

**THE HARTFORD EMPLOYERS PREMIER CHOICE POLICY<sup>SM</sup>**

**NOTICE - THIS IS A CLAIMS MADE AND REPORTED POLICY.**

**PLEASE READ IT CAREFULLY.**

**COVERAGE APPLIES ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR APPLICABLE EXTENDED REPORTING PERIOD AND REPORTED IN WRITING TO THE COMPANY AS SOON AS PRACTICABLE BUT IN NO EVENT LATER THAN SIXTY (60) CALENDAR DAYS AFTER THE EXPIRATION DATE OF THE POLICY PERIOD OR WITHIN ANY APPLICABLE EXTENDED REPORTING PERIOD. DEFENSE COSTS ARE APPLIED AGAINST THE RETENTION. PAYMENT OF DEFENSE COSTS REDUCES THE LIMIT OF LIABILITY. UNLESS OTHERWISE PROVIDED BY WRITTEN ENDORSEMENT TO THIS POLICY, THE INSURER SHALL HAVE NO DUTY TO DEFEND ANY CLAIM.**

In consideration of, and subject to, the payment of the premium stated in the Declarations, and in reliance upon the **Application**, and subject to all the terms and conditions of this Policy, the Insurer and the **Insureds** agree as follows:

**I. INSURING AGREEMENTS**

**(A) Employment Practices Liability**

The Insurer will pay on behalf of the **Insureds Loss** that the **Insureds** shall become legally obligated to pay as a result of a **Claim** first made during the **Policy Period**, or Extended Reporting Period, if applicable, against the **Insureds** for a **Wrongful Act** that takes place during or prior to the **Policy Period**.

**(B) Third Party Liability (Elective)**

If Third Party Liability Coverage is elected in Item H of the Declarations, the Insurer will pay on behalf of the **Insureds Loss** that the **Insureds** shall become legally obligated to pay as a result of a **Third Party Claim** first made against the **Insureds** during the **Policy Period**, or Extended Reporting Period, if applicable, for a **Third Party Wrongful Act** by the **Insureds** that takes place during or prior to the **Policy Period**.

This Insuring Agreement (B) is subject to the Third Party Liability Coverage Sublimit of Liability and Retention, specified in Item H of the Declarations and Third Party Prior Litigation Date specified in Item F of the Declarations. Such Sublimit of Liability is the maximum aggregate amount that the Insurer will pay for all **Loss** from all **Third Party Claims**, and is subject to, part of, and not in addition to, the Limit of Liability in Item C of the Declarations.

**II. DEFINITIONS**

**(A) "Application"** means the application for this Policy, including any materials or information submitted therewith, that is on file with the Insurer and shall be deemed a part of and attached to this Policy, as if physically attached hereto. **Application** also means an application for any policy in an uninterrupted series of policies issued by the Insurer, of which this Policy is a renewal or replacement.

**(B) "Benefits"** means perquisites, fringe benefits, deferred compensation and any other form of compensation (other than salaries, wages, or bonuses as a component of a front or back pay award).

**(C) "Claim"** means the **Insureds'** receipt of any of the following:

- (1) a written demand for monetary or non-monetary relief, including, without limitation, a written demand for employment reinstatement;
- (2) a complaint, counterclaim, cross-claim, petition or similar pleading filed to commence a civil proceeding;
- (3) any notice of charges, formal investigative order or similar document commencing a formal administrative or regulatory proceeding, including, without limitation, a proceeding before the Equal Employment Opportunity Commission or similar government agency;
- (4) a written demand for arbitration; or
- (5) a written request to toll or waive any statute of limitations relating to a **Claim**;

brought or submitted by or on behalf of an **Employee** or an applicant for employment with the **Company**;

**Claim** also means the **Insureds'** receipt of a notice of violation, order to show cause, or a written demand for monetary or injunctive relief in connection with an audit conducted by the Office of Federal Contract Compliance Programs;

**Claim** shall not mean any labor or grievance proceeding or arbitration that is subject to a collective bargaining agreement.

- (D) "**Company**" means any company named in Item A of the Declarations and any **Subsidiary**.
- (E) "**Defense Costs**" means that portion of **Loss** consisting of reasonable and necessary fees, consented to by the Insurer (including attorneys' fees and experts' fees) and expenses incurred in the defense or appeal of a **Claim**, covered by this policy and the premiums for any appeal, attachment or similar bond; provided, however, that the Insurer shall have no obligation to apply for or furnish such bond. **Defense Costs** shall not include the wages, salaries, **Benefits** or expenses of any **Insured**.
- (F) "**Domestic Partner**" means any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law.
- (G) "**Employee**" means:
  - (1) any past, present or future employee of the **Company**, in his or her capacity as such, whether such employee is in a supervisory, co-worker, subordinate or other position, including any part-time, seasonal and temporary employee;
  - (2) any natural person who is a leased or loaned employee to the **Company**, in his or her capacity as such; provided that such natural person shall be deemed an **Employee** only if, and to the extent that, the **Company** provides indemnification to such natural person for services rendered as if they were rendered by an actual employee of the **Company** in his or her capacity as such; and
- (H) "**Executive Officer**" means the chairperson of the board of directors, president, chief executive officer, chief operating officer, chief financial officer, or general counsel of the **Company**, or the **Company's** functional equivalent for any such title.
- (I) "**Independent Contractor**" means any natural person working in the capacity of an independent contractor pursuant to an **Independent Contractor Agreement**.
- (J) "**Independent Contractor Agreement**" means any written contract or agreement between an **Independent Contractor** and the **Company** specifying the terms and conditions of the **Company's** engagement of such **Independent Contractor**.

- (K) "**Insured(s)**" means one or more **Insured Persons** and the **Company**.
- (L) "**Insured Persons**" means:
- (1) one or more natural persons who were, now are or shall hereafter be duly elected or appointed directors or officers of the **Company** or, with respect to a **Subsidiary** incorporated outside the United States, their functional equivalent; and
  - (2) **Employees**.
  - (3) an **Independent Contractor** provided that within thirty (30) days after the date a **Claim** is first made against such **Independent Contractor** the **Company** shall agree in writing to indemnify such **Independent Contractor** for any **Loss** arising out of such **Claim**.
- (M) "**Interrelated Wrongful Acts**" means **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes.
- (N) "**Loss**" means sums that the **Insureds** are legally liable to pay solely as a result of any **Claim** covered by this Policy. **Loss** includes **Defense Costs**, compensatory damages, including front pay and back pay, settlement amounts, pre- and post-judgment interest, and legal fees and costs awarded pursuant to judgments.
- Loss** also includes punitive and exemplary damages, the multiple portion of any multiplied damage award, and liquidated damages under the Age Discrimination in Employment Act.
- Loss** shall not include:
- (1) taxes, fines or penalties imposed by law;
  - (2) non-monetary relief;
  - (3) **Benefits**;
  - (4) future compensation, including **Benefits**, for any person hired, promoted, or reinstated pursuant to a judgment, settlement, order or other resolution of a **Claim**;
  - (5) **Stock Benefits**;
  - (6) costs associated with providing any accommodations required by the Americans with Disabilities Act or any similar law;
  - (7) any other matters uninsurable pursuant to any applicable law; provided, however, that with respect to punitive, exemplary, multiple or liquidated damages, the insurability of such damages shall be governed by the internal laws of any applicable jurisdiction that most favors coverage of such damages.
- (O) "**Parent Company**" means the **Company** first named in Item A of the Declarations.
- (P) "**Policy Period**" means the period from the inception date set forth in Item B of the Declarations to the earlier of the expiration date set forth in Item B of the Declarations, or the effective date of cancellation pursuant to Section XI (B) of this Policy.
- (Q) "**Retaliation**" means adverse treatment of an **Employee** based upon such person:

- (1) exercising any rights under law, including, without limitation, rights under any workers compensation laws, the Family and Medical Leave Act, the Employee Retirement Income Security Act of 1974, or the Americans with Disabilities Act;
  - (2) refusing to violate any law;
  - (3) assisting, testifying, or cooperating with a proceeding or investigation regarding alleged violations of law by any **Insured**;
  - (4) disclosing or threatening to disclose alleged violations of law to a superior or to any governmental agency; or
  - (5) filing any "whistle blower" claim against any **Insured** under the federal False Claims Act, the Sarbanes-Oxley Act of 2002, or any similar "whistle blower" law.
- (R) "**Stock Benefits**" means any offering, plan or agreement between the **Company** and any **Employee** that grants stock, stock options, or stock appreciation rights in the **Company** to such person, including, without limitation, restricted stock or any other stock grant. **Stock Benefits** shall not include employee stock ownership plans or employee stock purchase plans.
- (S) "**Subsidiary**" means:
- (1) any corporation in which and so long as the **Parent Company** owns or controls, directly or indirectly, more than fifty percent (50%) of the outstanding stock representing the right to vote for the election of the board of directors of such corporation;
  - (2) any limited liability company in which and so long as the **Parent Company** owns or controls, directly or indirectly, the right to elect, appoint, or designate more than fifty percent (50%) of such entity's managers; and
  - (3) any corporation operated as a joint venture in which and so long as the **Parent Company** owns or controls, directly or indirectly, exactly fifty percent (50%) of the issued and outstanding voting stock and which, pursuant to a written agreement of the owner(s) of the remaining issued and outstanding voting stock of such corporation, the **Parent Company** entirely controls the management and operation of such corporation;
- (T) "**Third Party**" means any natural person who is a customer, vendor, service provider or other business invitee of the **Company**. **Third Party** shall not include any **Employee**.
- (U) "**Third Party Claim**" means any **Claim** by or on behalf of a **Third Party** that alleges a **Third Party Wrongful Act**.
- (V) "**Third Party Wrongful Act**" means actual or alleged:
- (1) discrimination against a **Third Party**, including discrimination based upon age, gender, race, color, national origin, religion, creed, marital status, sexual orientation or preference, gender identity or expression, genetic makeup, or refusal to submit to genetic makeup testing, pregnancy, disability, HIV or other health status, Vietnam Era Veteran or other military status, or other protected status established under federal, state, or local law; or
  - (2) sexual harassment against a **Third Party**, including unwelcome sexual advances, or requests for sexual favors.
- (W) "**Wrongful Act**" means actual or alleged:

- (1) wrongful dismissal, discharge, or termination of employment (including constructive dismissal, discharge, or termination), wrongful failure or refusal to employ or promote, wrongful discipline or demotion, failure to grant tenure, negligent employment evaluation, or wrongful deprivation of career opportunity;
- (2) sexual or other workplace harassment, including quid pro quo and hostile work environment;
- (3) employment discrimination, including discrimination based upon age, gender, race, color, national origin, religion, creed, marital status, sexual orientation or preference, gender identity or expression, genetic makeup, or refusal to submit to genetic makeup testing, pregnancy, disability, HIV or other health status, Vietnam Era Veteran or other military status, or other protected status established under federal, state, or local law;
- (4) **Retaliation**;
- (5) breach of any oral, written, or implied employment contract, including, without limitation, any obligation arising from a personnel manual, employee handbook, or policy statement; or
- (6) violation of the Family and Medical Leave Act.

**Wrongful Act** shall also mean the following, but only when alleged in addition to or as part of any **Wrongful Act** described above:

- (1) employment-related wrongful infliction of emotional distress;
- (2) failure to create, provide for or enforce adequate or consistent employment-related policies and procedures;
- (3) negligent retention, supervision, hiring or training; or
- (4) employment-related: invasion of privacy, defamation, or misrepresentation;.

### III. INTERRELATIONSHIP OF CLAIMS

All **Claims** arising from **Interrelated Wrongful Acts** shall be deemed to be a single **Claim**, for all purposes under this Policy, first made on the earliest date that:

- (A) any of such **Claims** was first made, regardless of whether such date is before or during the **Policy Period**;
- (B) notice of any **Wrongful Act** alleged in any such **Claims** was given to the Insurer pursuant to Section X (B) of this Policy; or
- (C) notice of any **Wrongful Act** or circumstance alleged in any such **Claims** was given under any prior insurance policy, regardless of whether such policy was issued by the Insurer.

### IV. DEFENSE, SETTLEMENTS AND COOPERATION

- (A) Unless otherwise provided by written endorsement to this Policy, the Insurer shall have no duty to defend any **Claim**. It shall be the duty of the **Insureds** to defend **Claims**; however, the **Company** may at its sole option tender to the Insurer the defense of a **Claim** for which coverage is provided under this Policy. The Insurer may accept such tender of defense, conditionally or unconditionally. Regardless of whether the Insurer accepts the tender of defense, the Insurer shall have the right to participate in the defense and settlement of any **Claim** that appears reasonably likely to involve this Policy. The Insurer may make any investigation it deems appropriate.

- (B) No **Defense Costs** shall be incurred or settlements made, contractual obligations assumed, or liability admitted with respect to any **Claim** without the Insurer's prior written consent, which shall not be unreasonably withheld. The Insurer shall not be liable for any **Defense Costs**, settlement, assumed obligation or admission to which it has not consented.
- (C) Subject to the allocation provisions in Section VII of this Policy, the Insurer shall advance on behalf of the **Insureds Defense Costs** that the **Insureds** have incurred in connection with **Claims** made against them, prior to the final disposition of such **Claims**, provided always that to the extent it is established that any such **Defense Costs** are not covered under this Policy, the **Insureds**, as appropriate, agree to repay to the Insurer such non-covered **Defense Costs**.
- (D) The Insurer may, with the consent of the **Insured**, settle any **Claim** for any amount that the Insurer deems reasonable. If the **Insured** withholds consent to such settlement, the **Insured** shall be solely responsible for thirty percent (30%) of all **Defense Costs** incurred after the date the **Insured** refused to consent to such settlement, and the **Insured** shall be solely responsible for thirty percent (30%) of all **Loss**, other than **Defense Costs**, in excess of such settlement amount; provided that in no event shall the Insurer's liability under this Policy for such **Claim** exceed the remaining portion of the Aggregate Limit of Liability.
- (E) The **Insureds** shall, as a condition precedent to their rights under this Policy, give to the Insurer all information and cooperation as the Insurer may reasonably require and shall do nothing that may prejudice the Insurer's position or its potential or actual rights of recovery.

## V. EXCLUSIONS

- (A) The Insurer shall not pay **Loss**:
  - (1) for bodily injury, sickness, disease, death, false arrest or imprisonment, abuse of process, malicious prosecution, trespass, nuisance or wrongful entry or eviction, or for injury to or destruction of any tangible property including loss of use thereof;
  - (2) for any actual or alleged **Wrongful Act** by **Insured Persons** of any **Subsidiary** in their capacities as such, or by any **Subsidiary**, if such **Wrongful Act** actually or allegedly occurred when such entity was not a **Subsidiary**;
  - (3) in connection with any **Claim** based upon, arising from, or in any way related to any:
    - (a) prior or pending demand, suit, or proceeding against any **Insured** as of; or
    - (b) audit initiated by the Office of Federal Contract Compliance Programs before the Prior Litigation Date and, if applicable, the Third Party Prior Litigation Date, in Item F of the Declarations, or the same or substantially similar fact, circumstance, or situation underlying or alleged in such demand, suit, proceeding, or audit;
  - (4) in connection with any **Claim** based upon, arising from, or in any way related to any fact, circumstance, or situation that, before the inception date in Item B of the Declarations, was the subject of any notice given under any other employment practices liability policy, management liability policy or other insurance policy which insures **Wrongful Acts** covered under this policy;
  - (5) in connection with any **Claim** based upon, arising from, or in any way related to the liability of others assumed by an **Insured** under any contract or agreement; provided, however, this exclusion shall not apply to liability that would have been incurred in the absence of such contract or agreement;

- (6) for breach of any **Independent Contractor Agreement**; or
  - (7) for a lockout, strike, picket line, hiring of replacement workers or similar action in connection with any labor dispute, labor negotiation or collective bargaining agreement.
- (B) The Insurer shall not pay **Loss** in connection with any **Claim** based upon, arising from, or in any way related to:
- (1) any claims for unpaid wages (including overtime pay), workers' compensation benefits, unemployment compensation, disability benefits, improper payroll deductions, improper employee classification, failure to maintain accurate time records, failure to grant meal and rest periods, or social security benefits; or
  - (2) a violation of the Fair Labor Standards Act (except for Equal Pay Act), Worker Adjustment and Retraining Notification Act, the National Labor Relations Act, the Occupational Safety and Health Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Employee Retirement Income Security Act of 1974, or any rule or regulation promulgated thereunder, or similar federal, state, local, or common laws, rules or regulations;

Provided that this exclusion shall not apply to that portion of **Loss** that represents a specific amount the **Insureds** become legally obligated to pay solely for a **Wrongful Act of Retaliation**.

- (C) The Insurer shall not pay **Loss** in connection with any **Claim** based upon, arising from, or in any way related to liability incurred for breach of any oral, written, or implied employment contract; provided however that this exclusion shall not apply to liability that would have been incurred in the absence of such contract, nor to that portion of **Loss** that represents **Defense Costs**.
- (D) Solely with respect to Insuring Agreement (B), the Insurer shall not pay **Loss** in connection with any **Third Party Claim** based upon, arising from or in any way related to any price discrimination or violation of any anti-trust law or any similar law designed to protect competition or prevent unfair trade practices.

## VI. LIMITS OF LIABILITY AND RETENTION

- (A) The Insurer's aggregate Limit of Liability for all **Loss** shall be the amount specified in Item C of the Declarations whether such **Loss** is covered under one or more Insuring Agreements.
- (B) The Insurer's liability with respect to **Loss** arising from each **Claim** shall apply only to that part of **Loss** that is excess of the applicable Retention set forth in Item D of the Declarations.
- (C) **Defense Costs** shall reduce the Limit of Liability available to pay judgments or settlements.

## VII. ALLOCATION

If both **Loss** covered under this Policy and loss not covered under this Policy are incurred, either because a **Claim** against an **Insured** includes both covered and non-covered matters, or because a **Claim** is made against an **Insured** and others who are not **Insureds**, the **Insureds** and the Insurer shall fairly and reasonably allocate such amount between covered **Loss** and non-covered loss based on such relative exposure of such covered and non-covered **Loss** and/or the proportionate fault of such **Insured** and others who are not **Insureds**.

If there can be an agreement between the **Insured** and the Insurer on an allocation of **Defense Costs**, the Insurer shall advance **Defense Costs** allocated to covered **Loss**. If they cannot agree on an allocation of **Loss**:

- (A) in any arbitration, suit or other proceeding, no presumption shall exist concerning what is a fair and reasonable allocation;

- (B) the Insurer shall advance **Defense Costs** that the Insurer believes to be covered under this Policy until a different allocation is negotiated, arbitrated or judicially determined; and,
- (C) the Insurer, solely if requested by the **Insureds**, shall submit the dispute to binding arbitration. The rules of the American Arbitration Association shall apply except with respect to the selection of the arbitration panel, which 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.

Any negotiated, arbitrated or judicially determined allocation of **Defense Costs** on account of a **Claim** shall be applied retroactively to all **Defense Costs** on account of such **Claim**, notwithstanding any prior advancement to the contrary. Any allocation or advancement of **Defense Costs** on account of a **Claim** shall not apply to or create a presumption with respect to the allocation of other **Loss** on account of such **Claim**.

#### VIII. EXTENDED REPORTING PERIOD

- (A) If the Insurer or the **Parent Company** fails or refuses to renew this Policy, or if the **Parent Company** cancels this Policy, the **Parent Company** shall have the right to elect an extension of time to report **Claims** under this Policy (the "Extended Reporting Period"); provided, however, that the Extended Reporting Period may not be elected by the **Parent Company** if this Policy is terminated by the Insurer for failure to pay any premium when due.
- (B) To elect the Extended Reporting Period, the **Parent Company** shall send a written notice of election of the Extended Reporting Period to the Insurer, together with payment of the premium therefore. The right to elect the Extended Reporting Period shall end unless the Insurer receives such notice and premium within sixty (60) days after the effective date of cancellation or non-renewal of the Policy. There shall be no right to elect the Extended Reporting Period after such time.
- (C) The premium for the Extended Reporting Period (the "Extended Reporting Period Premium") is specified in Item E of the Declarations. The Extended Reporting Period Premium shall be deemed to be fully earned at the inception of the Extended Reporting Period.
- (D) The Extended Reporting Period shall be for the duration specified in Item E of the Declarations following the end of the **Policy Period**.
- (E) Coverage during the Extended Reporting Period shall apply to **Claims** made for **Wrongful Acts** occurring prior to the earlier of (1) the **Policy Period** expiration date specified in Item B of the Declarations or (2) the effective date of any change in exposure described in Section XI(H) of this Policy. No coverage shall apply for any **Wrongful Act** occurring after such time.
- (F) There is no separate or additional Limit of Liability for the Extended Reporting Period. The Limit of Liability applicable to all **Claims** reported to the Insurer during the Extended Reporting Period shall be the remaining portion of the aggregate Limit of Liability specified in Item C of the Declarations.
- (G) Section X (A) of this Policy shall not apply during any Extended Reporting Period.

#### IX. COVERAGE EXTENSIONS

##### (A) DEATH, INCAPACITY OR BANKRUPTCY

In the event of the death, incapacity or bankruptcy of an **Insured Person**, any **Claim** made against the estate, legal representatives, heirs or assigns of such **Insured Person** for a **Wrongful Act** of such **Insured Person** shall be deemed to be a **Claim** against such **Insured Person**.

##### (B) SPOUSAL/DOMESTIC PARTNER EXTENSION

- (1) Subject to its express terms and conditions, the coverage afforded by this Policy shall be extended to a **Claim** made against a person who, at the time the **Claim** is made, is a lawful spouse or **Domestic Partner** of an **Insured Person**, provided:
  - (a) the **Claim** against the spouse or **Domestic Partner** results from a **Wrongful Act** allegedly committed by the **Insured Person**; and
  - (b) the **Insured Person** and his or her spouse or **Domestic Partner** are represented by the same legal counsel in connection with such **Claim**.
- (2) This Section IX (B) shall not afford the spouse or **Domestic Partner** of an **Insured Person** any greater rights under this Policy than those afforded the **Insured Person**.
- (3) The Insurer shall not be liable under this Section IX (B) to make any payment of **Loss**, including **Defense Costs**, in connection with any **Claim** made against an **Insured Person** or the spouse or **Domestic Partner** of such **Insured Person** for any actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty by such spouse or **Domestic Partner**.

## X. NOTICE

- (A) As a condition precedent to coverage under this policy, the **Insureds** shall report each **Claim** or **Third Party Claim**, if applicable, to the Insurer as soon as practicable but in no event later than sixty (60) days after the termination of the **Policy Period** or within the Extended Reporting Period, if applicable.
- (B) If during the **Policy Period** the **Insureds** become aware of a specific **Wrongful Act** that may reasonably be expected to give rise to a **Claim** against any **Insured**, and if such **Wrongful Act** is reported to the Insurer during the **Policy Period** in writing with particulars as to the reasons for anticipating such a **Claim**, the nature and dates of the alleged **Wrongful Act**, the alleged damages sustained, the names of potential claimants and any **Insured** involved in the alleged **Wrongful Act**, and the manner in which the **Insureds** first became aware of the specific **Wrongful Act**, then any **Claim** subsequently arising from such duly reported **Wrongful Act** shall be deemed a **Claim** first made during the **Policy Period** in which the **Wrongful Act** is first duly reported to the Insurer.
- (C) Notice of any **Claim** or specific **Wrongful Act** shall be given in writing to:

Hartford Financial Products  
Claims Department  
2 Park Avenue, 6<sup>th</sup> Floor  
New York, New York 10016  
Fax: (212) 277-0915

All notices, except for notice of a **Claim** or **Wrongful Act**, shall be given in writing to:

Hartford Financial Products  
Compliance Department  
2 Park Avenue, 5<sup>th</sup> Floor  
New York, New York 10016

- (D) All notices under this Policy shall: (1) be in English, (2) refer to the Policy Number, (3) be given by mail, prepaid express courier (or facsimile for notice of a **Claim** or **Wrongful Act**), (4) shall be properly addressed, and (5) be effective upon receipt.

## XI. GENERAL CONDITIONS

### (A) TERRITORY

This Policy extends to **Wrongful Acts** taking place or **Claims** made anywhere in the world.

**(B) CANCELLATION OF POLICY**

The Insurer may cancel this Policy for non-payment of premium by sending not less than ten (10) days notice to the **Parent Company** at its last known address. The Insurer may not otherwise cancel this Policy. The **Parent Company** may cancel this Policy by sending contemporaneous notice to the Insurer, and cancellation shall be effective upon the Insurer's receipt of such notice; provided, however, the **Parent Company** may not cancel this Policy after the effective date of the acquisition of the **Parent Company** as described in Section XI(H)(2) of this Policy. In the event the **Parent Company** cancels this Policy, the Insurer shall retain the customary short rate premium. Payment 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.

**(C) SUBROGATION**

In the event of any payment under this Policy, the Insurer shall be subrogated to the extent of such payment to all rights of recovery thereof, and the **Insureds** shall execute all papers required and shall do everything that may be necessary to secure and preserve such rights including the execution of such documents necessary to enable the Insurer effectively to bring suit in the name of the **Insureds** and shall do nothing to waive or prejudice such right.

**(D) COMPANY AUTHORIZATION**

This Policy contains all the agreements between the **Insured** and the Insurer concerning the insurance afforded. By acceptance of this Policy, the **Insureds** agree that the **Parent Company** shall act on behalf of all **Insureds** with respect to the giving and receiving of notice of **Claim** or cancellation, the payment of premiums and the receiving of any return premium, the negotiation, agreement to and acceptance of any endorsements to this Policy, and electing any Extended Reporting Period.

**(E) OTHER INSURANCE**

- (1) The coverage provided under this Policy shall be primary.
- (2) Notwithstanding Subsection (1) above, the coverage provided under this Policy for any **Claim** made against a temporary, leased or loaned **Employee** or an **Independent Contractor** shall be excess of the amount of any deductible, retention and limits of liability under any other policy or policies applicable to such **Claim**, whether such policy or policies are stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written specifically excess of this Policy by reference in such other policy or policies to this Policy's policy number.

**(F) ALTERATION, ASSIGNMENT AND TITLE LIMITATION**

No change in, modification of, or assignment of interest under this Policy shall be effective except when made by written endorsement signed by an authorized representative of the Insurer. The titles and headings to the various paragraphs and sections in this Policy, including endorsements attached, are included solely for ease of reference and do not in any way limit, expand or otherwise affect the provisions of the paragraphs and sections to which they relate.

**(G) ACTION AGAINST INSURER**

No action shall be taken against the Insurer unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy, and the amount of the **Insureds'** obligation to pay shall have been finally determined either by judgment against the **Insureds** after actual trial, or by written agreement of the **Insureds**, the claimant and the Insurer. No person or organization shall have the right

under this Policy to join the Insurer as a party to any action against the **Insureds** to determine the **Insureds'** liability, nor shall the **Insureds** or their legal representative implead the Insurer.

**(H) CHANGES IN EXPOSURE**

**(1) Acquisition or Creation of Corporation, Assets Acquisition, and Assumption of Liabilities**

If before or during the **Policy Period** the **Company**:

- (a)** acquires securities or voting rights in another entity or creates another entity that, as a result of such acquisition or creation, becomes a **Subsidiary**, or
- (b)** acquires any entity by merger into or consolidation with the **Company**,

then such entity and its **Insured Persons** shall be **Insureds** under this Policy but only with respect to **Wrongful Acts** taking place after such acquisition or creation. In the event that the number of employees at the newly created or acquired **Subsidiary** increases by the lesser of 500, or twenty percent (20%) of the number of **Employees** of the **Company**, then the **Parent Company** as a condition precedent to coverage with respect to such new **Insureds**, or to coverage for **Wrongful Acts** relating to such transaction and occurring subsequent to such transaction, shall give written notice of such transaction to the Insurer as soon as practicable but in no event more than ninety (90) days after the effective date of such transaction. The Insurer may require other information, and shall be entitled to impose such additional terms, conditions and premium as it, in its absolute discretion, chooses. If the **Parent Company** fails to comply with such condition precedent, coverage otherwise afforded by this Section XI (H) (1) shall terminate ninety (90) days after the effective date of such acquisition or assumption.

**(2) Acquisition of Parent Company**

If during the **Policy Period** (i) the **Parent Company** merges into or consolidates with another entity such that the **Parent Company** is not the surviving entity, or (ii) another entity, or person or group of entities and/or persons acting in concert acquires stock or voting rights that result in ownership or voting control by the other entity(ies) or person(s) of more than fifty percent (50%) of the outstanding stock representing the present right to vote for the election of directors of the **Parent Company**, then coverage under this Policy shall continue until the later of:

- (a)** termination of the **Policy Period**, or
- (b)** any subsequent date to which the Insurer may agree by endorsement,

but only with respect to **Claims** for **Wrongful Acts** taking place prior to such merger, consolidation or acquisition. Any coverage extension pursuant to **(b)** above shall be conditioned upon any premium paid or to be paid under this Policy and such premium shall be deemed fully earned upon inception of such coverage extension. Any **Claim** made during such coverage extension shall be deemed to have been made during the **Policy Period** in which such merger, consolidation or acquisition occurred.

The **Parent Company** shall give written notice of such merger, consolidation or acquisition to the Insurer as soon as practicable, together with such additional information as the Insurer may reasonably require.

**(3) Cessation of Subsidiaries**

If before or during the **Policy Period** an entity ceases to be a **Subsidiary**, coverage with respect to such **Subsidiary** and its **Insured Persons** shall continue until termination of this Policy but

only with respect to **Claims for Wrongful Acts** taking place prior to the date such entity ceased to be a **Subsidiary**.

**(4) Insolvency or Bankruptcy**

Bankruptcy or insolvency of an **Insured** or of an **Insured's** estate shall not relieve the Insurer of any of its obligations under this Policy.

**(I) REPRESENTATIONS AND SEVERABILITY**

**(1)** The **Insureds** represent that the declarations and statements contained in the **Application** are true, accurate and complete. This Policy is issued in reliance upon the **Application**. If the **Application** contains any intentional misrepresentation, or any unintentional misrepresentation that materially affects the Insurer's acceptance of the risk under this Policy, then no coverage shall be afforded under this Policy for any **Insured** who knew on the inception date of this Policy of any such misrepresentation.

**(2)** For purpose of determining coverage:

**(a)** Knowledge possessed by any **Insured Person** shall not be imputed to any other **Insured Person**; and

**(b)** Knowledge possessed by an **Executive Officer**, or any person signing the **Application**, shall be imputed to the **Company**. No other person's knowledge shall be imputed to the **Company**.

**(J) INSPECTION AND AUDIT**

The Insurer shall be permitted but not obligated to inspect the **Company's** operations at any time. Neither the Insurer's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the Insurer or others to determine or warrant that such property or operations are in compliance with any law, rule, or regulation.