

EMPLOYMENT PRACTICES LIABILITY POLICY

IMPORTANT NOTICE: THIS POLICY'S INSURING AGREEMENTS PROVIDE COVERAGE ON A CLAIMS MADE BASIS AND APPLY ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR THE OPTIONAL EXTENSION PERIOD (IF APPLICABLE) AND REPORTED TO THE INSURER IN ACCORDANCE WITH THE TERMS OF THIS POLICY. DEFENSE COSTS ARE INCLUDED WITHIN THE LIMIT OF LIABILITY. DEFENSE COSTS WILL REDUCE THE AVAILABLE LIMIT OF LIABILITY AND ARE SUBJECT TO RETENTIONS.

In consideration of the payment of the premium and in reliance upon all statements made and information furnished to the insurance company shown in the Declarations (a stock insurance company, hereinafter called the **Insurer**), including the statements made in the **Application** and any attachments thereto, and subject to all terms, conditions and limitations of this **Policy**, the **Insured** and **Insurer** agree:

SECTION I - INSURING AGREEMENT

The **Insurer** will pay on behalf of the **Insured**, **Loss** resulting from **Claims** first made during the **Policy Period** or the Extended Reporting Period against the **Insured** for which the **Insured** is legally obligated to pay for **Wrongful Employment Acts**.

SECTION II - ADDITIONAL COVERAGES

ESTATES, HEIRS AND MARITAL ESTATE LIABILITY - This **Policy** shall cover **Loss** resulting from **Claims** for **Wrongful Employment Acts** of an **Insured Person** made against:

- (1) the estates, heirs, legal representatives or assigns of any **Insured Persons** who are deceased, incompetent, insolvent or bankrupt; provided that such **Claims** would have been covered by this **Policy** in the absence of such death, incompetency, insolvency or bankruptcy; and
- (2) the lawful spouse or **Domestic Partner** of an **Insured Person** solely by reason of such person's status as a spouse or **Domestic Partner**, or such spouse or **Domestic Partner's** ownership interest in property which the claimant seeks as recovery for an alleged **Wrongful Employment Act** of such **Insured Person**.

The coverage provided by this Subsection shall not apply with respect to any loss arising from any act or omission by an **Insured Person's** estate, heirs, legal representatives, assigns, spouse or **Domestic Partner**.

SECTION III – EXTENDED REPORTING PERIOD

- A. If the **Company** or the **Insurer** cancels or nonrenews this **Policy** or if the **Policy** converts subject to Section XI (C)(1)(b), the **Insured** shall have the right to purchase an optional extended reporting period (herein called the Extended Reporting Period) for the period set forth in Item 8 of the Declarations. It is understood that if the **Insurer** cancels this **Policy** due to nonpayment of premium, the **Insured** shall not be entitled to the Extended Reporting Period.

- B. The Extended Reporting Period is not an extension of coverage, but rather an extended reporting period for **Claims** first made during the Extended Reporting Period resulting from **Wrongful Employment Acts** that occurred prior to the effective date of cancellation, nonrenewal or conversion and otherwise covered under this **Policy**. Notice of facts and circumstances that may give rise to a **Claim**, pursuant to Section VIII (B), must be given during the **Policy Period** and shall not be effective if given during the Extended Reporting Period.
- C. If the **Insured** elects to purchase the Extended Reporting Period, the premium will be calculated by multiplying the annual premium set forth in Item 5 (a) of the Declarations by the percentage set forth in Item 8 of the Declarations. The Extended Reporting Period is noncancellable and the entire premium shall be deemed fully earned at its commencement.
- D. The **Insureds'** right to purchase the Extended Reporting Period shall lapse unless the **Insurer** receives written notice of the **Insureds'** election and full payment of the additional premium due within sixty (60) days after the effective date of such cancellation, nonrenewal or conversion.
- E. The Limit of Liability with respect to **Claims** made during the Extended Reporting Period shall be part of and not in addition to the Limit of Liability set forth in Item 3 of the Declarations for all **Claims** made during the immediately preceding **Policy Year**. Any **Claim** made during the Extended Reporting Period shall be deemed to be made during the **Policy Year** immediately preceding the Extended Reporting Period.
- F. The offer by the **Insurer** and acceptance by the **Insured** of continued coverage under terms, conditions, Limits of Liability, retentions, or premiums different from those applicable to the expiring **Policy** shall not constitute a refusal to renew and shall not entitle any **Insured** to exercise the Extended Reporting Period.

SECTION IV - DEFINITIONS

Application means:

- (1) the application signed for the procurement of this **Policy** and any materials submitted to the **Insurer** in support of the procurement of this **Policy** or any **Policy** for which this **Policy** is a direct or indirect renewal or replacement; and
- (2) any publicly available information published or filed by or with a recognized source, agency or institution regarding the **Insured** in the twelve (12) months preceding the **Policy's** inception, and any amendments thereto, whether or not submitted with any signed application.

The **Application** is deemed to be attached to and incorporated into this **Policy**, as if physically attached.

Claim, either in singular or plural, means any of the following instituted against an **Insured**:

- (1) a written demand for monetary damages or non-monetary relief;
- (2) a civil proceeding commenced by the service of a complaint or similar pleading;
- (3) a criminal proceeding commenced by a return of an indictment;
- (4) an arbitration or mediation proceeding in which monetary damages are sought;
- (5) a formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document; or

- (6) a written request to toll or waive a statute of limitations, relating to a potential **Claim** described in Subsections (1) through (5) above, that is received and reported during the **Policy Period** or, if applicable, Extended Reporting Period, by an **Insured**

for a **Wrongful Employment Act**, including any appeals from such proceedings. **Claim** shall not include a labor or grievance arbitration pursuant to a collective bargaining agreement.

COBRA means the Consolidated Omnibus Budget Reconciliation Act, as amended.

Company means the entity or entities set forth in Item 1 of the Declarations, any **Subsidiary** created or acquired as of the inception date set forth in Item 2 of the Declarations, and, subject to Section X (B), any bank **Subsidiary** created or acquired during the **Policy Period**.

Defense Costs means reasonable and necessary legal fees and expenses incurred in defending or investigating any **Claim** and the cost of appeal, attachment or similar bonds. **Defense Costs** shall not include salaries, wages, overhead, or benefit expenses incurred by the **Insured**.

Discrimination means the termination of employment, the failure or refusal to hire or promote, the demotion of, or the employment-related defamation of any individual because of race, color, creed, national origin, sex, sexual orientation or preference, religion, age, gender, disability or handicap, pregnancy, or any other legally protected status.

Domestic Partner means 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**.

Employee, either in singular or plural, means any natural person whose labor or service is or was engaged and directed by the **Company** including any: 1) past, present, future, part-time, seasonal or temporary employees; and 2) volunteers and interns acting in the capacity of an **Employee**. **Employee** also includes **Leased Employees** but does not include **Independent Contractors**.

ERISA means the Employment Retirement Income Security Act of 1974, as amended.

Financial Impairment means 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** or any **Subsidiary**.

Harassment means:

- (1) unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when:
 - (a) submission to such conduct is made either explicitly or implicitly a term and condition of an individual's employment;
 - (b) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual;
 - (c) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment; or
 - (d) the allegation of harassment is brought by any customer(s), client(s), or other individual(s), class of individuals or group, and whether direct, indirect, intentional or unintentional; or

- (2) workplace harassment of a non-sexual nature as a consequence of race, color, creed, national origin, sex, sexual orientation or preference, religion, age, gender, disability or handicap, pregnancy, or any other legally protected status, which has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

Independent Contractor means any natural person who is not an **Employee** or a **Leased Employee** but performs labor or service for the **Company** pursuant to a written contract or agreement.

Insured, either in singular or plural, means the **Insured Persons** or the **Company**.

Insured Person, either in singular or plural, means any natural person who was, now is or shall become an **Employee**, director, officer, member of the board of trustees, governor, advisory or honorary director, or advisory or honorary member of the board of trustees of the **Company** while acting in his or her capacity as such.

Interrelated Wrongful Employment Acts means **Wrongful Employment Acts** which have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes.

Leased Employee means any natural person who is leased to the **Company** by a labor leasing firm under an agreement between the **Company** and the labor leasing firm to perform work for the **Company** and for whom the **Company** controls the means and manner of the work performed. But any coverage afforded under this **Policy** to a **Leased Employee** applies only to the extent that the **Company** indemnifies such **Leased Employee**, and any such coverage will be specifically excess of any other indemnity and insurance otherwise available to such **Leased Employee**.

Loss means **Defense Costs** and any amount which the **Insured** is legally obligated to pay resulting from a **Claim**, including damages, judgments, settlements, pre- and post-judgment interest. **Loss** shall also include punitive or exemplary damages and the multiple portion of any multiplied damage award to the extent such damages are insurable under the law of the jurisdiction most favorable to the insurability of such damages provided such jurisdiction has an adequate relationship to the relevant **Insured**. **Loss** shall not include:

- (1) criminal or civil fines or penalties imposed by law, and liquidated damages under the Age Discrimination in Employment Act;
- (2) the payment of insurance plan benefits the claimant may have been entitled to as an **Insured Person**, including but not limited to benefits payable pursuant to **ERISA** or **COBRA**;
- (3) costs to comply with any non-monetary or injunctive relief of any kind or any agreement to provide such relief, including but not limited to any damages, costs or expenses incurred in making an accommodation for any disabled person pursuant to the Americans with Disabilities Act or any similar federal, state or local laws, or in complying with any other federal, state or local laws of any kind;
- (4) other than **Defense Costs**, front pay, future damages or other future economic relief or the equivalent thereof which compensates the claimant for damages beyond the date of settlement or adjudication, where the **Company** has the option pursuant to a settlement or adjudication to reinstate the claimant, but fails to reinstate the claimant;

- (5) other than **Defense Costs**, compensation earned by the claimant while employed by the **Company** but not paid by the **Company** for reasons other than **Wrongful Employment Acts**, or damages determined to be owed under an express written contract of employment or an express written obligation to make payments in the event of termination of employment; or
- (6) any matters which are uninsurable under the law pursuant to which this **Policy** shall be construed.

Loss Information means information on open, closed and potential **Claims**, including date, description, and payment amounts, if any.

Named Insured means the first named entity set forth of Item 1 of the Declarations.

Policy means collectively, the Declarations, the **Application**, this policy form and any Endorsements attached hereto.

Policy Period means the period from the inception date set forth in Item 2 of the Declarations to the expiration date set forth in Item 2 of the Declarations or any earlier termination date. In no event will the **Policy Period** continue past the effective date of cancellation or termination of the **Policy**.

Policy Year means the period of one year following the effective date and hour of this **Policy** or any anniversary thereof, or if the time between the effective date and termination of the **Policy Period** is less than one year, such lesser period. Any extension of the **Policy Period** shall not result in an increase or reinstatement of the Limit of Liability. If the **Policy Period** is extended beyond its original expiration date, the period of the extension shall be a part of the **Policy Year**, which would have ended on the original expiration date.

Subsidiary means:

- (1) any entity in which the **Company** owns, directly or through one or more subsidiaries, more than fifty percent (50%) of the outstanding securities representing the present right to vote for the election of directors;
- (2) any limited liability company in which the **Company**, or one or more of its subsidiaries, has the right to appoint or designate fifty percent (50%) or more of such limited liability company's managers; or
- (3) any joint venture in which the **Company**, or one or more of its subsidiaries, has the right to elect, appoint or designate more than fifty percent (50%) of such entity's directors, trustees or other equivalent executives.

Wrongful Employment Act, either in singular or plural, means any actual or alleged act, error or omission by the **Insured** that constitutes or causes:

- (1) **Wrongful Termination, Discrimination or Harassment;**
- (2) employment-related misrepresentation;
- (3) employment-related libel, slander, humiliation, defamation, or invasion of privacy;
- (4) wrongful retaliation;
- (5) wrongful failure to employ or promote; wrongful deprivation of career opportunity; wrongful demotion; negligent evaluation; negligent hiring; negligent retention; wrongful discipline;
- (6) failure to provide and enforce adequate workplace or employment policies and procedures; or
- (7) any violation of any statutory or common law relating to employment other than those statutes or regulations set forth in the Violation of Employment Law Exclusion.

Wrongful Termination means termination of an employment relationship in a manner which is against the law or in breach of an oral and/or implied agreement to continue employment, including constructive and retaliatory discharge.

SECTION V – EXCLUSIONS

Bodily/Personal Injury and Property Damage Exclusion - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** for actual or alleged:

- (1) bodily injury, sickness, disease or death of any person with the exception of mental anguish or emotional distress;
- (2) damage to or destruction of any tangible or intangible property, including loss of use and diminution thereof; or
- (3) wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, abuse of process, assault, battery, or loss of consortium.

Foreclosed Property Exclusion - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** arising out of or in any way involving the ownership, sale, operation, management or control of any entity or property acquired by the **Company** as security or collateral for any loan, lease or extension of credit.

The Foreclosed Property Exclusion shall not apply to **Claims** resulting from **Wrongful Acts** in connection with the ownership, sale, operation, management or control of any one to four family residential property.

Non-Subsidiary Wrongful Employment Acts Exclusion - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** against any **Subsidiary** or its **Insured Persons** acting in the capacity of director, member of the board of trustees, officer or employee of such **Subsidiary** for any **Wrongful Employment Act** or **Interrelated Wrongful Employment Acts** actually or allegedly committed in whole or in part at any time when the entity was not a **Subsidiary** except as provided in Section XI (C)(3).

Prior Notice Exclusion - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** arising out of or in any way involving any **Wrongful Employment Act** or any **Wrongful Employment Act** which is part of any **Interrelated Wrongful Employment Acts**, or any fact, circumstance or situation, which has been the subject of any notice given to any carrier other than the **Insurer** under any similar insurance policy providing protection for any **Insured**.

Prior and Pending Proceeding Exclusion - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** arising out of or in any way involving any litigation or proceeding against any **Insured** initiated prior to the date set forth in Item 7 of the Declarations, or arising out of or in any way involving the same or substantially the same fact, circumstance or situation underlying or alleged in such prior litigation or proceeding.

Violation of Employment Law Exclusion - The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** arising out of or in any way involving an actual or alleged violation of the responsibilities, obligations or duties imposed by **ERISA, COBRA**, any Worker's Compensation, Unemployment Insurance, or disability benefits law, the Fair Labor Standards Act, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Occupational Safety and Health Act, or any rules or regulations promulgated under any of the above statutes, or similar provisions of any federal, state or local statutory, administrative or common law. However, this exclusion shall not apply to **Loss** in connection with that portion of a **Claim** alleging retaliation for the exercise of any rights under such laws.

SECTION VI - LIMIT OF LIABILITY AND RETENTION

- A. **LIMIT OF LIABILITY** - The **Insurer's** maximum Limit of Liability for all **Loss** resulting from all **Claims** first made during each **Policy Year** during the **Policy Period** shall not exceed the Limit of Liability set forth in Item 3 of the Declarations. Amounts incurred as **Defense Costs** will reduce and shall be part of and not in addition to the Limit of Liability.
- B. **RETENTION** - The **Insurer** shall only pay for **Loss** in excess of the applicable Retention amount set forth in Item 4 of the Declarations. Covered **Defense Costs** will be applied against the Retention and one Retention amount shall apply to the covered portion of each and every **Claim**.
- C. **SINGLE CLAIM** - **Claims** based upon or arising out of the same **Wrongful Employment Acts** or **Interrelated Wrongful Employment Acts** committed by one or more **Insureds** shall be considered a single **Claim**, and only one Retention and Limit of Liability shall apply to such single **Claim**. Each such single **Claim** shall be deemed to be first made on the date the earliest of such **Claims** was first made, regardless of whether such date is before or during the **Policy Period**.

SECTION VII - DEFENSE COSTS

- A. **NO DUTY TO DEFEND**
- (1) Amounts incurred as **Defense Costs** will reduce and shall be part of and not in addition to the applicable Limit of Liability. It shall be the duty of the **Insured** and not the duty of the **Insurer** to defend **Claims**. The **Insured** shall only retain counsel that is mutually agreed upon with the **Insurer**, consent for which shall not be unreasonably withheld.
- (2) The **Insured** shall not incur **Defense Costs**, admit liability for, settle, or offer to settle any **Claim** without the **Insurer's** prior written consent, which shall not be unreasonably withheld. The **Insurer** shall be entitled to full information and all particulars it may request in order to reach a decision as to such consent. If the **Insured** receives a settlement offer that the **Insurer** deems reasonable and the **Insured** withholds consent to such settlement, the **Insurer's** liability for all **Loss** on account of such **Claim** shall not exceed:
- (a) the amount for which the **Claim** could have been settled for; plus
 - (b) **Defense Costs** accrued as of the date such settlement was proposed; plus

- (c) fifty (50%) percent of the covered **Loss**, including **Defense Costs** incurred after the date such settlement was proposed, in excess of the amount for which the **Claim** could have been settled.

Notwithstanding the foregoing, if the proposed settlement amount does not exceed the applicable retention set forth in the Declarations, subpart (c) above shall not apply and the **Insurer's** liability for all **Loss** arising from such **Claim** shall not exceed the amount for which the **Claim** could have been settled plus **Defense Costs** incurred as of the date such settlement was proposed.

Any amounts paid by the **Insurer** under subparts (a), (b), or (c) above shall be part of and not in addition to the applicable Limit of Liability set forth in Item 3 the Declarations.

- (3) The **Insurer** shall have the right but not the duty to effectively associate with the **Insured** in the settlement and defense of any **Claim** that appears reasonably likely to involve the **Insurer**. Such association shall include, but not be limited to, participation in the formation of litigation strategy, review of pleadings and other pertinent papers prior to filing, and participation in the settlement negotiations.

B. ADVANCEMENT OF DEFENSE COSTS

- (1) Subject to Section XII, the **Insurer**, if requested by the **Insured**, shall advance covered **Defense Costs** on a current basis, except when advancement of **Defense Costs** is prohibited by law or regulation. The **Insured** shall repay any advanced **Defense Costs** to the **Insurer** in the event it is established that the **Insurer** has no liability under this **Policy** for such **Defense Costs**.
- (2) Prior to advancing or indemnifying **Defense Costs**, the **Insurer** shall be entitled to sufficient information and documentation as to the amount and purpose of any **Defense Costs** to enable it to evaluate the reasonableness and necessity of such **Defense Costs** and to verify that such **Defense Costs** were actually incurred.

SECTION VIII - NOTICE OF CLAIMS AND POTENTIAL CLAIMS

- A. The **Insured**, as a condition precedent to any rights under this **Policy**, shall give the **Insurer** written notice, as soon as practicable, of any **Claim** first made during the **Policy Period** or the Extended Reporting Period, but in no event later than ninety (90) days after the **Claim** is first made.
- B. If during the **Policy Period**, the **Insured** first becomes aware of circumstances which may give rise to a **Claim**, and gives written notice to the **Insurer** of the circumstances and reasons for anticipating a **Claim**, then any **Claim** subsequently made shall be deemed to have been first made during the **Policy Year** in which notice was first given to the **Insurer**. As a condition precedent to any coverage hereunder for such **Claims**, such notice must be specific and contain full particulars as to the names, dates, and persons involved in the underlying facts potentially giving rise to the **Claim**, as well as the identity of the potential plaintiffs and the causes of action to be asserted.
- C. All notices required to be given to the **Insurer** under this **Policy** shall be given to the **Insurer** at the address set forth in Item 9 of the Declarations.

SECTION IX – DUTY TO COOPERATE

The **Insured** shall promptly furnish the **Insurer** with all information reasonably requested by the **Insurer** including, but not limited to, copies of reports, investigations, pleadings and other papers. As a condition precedent to coverage under this **Policy**, the **Insured** shall provide the **Insurer** with such information, assistance and cooperation as the **Insurer** may reasonably request.

SECTION X – MERGERS AND ACQUISITIONS

- A. Except as provided by Subsection (B) below, if during the **Policy Period**, the **Company** adds additional **Employees** through acquisition, merger with another entity or through the creation or acquisition of a **Subsidiary**, then no coverage shall be afforded under this **Policy** for any **Loss** incurred by the **Company**, such entity, **Subsidiary**, or its **Insured Persons** resulting from any **Claim** first made, prior to:
- (1) the **Company** providing written notice of such transaction, including any requested information regarding the transaction, to the **Insurer** as soon as practicable;
 - (2) the **Insurer**, at its sole discretion, agreeing in writing to provide such coverage; and
 - (3) the **Company** accepting any special terms, conditions and/or Exclusions and paying any additional premium required by the **Insurer**.

However, this provision shall not apply until ninety (90) days after the acquisition, merger or creation.

- B. If during the **Policy Period**, the **Company** creates or acquires a bank or bank **Subsidiary** whose assets are less than twenty-five (25%) percent of the **Company's** total assets at the time of the transaction, the **Insurer** agrees to provide automatic coverage for such bank, bank **Subsidiary** and its **Insured Persons** for the remainder of the **Policy Period**.
- C. Any coverage afforded under this **Policy** for a **Loss** in any way involving the **Company**, **Subsidiary**, or any acquired, merged or created entity or its **Insured Persons** shall not apply to any **Claim** arising out of or directly or indirectly resulting from:
- (1) any **Wrongful Employment Act** or any fact, circumstance or situation committed or allegedly committed prior to the effective date of such acquisition, merger or creation; or
 - (2) any other **Wrongful Employment Act**, which, together with **Wrongful Employment Acts** committed or allegedly committed prior to effective date of such acquisition, merger or creation constitute **Interrelated Wrongful Employment Acts**.

SECTION XI – CANCELLATION / NONRENEWAL / TERMINATION

A. NAMED INSURED CANCELLATION

The **Named Insured** may cancel this **Policy** by providing written notice to the **Insurer**. If the **Named Insured** cancels this **Policy**, the **Insurer** shall only return ninety percent (90%) of the unearned premium. For multi-year **Policies**, the **Insurer** shall only return ninety percent (90%) of the unearned premium if the cancellation occurs before the first anniversary. If the cancellation occurs after the first anniversary, unearned premium will be returned on a prorata basis as soon as practicable.

B. INSURER NONRENEWAL/CANCELLATION

- (1) **NONRENEWAL**: The **Insurer** shall not be required to renew this **Policy** upon expiration of the **Policy Period**. This **Policy** may be nonrenewed by the **Insurer** by giving to the **Named Insured** written notice stating when, not less than sixty (60) days thereafter, such action shall become effective and the reason(s) therefore.
- (2) **CANCELLATION**:
- (a) This **Policy** may be cancelled by the **Insurer** by giving to the **Named Insured** written notice stating when such action shall become effective and the reason(s) therefore.
- (b) If the **Insurer** cancels this **Policy**, prior to the cancellation effective date, the **Insurer** shall provide not less than:
- (i) sixty (60) days notice of its intent to cancel; or
- (ii) twenty (20) days notice of its intent to cancel for nonpayment of premium.
- (c) If the **Insurer** cancels this **Policy**, the **Insurer** shall return one hundred percent (100%) of the unearned premium. The return of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.
- (3) **NOTICE**: Pursuant to Section XI (B), notice will be mailed to the **Named Insured** by certified mail at the address set forth in Item 1 of the Declarations. The mailing of such notice as aforesaid shall be sufficient proof of notice, and this **Policy** shall terminate at the date and hour specified in such notice.

C. TERMINATION

- (1) Upon the occurrence of any of the following events, this **Policy** shall be deemed terminated:
- (a) **Financial Impairment** of the **Company** or any **Subsidiary** comprising more than fifty percent (50%) of the **Company's** total assets;
- (b) acquisition of the **Company** by another entity or the merger or consolidation of the **Company** into another entity such that the **Company** is not the surviving entity or acquisition of substantially all of the assets of the **Company** by another entity; or
- (c) the **Company** ceasing to engage actively in its primary business.
- (2) Pursuant to Subsection (C)(1) above, the **Insurer** shall refund the unearned premium, calculated on a pro-rata basis. The return of any unearned premium shall not be a condition precedent to the effectiveness of termination but such payment shall be returned as soon as practicable. The occurrence of any of the foregoing events shall not affect the **Insured's** right to purchase the Extended Reporting Period pursuant to Section III.
- (3) In the event of **Financial Impairment** or sale of a **Subsidiary** comprising less than fifty percent (50%) of the **Company's** total assets, this termination provision shall apply only to the **Subsidiary** and its **Insured Persons** and the **Policy** shall continue in full force with respect to all other **Insureds**.

SECTION XII – ALLOCATION AND ARBITRATION

A. ALLOCATION

If any **Insured** incurs a loss that is partially covered by this **Policy** either because such **Claim** includes both covered and uncovered matters or because such **Claim** is made against covered and uncovered parties, then such loss incurred by the **Insured** on account of such **Claim** shall be allocated by the **Insurer** between covered **Loss** and uncovered loss based on the relative legal exposures of the parties to covered and uncovered matters.

B. ARBITRATION

- (1) The **Insurer** and the **Insured** agree to use their best efforts to reach a proper allocation of **Defense Costs**. If the **Insured** and the **Insurer** cannot agree on an allocation:
 - (a) no presumption as to allocation shall exist in any arbitration, suit or other proceeding;
 - (b) the **Insurer** shall advance on a current basis **Defense Costs** which the **Insurer** believes to be covered under this **Policy** until a different allocation is negotiated, arbitrated or judicially determined; and
 - (c) the **Insurer**, if requested by the **Insured**, shall submit the allocation dispute to binding arbitration. The rules of the American Arbitration Association shall apply except with respect to the selection of the arbitration panel. The arbitration panel shall consist of one arbitrator selected by the **Insured**, one arbitrator selected by the **Insurer**, and a third independent arbitrator selected by the first two arbitrators. In any such arbitration, each party will bear its own legal fees and expenses.
- (2) Any negotiated, arbitrated or judicially determined allocation of **Defense Costs** will be applied retroactively to all **Defense Costs**, notwithstanding any prior advancement to the contrary. Any allocation or advancement of **Defense Costs** shall not apply to or create any presumption with respect to the allocation of other **Loss** arising from such **Claim** or any other **Claim**.

SECTION XIII - REPRESENTATIONS AND SEVERABILITY

A. REPRESENTATIONS

It is agreed and represented that the particulars and statements contained in the **Application** are the basis of this **Policy** and are to be considered as incorporated into and constituting a part of this **Policy**. By acceptance of this **Policy**, the **Insured** agrees that:

- (1) such **Application** shall be construed as a separate **Application** for coverage by each **Insured Person**;
- (2) this **Policy** shall not be deemed to be a series of individual insurance contracts with the **Company** and each of the **Insured Persons**; and
- (3) the statements in the **Application** are their representations, that they are material to the acceptance of the risk or hazard assumed by the **Insurer** under this **Policy**, and that this **Policy** is issued in reliance upon the truth of such representations.

B. SEVERABILITY

The **Insureds** agree that in the event the **Application** contains misrepresentations made with the actual intent to deceive, no coverage will be provided for any **Claim** under this **Policy** with respect to:

- (1) any **Insured Person** who knew of any fact, circumstance or situation that was not truthfully disclosed in the **Application**;
- (2) the **Company**, to the extent the **Company** indemnifies the **Insured Person** reflected in Subsection (1) above; or
- (3) the **Company** if any past, present, or future chief financial officer, in-house counsel, chief executive officer, President or Chairman of the Board of the **Company**, or any person holding any equivalent position within the **Company** (regardless of title), knew of any fact, circumstance or situation that was not truthfully disclosed in the **Application**.

The foregoing conditions shall apply whether or not the **Insured Person** actually knew if the misrepresentation or untruthful disclosure was made in the **Application** for coverage.

C. **SEVERABILITY OF EXCLUSIONS**

With respect to the Exclusions herein, in order to determine if coverage is available:

- (1) no **Wrongful Employment Act**, fact pertaining to or knowledge possessed by any **Insured Person** will be imputed to any other **Insured Person**; and
- (2) all facts pertaining to and knowledge possessed by any past, present, or future chief financial officer, in-house counsel, chief executive officer, President or Chairman of the Board of the **Company**, or any person holding any equivalent position within the **Company** (regardless of title), shall be imputed to the **Company** with respect to the Violation of Employment Law Exclusion.

SECTION XIV - GENERAL TERMS AND CONDITIONS

- A. **SUBROGATION** - In the event of any payment under this **Policy**, the **Insurer** shall be subrogated to the extent of such payment to all the **Insured Persons'** and the **Company's** rights to recovery therefor, and the **Insured** shall execute all papers required and shall do everything that may be necessary to secure the **Insurer's** rights, including the execution of such documents as may be necessary to enable the **Insurer** effectively to bring suit in the name of the **Insured Persons** or the **Company**. Recovery of any **Loss** paid under the **Policy**, regardless of whether effected by the **Insurer** or **Insureds**, less the cost of making such recovery, shall be distributed first to the **Insureds** for any amounts which are in excess of the limits of liability of this **Policy** and would have been covered by this **Policy** otherwise, next to the **Insurer** for the amount of such **Loss** paid hereunder, next to the **Insureds** for any retention, and lastly to the **Insureds** for the amount of **Loss** excluded, or otherwise not covered, under this **Policy**. Recovery by the **Insurer** from reinsurance or indemnity shall not be a recovery hereunder.
- B. **ASSIGNMENT AND ACCEPTANCE** - By acceptance of this **Policy**, the **Insured** and the **Insurer** agree that this **Policy**, the **Application**, and any written Endorsements attached thereto constitute the entire agreement between the parties. Assignment of interest under this **Policy** shall not bind the **Insurer** until its consent is endorsed hereon.

- C. **CONFORMITY TO STATUTE** - Any terms of this **Policy** which are in conflict with the terms of any applicable laws governing this **Policy**, are amended to conform to such laws.
- D. **AUTHORIZATION** - By acceptance of this **Policy**, the **Insureds** agree that the **Named Insured** will act on behalf of all **Insureds** for all purposes under this **Policy** including, but not limited to, giving and receiving of all notices and correspondence, cancellation, nonrenewal or termination of this **Policy**, payment of premiums, the negotiation and acceptance of Endorsements, and the receipt of any return premiums that may be due under this **Policy**.
- E. **CHANGES** - Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the **Insurer** shall not effect a waiver or a change in any part of this **Policy** or estop the **Insurer** from asserting any right under the terms of this **Policy**, nor shall the terms, conditions and limitations of this **Policy** be waived or changed, except by written endorsement issued to form a part of this **Policy**.
- F. **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 the terms of this **Policy**, and until the **Insured's** obligation to pay is finally determined, either by an adjudication or by written agreement of the **Insureds**, the 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 the **Insured** nor shall the **Insurer** be impleaded by the **Insured** or their legal representatives in any such **Claim**.
- G. **OTHER INSURANCE OR INDEMNIFICATION** - This **Policy** shall not be subject to the terms of any other insurance. All **Loss**, including **Defense Costs**, payable under this **Policy** shall be excess to:
- (1) any other existing insurance regardless of whether collectable, including, but not limited to, any insurance under which there is a duty to defend, unless such other insurance is written only as specific excess insurance over the Limits of Liability provided by this **Policy**; and
 - (2) indemnification to which an **Insured** is entitled from any entity other than the **Company**.
- H. **LOSS INFORMATION** - The **Insurer** will provide **Loss Information** to the **Company** within ten (10) days of the **Company's** request or, if required by statute, at the same time as any notice of cancellation or nonrenewal of this **Policy**. However, **Loss Information** shall not include information on any reserve.
- I. **INSOLVENCY / BANKRUPTCY** - The bankruptcy or insolvency of the **Insured** or of the estate of such **Insured** shall not release the **Insurer** from its obligations nor deprive the **Insurer** of its rights under this **Policy**.
- J. **HEADINGS AND SUB-HEADINGS** - The descriptions in the headings and sub-headings of this **Policy** are solely for convenience, and form no part of the terms and conditions of coverage. Terms that appear in boldface type shall have the meaning set forth in Section IV. Definitions.
- K. **WORLDWIDE TERRITORY** - This **Policy** applies to **Wrongful Acts** occurring and **Claims** made anywhere in the world where permitted by law.