

# ***PROFESSIONAL UNDERWRITERS AGENCY, INC.***

## **EMPLOYMENT PRACTICES LIABILITY INSURANCE**

Various provisions in this **Policy** restrict coverage. Read the entire **Policy** carefully to determine rights, duties and what is and is not covered.

Throughout this **Policy** words and phrases that appear in bold have special meaning. Please refer to **INSURING AGREEMENTS III. DEFINITIONS.**

In consideration of the payment of the premium, and in reliance upon the accuracy of the statements in the application attached hereto and made a part hereof, and subject to the Limits of Liability of this **Policy** as set forth in the Declarations and the Exclusions, Conditions and other terms of this **Policy**, Underwriters and the **Insureds** agree as follows.

### **INSURING AGREEMENTS**

#### **I. COVERAGE:**

Underwriters will pay on behalf of the **Insureds** all sums in excess of the Retention that the **Insureds** shall become legally obligated to pay as **Loss** by reason of liability arising out of **Wrongful Employment Practices** or **Third-Party Discrimination**.

#### **II. TERRITORY:**

Coverage under this **Policy** shall extend to **Wrongful Employment Practices** and **Third-Party Discrimination** taking place and **Claims** made anywhere in the world.

#### **III. DEFINITIONS:**

A. **Claim** shall mean:

- (1) A written demand for monetary damages or non-monetary relief, or written notice of an intention to hold an **Insured** responsible, for a **Wrongful Employment Practice** or **Third-Party Discrimination**;
- (2) A charge, complaint or other notice of commencement of federal, state, or local administrative proceedings by or before any agency with authority over the **Insured's** employment practices; or
- (3) The filing of a civil lawsuit or arbitration proceeding;

**Claim** shall not include:

- (1) any labor or grievance arbitration subject to a collective bargaining agreement; or
- (2) the filing of a criminal lawsuit or the institution of criminal proceedings.

A **Claim** shall be deemed made when it is received by an **Insured**.

For the purposes of this **Policy**, all **Claims** arising out of the same **Wrongful Employment Practices** or **Third-Party Discrimination** and all **Interrelated Claims** shall be deemed one **Claim**. Such **Claim** shall be deemed to be first made on the date of the earliest of such **Claims** is first made, regardless of whether such date is before or during the **Policy Period**.

B. **Defense Costs** shall mean:

Reasonable and necessary fees, costs, and expenses incurred by counsel appointed or approved by Underwriters in the investigation, defense and appeal of any **Claim**. **Defense Costs** shall not include the cost of investigation and adjustment of **Claims** by salaried employees of the **Insured** or the cost of the **Insured's** overhead and shall not include regular or overtime wages, salaries, or fees of the directors, officers, or employees of the **Named Insured** that are incurred in assisting the **Insured** or defense counsel in defending a **Claim** under this **Policy**.

C. **Employee** shall mean:

Any individual whose labor or service is engaged by and directed by the **Named Insured**, including volunteers and all staff members, whether part-time, full time, seasonal, or temporary, and including **Leased Employees**. Independent contractors will also be considered **Employees**.

D. **Financial Impairment** shall mean:

The status of the **Named Insured** resulting from the appointment by any state or federal official, agency or court of any receiver, trustee, examiner, conservator, liquidator, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Named Insured**.

E. **Insured** shall mean:

The **Named Insured** identified in Item 1. of the Declarations, whether as an individual, corporation, partnership, joint venture, association or otherwise;

Individuals who are your current or former principals, partners, officers, directors, trustees, shareholders, members of the Board of Managers, management committee members, in-house general counsel and any **Employee(s)** for whom the **Named Insured** requests coverage at the time of the **Claim** but solely while acting in the course and scope of his/her employment with the **Named Insured**; and any **Insured Subsidiary**.

If, at any time during the **Claim**, you no longer want us to provide coverage for any such **Employee(s)**, you shall send us written notice requesting that coverage for the **Employee(s)** be withdrawn. Coverage for the **Employee** shall cease as of the date we receive such notice.

F. **Insured Subsidiary** shall mean:

Any organization more than 50% owned by the **Named Insured** listed in Item 1. of the Declarations. Subject to the provisions contained in **CONDITIONS II. CHANGES IN EXPOSURE** of this Policy, **Insured Subsidiary** shall also include any organization acquired by the **Named Insured** listed in Item 1. during the **Policy Period**; *provided, however*, that: 1) such acquired organization is more than 50% owned by the **Named Insured**; 2) the total number of the acquired organization's employees does not exceed 25% of the total number of the **Named Insured's Employees** as of the inception date of this **Policy**; and 3) coverage for such acquisition shall only apply to **Loss** arising from **Wrongful Employment Practices** or **Third-Party Discrimination** taking place after the acquisition.

G. **Interrelated Claims** shall mean:

All **Claims** arising from **Wrongful Employment Practices** and **Third-Party Discrimination** that have as a common nexus any fact, circumstance, situation, event, transaction, or series of related facts, circumstances, situations, events, or transactions.

H. **Leased Employees** shall mean:

Any **Employee** who is leased to the **Named Insured** to perform work at and for the **Named Insured** and over whom the **Named Insured** controls the means and manner of their work.

I. **Loss** shall mean:

Damages, judgments, settlements, verdicts and awards, including compensatory damages, back pay, front pay, pre judgment interest and post judgment interest, statutory attorneys' fees and statutory liquidated damages awarded against the **Insured** and **Defense Costs**. **Loss** shall also include punitive or exemplary damages, if purchased and indicated by an amount appearing in Item 4c. of the Declarations and if insurable pursuant to the law of any applicable jurisdiction most favorable to insurability.

**Loss** shall not include: fines, penalties and taxes; multiple damages; matters which are uninsurable pursuant to the law under which this **Policy** shall be interpreted; amounts for which the **Insured** is absolved from payment; amounts owed any contract of employment; commissions, bonuses, profit sharing or any other benefit payments; stock options or amounts reflecting the value of stock options; severance pay; the cost to modify any premises or provide any accommodation to any disabled person; or the cost of reinstating employment or providing any other non-monetary relief.

J. **Policy** shall mean:

Collectively, the Declarations, the application, this **Policy** form, and any endorsements.

K. **Policy Period** shall mean:

the period from the effective date of this **Policy** to the expiration date or earlier termination date, if any, of this **Policy**.

L. **Third-Party Discrimination** shall mean:

Any actual or alleged discrimination, including harassment, or civil rights violation by an **Insured** against any non-**Employee**.

M. **Wrongful Employment Practice** shall mean any actual or alleged:

- (1) violation of any federal, state, local or common law, prohibiting any kind of employment-related discrimination;
- (2) harassment, including any type of sexual or gender harassment as well as racial, religious, sexual orientation, pregnancy, disability, age, or national origin-based harassment and including workplace harassment by non-employees;
- (3) abusive or hostile work environment;
- (4) wrongful discharge or termination of employment, whether actual or constructive;
- (5) breach of an implied employment contract;
- (6) wrongful failure or refusal to hire or promote, or wrongful demotion;
- (7) wrongful failure or refusal to provide equal treatment or opportunities;
- (8) employment terminations, disciplinary actions, demotions or other employment decisions that violate public policy or the Family Medical Leave Act or similar state or local law;
- (9) defamation, libel, slander, disparagement, false imprisonment, misrepresentation, malicious prosecution, or invasion of privacy;
- (10) wrongful failure or refusal to adopt or enforce adequate workplace or employment practices, policies or procedures;
- (11) wrongful, excessive or unfair discipline;
- (12) wrongful infliction of emotional distress, mental anguish, or humiliation;
- (13) retaliation, including retaliation for exercising protected rights, supporting in any way another's exercise of protected rights, or threatening or actually reporting wrongful activity of an **Insured** such as violation of any federal, state, or local "whistle blower" law,
- (14) wrongful deprivation of career opportunity, negligent evaluation or failure to grant tenure;

- (15) violations of the Uniformed Services Employment and Reemployment Rights Act;
- (16) negligent hiring or negligent supervision of others, including wrongful failure to provide adequate training, in connection with (1) through (15) above,

but only if employment-related and claimed by or on behalf of an **Employee**, former **Employee**, or applicant for employment, and only if committed or allegedly committed by any of the **Insureds** in their capacity as such.

#### IV. LIMITS OF LIABILITY:

Underwriters' maximum liability for **Loss** and **Defense Costs** combined on account of each **Claim** first made during the **Policy Period** shall be the Limit of Liability set forth in Item 4a. of the Declarations. Underwriters' maximum liability for **Loss** and **Defense Costs** combined on account of all **Claims** first made during the same **Policy Period** shall be the Limit of Liability for the **Policy Period** set forth in Item 4d. of the Declarations.

Item 4b. of the Declarations reflects Underwriters' maximum liability for **Claims** of **Third-Party Discrimination**. Item c. of the Declarations reflects Underwriters maximum liability for punitive, exemplary, and multiple damages. The amounts indicated in Item 4b. and Item 4c. of the Declarations will not operate to increase the per **Claim** Limit of Liability indicated in Item 4a. of the Declarations or the aggregate Limit of Liability indicated in Item 4d. of the Declarations.

The Limit of Liability for the Extended Reporting Period, if exercised, shall be part of and not in addition to the Limit of Liability for the **Policy Period**. The purchase of the Extended Reporting Period shall not increase or reinstate the Limit of Liability set forth in Item 4d. of the Declarations, which shall be our maximum liability for all **Loss** and **Defense Costs** on account of all **Claims** first made during such **Policy Period** and Extended Reporting Period, combined.

**Defense Costs** shall be part of, and not in addition to, the Limits of Liability set forth in Items 4a.-e. of the Declarations, and **Defense Costs** shall reduce the Limits of Liability. Notwithstanding the other provisions of this Section IV., if purchased and indicated in Item 4e. of the Declarations, an additional Limit of Liability shall apply for coverage of **Defense Costs** only (referred to as the "Defense-Only Limit"). This Defense-Only Limit shall apply to **Defense Costs** in the first instance, leaving the original Limit of Liability as indicated in Item 4a. of the Declarations to apply second to: (1) **Defense Costs** incurred in excess of, and after exhaustion of, the Defense-Only Limit and/or 2) any **Loss**, such as damages, judgments, settlements, verdicts, and awards, until the original Limit of Liability is exhausted.

In no event shall the Defense-Only Limit apply to **Loss**, and in no event shall Underwriters be obligated to pay more than the original Limit of Liability indicated in Item 4a. of the Declarations toward **Loss**, even though the combination of Defense-Only Limit and original Limit of Liability can apply toward **Defense Costs**.

In no event shall Underwriters' obligations under the **Policy** exceed the combination of the original Limit of Liability in Item 4a. of the Declarations plus the Defense-Only Limit indicated in Item 4e. of the Declarations. If a Defense-Only Limit is purchased, references in

other parts of Section IV. to “Limit of Liability” shall refer to the combination of the original Limit of Liability and the Defense-Only Limit, subject to all other limitations and conditions of coverage.

Purchase of the Defense-Only Limit shall not alter the Retention obligations of the **Insured**.

## V. **RETENTION:**

Underwriters’ obligations to pay under this **Policy** applies only to the amount of **Loss** in excess of the Retention shown in Item 5. of the Declarations. Underwriters shall have no obligations under this **Policy** unless and until the Retention has been exhausted or unless the **Named Insured** is unable to meet its uninsured responsibility on account of **Financial Impairment**. The Retention amount stated in the Declarations is applicable to each **Claim** that is first made during the **Policy Period** or the Extended Reporting Period and will apply once to all **Interrelated Claims** regardless of the number of claimants.

If, prior to the termination of any **Employee**, the **Named Insured** obtains and adopts the written advice of legal counsel recommended or approved by us as respects such termination, then the Retention amount stated in Item 5. of the Declarations shall be reduced by 25% for any **Claim** commenced by that **Employee** arising from the events of the termination; *provided, however*, that no such reduction shall apply in connection with those terminations that result from any reduction in force, systematic lay-off or closure of any division, office or facility you own or operate.

If the **Named Insured** consents to a settlement of a **Claim** within ten (10) days of the first request by **Underwriters** to consent and the settlement is accepted by the claimant, then the applicable Retention shall be retroactively reduced by ten percent (10%). Any consent to the same or another settlement after such time shall not reduce the Retention.

In the event of: (1) a determination of No Liability of all **Insureds**; or (2) a dismissal or a stipulation to dismiss a **Claim** without prejudice and without payment by any **Insured**, then the applicable Retention shall be retroactively reduced by an amount up to twenty-five percent (25%) or \$100,000, whichever is less; *provided, however*, that in the case of (2), any amounts to be returned shall be returned ninety (90) days after the date of dismissal or stipulation as long as the **Claim** is not reinstated (or any other **Claim** which is subject to the same single Retention according to this section is not brought) within that time, and further subject to an undertaking by the **Named Insured** in a form acceptable to Underwriters that such amounts shall be paid back to Underwriters in the event the **Claim** (or any other **Claim** which is subject to the same single Retention according to this section) is brought after such 90-day period and before the expiration of the statute of limitations for such **Claim**.

“No Liability” for purposes of this provision means: (1) a final judgment of no liability obtained prior to trial, in favor of all **Insureds**, by reasons of a motion to dismiss or a motion for summary judgment, after the exhaustion of all appeals; or (2) a final judgment of no liability obtained after trial in favor of all **Insureds**, after the exhaustion of all appeals. In no event shall the term “No Liability” apply to a **Claim** made against an **Insured** for which a settlement has occurred.

## VI. **DEFENSE, SETTLEMENT, COOPERATION:**

- A. Underwriters have the right and duty to defend the Insureds against all **Claims** to which this **Policy** applies and such obligation is limited to amounts constituting **Defense Costs**.
- B. The **Insureds** agree to provide Underwriters with all information, assistance and cooperation that Underwriters reasonably request and agree that in the event of a **Claim**, the **Insureds** will do nothing that may prejudice Underwriters' position or Underwriters' potential or actual rights of recovery.
- C. Underwriters shall not settle any **Claim**, without the **Named Insured's** consent. If, however, the **Named Insured** shall refuse to consent to any settlement recommended by Underwriters, Underwriters' liability for the **Claim** shall not exceed: 1) the amount for which Underwriters could have settled the **Claim** plus **Defense Costs** incurred as of the date Underwriters proposed such settlement; plus 2) 70% of covered **Loss** excess of the proposed settlement as long as 30% is borne by the **Named Insured** at its own risk. This provision shall not apply unless the total **Loss**, including the proposed settlement, would exceed the applicable Retention.
- D. The **Insureds** shall not admit liability for or settle any **Claim** or incur any cost or expense of investigation and/or defense in connection with any **Claim** or any circumstances for which notice is given under this **Policy** without Underwriters' prior written consent, which shall not be unreasonably withheld.

## **VII. EXTENDED REPORTING PERIOD:**

In the event of non-renewal or cancellation of this **Policy**, the **Named Insured** shall have the right to exercise the following: 1. upon payment of an additional premium of 100% of the annual premium, to an extension of the coverage granted by this **Policy** for a one (1) year period after the date of such termination or non-renewal; 2. upon payment of an additional premium of 150% of the annual premium to an extension granted by this **Policy** for the period of two (2) years after the date of such termination or non-renewal; or 3. upon payment of an additional premium of 175% of the annual premium to an extension of the coverage granted by this **Policy** for the period of three (3) years after the date of such termination or non-renewal, but with respect to any option exercised by the **Named Insured** only in connection with any **Wrongful Employment Practice** or **Third-Party Discrimination** of an **Insured** committed before the date of such termination or non-renewal. This right of discovery under this clause shall terminate unless written notice is given to Underwriters by the **Named Insured** within thirty (30) days after the effective date of termination or non-renewal and the additional premium hereunder is paid to Underwriters within thirty (30) days of such effective date. The entire premium for the Extended Reporting Period shall be deemed fully earned and non-refundable upon payment.

## **EXCLUSIONS**

We are not obligated to defend, or pay **Defense Costs** or **Loss** on account of any **Claim**:

- A. arising out of, based upon, or attributable to any **Wrongful Employment Practices** or **Third-Party Discrimination** committed by the **Insured** or at the **Insured's** direction with criminal or fraudulent purpose or intent if such purpose or intent is established in

fact; provided, however, the applicability of this exclusion to any **Insured** under this Policy shall not be imputed to any other **Insured** or the **Named Insured**;

- B. based upon, arising out of, or attributable to, liability of others assumed by any **Insured** under any contract or agreement, either oral or written, except to the extent that the **Insured** would have been liable in the absence of such contract or agreement.
- C. for any actual or alleged violation of the responsibilities, obligations or duties imposed by the:
  - (i.) Employee Retirement Income Security Act 1974;
  - (ii.) National Labor Relations Act;
  - (iii.) Worker Adjustment and Retraining Notification Act;
  - (iv.) Fair Labor Standards Act (except the Equal Pay Act);
  - (v.) The Occupational Safety and Health Act;
  - (vi.) actual or alleged violation of the responsibilities, obligations or duties imposed by any Workers' Compensation Law and all rules or regulations promulgated thereunder and amendments thereto, or
  - (vii.) any other federal, state or local statute or law similar to any statute or law described in (i) through (vi) of this exclusion;

provided, however, this exclusion shall not apply to any **Claim** for any actual or alleged retaliatory treatment of the claimant on account of the claimant's exercise of rights pursuant to such statute, law, rule or regulation.

- D. for any actual or alleged violations of any federal, state or local wage and hour laws or regulations, however, in the event such **Claim** also alleges **Wrongful Employment Practices** otherwise covered by this **Policy**, notwithstanding the provisions of **INSURING AGREEMENTS VI. DEFENSE, SETTLEMENT COOPERATION**, Underwriters agree to pay **Loss** solely for that portion of the **Claim** involving such **Wrongful Employment Practices**.
- E. arising out, based upon or attributable to **Wrongful Employment Practices** or **Third-Party Discrimination** of which any **Insured** who is a principal, partner, officer, director, trustee, in-house counsel or human resource manager was aware by actual knowledge of the facts or circumstances of such **Wrongful Employment Practices** or **Third-Party Discrimination** prior to the Continuity Date identified in Item 7. of the Declarations;
- F. arising out of any fact, circumstance or situation that was identified in the application for this insurance; and
- G. arising out of **Wrongful Employment Practices** or **Third-Party Discrimination** that has been the subject of any notice given under any other policy prior to the inception date of this **Policy**.

## CONDITIONS

### I. NOTICE: DUTIES IN THE EVENT OF A CLAIM

1. The **Insureds** must see to it that Underwriters or Underwriters' Authorized Representatives, as shown in Item 8. of the Declarations, are notified as soon as practicable, but in no event more than ninety (90) days after any **Insured** who is a principal, partner, officer, director, general counsel or human resource manager becomes aware that a **Claim** has been made. The report should include:
  - (a) the identity of the person(s) alleging the **Wrongful Employment Practice** or **Third-Party Discrimination**;
  - (b) the identity of any **Insured(s)** who allegedly committed the **Wrongful Employment Practice** or **Third-Party Discrimination**;
  - (c) the identity of any witnesses to the alleged **Wrongful Employment Practice** or **Third-Party Discrimination**; and
  - (d) the date(s) the **Wrongful Employment Practice** or **Third-Party Discrimination** took place.
2. The **Insureds** must:
  - (a) immediately send Underwriters or Underwriters' Authorized Representatives copies of any demands, notices, summonses or legal papers received in connection with the **Claim**;
  - (b) authorize Underwriters or Underwriters' Authorized Representatives to obtain statements, records and other information;
  - (c) co-operate with Underwriters or Underwriters' Authorized Representatives in the investigation or defense of the **Claim**; and
  - (d) assist Underwriters or Underwriters' Authorized Representatives in the enforcement of any right against any person or organization which may be liable to an **Insured** because of **Loss** to which this **Policy** may also apply.
3. No **Insureds** will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense without Underwriters' consent. Subsequent payments which are deemed by Underwriters as having been prejudiced by any such voluntary payment will also be the sole responsibility of the **Insured**.
4. Solely at an **Insured's** option, an **Insured** may within the **Policy Period** report an oral complaint by an **Employee**, former **Employee** or applicant for employment alleging **Wrongful Employment Practices** or **Third-Party Discrimination**. If such report is received by Underwriters or Underwriters'

Authorized Representatives within the **Policy Period** then any **Claim** subsequently arising from such oral complaint will be deemed to be made on the date such report was received. Such report must include the identity of the person(s) making the oral complaint.

## II. CHANGES IN EXPOSURE

1. If, during the **Policy Period**, the total number of your **Employees** increases by more than 25%, or ten (10) Employees, whichever is greater, as a result of your merger(s) with or acquisition(s) of any other entity, the **Named Insured** must give us notice of such increase as soon as practicable but in any event within sixty (60) days . We will be entitled to impose such amended coverage terms and adjust the premium as we may require.
2. Neither death, bankruptcy nor insolvency of any **Insured**, nor dissolution of the **Insured Company**, will relieve us of any obligations under the **Policy**.
3. If, during the **Policy Period**, you acquire 50% or more ownership in an organization and the number of acquired employees exceeds 25% of the total number of the **Named Insured's Employees** as of the inception date of this **Policy** then that organization shall be considered an **Insured Subsidiary** but only if you give us notice of such acquisition as soon as practicable but in any event within sixty (60) days after such acquisition. Coverage for such **Insured Subsidiary** shall only apply to **Loss** arising from **Wrongful Employment Practices** and **Third-Party Discrimination** taking place after the merger or acquisition.
4. If, during the **Policy Period**, you merge with another entity such that you are no longer the surviving entity or if more than 50% of your outstanding securities representing the present right to vote for the election of directors is acquired by any person or entity, this **Policy** will continue until its natural Expiration Date as set forth in Item 3. of the Declarations but only with respect to any **Wrongful Employment Practices** or **Third-Party Discrimination** committed before the date of the merger or acquisition.

## III. CANCELLATION:

This **Policy** may be cancelled by the **Named Insured** by surrender to Underwriters or Underwriters' Authorized Representatives or by mailing to Underwriters written notice stating when thereafter cancellation shall be effective. This **Policy** may be cancelled by Underwriters only for non-payment of premium by mailing to the **Named Insured** at the address shown in the Declarations a written notice stating when, not less than ten (10) days thereafter, such cancellation shall become effective. The mailing of such notice shall be sufficient proof of such notice. Delivery of such written notice, whether by the **Named Insured** or by Underwriters, shall be equivalent to mailing. *If the **Named Insured** cancels, earned premium shall be computed in accordance with the standard short rate table, but in no event will earned premium be less than twenty-five percent (25%) of the total premium indicated in the Declarations. If we cancel, earned premium shall be computed pro rata. Premium adjustment may be made at the time cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.*

**IV. SUBROGATION:**

In the event of any payment under this Policy, Underwriters shall be subrogated to all of the **Insured's** rights of recovery and the **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure and preserve such rights.

**V. ACTION AGAINST THE INSURERS:**

No action shall be maintained against Underwriters by the **Insured** unless, as a condition precedent thereto, the **Insured** shall have fully complied with all the terms and conditions of this **Policy**. Nothing contained in this Policy shall give any person or organization any right to join Underwriters as a co-defendant in any action against the **Insureds** to determine the **Insured's** liability nor shall Underwriters be impleaded by the **Insureds** or their legal representatives.

**VI. OTHER INSURANCE:**

Unless expressly written to be excess over other insurance, this Policy is intended to apply as primary insurance for **Wrongful Employment Practice Claims** covered by this Policy. As to coverage for **Claims** against **Leased Employees**, this **Policy** applies excess of all indemnification and insurance available to any **Insured** from or through the leasing company. As to coverage for **Claims** for **Third-Party Discrimination**, this Policy applies excess of all indemnification and insurance that may otherwise be available to any **Insured**. Nothing in this provision shall prevent Underwriters or the **Insureds** from seeking contribution or coverage from any other insurer or indemnitor.

**VII. ASSIGNMENT:**

This Policy cannot be changed, modified, or assigned without Underwriters' written, signed endorsement.

**VIII. REPRESENTATIONS:**

By acceptance of this Policy, all **Insureds** agree that the statements in the application are their agreements, representations and warranties, that this **Policy** is used in reliance upon the truth thereof, and that this **Policy** embodies all agreements existing between themselves and Underwriters or any of their representatives relating to this **Policy**.

**IX. FALSE OR FRAUDULENT CLAIMS:**

If the **Insured** submits any **Claim** knowing such **Claim** to be false or fraudulent, as regards amount or otherwise, this **Policy** shall become void for such **Claim**.

**X. AUTHORIZATION:**

The **Named Insured** shall be deemed the agent of all **Insureds** with respect to all matters pertaining to this **Policy**.

## **XI. ARBITRATION:**

Underwriters and the **Insureds** agree that any dispute, controversy, or claim arising out of or relating to this **Policy** or its breach, termination, or invalidity, will be submitted either: (1) to final and binding arbitration; or (2) to non-binding mediation, whichever the **Insured** shall select, pursuant to such rules and procedures as the parties may agree. If the parties cannot agree, the arbitration or mediation shall be administered by the American Arbitration Association in accordance with its then prevailing commercial arbitration/mediation rules and such arbitration or mediation shall take place in New York. In the event of arbitration, the panel shall consist of one arbitrator selected by the **Named Insured**, one arbitrator selected by Underwriters, and a third independent arbitrator selected by the first two arbitrators. In any arbitration or mediation, each party will bear its own legal fees and expenses.

## **XII. SERVICE OF SUIT:**

In the event any non-binding mediation selected by the **Insured** in accordance with Section XI, does not resolve disputes arising out of or related to this **Policy**, Underwriters, at the request of any **Insured**, will submit to the jurisdiction of a court of competent jurisdiction within the United States and will comply with all requirements necessary to give such court jurisdiction. Nothing in this Section XI constitutes or should be understood to constitute a waiver of Underwriters' rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such suit may be made upon the firm shown under Item 9. of the Declarations, and that if such suit is instituted against any of the Underwriters of this **Policy**, Underwriters will abide by the final decision of such court or of any appellate court in the event of an appeal.

The firm shown under Item 8. of the Declarations is authorized and directed to accept service of process on behalf of the Underwriters in any such suit and/or upon the request of any **Insured** to give a written undertaking to such **Insured** that they will enter general appearance upon Underwriters' behalf in the event such a suit is instituted.

Further, pursuant to the statute of any state, territory, or district of the United States which makes provision therefore, Underwriters hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his or her successor or successors in office, as their true and lawful attorney, upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of any Insured or any beneficiary of this Policy, and hereby designate the firm shown under Item 9. of the Declarations as the firm to whom the said officer is authorized to mail such process.

## **XIII. SPOUSAL AND DOMESTIC PARTNER EXTENSION:**

If a **Claim** against an **Insured** includes a **Claim** against the lawful spouse or domestic partner of such **Insured** solely by reason of (a) such spousal or domestic partner status; or (b) such spouse's or domestic partner's ownership interest in property or assets that are sought as recovery for **Wrongful Employment Practices** or **Third-Party Discrimination**, any such **Claim** shall be deemed to be a **Claim** against an **Insured**.

#### **XIV. NON-RENEWAL:**

If Underwriters decide not to renew this Policy, Underwriters will mail or deliver to the **Named Insured** written notice of non-renewal not less than sixty (60) days before the expiration date of this **Policy**. Proof of mailing shall be sufficient notice of non-renewal.