

EMPLOYMENT PRACTICES LIABILITY INSURANCE

(Claims Made and Reported Coverage/Defense Costs Reduce the Limit of Liability)

THIS IS A CLAIMS MADE AND REPORTED POLICY. THIS POLICY APPLIES ONLY TO CLAIMS FIRST MADE AGAINST AN INSURED DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD (IF APPLICABLE) AND REPORTED TO THE COMPANY IN WRITING PURSUANT TO THE TERMS AND CONDITIONS OF THIS POLICY. LOSS AND DEFENSE COSTS REDUCE AND MAY EXHAUST THE LIMIT OF LIABILITY. THE DEDUCTIBLE APPLIES TO LOSS AND DEFENSE COSTS. PLEASE REVIEW THIS POLICY WITH YOUR INSURANCE BROKER OR ADVISOR.

Capitalized and bolded words or phrases in this **Policy** have special meaning. Review Section III, **DEFINITIONS** for the meaning of these words and phrases. Subheadings are provided to assist in finding important **Policy** information, but do not change the terms or conditions of this **Policy**.

I. INSURING AGREEMENTS

In consideration of the payment of the premium and in reliance upon all statements made and information submitted with the **Application**, which is deemed attached hereto and made a part of this **Policy**, and subject to the Limit of Liability and Deductible as well as all terms, conditions, limitations and exclusions of this **Policy**, the **Company** and **Named Insured** agree as follows:

(A) Employment Practices Wrongful Act Coverage

The **Company** shall pay **Loss** and **Defense Costs**, in excess of the Deductible and subject to this **Policy's** Limit of Liability, that an **Insured** is legally obligated to pay as a result of a **Claim** made against an **Insured** for an **Employment Practices Wrongful Act** as long as: (1) the **Claim** is first made against an **Insured** during the **Policy Period** or Extended Reporting Period (if applicable), and reported to the **Company** in writing during the **Policy Period** or Extended Reporting Period (if applicable); (2) the **Named Insured, Management Team, or Member** had no knowledge of the facts or circumstances giving rise to the **Claim** prior to the **Policy Period**; and (3) the **Employment Practices Wrongful Act** was committed after this **Policy's** Retroactive Date (if applicable).

(B) Third Party Wrongful Act Coverage

The **Company** shall pay **Loss** and **Defense Costs**, in excess of the Deductible and subject to this **Policy's** Limit of Liability, that an **Insured** is legally obligated to pay as a result of a **Claim** made against an **Insured** for a **Third Party Wrongful Act** as long as: (1) the **Claim** is first made against an **Insured** during the **Policy Period** or Extended Reporting Period (if applicable), and reported to the **Company** in writing during the **Policy Period** or Extended Reporting Period (if applicable); (2) the **Named Insured, Management Team, or Member** had no knowledge of the facts or circumstances giving rise to the **Claim** prior to the **Policy Period**; and (3) the **Third Party Wrongful Act** was committed after this **Policy's** Retroactive Date (if applicable).

II. DEFENSE, INVESTIGATION AND SETTLEMENT OF CLAIMS

(A) Duty to Defend

- (1) The **Company** shall have the right and duty to defend any **Claim** to which this **Policy** applies, even if the allegations are groundless or false. The **Company** shall have the right to select and appoint defense counsel and to manage the defense of any **Claim** to which this **Policy** applies.
- (2) The **Company's** duty to defend shall cease upon exhaustion of the applicable Limit of Liability.

(B) Discretionary Defense of Non-Covered Claims

- (1) The **Company** may, in its sole discretion, defend an **Insured** in a criminal, regulatory or other non-covered proceeding, if the **Company** determines that providing such defense may benefit the defense of a **Claim** to which this **Policy** applies.
- (2) If the **Company** chooses to defend a non-covered proceeding, the **Company** and such **Insured** must agree to the appointment of defense counsel. A defense under Section II.(B) is subject to all other terms and conditions of this **Policy**. **Defense Costs** incurred for the non-covered proceeding shall reduce the available Limit of Liability or applicable Sublimit of Liability.
- (3) Defending an **Insured** for a non-covered proceeding shall not render the **Company** liable for any damages or other amounts that arise from settlement or adjudication of the non-covered proceeding.

(C) Investigation and Settlement of Claims

- (1) The **Company** shall have the right and sole discretion to conduct any investigation it deems necessary.
- (2) The **Company** may, with the consent of the **Named Insured**, settle any **Claim** it deems reasonable and necessary.
- (3) If any **Insured** refuses to consent to any settlement recommended by the **Company**, the **Company's** liability for such **Claim** shall not exceed:
 - (a) the amount of the recommended settlement plus **Defense Costs** incurred in excess of the Deductible up to the date of an **Insured's** refusal to consent to the recommended settlement; plus
 - (b) fifty percent (50%) of any **Loss** and **Defense Costs**, in excess of the amount stated in paragraph (a), above, incurred in connection with such **Claim**.

The remaining fifty percent (50%) of any **Loss** and **Defense Costs**, in excess of the amount referenced in paragraph (b), above, shall be the sole responsibility of an **Insured**.

III. DEFINITIONS

(A) **Application**

“**Application**” means all applications and/or proposals, and all other information and materials submitted by or on behalf of any **Insured** to the **Company** in connection with the underwriting of this **Policy**, or any other policy or policies of which this **Policy** is a renewal or replacement.

(B) **Circumstance**

“**Circumstance**” means any fact or event that may give rise to a **Claim** for an **Employment Practices Wrongful Act** or a **Third Party Wrongful Act** against one or more **Insureds**, which is first discovered or learned by an **Insured** during the **Policy Period**, but which does not yet meet the definition of a **Claim**.

(C) **Claim**

“**Claim**” means:

- (1) a written demand made by or on behalf of a **Claimant** alleging damages;
- (2) a written complaint or petition for damages commencing a civil or administrative proceeding, including a complaint or charge of discrimination submitted to the Equal Employment Opportunity Commission or similar federal, state, or local agency, arbitration, or other alternative dispute resolution by or on behalf of a **Claimant**; or
- (3) a written request submitted by or on behalf of a **Claimant** to a governmental agency seeking the commencement of a regulatory investigation of an **Insured**.

However, “**Claim**” does not include: (a) labor arbitrations or grievance proceedings pursuant to a collective bargaining agreement or (b) criminal or quasi-criminal proceedings. “**Claim**” also does not include any independent investigation or audit by any governmental or regulatory agency.

A **Claim** will be deemed to have been first made when any **Insured** receives written notice of the **Claim**, or becomes aware of the existence of the **Claim**.

(D) **Claimant**

“**Claimant**” means an **Employee** or **Third Party** who brings a **Claim**, or on whose behalf a **Claim** is brought by a governmental agency, guardian ad litem, conservator, administrator, or trustee.

(E) **Company**

“**Company**” means the insurance company identified in the Declarations of this **Policy**.

(F) **Defense Costs**

“**Defense Costs**” mean reasonable and necessary legal fees and expenses charged by an attorney selected and appointed by the **Company** in defense of a **Claim**; and all other reasonable and necessary costs, charges, and expenses

incurred in the investigation and defense of a **Claim**, including expert witness or mediation fees and appellate bond premiums (although the **Company** has no obligation to furnish any bond).

“**Defense Costs**” do not include:

- (1) the salary, wages or lost earnings of any **Insured** or any **Employee** of the **Named Insured**, and the **Named Insured’s** costs, expenses, or loss of productivity, incurred in response to reasonable requests to participate or assist in the investigation or defense of a **Claim**; or
- (2) any attorneys’ fees, costs, or expenses incurred by or on behalf of any **Insured** that are not directly related to the defense of a **Claim** which the **Company** has agreed to defend.

(G) Employee

“**Employee**” means:

- (1) an individual providing paid or volunteer services, on a full-time, part-time, or seasonal basis, when acting on behalf of, engaged by, or directly supervised by the **Named Insured**;
- (2) an individual who has filed an application for employment with the **Named Insured**; or
- (3) an individual who is part of the **Management Team**.

“**Employee**” does not include leased employees or independent contractors, or their employees, unless specifically added to this **Policy** by Endorsement. “**Employee**” also does not include “**Members**.”

(H) Employment Practices Wrongful Act

“**Employment Practices Wrongful Act**” means one or more of the following actual or alleged wrongful acts, errors, or omissions, by an **Insured** against an **Employee**, which directly results in an unlawful impairment of the terms and conditions of employment or continued employment:

- (1) “**Discrimination**,” which means any actual or alleged adverse employment action or threatened action against an **Employee** because of an **Employee’s** age, race, ancestry, color, religion, actual or perceived disability, marital status, medical condition, genetic information, military or veteran status, national origin, sex, gender, gender identity and/or gender expression, or sexual orientation, or status as a member of any other class of individuals protected by the law of the state or local jurisdiction in which the **Claimant** is employed;
- (2) “**Harassment**,” which means unwelcome sexual or non-sexual advances, requests for favors, or other verbal, physical, or electronic conduct of a sexual or non-sexual nature that: (a) explicitly or implicitly is made a condition of employment; (b) is used as a basis for employment decisions; or (c) creates a work environment that interferes with performance;
- (3) “**Retaliation**,” which means any actual, alleged or threatened adverse employment action against an **Employee** because of an **Employee’s** exercise or attempted exercise of his or her rights under any law; and

- (4) **“Inappropriate Workplace Conduct,”** which means actual or alleged:
- (a) violation(s) of federal, state or local family and/or personal leave laws and regulations, including any arising from, or related to, the exercise or attempted exercise of rights protected by such laws or regulations;
 - (b) violation(s) of the Uniformed Services Employment and Reemployment Rights Act, or any similar state or local law or regulation including any arising from, or related to, the exercise or attempted exercise of rights protected by such laws or regulations; and
 - (c) defamation, libel, slander, disparagement, invasion of privacy, and false imprisonment, as long as a **Claim** directly arises from the employment relationship.

(I) Insured

“Insured” means the **Named Insured(s)**, any **Member(s)**, and any **Employee** solely while acting within the course and scope of the **Named Insured’s** business operations or employment with the **Named Insured(s)**.

To the extent a **Claimant** seeks to collect upon community property or shared assets of an **Employee** and his/her legal spouse or domestic partner, the definition of **“Insured”** is extended to include the spouse or domestic partner, but solely for the purpose of defending against disputed collection efforts. The spouse or domestic partner is not an **Insured** for his/her actual or alleged separate or independent acts, errors, or omissions giving rise to the **Claim**.

(J) Interrelated Claims

“Interrelated Claims” means all **Claims** that have a common or logical nexus of facts, circumstances, decisions, plans, situations, events, transactions, or causes of harm, even if based on different theories of liability, or involving different **Claimants** or different dates of harm or injury. However, **Disability Access Discrimination Claims** involving: (1) separate or distinct physical locations or (2) the same physical location, but where separate **Claimants** allege violations; shall each be considered a separate **Claim** regardless of any factual or legal similarity.

Interrelated Claims shall be deemed to have been first made on the date of the first **Interrelated Claim**, even if the first **Interrelated Claim** was made prior to the **Policy Period**. For **Claims** first made and reported to the **Company** during this **Policy Period**, any subsequent **Interrelated Claim** will be deemed to have been first made during this **Policy Period**.

(K) Loss

“Loss” means compensatory damages pursuant to any settlement, judgment or award, statutory attorneys’ fees, and pre- and post-judgment interest awarded by a court. **“Loss”** shall also include the non-multiplied portion of any multiplied damage award and punitive or exemplary damages to the extent such damages are insurable under the law of the most favorable applicable jurisdiction that allows coverage for such damages.

“**Loss**” does not include:

- (1) amounts incurred to make any building or property more accessible or accommodating to any disabled person;
- (2) amounts incurred to satisfy educational requirements, training opportunities, equipment, supplies, or other remedial devices or business practices;
- (3) liquidated damages or the multiplied portion of any multiplied damages award;
- (4) discounts, coupons, prizes, awards or other incentives offered to any **Insured’s** clients or customers;
- (5) taxes, civil or criminal fines, or penalties imposed by law;
- (6) sanctions imposed by a court, arbitrator or administrative agency which arise from an **Insured’s** knowing failure to comply with orders compelling attendance at any proceeding, or compliance with any discovery or evidence preservation obligations;
- (7) commissions, bonuses, profit sharing or severance payments;
- (8) employee benefits, including health or welfare insurance benefits, or employer-paid contributions, or retirement program matching funds, or any unemployment, disability or social security benefits; and
- (9) amounts owed under any federal, state or local wage and hour laws, including, but not limited to, the Fair Labor Standards Act; or
- (10) any amounts uninsurable under the law pursuant to which this **Policy** is construed.

(L) Management Team

“**Management Team**” means in-house counsel, a personnel or human resources director or risk management personnel employed by the **Named Insured**, or any other **Employee** with management level responsibility (i.e. the ability to hire, terminate, demote or prepare performance evaluation of employees) whose job title or function is the same or equivalent to these titles.

(M) Material Risk Changing Event

“**Material Risk Changing Event**” means any of the following events which takes place after the Effective Date of this **Policy**:

- (1) The **Named Insured** increases its business operations by: (a) adding a new physical location of operations; and (b) increasing the average daily attendance of its **Employees** by twenty percent (20%) or more than the number of **Employees** listed in the **Application**;
- (2) The **Named Insured** acquires or merges with another legal entity resulting in: (a) the addition or change of a primary business location, or the addition of one or more new operational locations; or (b) the increase in the average daily attendance of **Employees** by twenty percent (20%) or more than the number of **Employees** listed in the **Application**; or

- (3) The **Named Insured** forms a new corporate entity or subsidiary, joins or forms a partnership or joint venture, or materially changes its primary business operations, resulting in an increase in the average daily attendance of **Employees** by twenty percent (20%) or more than the number of **Employees** listed in the **Application**.

(N) Member

“**Member**” means a director, officer, owner, partner, principal, or shareholder of the **Named Insured**.

(O) Named Insured

“**Named Insured**” means the entity designated as the **Named Insured** in the Declarations of this **Policy**, and any entity added by Endorsement as a **Named Insured**.

(P) Policy

“**Policy**” means this **Policy**, the Declarations of this **Policy**, the duly issued Endorsements, and the **Application**.

(Q) Policy Period

“**Policy Period**” means the period from the Effective Date of this **Policy** to the Expiration Date set forth in the Declarations of this **Policy**, or this **Policy’s** earlier termination date. “**Policy Period**” does not include any Automatic or Optional Extended Reporting Period to which this **Policy** applies.

(R) Third Party

“**Third Party**” means: (1) a natural person who is a vendor, client, or customer of the **Named Insured**; or (2) an employee of a vendor, client, or customer of the **Named Insured**.

“**Third Party**” does not include an **Employee** or **Member**, or any spouse, domestic partner, parent, or child of an **Employee** or **Member**.

(S) “Third Party Wrongful Act” means one or more of the following actual or alleged wrongful acts, errors, or omissions by an **Insured**, against a **Third Party**:

(1) “**Disability Access Discrimination**” which means failure to comply with federal, state, or local disability access laws in a manner that interferes with a **Third Party’s** ability to conduct business with an **Insured** or perform the **Third Party’s** job functions in conjunction with the **Named Insured’s** business operations;

(2) “**Third Party Discrimination**” which means the failure or refusal of an **Insured** to engage in business with a **Third Party**, or the creation of disparate, unfair, or less favorable business terms or conditions because of the **Third Party’s** age, race, ancestry, color, religion, actual or perceived disability, marital status, medical condition, genetic information, military or veteran status, national origin, sex, gender, gender identity and/or gender expression, or sexual orientation, or status as a member of any other class

of individuals protected by the law of the state or local jurisdiction in which the discrimination was committed; and

- (3) “**Third Party Harassment**” which means unlawful verbal, physical or electronic conduct by one or more **Employees** which creates a hostile business environment that interferes with the **Third Party’s** ability to conduct business with an **Insured** or perform the **Third Party’s** job functions in conjunction with the **Named Insured’s** business operations.

IV. **EXCLUSIONS**

This **Policy** does not apply to any **Claim, Loss or Defense Costs**:

- (A) for, based upon, or arising from intentional or fraudulent misconduct causing harm or injury to a **Claimant** by any **Member** or individual who is part of the **Management Team** (as to the **Named Insured**), or any **Insured** seeking benefits under this **Policy**, as determined by a final judgment or adjudication, either in the **Claim** or in a separate action or proceeding.
- (B) for, based upon, or arising from an actual or alleged violation of the Fair Labor Standards Act or any other federal, state, or local wage and hour law, regulation, or order, including, but not limited to, those relating to overtime compensation, on-call time, minimum wage, employment misclassification, gratuities, vacation pay, meal and rest breaks, uniform and equipment reimbursement, payroll deductions, waiting time penalties, books, records, and documentation obligations, mileage or other business expense reimbursement. This Exclusion does not apply to any separate **Loss or Defense Costs** arising from an **Employment Practices Wrongful Act**.
- (C) for, based upon, or arising from any rights, benefits, or obligations under any workers’ compensation, social security, or other federal or state disability benefits, or unemployment insurance or compensation program. This Exclusion does not apply to any separate **Loss or Defense Costs** arising from an **Employment Practices Wrongful Act**.
- (D) for, based upon, or arising from any rights, benefits or obligations under any health, welfare, or retirement program, including, but not limited to, the Occupational Safety and Health Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Employee Retirement Income Security Act of 1974, or their state law equivalents. This Exclusion does not apply to any separate **Loss or Defense Costs** arising from an **Employment Practices Wrongful Act**.
- (E) for, based upon, or arising from any federal, state, or local regulatory or administrative investigation or proceeding that was commenced prior to the Effective Date of this **Policy**. This Exclusion does not apply if the **Named Insured, Management Team, Member**, and each **Insured** seeking coverage had no knowledge of such investigation or proceeding prior to the Effective Date of this **Policy**.
- (F) for, based upon, or arising from facts required to be disclosed in the **Application**. This Exclusion does not apply to an innocent **Insured**, other than the **Management Team** or **Member**, who was unaware of the non-disclosure.
- (G) for, based upon, or arising from any **Claim** or **Circumstance** for which notice was given under any prior policy of insurance, whether or not a predecessor to this

Policy. This Exclusion applies to any **Claim** or **Circumstance** identified in the **Application**.

- (H) for, based upon, or arising from any actual or alleged breach of an oral or written employment, partnership, stock ownership, stock option or stock purchase, franchise, or independent contractor, or temporary employee or recruiting agency contract or agreement.
- (I) for, based upon, or arising from an actual or alleged violation of the Worker's Adjustment and Retraining Notification Act or any state law equivalent.
- (J) for, based upon, or arising from an actual or alleged violation of the National Labor Relations Act, any state law equivalent, or any derivative federal or state regulations, including any **Claim** directly or indirectly arising from or based on union organizing or representation, contractual grievance procedures, collective bargaining negotiations, or any collective bargaining agreement.
- (K) for, based upon, or arising from any **Employment Practices Wrongful Act** or a **Third Party Wrongful Act**, if an **Insured** has suffered a final criminal conviction based on the facts or circumstances giving rise to such **Claim**. However, the criminal conviction of one **Insured** shall not be imputed to any other **Insured** unless the other **Insured** seeking coverage approved of, or ratified, the criminal conduct of the convicted **Insured**.
- (L) for, based upon, or arising from an actual or alleged assault, battery, or physical or emotional injury or harm, unless such injury or harm forms the factual basis for an **Employment Practices Wrongful Act** or a **Third Party Wrongful Act** giving rise to the **Claim**.
- (M) for, based upon, or arising from allegations that a **Claimant** provided personal services to any **Insured**, including, but not limited to, personal or domestic cleaning, laundry, cooking, driving/chauffeur, childcare/eldercare, or personal financial assistance, regardless of whether compensation for such services was owed or paid by or on behalf of the **Named Insured**, an individual **Insured**, or any **Employee**.
- (N) for, based upon, or arising from:
 - (1) the **Named Insured's** ownership interest or participation in any other company, corporation, partnership, or joint venture not listed as a **Named Insured** in this **Policy**;
 - (2) the **Named Insured's** change in ownership, or acquisition by any other company, corporation, partnership, joint venture, or individual;
 - (3) an **Employment Practices Wrongful Act** or a **Third Party Wrongful Act** committed by a legal entity (or its employees or agents) or individual who is not an **Insured** on the date of the alleged wrongful act(s) giving rise to the **Claim**; or
 - (4) exposures arising from a **Material Risk Changing Event** not disclosed to the **Company** within sixty (60) days of the date of the event triggering an obligation to give such notice to the **Company**.
- (O) for, based upon, or arising from actual or threatened acts of physical harm or violence to persons or property for the purpose of:

- (1) intimidating, coercing, or imposing an act of revenge or retaliation on a government agency;
- (2) creating a general fear or panic among the general public; or
- (3) expressing a particular political, ideological, religious, social, or economic philosophy or ideology.

V. LIMIT OF LIABILITY, PAYMENTS AND DEDUCTIBLE

(A) Limit of Liability and Payment of Loss and Defense Costs

- (1) The amount stated in the Declarations of this **Policy** shall be the **Company's** per **Claim** and maximum aggregate Limit of Liability for all **Loss** and **Defense Costs** for all **Claims** first made during the **Policy Period**, including any Extended Reporting Period (if applicable).
- (2) The **Company** shall not be liable to pay any **Loss** or **Defense Costs** or continue the defense of any **Claim** after the Limit of Liability has been exhausted.
- (3) Payment of **Loss** and **Defense Costs** by the **Company** reduces and may entirely exhaust the Limit of Liability.
- (4) The **Company** has the right to pay **Loss** or **Defense Costs**, whether related to one or more **Claims**, in the order in which the **Company** receives invoices or requests for payment from an **Insured** or defense counsel. The **Company** also has the right, if it receives invoices or requests for payment at or near the same time, to first pay **Defense Costs** before paying any **Loss**.
- (5) Payment of **Loss** and **Defense Costs** under this **Policy** shall be made only in full compliance with all United States of America economic or trade sanctions, laws or regulations, including, but not limited to, sanctions, laws and regulations administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC").

(B) Deductible

- (1) The Deductible stated in the Declarations of this **Policy**, or any Endorsement thereto, shall apply to **Loss** and **Defense Costs** for each **Claim**. If a single proceeding involves more than one **Claim**, a separate Deductible will apply to each **Claim**, regardless of the number of **Claims**. If one or more proceedings involve **Interrelated Claims**, only one Deductible will apply.
- (2) Payment of the Deductible by one or more **Insureds** is a condition precedent to the **Company's** obligations under this **Policy**. However, the **Company** may, in its sole discretion, advance **Defense Costs** that would fall within the Deductible, subject to reimbursement by an **Insured**. Payment by others of the Deductible, including, but not limited to, other insurers, does not satisfy the Deductible under this **Policy**.
- (3) The Deductible will be reduced by fifty percent (50%) if a **Claim** is fully and finally resolved through mediation prior to the commencement of litigation, arbitration, or any other proceeding against an **Insured**.

VI. TERRITORY

This **Policy** applies to an **Employment Practices Wrongful Act** or a **Third Party Wrongful Act** committed by an **Insured** anywhere in the world. However, the **Claim** against an **Insured** must be made, filed and maintained within the United States of America, its territories and possessions or Canada.

VII. CONDITIONS

(A) **Duty to Provide Notice of a Claim**

- (1) As a condition precedent to any rights under this **Policy**, an **Insured** shall give written notice of a **Claim** to the **Company** as soon as practicable, but no later than thirty (30) days after the end of the **Policy Period** or during any Extended Reporting Period (if applicable).
- (2) The notice shall be submitted as set forth in the Declarations of this **Policy**. The notice shall contain: (a) a copy of the **Claim** and any related documents; (b) the names of all **Insureds** allegedly involved in the **Claim**; (c) the identity of each **Claimant** or potential **Claimant(s)**; (d) a description of the date, time, place, and circumstances giving rise to the **Claim**; and (e) the names of any witnesses who may have knowledge of the facts or circumstances giving rise to the **Claim**.

(B) **Notice of a Circumstance**

- (1) If during the **Policy Period**, an **Insured** becomes aware of a **Circumstance**, an **Insured** may provide notice of the **Circumstance** to the **Company** in the same manner as notice of a **Claim**. However, such notice must be received by the **Company** prior to the Expiration Date of this **Policy**.
- (2) The notice must describe: (a) the **Circumstance** that may give rise to a **Claim** for an **Employment Practices Wrongful Act** or a **Third Party Wrongful Act**; (b) how the **Insured(s)** became aware of the **Circumstance**; (c) the identity of expected **Claimant(s)**; and (d) damages expected to arise from any future **Claim**. The **Company** will acknowledge receipt of the notice of **Circumstance** and identify whether the notice complies with these requirements. Presentation of an insufficient notice of **Circumstance** does not extend the deadline to comply with these requirements.
- (3) If a **Claim** subsequently is made against an **Insured**, and there has been compliance with Sections **VII.(B)(1)** and **(2)**, the **Claim** will be deemed to relate back to this **Policy Period**, provided the **Claim** is made and reported to the **Company** within three (3) years from the end of the **Policy Period**.
- (4) Upon the **Company's** receipt of a notice of a **Circumstance**, the **Company** may choose to investigate, but shall have no duty to do so.

(C) **Assistance and Cooperation**

- (1) Every **Insured** shall cooperate with the **Company** and its representatives. Upon request, an **Insured** shall: (a) provide statements or interviews under oath; (b) attend hearings, depositions, mediations, settlement conferences, trials or other proceedings; (c) assist in securing and giving evidence; (d) obtain cooperation and attendance of witnesses; and (e) assist in effecting settlement.

- (2) Failure to cooperate by any **Insured** which impairs the **Company's** ability to investigate, defend, evaluate, or resolve a **Claim**, shall result in a termination of rights under this **Policy** as to the involved **Insured(s)**. Waiver applies to the **Named Insured** only in the case of non-cooperation by one or more of the **Members**.

(D) No Voluntary Payments/No Admission of Liability

- (1) As a condition precedent to every **Insured's** rights under this **Policy**, every **Insured** agrees not to settle or offer to settle any **Claim**, incur any **Defense Costs**, or assume any obligation, or admit liability for any **Claim**, without the **Company's** prior written consent. Every **Insured** must take all reasonable steps to prevent or mitigate any **Claim** or **Loss** to which this **Policy** applies. No **Insured** shall take any action which increases the **Company's** exposure under this **Policy**.
- (2) The **Company** shall not be liable for any **Loss** or **Defense Costs** incurred or agreed to without the **Company's** prior written consent. If such actions also impair the **Company's** ability to manage, defend, or resolve a **Claim**, any rights under this **Policy** with respect to the **Claim** by each violating **Insured** shall be waived.

(E) Allocation of Loss and Defense Costs

If a **Claim** contains both covered and non-covered factual allegations, theories of liability or parties, the **Named Insured** and the **Company** agree that there must be an allocation between insured and uninsured **Loss** and **Defense Costs**. In determining a fair and appropriate allocation, the **Named Insured** and the **Company** will evaluate the relative financial exposures and asserted theories of liability, and agree on a reasonable and fair allocation. If there is no agreement as to the appropriate allocation, the **Company** shall pay the allocated portion of **Loss** and **Defense Costs** which the **Company** deems fair and appropriate until an agreement can be reached. In addition, if there is no agreement on allocation of **Loss** and **Defense Costs**, no presumption as to allocation shall exist in any suit, arbitration, or other proceeding.

(F) Other Insurance

This **Policy** shall be excess over any other valid and collectible insurance, including the amount of any deductibles and/or retentions, available to any **Insured**, including any insurance under which there is a duty to defend and regardless of whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise, unless such insurance is written specifically as excess insurance of this **Policy** by reference in such other policy to the **Policy** number stated in the Declarations of this **Policy**.

(G) Complete Agreement/No Waiver of Terms/Modifications or Changes to this Policy

- (1) By accepting this **Policy**, the **Named Insured** agrees that it contains all rights, duties and obligations between the **Company** and any **Insureds**.
- (2) No provision of this **Policy** can be waived, modified, or released except by written Endorsement to this **Policy**.

- (3) The principles of waiver and estoppel cannot be used to expand the **Company's** duties or obligations under this **Policy**.

(H) Subrogation

- (1) If any payment is made under this **Policy**, the **Company** shall be subrogated to the extent of such payment to all rights of recovery thereof. Every **Insured** shall protect and assist the **Company** in the enforcement of any right to contribution, indemnity or subrogation.
- (2) Every **Insured** obtaining benefits under this **Policy** authorizes the **Company**, in an **Insured's** name or in the **Company's** name, to file and pursue any claim, lawsuit, or other proceeding necessary to enforce such rights.
- (3) All recoveries (after first deducting the legal fees and expenses incurred by the **Company** in obtaining such recovery) shall be paid first to the **Company** to the extent of any **Loss** or **Defense Costs** incurred by the **Company**, with the balance paid to an **Insured**.

(I) Action Against the Company

- (1) No action shall lie against the **Company** unless, as a condition precedent:
 - (a) there has been full compliance with all of the terms and conditions of this **Policy**; and
 - (b) the amount of the **Insured's** obligation to pay has been fully and finally adjudicated or made the subject of a settlement consented to in writing by the **Company**.
- (2) Any **Claimant** or legal representative thereof who has secured such judgment or written settlement shall thereafter be entitled to recover under this **Policy** to the extent this **Policy** applies. No **Claimant** shall have the right or ability to join the **Company** as a party to any **Claim** against any **Insured** to determine an **Insured's** liability. No **Insured** or its legal representative is authorized to implead the **Company** into any **Claim**.

(J) Bankruptcy or Insolvency

Bankruptcy or insolvency of any **Insured** shall not relieve the **Company** of its obligations, nor deprive the **Company** of its rights or defenses under this **Policy**.

(K) Assignment of Interests

No assignment of interest under this **Policy** shall bind the **Company** unless its prior written consent is endorsed to this **Policy**.

VIII. MATERIAL CHANGES

(A) Material Change in Risk

- (1) If, during the **Policy Period**, the **Named Insured** participates in a **Material Risk Changing Event**, this **Policy** shall not apply to any **Claim** arising from such change in exposure unless:

- (a) the **Named Insured** gives the **Company** written notice of the **Material Risk Changing Event**, as soon as possible, but in no event later than sixty (60) days after the date of the **Material Risk Changing Event**;
 - (b) the **Named Insured** specifically requests that the **Company** provide a quotation to extend coverage for the changed exposure, which shall be quoted by the **Company** from the actual or agreed date of the **Material Risk Changing Event**; and
 - (c) the **Named Insured's** agrees to any additional terms, conditions or exclusions proposed by the **Company**, as confirmed in a written Endorsement to this **Policy** and tenders payment for any increase in premium within thirty (30) days from the date of agreement to bind coverage.
- (2) The **Company** is under no obligation to extend coverage to the **Named Insured** for new or increased exposures arising from a **Material Risk Changing Event**. If the **Company** does not agree to extend coverage for the increased risks or exposures, or if the **Named Insured** does not accept the **Company's** offered terms and conditions for such coverage, either party may cancel this **Policy** in accordance with Section **IX.(A)** of this **Policy**.

(B) Acquisition of the Named Insured

If during the **Policy Period**, the **Named Insured** is acquired by another person or entity (i.e., fifty percent (50%) or more of the ownership interest in the **Named Insured** is transferred), this **Policy** will remain in effect until the expiration of this **Policy**, but will only apply to **Claim(s)** for **Employment Practices Wrongful Acts** or a **Third Party Wrongful Acts** which were conducted prior to the change in ownership.

IX. CANCELLATION AND EXTENSIONS OF THIS POLICY

(A) Cancellation

- (1) The **Named Insured** may cancel this **Policy** by giving advance written notice to the **Company** stating when thereafter cancellation shall take effect.
- (2) If the **Company** decides to cancel this **Policy**, the **Company** will mail written notice to the **Named Insured** stating the date on which cancellation shall take effect and the reason for cancellation. If the reason is because of non-payment of premium, then the date of cancellation will be at least ten (10) days from the date of the notice of cancellation. If it is for any other reason, then the date of cancellation will be at least sixty (60) days from the date of the notice of cancellation.
- (3) If this **Policy** is cancelled by the **Company**, the return portion of the premium shall be computed on a prorated basis. If the **Named Insured** cancels this **Policy**, the **Company** will return ninety percent (90%) of the unearned premium. Cancellation is not contingent upon acceptance by the **Named Insured** of the returned premium.
- (4) Notice of cancellation given by the **Named Insured** to the **Company**, or given by the **Company** to the **Named Insured**, shall be deemed to be notice

to all other **Insureds**. Special notice will be given to any other **Insured** if required by law.

(B) Automatic Extended Reporting Period

- (1) If this **Policy** is cancelled or non-renewed for any reason other than fraud, material misrepresentation, material omission, or non-payment of premium, an **Insured** shall have the right, for a period not to exceed sixty (60) days after the expiration or cancellation date, to provide notice of a **Claim** first made during the **Policy Period** or prior to the date of cancellation, in the manner required by Section **VII.(A)** of this **Policy**.
- (2) This Automatic Extended Reporting Period shall not apply if the **Named Insured** has another valid and collectable insurance policy that will extend coverage for the **Claim** or would extend coverage if its limits had not been exhausted.

(C) Optional Extended Reporting Period

- (1) If this **Policy** is cancelled or non-renewed by the **Company** for any reason other than fraud, material misrepresentation, material omission, or nonpayment of premium, or if the **Named Insured** cancels or chooses not to renew this **Policy**, then the **Named Insured** shall have the right, following the effective date of such cancellation, if applicable, or the Expiration Date of this **Policy**, to purchase an Optional Extended Reporting Period, upon written request and payment of an additional premium of up to a percentage of the full annual premium not to exceed:

For 12 months:	100% of the full annual premium
For 24 months:	150% of the full annual premium
For 36 months:	185% of the full annual premium

As used herein, "full annual premium" means the equivalent annual premium for the coverage terms in effect immediately prior to the end of the **Policy Period**.

- (2) The Optional Extended Reporting Period cannot be cancelled, and the premium payment is deemed immediately earned in full.
- (3) **Claims** noticed to the **Company** during the Optional Extended Reporting Period are subject to all terms, conditions, limitation and exclusions, as well as the Limit of Liability (eroded by the payment of **Loss** or **Defense Costs** for any prior **Claim**) and Deductible obligations of this **Policy**.
- (4) The rights contained in this provision shall terminate, however, unless the **Named Insured** provides written notice of such election to purchase the Optional Extended Reporting Period to the **Company** within thirty (30) days of the effective date of cancellation, if applicable, or the Expiration Date of this **Policy**. Furthermore, as a condition precedent to the **Named Insured's** rights to purchase the Optional Extended Reporting Period, the total premium for this **Policy** must have been paid in full and any outstanding Deductible fully satisfied.