Independent Contractor** also shall be considered an **Employee**.
- I. **Employment Claim** means any of the following which are brought and maintained against an **Insured** by or on behalf of any past, present, prospective or alleged **Employee** or applicant for employment by a **Company**, including if applicable, any appeal therefrom:

1. a written demand against any **Insured** for monetary damages or non-monetary or injunctive relief, commenced by the **Insured's** receipt of such demand, including a written demand for reinstatement, reemployment, or reengagement;
2. a civil proceeding against any **Insured** commenced by the service of a complaint or similar pleading upon the **Insured**;
3. an arbitration, mediation or other alternative dispute resolution proceeding against any **Insured** commenced by the **Insured's** receipt of a demand for arbitration or mediation or similar document;
4. a criminal proceeding against any **Insured** commenced by the return of an indictment or the filing of a criminal complaint, information, notice of charge or similar document against the **Insured**;
5. an administrative or regulatory proceeding against any **Insured** commenced by the filing of a notice of charges, formal investigative order or similar document which names the **Insured** as a target or subject of such proceeding, including but not limited to any such administrative or regulatory proceeding before or brought by or on behalf of the Equal Employment Opportunity Commission or any similar governmental agency located anywhere in the world with jurisdiction over the employment practices of the **Company**; provided that with respect to an audit by the Office of Federal Contract Compliance Programs, such a proceeding shall be commenced by the **Insured** receiving a Notice of Violation or Order to Show Cause; or
6. a written demand that an **Insured** toll or waive a statute of limitations relating to a potential **Employment Claim** otherwise described in this definition, commenced by the **Insured's** receipt of such demand.

Notwithstanding anything to the contrary in this definition, **Employment Claim** shall not include any labor or grievance arbitration or other proceeding pursuant to or governed by a collective bargaining agreement.

- J. Employment Contract Breach** means any actual or alleged breach of any employment-related oral, written or implied contract with the **Company**, including any such contract arising out of any personnel manual, employee handbook, policy statement or other representation.
- K. Employment Discrimination** means any actual or alleged violation of employment discrimination laws or public policy, including but not limited to any actual, alleged or constructive employment termination, dismissal, or discharge, employment demotion, denial of tenure, modification of any term or condition of employment, any failure or refusal to hire or promote, or any limitation or segregation of any **Employee** or applicant for employment in any way that would deprive any person of employment opportunities or otherwise affect his or her status as an employee based on such person's race, color, religion, creed, age, sex, disability, marital status, genetic information, national origin, pregnancy, HIV status, sexual orientation or preference, veteran status or any other status that is protected pursuant to any federal, state, local or foreign statutory law or common law.
- L. Employment Practices Wrongful Act** means any of the following actually or allegedly committed by the **Company** or by an **Insured Person** in their capacity as such:
1. **Employment Contract Breach**;
  2. **Employment Discrimination**;
  3. **Harassment**;
  4. **Retaliation**;
  5. **Workplace Tort**;
  6. **Wrongful Employment Decision**; or
  7. **Wrongful Termination**,

- M. Executive Officers** means with respect to any **Company** its past, present and future chairperson, chief executive officer, chief financial officer and chief legal officer or equivalent.
- N. Extended Reporting Period** means the period for the extension of coverage, if exercised, described in Section II. A. or V. G. 2. of this **Policy**.
- O. Financial Impairment** means the status of the **Company** resulting from (1) the appointment by any state or federal or foreign official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Company**, or (2) the **Company** becoming a debtor in possession.
- P. Harassment** means any actual or alleged:
1. harassment, including unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature that is made as a condition of employment with, used as a basis for employment decisions by, or interferes with performance or creates an intimidating, hostile or offensive working environment within, the **Company**; or
  2. workplace harassment, including work-related harassment or bullying of a non-sexual nature that interferes with performance or creates an intimidating, hostile or offensive working environment within the **Company**.
- Q. Independent Contractor** means any natural person working in the capacity as an independent contractor for a **Company** pursuant to an express contract or agreement between such independent contractor and the **Company**, provided that such express contract or agreement governs the nature of the **Company's** engagement of such independent contractor.
- R. Insured Persons** means any:
1. one or more natural persons who were, now are or shall become a duly elected or appointed director, trustee, **Manager**, regent, governor, officer, in-house general counsel, controller, risk manager, director of human resources or their functional equivalent of the **Company**;
  2. **Employee** who is not described in subparagraph R. 1. above and who is not an **Independent Contractor**; and
  3. **Independent Contractor**, but only if the **Company** has agreed, prior to the date of any alleged **Wrongful Act** by such **Independent Contractor**, to provide indemnification to such individual to the same extent as that provided to the **Company's** employees.
- S. Insureds** means the **Company** and the **Insured Persons**.
- T. Interrelated Wrongful Acts** means all **Wrongful Acts** based upon, arising out of, or attributable to the same or related facts, circumstances, situations, events, transactions or causes.
- U. Loss** means the amount which the **Insureds** become legally obligated to pay on account of **Claims** made against them for which coverage applies, including, but not limited to, (1) damages (including punitive, exemplary or multiple damages if insurable as provided below), (2) judgments, (3) any award of pre-judgment and post-judgment interest with respect to covered damages, (4) settlements, (5) **Defense Costs**, (6) claimant's attorney's fees and costs for which an **Insured** against whom the **Claim** is made is legally obligated to pay by reason of a court order or settlement agreement to which the Insurer consents pursuant to Section V. D., (7) civil fines or penalties assessed against an **Insured Person** for an unintentional or non-willful violation of any federal, state, local or foreign law, (8) back pay or front pay, and (9) liquidated damages awarded in accordance with the Age Discrimination in Employment Act, Family and Medical Leave Act, or Equal Pay Act.

**Loss** (other than **Defense Costs**) does not include (1) any amount for which the **Insureds** are absolved from payment, (2) taxes, other than taxes imposed on a **Company** for which the **Insured Persons** are legally liable solely by reason of the **Company's** insolvency, or taxes imposed on an **Insured Person** solely by reason of the Insurer's payment of covered **Loss** incurred by such **Insured Person**, (3) fines or penalties imposed by law, other than civil fines or penalties expressly referenced above, (4) any costs incurred to

comply with any injunctive or other non-monetary relief or any agreement to provide such relief, including without limitation any costs to modify any building or property, (5) salary, wages, commissions, bonuses, non-deferred cash incentive compensation, severance compensation of any kind, **Stock Benefits** or other compensation if actually or allegedly earned by the claimant in the course of employment, other than back pay, front pay or any additional compensation allegedly due as a result of an **Employment Practices Wrongful Act**, (6) future salary, wages, commissions or **Benefits** of a claimant who has been hired, promoted or reinstated to employment, or shall be hired, promoted or reinstated to employment, pursuant to a settlement, order or other resolution of any **Claim**, (7) **Benefits** due or that are to become due, or the equivalent value of such **Benefits**, except with respect to any **Employment Claim** for **Wrongful Termination**, or (8) matters uninsurable under the law pursuant to which this **Policy** is construed.

The insurability of punitive, exemplary, multiple or liquidated damages, fines, penalties or taxes otherwise included within this definition shall be determined under the internal laws of any applicable jurisdiction most favorable to the **Insureds**, including without limitation the jurisdiction in which the **Parent Company**, the **Insured Persons**, the Insurer, this **Policy** or such **Claim** is located.

**V. Managers** means any natural person who was, now is or shall become a manager, member of the Board of Managers or equivalent executive of a **Company** that is a limited liability company.

**W. Parent Company** means the organization first named in Item 1. of the Declarations.

**X. Policy** means, collectively, the Declarations, the **Application**, this policy form and any endorsements hereto.

**Y. Policy Period** means the period of time specified in Item 2. of the Declarations, subject to prior termination in accordance with Section V. I. of this **Policy**.

**Z. Retaliation** means any actual or alleged retaliatory treatment against an **Employee** based upon such individual:

1. refusing to violate any law, or opposing any unlawful practice, or exercising his or her rights under law;
2. threatening to disclose or disclosing to: (i) an **Insured Person**; or (ii) any governmental agency, any alleged violations of law by an **Insured**;
3. assisting, testifying or cooperating with a proceeding or investigation (including the **Company's** internal investigation conducted by its human resources or legal department) regarding the **Insured's** alleged violations of law; or
4. filing any claim against the **Company** pursuant to any federal, state, local or foreign whistleblower law.

**AA. Stock Benefits** means:

1. any offering, plan or agreement between a **Company** and any **Employee** which grants stock, stock options, warrants, or shares of the **Company** to such **Employee**, including grants of stock options, restricted stock, stock warrants, performance stock shares, membership shares, or any other incentive or compensation granted in the form of securities of the **Company**; or
2. any instrument or payment whereby the value or amount of such instrument or payment is derived from the value of the **Company's** securities, including a phantom stock plan or arrangement, or stock appreciation rights,

provided that **Stock Benefits** shall not include any amounts based upon, arising out of, or attributable to employee stock purchase plans or employee stock ownership plans.

**BB. Subsidiary** means:

1. any organization in which more than fifty percent (50%) of the outstanding voting securities representing the present right to vote for election of or to appoint or designate directors, **Managers** or equivalent executives is owned, directly or indirectly, in any combination, by one or more **Companies**;

2. any organization in which one or more **Companies**, in any combination, have the right, pursuant to a written contract with or the by-laws, charter, operating agreement or similar document of such organization, to elect or appoint a majority of the directors, **Managers** or equivalent executives of such organization; and
3. any foundation or charitable trust controlled or exclusively sponsored by one or more **Companies**;

on or before the inception of the **Policy Period**.

**CC. Third Party** means any natural person who is at the time of a **Third Party Discrimination Wrongful Act** (1) a customer, vendor, service provider or other business invitee of the **Company**, or (2) an independent contractor of the **Company** who is not an **Insured Person** as defined in Section III. R. 3. above. **Third Party** shall not include any **Insured Person** or any applicant for employment with the **Company**.

**DD. Third Party Discrimination Claim** means any of the following which are brought and maintained against an **Insured** by or on behalf of a **Third Party**, including, if applicable, any appeal therefrom:

1. a written demand for monetary damages or other non-monetary or injunctive relief, commenced by the **Insured's** receipt of such demand;
2. a civil proceeding commenced by the service of a complaint or similar pleading upon the **Insured**;
3. an arbitration, mediation or other alternative dispute resolution proceeding commenced by the **Insured's** receipt of a demand for an arbitration or mediation or similar document;
4. a formal administrative or formal regulatory proceeding or investigative proceeding commenced by the filing of a notice of charges, formal investigative order or similar document which names the **Insured** as a target or subject of such proceeding; or
5. a written demand that an **Insured** toll or waive a statute of limitations relating to a potential **Third Party Discrimination Claim** otherwise described in this definition, commenced by the **Insured's** receipt of such demand.

**EE. Third Party Discrimination Wrongful Act** means any actual or alleged:

1. discrimination against a **Third Party** based upon such **Third Party's** race, color, religion, creed, age, sex, disability, marital status, genetic information, national origin, pregnancy, HIV status, sexual orientation or preference, veteran status or any other status that is protected pursuant to any federal, state, local or foreign statutory law or common law; or
2. sexual harassment directed against a **Third Party**, including unwelcome sexual advances, requests for sexual favors or other conduct of a sexual nature;

committed, attempted, or allegedly committed or attempted by the **Company** or by any **Insured Person** while acting in his or her capacity as such.

**FF. Workplace Tort** means any actual or alleged employment-related:

1. misrepresentation or defamation (including libel and slander);
2. invasion of privacy, including the unauthorized use or disclosure of an **Employee's**:
  - a. medical information in violation of the Health Insurance Portability and Accountability Act ("HIPAA");
  - b. credit information or related information in violation of the Fair Credit Reporting Act;
  - c. other information obtained through an employment-related background check; or
3. negligent evaluation, wrongful discipline or wrongful deprivation of a career opportunity.

**Workplace Tort** shall also mean any actual or alleged employment-related:

4. negligent retention, negligent supervision, negligent hiring or negligent training;
5. false arrest, false detention or false imprisonment;
6. wrongful infliction of emotional distress, mental anguish or humiliation; or
7. failure to provide or enforce consistent employment-related corporate policies and procedures;

solely when alleged as part of an **Employment Claim** for any **Employment Contract Breach, Employment Discrimination, Harassment, Retaliation, Wrongful Employment Decision, or Wrongful Termination**, or any act set forth in subparagraphs 1., 2. and 3. of this definition.

**GG. Wrongful Act** means:

1. solely with respect to Insuring Clause A., an **Employment Practices Wrongful Act**; and
2. solely with respect to Insuring Clause B., a **Third Party Discrimination Wrongful Act**.

**HH. Wrongful Employment Decision** means any actual or alleged wrongful demotion, denial of tenure, or failure or refusal to hire or promote, failure to employ, or wrongful or negligent employee reference.

**II. Wrongful Termination** means any actual or alleged wrongful dismissal, termination or discharge of employment, including constructive dismissal, termination or discharge. **Wrongful Termination** does not include **Employment Contract Breach**.

#### IV. EXCLUSIONS

**A.** The Insurer shall not be liable for **Loss** on account of that portion of any **Claim** made against any **Insured**:

1. Prior Notice

based upon, arising out of, or attributable to any fact, circumstance, situation, **Wrongful Act** or claim which has been the subject of any written notice under any other employment practices liability insurance policy or coverage part if such notice is given under such other policy or coverage part prior to the inception of the **Policy Period** and if the insurer of such other policy does not reject such notice as invalid;

2. Prior Proceeding

based upon, arising out of, or attributable to any **Claim** or other litigation, arbitration or administrative or regulatory proceeding or investigation involving any **Insured**, pending on or before the applicable Prior Litigation Date set forth in Item 5. of the Declarations, or the same or substantially the same fact, circumstance or situation underlying or alleged therein;

3. Bodily Injury/Property Damage

for bodily injury, sickness, disease or death of any person, assault or battery, or for damage to or destruction of any tangible property including loss of use thereof, provided that this exclusion shall not apply to the extent such **Claim** is for mental anguish or emotional distress;

4. New Subsidiaries

for **Wrongful Acts** actually or allegedly committed or attempted by a **Subsidiary** or its **Insured Persons** before the date such **Subsidiary** became an **Insured**;

5. Conduct

based upon, arising out of, or attributable to any deliberately fraudulent act or omission by such **Insured**, if a final and non-appealable adjudication in an underlying proceeding establishes such **Insured** committed such fraudulent conduct; or

6. Select Employment Statutes

for any actual or alleged violation of the responsibilities, obligations or duties imposed by:

- a. any law governing workers' compensation, unemployment insurance, unemployment compensation, social security, retirement or disability benefits, or benefits of any kind;
- b. the Fair Labor Standards Act (except the Equal Pay Act) or any other law concerning wage and hour practices, including without limitation any **Claim** for off-the-clock work, failure to provide rest or meal periods, failure to reimburse expenses, improper classification of employees as exempt or non-exempt, failure to properly maintain accurate time records, or failure to properly determine or timely pay wages, overtime, minimum wage or other compensation;
- c. the National Labor Relations Act;
- d. the Worker Adjustment and Retraining Notification Act;
- e. the Occupational Safety and Health Act;
- f. the Employee Retirement Income Security Act; or
- g. any federal, state, local or foreign statute, rule, regulation or common law similar or related to, or promulgated pursuant to, any law otherwise described in this exclusion;

provided that this exclusion shall not apply to **Loss** arising out of any **Employment Claim** for **Retaliation**.

**B. Severability of Exclusions**

For the purpose of determining the applicability of any Exclusion set forth in this **Policy**:

1. the **Wrongful Act** of any **Insured Person** shall not be imputed to any other **Insured Persons**; and
2. only the **Wrongful Act** of any **Executive Officer** of a **Company** shall be imputed to such **Company** and its **Subsidiaries**.

**V. GENERAL TERMS AND CONDITIONS**

**A. Limit of Liability**

For the purposes of this **Policy**, all **Claims** which in whole or in part arise out of the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed one **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made, regardless of whether such date is before or during the **Policy Period**. All **Loss** resulting from a single **Claim** shall be deemed a single **Loss**.

The Total Aggregate Limit of Liability stated in Item 3. of the Declarations shall be the maximum aggregate liability of the Insurer under this **Policy** for all **Loss** resulting from all covered **Claims** under Insuring Clauses A. and B., combined, regardless of the number of **Claims** or the time of payment by the Insurer. The Aggregate Limit of Liability stated in Items 3. (a) and 3. (b) of the Declarations shall be the maximum aggregate liability of the Insurer under Insuring Clause A. and Insuring Clause B., respectively, for all covered **Loss** resulting from all covered **Claims** thereunder. The Aggregate Limits of Liability stated in Items 3. (a) and 3. (b) of the Declarations are part of and not in addition to the Total Aggregate Limit of Liability stated in Item 3. of the Declarations.

The Limit of Liability for the **Extended Reporting Period**, if exercised, shall be part of and not in addition to the Limit of Liability for the **Policy Period**. The purchase of the **Extended Reporting Period** shall not increase or reinstate the aggregate Limit of Liability, which shall be the maximum liability of the Insurer for the **Policy Period** and **Extended Reporting Period**, combined.

**Defense Costs** shall be part of and not in addition to the Limit of Liability set forth in Item 3. of the Declarations, and **Defense Costs** shall reduce and may exhaust such Limit of Liability. If the Limit of Liability applicable to a **Loss** is exhausted by payment of **Loss**, the Insurer's obligations under this **Policy** (including any duty to defend a **Claim**) shall be completely fulfilled and extinguished. The Insurer is entitled to pay **Loss** as it becomes due and payable by the **Insureds**, without consideration of other future payment obligations.

#### **B. Retention**

Except as otherwise provided in this Section V. B., the Insurer's liability with respect to **Loss** arising from each **Claim** shall apply only to that part of **Loss** which is excess of the applicable Retention amount set forth in Item 4. of the Declarations. If different parts of a single **Claim** are subject to different Retentions, the applicable Retentions will be applied separately to each part of such **Loss**, but the sum of such Retentions shall not exceed the largest applicable Retention. The applicable Retention shall be eroded by the **Insureds** paying covered **Loss** otherwise subject to such Retention.

If the **Company** is permitted or required by common or statutory law, but fails or refuses, other than for reason of **Financial Impairment**, to advance **Defense Costs** or indemnify the **Insured Persons** for **Loss**, then any payment by the Insurer of such **Defense Costs** or other **Loss** shall not be reduced by the applicable Retention. However, if the Insurer pays such **Defense Costs** or such other **Loss**, the **Company** shall reimburse the Insurer for such amounts to the extent the applicable retention is not then exhausted, and such amounts shall become immediately due and payable as a direct obligation of the **Company** to the Insurer. The **Company** agrees to indemnify and advance on behalf of the **Insured Persons** all such **Defense Costs** and other **Loss** otherwise covered under this **Policy** to the fullest extent permitted or required by applicable law. For purposes of this paragraph, the shareholder, **Managers**, and Board of Director resolutions of the **Company** shall be deemed to provide indemnification for such **Defense Costs** or other **Loss** to the fullest extent permitted by law.

#### **C. Notice**

The **Insureds** shall give to the Insurer written notice of any **Claim** made against the **Insureds** as soon as practicable after any **Executive Officer** or the **Company's** risk manager first learns of such **Claim**, but in no event later than (1) ninety (90) days after expiration of the **Policy Period**, if the **Extended Reporting Period** is not exercised, or (2) expiration of the **Extended Reporting Period**, if exercised.

If during the **Policy Period** or the **Extended Reporting Period**, if exercised, the **Insureds** first become aware of any circumstances which may reasonably give rise to a future **Claim** under this **Policy** and during such **Policy Period** or **Extended Reporting Period**, if exercised, give written notice to the Insurer of the circumstances, the anticipated **Wrongful Act** allegations, the reasons for anticipating such **Claim** and full particulars as to dates, persons and entities involved, then any **Claim** which arises out of such circumstances shall be deemed to have been first made during the **Policy Period** or the **Extended Reporting Period**, if exercised, in which such written notice was received by the Insurer. No coverage is provided for fees and expenses incurred in connection with a potential **Claim** prior to the time such notice results in a **Claim**.

All notices under any provision of this **Policy** shall be in writing and given by email, mail, prepaid express courier, or facsimile properly addressed to the appropriate party. Notice to the **Insureds** may be given to the **Parent Company** at the address as shown in Item 1. of the Declarations. Notice to the Insurer shall be given to the respective address set forth in Item 7. of the Declarations. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or one day following the date such notice is sent, whichever is earlier.

#### **D. Defense and Settlement**

The Insurer shall have the right and duty to defend any **Claim** covered by this **Policy**, regardless of whether or not any of the allegations are groundless, false or fraudulent. The Insurer's duty to defend any **Claim**

shall cease upon exhaustion of the applicable Limit of Liability. The Insurer may make any investigation it deems necessary and may, with the consent of the **Insureds**, make any settlement of any **Claim** it deems appropriate.

The **Insureds** agree not to settle or offer to settle any **Claim**, select defense counsel, incur any **Defense Costs** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the Insurer's written consent. Only those settlements, **Defense Costs**, assumed obligations or admissions to which the Insurer consents shall be recoverable **Loss** under this **Policy**. The **Insureds** shall promptly send to the Insurer all settlement demands or offers received by the **Insureds** from the claimant(s). However, if the **Insureds** are able to settle all **Claims** which are subject to a single Retention for an aggregate amount, including **Defense Costs**, not exceeding such Retention, the Insurer's consent shall not be required for the settlement of such **Claims**.

The Insurer may, with the consent of the **Insured**, make any settlement of any **Claim** covered under this **Policy** which the Insurer deems expedient. If the **Insured** against whom the **Claim** is made withholds consent to any settlement acceptable to the claimant and recommended by the Insurer (a "Proposed Settlement"), the Insurer's liability for all **Loss**, including **Defense Costs**, incurred by such **Insured** on account of such **Claim** shall not exceed:

1. the amount of the Proposed Settlement plus covered **Defense Costs** incurred up to the date of the **Insured's** refusal to consent to the Proposed Settlement of such **Claim**; and
2. eighty-five percent (85%) of any covered **Loss**, including **Defense Costs**, in excess of the amount referenced in paragraph 1. above, incurred in connection with such **Claim**; subject in all events to the applicable Retention and Limit of Liability. The remaining fifteen percent (15%) of any covered **Loss**, including **Defense Costs**, in excess of the amount referenced in paragraph 1. above will be borne by the **Insured**, notwithstanding anything to the contrary in this **Policy**.

The **Insureds** agree to provide the Insurer with all information, assistance and cooperation which the Insurer reasonably requests and agree that in the event of a **Claim** or **Loss** the **Insureds** will do nothing that shall prejudice the Insurer's position or its potential or actual rights of recovery.

The failure of any **Insured Person** or the **Company** to comply with this Section V. D. shall not impair the rights of any other **Insured Person** under this **Policy**.

The Insurer and the **Insureds** shall not unreasonably withhold any consent referenced in this Section V. D.

#### **E. Allocation**

If in any **Claim** the **Insureds** who are afforded coverage for such **Claim** incur **Loss** jointly with others (including **Insureds**) who are not afforded coverage for such **Claim**, or incur an amount consisting of both **Loss** covered by this **Policy** and loss not covered by this **Policy** because such **Claim** includes both covered and uncovered matters, then the **Insureds** and the Insurer shall allocate such amount between covered **Loss** and uncovered loss as follows:

1. **Defense Costs**: one hundred percent (100%) of **Defense Costs** incurred by such **Insured** resulting from such **Claim** shall be covered **Loss**; and
2. Loss other than **Defense Costs**: all remaining loss incurred by such **Insured** from such **Claim** shall be allocated between covered **Loss** and uncovered loss based upon the relative legal and financial exposures of the parties to such matters and, in the event of a settlement, based also upon the relative benefits to the parties from settlement of the covered and uncovered matters.

#### **F. Other Insurance**

If any **Loss** under this **Policy** is insured under any other valid and collectible policy(ies), prior or current, then coverage under this **Policy** for such **Loss**, subject to its limitations, conditions, provisions and other terms, shall be primary to and not excess of such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, provided that **Loss** payable on behalf of any temporary or leased employee or **Independent Contractor** under this **Policy** for an **Employment Claim** made against such temporary or leased employee or **Independent Contractor** shall be excess of and shall

not contribute with any other valid and collectible insurance policy, other than a policy that is issued specifically as excess of the insurance provided under this **Policy**, regardless of whether or not such other insurance is stated to be primary, contributory, excess, contingent or otherwise.

The coverage provided under this **Policy** for **Third Party Discrimination Claims** shall be excess of and shall not contribute with any other valid and collectible insurance policy, other than a policy that is issued specifically as excess of the insurance provided under this **Policy**, regardless of whether or not such other insurance is stated to be primary, contributory, excess, contingent or otherwise.

## **G. Transactions Changing Coverage**

### **1. Acquisition or Creation of Another Organization**

If, during the **Policy Period**, the **Company**:

- a. acquires voting securities or voting rights in another organization or creates another organization, which as a result of such acquisition or creation becomes a **Subsidiary**; or
- b. acquires any organization by merger into or consolidation with the **Company**;

then, subject to all terms and conditions of this **Policy**, such organization and its **Insureds** shall be covered under this **Policy** but only with respect to covered **Wrongful Acts** taking place after such acquisition or creation unless the Insurer agrees to provide coverage by endorsement for **Wrongful Acts** taking place prior to such acquisition or creation.

If the assets of such acquired organization exceed twenty-five percent (25%) of the total assets of the **Parent Company** as reflected in the **Parent Company's** then most recent consolidated financial statements, the **Parent Company**, as a condition precedent to coverage with respect to such **Insureds**, shall give written notice of such acquisition to the Insurer within ninety (90) days after the effective date of such acquisition and shall agree to any additional terms and conditions, and pay any reasonable additional premium, required by the Insurer.

### **2. Acquisition of Parent Company**

If, during the **Policy Period**, any of the following events occur:

- a. the acquisition of the **Parent Company**, or of all or substantially all of its assets, by any person, entity or group of persons or entities acting in concert, or the merger or consolidation of the **Parent Company** into or with another entity such that the **Parent Company** is not the surviving entity; or
- b. the obtaining by any person, entity or group of persons or entities acting in concert of securities or rights which results in such person, entity or group having the right to elect, appoint or designate at least fifty percent (50%) of the directors or **Managers** of the **Parent Company**;

then coverage under this **Policy** will continue in full force and effect until termination of this **Policy**, but only with respect to **Claims** for covered **Wrongful Acts** taking place before such event. Coverage under this **Policy** will cease as of the effective date of such event with respect to **Claims** for **Wrongful Acts** taking place after such event.

If such event occurs, the **Insureds** shall have the right, upon payment of the additional premium described below, to elect an extension of the coverage described in the preceding paragraph for a twelve (12) to seventy-two (72) month **Extended Reporting Period** following the termination of the **Policy Period**; but the Insurer may, in its sole discretion and subject to any additional terms, conditions and premiums required by the Insurer, agree by written endorsement to this **Policy** to any other **Extended Reporting Period** requested by the **Insureds**. This right to elect an extension of coverage shall lapse unless written notice of such election, together with payment of the additional premium due, is given by the **Insureds** to the Insurer within thirty (30) days following the effective date of such event.

Upon request from any **Insured** following notice to the Insurer of such event, the Insurer shall notify such **Insured** of the additional premium amount for this extension of coverage.

The **Insureds** shall not be entitled to elect this extension of coverage if an **Extended Reporting Period** is elected pursuant to Section II. A. of this **Policy**.

### 3. Cessation of Subsidiaries

If before or during the **Policy Period** an organization ceases to be a **Subsidiary**, coverage with respect to such **Subsidiary** and its **Insureds** shall apply only with respect to **Claims** for covered **Wrongful Acts** taking place prior to the date such organization ceased to be a **Subsidiary**.

## H. Representations and Severability

The **Insureds** acknowledge and agree that the statements and information contained in the **Application** are true and are the basis of this **Policy** and are to be considered as incorporated into and constituting a part of this **Policy**. This **Policy** is issued in reliance upon the truth of such representations and warranties.

In the event the **Application** contains any misrepresentation or omission of material information, then coverage under this **Policy** may be voided *ab initio* only as described below:

1. coverage for any **Loss** which is incurred by **Insured Persons** and for which the **Company** is neither permitted nor required to indemnify shall not be rescinded or voided by the Insurer in whole or in part for any reason;
2. coverage may be voided *ab initio* for **Loss** which is incurred by an **Insured Person** and for which the **Company** is permitted or required to indemnify only if and to the extent such **Loss** is incurred by an **Insured Person** who had knowledge of the facts that were either omitted from or misrepresented in the **Application**, whether or not such **Insured Person** knew the **Application** contained such misrepresentation or omission; and
3. coverage for a **Company** and its **Subsidiaries** may be voided *ab initio* for **Loss** otherwise covered under this **Policy** only if any past or present **Executive Officer** of such **Company** had knowledge of the facts that were either omitted from or misrepresented in the **Application**, whether or not such **Executive Officer** knew the **Application** contained such misrepresentation or omission.

For purposes of this Section V. H., knowledge possessed by any **Insured Person** shall not be imputed to any other **Insured Person**, and only knowledge possessed by an **Executive Officer** of a **Company** shall be imputed to such **Company** and its **Subsidiaries**.

## I. Termination and Nonrenewal of Policy

This **Policy** shall terminate at the earliest of the following times:

1. the effective date of termination specified in a prior written notice by the **Parent Company** to the Insurer, provided this **Policy** may not be terminated by the **Parent Company** after the effective date of an event described in Section V. G. 2. of this **Policy**;
2. upon expiration of the **Policy Period** as set forth in Item 2. of the Declarations;
3. twenty (20) days after receipt by the **Parent Company** of a written notice of termination from the Insurer for failure to pay a premium when due, unless the premium is paid within such twenty (20) days; or
4. at such other time as may be agreed upon by the Insurer and the **Parent Company**.

The Insurer may only cancel this **Policy** for non-payment of premium as set forth in subparagraph 3. above and may not cancel for any other reason.

The Insurer shall refund the unearned premium, which shall be ninety percent (90%) of the pro rata unearned premium if this **Policy** is terminated by the **Parent Company**. Under any other circumstances the refund shall be computed pro rata. Payment or tender of any unearned premium by the Insurer shall not be a condition precedent to the effectiveness of such termination, but such payment shall be made as soon as practicable.

If the Insurer decides to nonrenew this **Policy**, the Insurer will mail to the **Parent Company** written notice stating such intent at least sixty (60) days before the expiration date set forth in Item 2. of the Declarations.

If a financial strength rating for the Insurer is issued (1) below A- by A.M. Best Co., or (2) below BBB by Standard & Poor's Rating Services (hereinafter "Credit Rating Downgrade"), this **Policy** may be canceled by the **Parent Company** by mailing written prior notice to the Insurer of such cancellation or by surrender of this **Policy** to the Insurer. If this **Policy** is cancelled by the **Parent Company** within thirty (30) days after such Credit Rating Downgrade, the Insurer shall compute and refund to the **Parent Company** the unearned premium on a pro rata basis. If this **Policy** is cancelled by the **Parent Company** after such thirty (30) days, the Insurer shall compute and refund to the **Parent Company** the unearned premium at a rate of ninety percent (90%) of the pro rata unearned premium.

#### **J. Coverage Dispute Resolution**

Any dispute between the Insurer and the **Insured** based upon, arising out of or attributable to (1) any actual or alleged coverage under this **Policy**, or (2) the validity, breach or termination of this **Policy**, shall be resolved by final and binding arbitration, provided that:

1. the **Insured** shall have the option to submit any such dispute to non-binding mediation prior to the binding arbitration; and
2. the parties shall share the common costs of such arbitration or mediation, but shall bear their own fees and expenses therein.

In the event of a binding arbitration, such proceeding shall be pursuant to such rules and procedures as the parties may agree. If the parties cannot agree, the arbitration shall be administered by the American Arbitration Association in accordance with its then prevailing Commercial Arbitration Rules. The arbitration panel shall consist of one arbitrator selected by the **Insured**, one selected by the Insurer, and the third independent arbitrator selected by the two party-appointed arbitrators.

#### **K. Bankruptcy**

Bankruptcy or insolvency of **Insureds** or of the estate of any **Insured Person** shall not relieve the Insurer of its obligations nor deprive the Insurer of its rights or defenses under this **Policy**.

If a liquidation or reorganization proceeding is commenced by or against a **Company** pursuant to the United States Bankruptcy Code, as amended, or any similar state or local law, the **Insureds** hereby (1) waive and release any automatic stay or injunction which may apply in such proceeding to this **Policy** or its proceeds under such Bankruptcy Code or law, and (2) agree not to oppose or object to any efforts by the Insurer or any **Insured** to obtain relief from any such stay or injunction.

#### **L. Territory and Valuation**

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 stated 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.

Coverage under this **Policy** shall extend to **Wrongful Acts** taking place, **Loss** incurred or **Claims** made anywhere in the world.

#### **M. Subrogation**

In the event of any payment under this **Policy**, the Insurer shall be subrogated to the extent of such payment to all the **Insureds'** rights of recovery, including without limitation the **Insured Person's** rights to indemnification or advancement from the **Company**. The **Insureds** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the Insurer effectively to bring suit or otherwise pursue subrogation rights in

the name of the **Insureds**. In no event shall the Insurer subrogate against an **Insured Person** unless and to the extent Exclusion A. 5. in Section IV. of this **Policy** applies to such **Insured Person**.

Any recoveries by the Insurer of **Loss** paid under this **Policy** shall be the sole property of the Insurer, but an amount equal to the amount of such recoveries, minus all costs incurred by the Insurer to obtain such recoveries, shall reinstate, in such amount and as of the date each recovery is received by the Insurer, the Limits of Liability and any Sublimit of Liability of this **Policy** that were eroded or exhausted by such payment.

**N. Action Against the Insurer**

No action shall lie against the Insurer unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this **Policy**. No person or organization shall have any right under this **Policy** to join the Insurer as a party to any action against **Insureds** to determine the **Insured's** liability nor shall the Insurer be impleaded by the **Insureds** or their legal representatives.

**O. Authorization Clause**

By acceptance of this **Policy**, the **Parent Company** agrees to act on behalf of the **Insureds** with respect to the payment of premiums and the receiving of any return premiums that may become due under this **Policy**, the agreement to and acceptance of endorsements, and the giving or receiving of any notice provided for in this **Policy**, and the **Insureds** agree that the **Parent Company** shall so act on their behalf.

**P. Alteration, Assignment and Headings**

No change in, modification of, or assignment of interest under this **Policy** shall be effective except when made by a written endorsement to this **Policy** which is issued by the Insurer.

The titles and headings to the various sections, subsections and endorsements of the **Policy** are included solely for ease of reference and do not in any way limit, expand or otherwise affect the provisions of such sections, subsections or endorsements.