

**EMPLOYMENT  
PRACTICES  
LIABILITY  
INSURANCE  
POLICY  
NEW YORK**

SPECIMEN



1235 Radio Road  
Redwood City  
California 94065-1217  
(800) 652-1772

## ADDITIONAL MEMBERSHIP BENEFITS

In addition to the benefits described in your Policy, as a member of the Company every *Named Insured* automatically qualifies for additional benefits designed to minimize your employment practices liability exposure by helping you with all aspects of your firm's human resource management.

These additional benefits are:

- Unlimited direct hotline and e-mail access to a specialist for consultation on employment practices and human resources issues.
- Comprehensive web-based tools through the **Members-only section of CAMICO.com**. The tools provide information, such as employment law, forms, an employment handbook constructor tool, job descriptions, and much more.
- Unlimited access to our **Claims Hotline**, providing claim professionals that can assist you with legal liability concerns before they become a *Claim*.

CAMICO urges you to take advantage of these additional benefits so that, together, we can reduce the cost of claims and increase the effectiveness of your firm.

## NOTICE

**THESE POLICY FORMS AND THE APPLICABLE RATES ARE EXEMPT FROM THE FILING REQUIREMENTS OF THE NEW YORK STATE INSURANCE DEPARTMENT, BUT MEET THE MINIMUM STANDARDS OF THE NEW YORK INSURANCE LAW AND REGULATIONS.**

This Policy is written on a CLAIMS-MADE basis. This Policy provides no coverage for *Claims* arising out of *Employment Practices* which took place prior to the *Retroactive Date* stated in the Policy and shown on the Declarations page. This Policy covers only *Claims* actually made against an *Insured* while the Policy remains in effect. All coverage under the Policy ceases upon the termination of the Policy except for the Basic *Extended Reporting Period*, or unless the *Named Insured* purchases Supplemental *Extended Reporting Period* (See, V. *Extended Reporting Periods*).

*Extended Reporting Period* coverage provides that *Claims* made against an *Insured* during an *Extended Reporting Period* will be covered only if the *Employment Practices* giving rise to the *Claim* took place prior to the expiration or cancellation date of the Policy and after the *Retroactive Date*. The Basic *Extended Reporting Period* is for sixty (60) days after the termination of the Policy. If purchased, the Supplemental *Extended Reporting Period* is for either twelve (12) or thirty-six (36) months after the termination of the *Policy Period* and includes the Basic *Extended Reporting Period*. Because neither *Extended Reporting Period* is unlimited, there may be a gap in coverage upon expiration of either *Extended Reporting Period* if: the *Named Insured* does not buy a policy with “prior acts” coverage to replace this Policy; or, the *Named Insured* purchases a replacement policy with coverage that is not as broad as this Policy; or, the *Named Insured* buys no replacement policy whatsoever. At the end of the applicable *Extended Reporting Period*, this Policy will not provide coverage for any new *Claim* reported to the Company.

This Policy is written on a “defense-within-limits” basis. Unless the Policy includes an endorsement which modifies this policy term, the Policy’s Limits of Liability are reduced by payment of *Claim Expenses* and *Damages*. The Company will cease defending and/or paying *Claim Expenses* when the applicable Limit of Liability has been exhausted by payment of *Claim Expenses* or *Damages*.

During the first several years of the claims-made relationship, claims-made rates are comparatively lower than occurrence rates, and there will likely be substantial annual premium increases, independent of overall rate level increases, until the claims-made relationship reaches maturity.

The Policy contains additional restrictions on coverage. Please review the entire Policy carefully and discuss the coverage thereunder with your insurance agent, broker or other representative.

SPECIMEN

## POLICY TABLE OF CONTENTS

I.	INSURING AGREEMENTS .....	1
	A. Coverage for <i>Damages</i> and Reporting Requirements .....	1
	B. Defense and Settlement of <i>Claims</i> .....	1
	C. Limits of Liability and Deductible .....	2
	D. Supplementary Policy Benefits .....	3
II.	WHO IS AN <i>INSURED</i> .....	3
III.	EXCLUSIONS .....	4
IV.	DEFINITIONS .....	5
V.	<i>EXTENDED REPORTING PERIODS</i> .....	8
VI.	POLICY CONDITIONS .....	9
	A. Duties in the Event of a <i>Potential Claim</i> or <i>Claim</i> .....	9
	B. Examination of Books and Records .....	10
	C. Transfer of <i>Insured's</i> Rights and Duties Under This Policy .....	10
	D. Legal Action Against the Company .....	11
	E. Other Insurance .....	11
	F. Cancellation or Non-Renewal .....	11
	G. Payment of Premiums and Deductibles .....	13
	H. Separation of <i>Insureds</i> .....	13
	I. Sole Agent .....	13
	J. Changes .....	13
	K. Bankruptcy .....	13
	L. Mutual Policy Provisions: Dividends, Voting, Policy Non-Assessable .....	14
	M. Entire Contract .....	14

SPECIMEN

## EMPLOYMENT PRACTICES LIABILITY INSURANCE POLICY

In consideration of the *Named Insured's* payment of premium and Deductible(s), and in reliance upon the *Named Insured's* statements made in the original application and all renewal or supplemental applications, all of which are incorporated into this policy by this reference, CAMICO Mutual Insurance Company ("the Company") agrees with the *Named Insured* as follows:

### I. INSURING AGREEMENTS

#### A. Coverage for Damages and Reporting Requirements

1. The Company will pay those sums that an *Insured* becomes legally obligated to pay as *Damages* because of a *Claim* arising out of any *Employment Practices* to which this insurance applies, provided that:

- (a) the *Claim* was first made against any *Insured* during the *Policy Period* or any applicable *Extended Reporting Period*, and reported to the Company either (i) during the *Policy Period* or within thirty (30) days thereafter, or (ii) during the applicable *Extended Reporting Period*; and
- (b) the *Claim* does not arise from facts or circumstances which would cause a reasonable person to believe a *Claim* would be made and which were known to any *Insured* prior to the effective date of the first policy of this type issued by the Company and continuously renewed thereafter; and
- (c) the *Claim* was not reported to any insurer, including the Company, prior to the effective date of the *Policy Period* identified in the policy's Declarations; and
- (d) the *Damages* result from a *Claim* made by *Employees, Leased Workers, Contract Workers*, former *Employees*, applicants for employment by the *Named Insured*, or *Third Party Claimants*; and
- (e) the *Employment Practices* occurred after the *Retroactive Date*, if any, shown in the Declarations and before the end of the *Policy Period*, within in the *Coverage Territory*.

2. A *Claim* is deemed made on the date the Company receives notice of the *Claim* from the *Insured* or a third party, whichever is earlier. All *Claims* for *Damages* by one or more claimants based on or arising out of either one *Employment Practice* or *Interrelated Employment Practices*, by one or more *Insureds*, shall be deemed to be one *Claim* and to have been made at the time the first of those *Claims* is made against any *Insured*.

#### B. Defense and Settlement of Claims

1. The Company has the right and duty to defend *Claims* against the *Insured* seeking *Damages* to which this insurance applies, the right to appoint counsel to defend a *Claim*, and the duty to pay related *Claim Expenses*. However, the Company has no duty: (i) to defend *Claims* against the *Insured* seeking *Damages*, or (ii) to pay for related *Claim Expenses*, when this insurance does not apply. Each payment the Company makes for *Damages* or *Claim Expenses* reduces the Limit of Liability available. The Company may, at its sole discretion:

- (a) Investigate any *Employment Practices* that may result in *Damages*; and
- (b) Settle any *Claim* which may result, provided:
  - (i) The Company has the *Named Insured's* written consent to settle; and
  - (ii) The settlement is within the remaining applicable Limit of Liability.

2. If the *Named Insured* refuses to consent to any settlement recommended by the Company, and such recommended settlement is acceptable to the claimant, then the Company's liability under this Policy for such *Claim* shall not exceed the amount the Company would have paid for *Damages* and *Claim Expenses* if the *Named Insured* had consented to the Company's settlement recommendation. The *Named Insured* shall thereafter be responsible for the negotiation and defense of that *Claim* at its own cost and without the Company's involvement.

3. The Company's right and duty to defend any *Claim(s)* under this Policy ends when the applicable Limit of Liability has been exhausted by payment of *Damages* or *Claim Expenses*. This applies both to *Claims* pending at that time and any that may be made thereafter.

4. Transfer of Duties When Limit of Liability is Reached

(a) If the Company concludes that the Per *Claim* or the Aggregate Limit of Liability is likely to be reached upon the payment of judgment(s) or settlement(s) for *Claims* or suits to which this insurance may apply, the Company will provide the *Named Insured* with written notice of the anticipated exhaustion. When the Limit of Liability actually has been reached in the payment of judgment(s) or settlement(s), the Company will provide the *Named Insured* with written notice as soon as practicable of the exhaustion of the Limit of Liability and the termination of the Company's duty to defend. The Company will initiate and cooperate in, the transfer of control, to the *Named Insured*, of all remaining *Claims* and suits seeking *Damages* that were reported to the Company prior to exhaustion of the Limit of Liability and that are subject to the exhausted Limit of Liability. In reliance upon the *Named Insured's* agreement to cooperate in the transfer of control of those *Claims* and suits, the Company agrees to take such steps as it deems appropriate to avoid default in, or to continue defense of, such *Claims* or suits until the transfer is completed. The Company will take no action whatsoever with respect to any *Claim* or suit seeking *Damages* if the *Claim* or suit is reported to the Company after the Policy Aggregate Limit of Liability has been exhausted.

(b) The *Named Insured* and any other *Insured* involved in a *Claim* or suit seeking *Damages* subject to the Policy Aggregate Limit of Liability must arrange for the defense of such *Claims* or suits within such time period as agreed to between the *Named Insured* and the Company, or in the absence of any such agreement, then as soon as practicable. The *Named Insured* will reimburse the Company for expenses the Company incurs in taking those steps the Company deems appropriate in accordance with this paragraph. The duty to reimburse the Company will begin on the date on which the applicable Limit of Liability is reached, or the date on which the Company sent notice, whichever is later.

(c) The exhaustion of the applicable Limit of Liability by the payment of judgment(s) or settlement(s), and the termination of the Company's duty to defend, will not be affected by the Company's failure to notify the *Named Insured* of these provisions.

**C. Limits of Liability and Deductible**

1. Limit of Liability – Per *Claim*

The maximum amount payable by the Company for *Damages* and *Claim Expenses* for each covered *Claim* arising from *Employment Practices* is the Per *Claim* Limit of Liability stated in the Declarations, less the Per *Claim* Deductible. A single Per *Claim* Limit of Liability applies to all *Claims* arising from *Interrelated Employment Practices* regardless of the number of claimants, lawsuits, proceedings or *Insureds* involved.

2. Limit of Liability – Policy Aggregate

The maximum amount payable by the Company for *Damages* and *Claim Expenses* for all covered *Claims*, arising from *Employment Practices*, to which this Policy applies is the Policy Aggregate Limit of Liability stated in the Declarations. Each payment the Company makes for such *Damages* or *Claim Expenses* reduces the Aggregate

Limit of Liability by the amount of the payment. This reduced limit will then be the Limit of Liability available for payment of further *Damages* and *Claim Expenses* under this Policy.

3. The Aggregate Limit of Liability of this Policy apply separately to each consecutive annual period and to any remaining period of less than twelve (12) months, starting with the beginning of the *Policy Period* shown in the Declarations, unless the *Policy Period* is extended after issuance for an additional period of less than twelve (12) months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limit of Liability.

4. Deductible

The *Named Insured* shall pay the Deductible, in the amount stated on the Declarations, for *Claim Expenses* and *Damages* resulting from each *Claim*. The *Named Insured* is responsible for reimbursing the Company for the Deductible. The Deductible applies to all *Damages* for injury arising from *Employment Practices* and any *Claim Expenses*. If there should be no *Damages* paid for a *Claim*, the *Named Insured* is still obligated to pay the applicable Deductible for any *Claim Expenses* incurred by the Company in connection with that *Claim*. The Limit of Liability shown in the Declarations will be reduced by the amount of the Deductible applicable to a *Claim*.

The terms of this insurance apply irrespective of the application of the Deductible, including those with respect to: (a) the Company's right and duty to defend any *Claims* seeking those *Damages*; and the *Named Insured's* and any involved *Insured's* duties in the event of a *Claim*.

The Company may pay any part or all of the Deductible for *Claim Expenses* or *Damages*.

5. Expenses for *Potential Claims*

Any expenses incurred by the Company on behalf of an *Insured* prior to a *Claim* being made are not chargeable against the Deductible or against the applicable Limit of Liability.

6. Reimbursement of the Company

If the Company pays any *Claim Expenses* or *Damages* within the Deductible or in excess of the applicable Limit of Liability, the *Named Insured* shall reimburse these amounts within thirty (30) days of the Company's request. All *Insureds* are jointly and severally liable for reimbursement of these amounts to the Company.

**D. Supplementary Policy Benefits**

1. Deductible Reduction

The Company will reduce the *Named Insured's* Deductible by fifty percent (50%), up to a maximum of \$50,000, under the following circumstances: (a) when any *Insured* reports *Employment Practices* to the Company pursuant to section VI. POLICY CONDITIONS, A. Duties in the Event of *Potential Claim* or *Claim* prior to the *Claim* being made against the *Insured*; or (b) when the *Named Insured* uses formal mediation to seek a resolution of a *Claim*.

2. Per Diem Reimbursement

The Company will pay \$300 per day to the *Named Insured*, up to a maximum payment of \$6,000 Per *Claim*, to compensate an *Insured* for attendance at mediation, arbitration or trial proceedings at the Company's request.

**II. WHO IS AN INSURED**

Each of the following *Persons* is an *Insured*, but only for acts within the scope of his/her employment by the *Named Insured* or while performing duties related to the conduct of the *Named Insured's* business, on or after the *Retroactive Date*:

- (a) The *Named Insured* identified in the Declarations or in an endorsement.
- (b) Any *Person* identified in an endorsement as an *Insured*.
- (c) A current or former owner, partner, shareholder or *Employee* of a *Named Insured*.
- (d) Any *Person* who, during the *Policy Period*, becomes an owner, partner, shareholder or *Employee* of a *Named Insured*.
- (e) A *Contract Worker* of a *Named Insured*.
- (f) A *Predecessor Firm*.
- (g) A *Person* acquired by or merged with a *Named Insured* during the *Policy Period*, but only for *Employment Practices* which take place after the acquisition or merger.
- (h) The heirs, executors, administrators, assigns and legal representatives of an *Insured*, but only to the extent of that *Insured's* rights and duties under this policy.

### III. EXCLUSIONS

This insurance does not apply to *Claims* based on, arising out of, or in any way involving:

- (a) *Employment Practices* which were the subject of any demand made or any suit or other proceeding initiated against any *Insured* prior to the effective date of the earlier of: (i) the first policy of this type that the Company issued to the *Named Insured* of which this policy was an uninterrupted renewal of this type of coverage, or (ii) this policy.
- (b) Liability arising under any of the following laws:
  1. Any workers compensation, disability benefits or unemployment compensation law, or any similar law. However, this exclusion shall not apply to any *Claim* based upon, arising from or in consequence of any actual or alleged retaliatory treatment of the claimant by an *Insured* on account of the claimant's exercise of rights pursuant to any such law; or
  2. Employees' Retirement Income Security Act of 1974, Public Law 93-406, (ERISA) as now or hereafter amended, or any similar state or other governmental law. This includes fiduciary liability, liability arising out of the administration of any employee benefit plan and any other liability under any such laws; or
  3. The National Labor Relations Act of 1938, the Worker Adjustment and Retraining Notification Act of 1988 (Public Law 100-379), the Consolidated Omnibus Budget Reconciliation Act of 1985, or the Occupational Safety and Health Act; or
  4. The Fair Labor Standards Act, or any state or common law wage or hour law, including, but not limited to laws governing minimum wages, hours worked, overtime compensation, and including any recordkeeping and reporting related thereto. This exclusion includes actions or *Claims* brought by or on behalf of individuals or agencies seeking wages, fines, penalties, taxes, disgorgement, or other affirmative relief or compensation, but does not include *Claims* based on the Equal Pay Act or retaliation related to Equal Pay Act *Claims*.

This exclusion also applies to:

- (i) Any rules or regulations promulgated under any of the foregoing and amendments thereto;
- (ii) Any similar provisions of any federal, state or local law;

- (iii) That part of any *Damages* awarded for the cost or replacement of any insurance benefits due or alleged to be due to any current or former *Employee*; and
  - (iv) Any *Claim* based upon, arising from or in consequence of any actual or alleged retaliatory treatment of the claimant by the *Insured* on account of the claimant's exercise of rights pursuant to any such law described in this item (b). This provision does not apply to the specific retaliation exceptions shown in items (b).1. and (b).4. above.
- (c) Oral or written publication of material, if such material:
- 1. Was published by or at the direction of the *Insured* with knowledge of the material's falsity; or
  - 2. Was first published before the *Retroactive Date*, if any, shown in the Declarations of this policy.
- (d) Dishonest, malicious, criminal or fraudulent acts of an *Insured* or the willful failure by an *Insured* or with an *Insured's* consent to comply with any law or any governmental or administrative order or regulation relating to *Employment Practices*. Willful, as used in this exclusion (d), means acting with intentional or reckless disregard for such employment related laws, orders or regulations. The enforcement of this exclusion against any *Insured* shall not be imputed to any other *Insured*.
- (e) *Bodily Injury or Property Damage*.
- (f) *Employment Practices* which occur when or after:
- 1. The *Named Insured* files for or is placed in any bankruptcy, receivership, liquidation or reorganization proceeding; or
  - 2. Any *Person* acquires an ownership interest in the *Named Insured*, which is greater than fifty percent (50%).
- (g) Costs of complying with physical modifications to the *Named Insured's* premises or any changes to an *Insured's* usual business operations as mandated by the Americans with Disabilities Act of 1990 including any amendment thereto, or any similar federal, state or local law. This exclusion also applies to any *Claim* based upon, arising from or in consequence of any actual or alleged retaliatory treatment of the claimant by the *Insured* on account of the claimant's exercise of rights pursuant to any such law described in this item (g).
- (h) Lockout, strike, picket line, related worker replacements or other similar actions resulting from labor disputes or labor negotiations. This exclusion also applies to any *Claim* based upon, arising from or in consequence of any actual or alleged retaliatory treatment of the claimant by the *Insured* on account of the claimant's exercise of rights pursuant to labor disputes or labor negotiations.
- (i) Allegations of *Employment Practices* made by an owner, partner or shareholder of the *Named Insured* against any other *Insured*.
- (j) Allegations of wrongful failure to grant partnership or ownership status to a qualified *Employee*.
- (k) Allegations made by a *Third Party Claimant* of *Employment Practices* other than acts of discrimination or sexual harassment.

#### IV. DEFINITIONS

- (a) *Bodily Injury* means physical injury to the body, sickness or disease sustained by a *Person* as the result of direct physical injury to the body, including death resulting from any of these at any time. *Bodily Injury* does not include mental anguish or emotional distress or humiliation that results from any *Employment Practices*.
- (b) *Claim* means oral or written notice presented by:

1. Any *Employee, Leased Worker, Contract Worker, former Employee* or applicant for employment by the *Named Insured* alleging that an *Insured* is responsible for *Damages* as a result of injury arising out of any *Employment Practices*;
2. A *Third Party Claimant* alleging that an *Insured* is responsible for *Damages* as a result of injury arising out of an *Employment Practices* described in section IV. DEFINITIONS, paragraph (h).6. and (h).7; or
3. The Federal Equal Employment Opportunity Commission or any other federal, state or local administrative or regulatory agency on behalf of a *Person* described in 1. or 2, above.

*Claim* includes any civil proceeding in which either *Damages* are alleged or fact finding will take place, when either is the result of any *Employment Practices* to which this insurance applies. This includes:

- (i) An arbitration proceeding in which such *Damages* are claimed and to which the *Insured* submits with the Company's consent;
  - (ii) Any alternative dispute resolution proceeding in which such *Damages* are claimed and to which the *Insured* submits with the Company's consent; or
  - (iii) Any administrative proceedings as established under federal, state or local laws applicable to *Employment Practices* covered under this insurance.
- (c) *Claim Expenses* means payments allocated to a specific *Claim* for its investigation, settlement, or defense, including:
1. Attorney fees and all other litigation expenses.
  2. The cost of bonds to appeal a judgment or award in any *Claim* covered by this insurance, but only for bond amounts within the remaining applicable Limit of Liability. The Company does not have to furnish these bonds.
  3. The cost of bonds to release attachments, but only for bond amounts within the remaining applicable Limit of Liability. The Company does not have to furnish these bonds.
  4. Reasonable out-of-pocket expenses incurred by the *Insured* at the Company's request to assist the Company in the investigation or defense of any *Claim*.
  5. Costs taxed against the *Insured* in the *Claim*.

*Claim Expenses* do not include:

- (a) Salaries and expenses of the Company's employees or the *Named Insured's Employees*; or
  - (b) *Pre-judgment Interest*; or
  - (c) Any fees, costs or expenses incurred by an *Insured* without the Company's consent; or
  - (d) *Damages*.
- (d) A *Contract Worker* is a natural person who contracts directly with the *Named Insured* to provide *Professional Services* on behalf of the *Named Insured*.
- (e) *Coverage Territory* means:
1. The United States of America (including its territories and possessions) and Puerto Rico; or
  2. Anywhere in the world with respect to the activities of a *Person* whose place of employment is in the territory described in subparagraph 1. above, while he or she is away for a short time on the *Named Insured's* business, provided that the *Insured's* responsibility to pay *Damages* is determined in a suit on the merits (or any type of civil proceeding described under the definition of *Claim*) in and under the substantive law of the United States of America (including its territories and possessions) or Puerto Rico.

(f) *Damages* are monetary amounts to which this insurance applies and which an *Insured* is legally obligated to pay as judgments or awards, or as settlements to which the Company has agreed in writing. *Damages* include: (i) *Pre-judgment Interest* awarded against an *Insured* on that part of the judgment which is covered by this insurance, and (ii) attorney fees awarded pursuant to statute. *Damages* do not include:

1. Civil, criminal, administrative or other fines or penalties;
2. Equitable relief, injunctive relief, declarative relief or any other non-monetary relief or recovery other than money;
3. Judgments or awards because of acts deemed uninsurable by law;
4. *Claim Expenses*;
5. Loss of any benefit conferred or loss of any obligation imposed under an express contract of employment;
6. Any obligation to pay *Damages* by reason of the assumption of liability in any contract or agreement, which liability the *Insured* would not have had in the absence of the contract or agreement.
7. The multiplied portion (whether doubled, trebled or otherwise) of any judgment or award, except for multiplied damages under the Age Discrimination in Employment Act of 1967 ("ADEA");
8. Amounts owed under federal, state or local wage and hour laws, except for amounts awarded pursuant to a *Claim* under the federal Equal Pay Act or similar state laws;
9. Commissions, bonuses, profit sharing or benefits which are earned but unpaid;
10. Amounts representing medical or insurance benefit claim payments; or
11. Plaintiff's or claimant's attorneys fees associated with 1 through 10, above.

(g) *Employee* means a *Person* employed by the *Named Insured* for wages or salary. *Employee* does not include any *Contract Worker*, any independent contractor, any employees of an independent contractor, or any *Leased Worker*.

(h) *Employment Practices* means any of the following actual or alleged practices (i) which are directed against any of the *Named Insured's Employees, Leased Workers, Contract Workers, former Employees* or any applicant for employment by the *Named Insured*, and (ii) for which remedy is sought under any civil employment law whether federal, state or local and whether arising out of statutory or common law:

1. Wrongful refusal to employ a qualified applicant for employment;
2. Wrongful failure to promote, or wrongful deprivation of career opportunity;
3. Wrongful demotion, evaluation, reassignment or discipline;
4. Wrongful termination of employment, including retaliatory or constructive discharge;
5. Employment related misrepresentation;
6. Harassment, coercion, discrimination or humiliation as a consequence of race, color, creed, national origin, marital status, medical condition, gender, age, physical appearance, physical and/or mental impairments, pregnancy, sexual orientation or sexual preference or any other protected class or characteristic established by any applicable federal, state, or local statute;
7. Sexual harassment, unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual or non-sexual nature that: (i) creates an intimidating, hostile or offensive working environment, or a work environment that interferes with performance; (ii) are made a condition of employment, either implicitly or explicitly; or (iii) is used as a basis for employment decisions; or
8. Oral or written publication of material that slanders, defames or libels, or violates or invades a right of privacy.

*Employment Practices* also means actual or alleged conduct described in subparagraph (h).6. and (h).7, above, if directed against a *Third Party Claimant* by an *Insured*.

(i) An *Extended Reporting Period* is a period of time after the end of the *Policy Period* for reporting a *Claim* arising out of any *Employment Practices* occurring prior to the end of the *Policy Period* and otherwise covered by

this Policy. *Extended Reporting Periods* are offered by the Company under the terms and conditions stated in section V. *EXTENDED REPORTING PERIODS* of this Policy and the *Extended Reporting Period* endorsement issued by the Company.

(j) An *Insured* means the *Named Insured* and any *Person* who qualifies as an *Insured* under section II. WHO IS AN *INSURED*.

(k) *Interrelated* means having as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.

(l) *Leased Worker* means a *Person* leased to the *Named Insured* by a labor leasing firm under an agreement between the *Named Insured* and the labor leasing firm to perform duties related to the conduct of the *Named Insured's* business. *Leased Worker* does not include a *Contract Worker*.

(m) The *Named Insured* is the *Person* identified on the Declarations attached to this Policy.

(n) A *Person* means any natural person or legal entity.

(o) The *Policy Period* is the period of time which begins on the effective date stated on the Declarations and ends on the renewal, termination, expiration or cancellation of this policy, and specifically excludes any *Extended Reporting Period*.

(p) A *Potential Claim* is an *Employment Practices* event or circumstances that any *Insured* might reasonably expect would be the basis for a *Claim*.

(q) *Pre-judgment Interest* means interest added to a judgment that accrues after entry of the judgment and before the Company has paid, offered to pay, or deposited in court the amount available for the judgment.

(r) A *Predecessor Firm* is: (i) any firm, some or all of whose partners or shareholders have joined the *Named Insured*, provided such partners or shareholders produced over fifty percent (50%) of the prior firm's annual gross billings and such billings have been assigned to the *Named Insured*, or (ii) any sole proprietor who joined the *Named Insured* and who has assigned over fifty percent (50%) of the billings from the former sole proprietorship to the *Named Insured*.

(s) *Professional Services* are any professional services performed by an *Insured* as long as the fees or commissions, if any, or other benefits from such services inures to the benefit of the *Named Insured*.

(t) *Property Damage* means physical injury to, conversion of, or destruction of tangible property, including the loss of use of tangible property.

(u) The *Retroactive Date*, stated in the Declarations, is the earliest date from which this policy provides coverage for *Employment Practices*.

(v) *Third Party Claimant* means any natural *Person*: (i) who is an employee or a leased worker or a contract worker or a former employee of a client of the *Named Insured*; and (ii) who makes a *Claim* against the *Insured* alleging an *Employment Practices* described in section IV. DEFINITIONS, paragraph (h).6. and (h).7.

## V. *EXTENDED REPORTING PERIODS*

A. The Company will provide *Extended Reporting Periods*, as described below, if:

1. This Policy is cancelled or not renewed; or

2. The Company renews or replaces this Policy with insurance that:

(a) has a *Retroactive Date* later than the date shown in the Declarations; or

(b) does not apply on a claims-made basis.

B. *Extended Reporting Periods* do not extend the *Policy Period* or change the scope of coverage provided. They apply only to *Claims* arising from *Employment Practices* committed after the *Retroactive Date*, if any, shown in the Declarations and before the end of the *Policy Period*. Once in effect, *Extended Reporting Periods* may not be cancelled. The *Extended Reporting Periods* do not reinstate or increase the Limits of Liability.

C. A Basic *Extended Reporting Period* is automatically provided without additional charge. This period starts with the end of the *Policy Period* and lasts for:

1. Sixty (60) days with respect to any *Claim* arising from *Employment Practices* not previously reported to the Company; and
2. Five (5) years with respect to any *Claim* arising out of *Employment Practices* which were properly reported to the Company before the end of the *Policy Period* in accordance with section VI. POLICY CONDITIONS, A. Duties in the Event of a *Potential Claim* or *Claim*, paragraph A.1.

The Basic *Extended Reporting Period* does not apply to any *Claim* that is covered under any subsequent insurance purchased by the *Named Insured*, or that would be covered but for exhaustion of the amount of insurance applicable to such *Claim*.

D. A Supplemental *Extended Reporting Period* of either twelve (12) or thirty-six (36) months duration is available, but only by endorsement and for an extra charge, and only if there are no amounts owed by the *Named Insured* to the Company, including sums due for premium or Deductibles. This supplemental period starts when the Basic *Extended Reporting Period* ends. The *Named Insured* must give the Company a written request for the Supplemental *Extended Reporting Period* endorsement, and its length, within thirty (30) days after the end of the *Policy Period*. The Supplemental *Extended Reporting Period* will not go into effect unless the *Named Insured* pays the additional premium when due. The Company will determine the additional premium in accordance with its rules and rates, and may take into account the following:

1. The exposures to be insured;
2. Previous types and amounts of insurance;
3. Limits of Liability available under this policy for future payment of *Damages* or *Claim Expenses*; and
4. Other related factors.

The additional premium for the Supplemental *Extended Reporting Period* coverage will not exceed two hundred percent (200%) of the annual premium for this policy.

The Supplemental *Extended Reporting Period* endorsement the Company issues shall set forth the terms, not inconsistent with this section V. *EXTENDED REPORTING PERIODS*, including a provision to the effect that the insurance afforded for *Claims* first received during such period is excess over any other valid and collectible insurance available under policies in force after the Supplemental *Extended Reporting Period* begins.

## VI. POLICY CONDITIONS

### A. Duties in the Event of a *Potential Claim* or *Claim*

As a condition precedent for coverage under this Policy, an *Insured* must:

1. Upon acquiring knowledge of a *Potential Claim*, promptly notify the Company or its authorized representative, as soon as practicable, of any specific *Employment Practices* which any *Insured* believes may result in an actual *Claim*. The *Insured's* belief must be reasonably certain as the result of specific allegations made by a potential claimant or such potential claimant's representative, or as the result of specifically identifiable injury

sustained by a potential claimant. Notices of *Employment Practices* should include the following detailed information:

- (a) How, when and where such *Employment Practices* took place;
- (b) The names and addresses of any potential claimants and witnesses; and
- (c) The nature of any injury arising out of such *Employment Practices*.

Notice of such *Employment Practices* constitutes notice of a *Potential Claim*, and preserves any *Insured's* rights to future coverage for subsequent *Claims* arising out of such *Employment Practices* as described in the Basic *Extended Reporting Period* of section V. *EXTENDED REPORTING PERIODS*.

2. Upon receipt of a *Claim*:

- (a) Immediately record the specifics of the *Claim* and the date received;
- (b) Provide the Company with written notice of the *Claim* by mail, at:

CAMICO Mutual Insurance Company  
Claims Department  
1235 Radio Road, 2<sup>nd</sup> Floor  
Redwood City, California 94065

Notice given by or on behalf of an *Insured*, or written notice by or on behalf of the injured person or any other claimant, to any licensed agent of the Company in New York, with particulars sufficient to identify an *Insured*, shall be deemed notice to the Company. Failure to provide prompt notice shall not invalidate the *Claim* made if the *Insured* can establish that it was not reasonably possible to give prompt notice and that notice was given as soon as was reasonably possible.

(c) The *Named Insured* and any other involved *Insured* must:

- (1) Immediately send the Company copies of any demands, notices, summonses or legal papers received in connection with the *Claim*;
- (2) Authorize the Company to obtain records and other information;
- (3) Cooperate with the Company in the investigation, settlement or defense of the *Claim*; and
- (4) Assist the Company, upon its request, in the enforcement of any right against any *Person* or organization, which may be liable to the *Insured* because of injury or damage to which this insurance may also apply.

3. Refuse, except at the *Named Insured's* own cost, to admit any liability, assume responsibility for any *Damages*, voluntarily make any payment, or incur any *Claim Expenses* without the Company's prior written consent.

**B. Examination of Books and Records**

The Company may examine and audit the *Named Insured's* books and records as they relate to this insurance at any time during the *Policy Period* and up to three years thereafter.

**C. Transfer of *Insured's* Rights and Duties Under This Policy**

1. No *Insured* may transfer or assign any *Insured's* rights or interest in, or duties under, this policy without the Company's written consent.

2. If the Company makes any payment for *Damages* and/or *Claim Expenses*, it shall be subrogated to all of the *Insureds'* rights of recovery against anyone, and the *Insureds* shall do whatever is necessary to secure such rights. At the Company's request, the *Insureds* will sue those responsible or transfer those rights to the Company and help the Company enforce them. After becoming aware of a *Claim* or a *Potential Claim*, no *Insured* shall do anything to prejudice the Company's subrogation rights.

3. Any monetary recoveries will be distributed between the *Named Insured* and the Company in proportion to the amounts paid by the *Named Insured* within the Deductible and by the Company within the Limits of Liability.

#### **D. Legal Action Against the Company**

1. No *Insured* shall seek to join the Company as a party to a suit that seeks *Damages* from an *Insured* or sue the Company unless: (a) all of the terms and conditions of this Policy have been met, and (b) the amount of the *Insured's* obligation to pay *Damages* has been finally determined either by judgment against the *Insured* after an actual contested trial or by written agreement of the *Insured* and the claimant with the prior written consent of the Company.

2. In the event that a judgment against an *Insured* or an *Insured's* personal representative in an action brought to recover damages for injury sustained or loss or damage occasioned during the life of the Policy shall remain unsatisfied at the expiration of thirty days from the service of notice of entry of judgment upon the attorney for an *Insured*, or upon an *Insured*, and upon the Company, then an action may, except during a stay or limited stay of execution against the *Insured* on such judgment be maintained against the Company under the terms of the Policy for the amount of such judgment that is covered by this Policy and that does not exceed the amount of the remaining applicable Limit of Liability under the Policy.

#### **E. Other Insurance**

If other valid and collectible insurance is available to an *Insured* for *Damages* or *Claim Expenses* the Company covers under this policy, the Company's obligations are limited as follows:

1. As this insurance is primary insurance, the Company's obligations are not affected unless any of the other insurance is also primary. Then, the Company will share with all that other insurance by the methods described in subparagraph 2. below.

2. If all of the other insurance permits contribution by equal shares, the Company will follow this method also. Under this method, each insurer contributes equal amounts until it has paid its applicable Limit of Liability or none of the loss remains, whichever comes first. If any of the other insurance does not permit contribution by equal shares, the Company will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable Limit of Liability to the total applicable Limits of Liability of all insurers.

#### **F. Cancellation or Non-Renewal**

1. The *Named Insured* may cancel this Policy by providing written notice to the Company accompanied by surrender of the Policy to the Company or any of the Company's authorized agents, or by mailing written notice to the Company at the location stated VI. POLICY CONDITIONS, A. Duties in the Event of a *Potential Claim* or *Claim*, paragraph 1. The written notice must state the date on which the *Named Insured* requests cancellation to become effective. The mailing of notice by the *Named Insured* shall be sufficient proof of notice. The time of surrender shall become the end of the *Policy Period*. Hand delivery of such written notice by the *Named Insured* shall be equivalent to mailing.

2. Cancellation of Policies in Effect for Sixty (60) Days or Less:

If this Policy has been in effect for sixty (60) days or less, the Company may cancel the Policy by mailing or delivering to the *Named Insured* written notice stating the reason for cancellation at the mailing address shown in this Policy, and the authorized agent or broker at least:

(a) Fifteen (15) days before the effective date of cancellation, if the cancellation is based on one or more of the following reasons:

1. Nonpayment of premium;
2. An *Insured's* conviction of a crime arising out of acts increasing the hazard insured against;
3. Acts or omissions by the *Named Insured* or the *Named Insured's* representative constituting fraud or material misrepresentation in the procurement of this Policy, in continuing this Policy or in presenting a *Claim* under this Policy;
4. An act or omission of a policy condition by an *Insured* that substantially and materially increases the hazards insured against;
5. Material change in the risk;
6. Determination by the New York Superintendent of Insurance that the continuation of the policy would place the Company in violation of the insurance laws of this state; would jeopardize the Company's solvency; or would be hazardous to the interest of the Company's policyholders, creditors or the public; or
7. An *Insured's* professional license is revoked or suspended.

(b) Twenty (20) days before the effective date of cancellation if for any reason not stated in paragraph (a), above.

3. Cancellation of Policies in Effect for More Than Sixty (60) Days

If this Policy has been in effect for more than sixty (60) days, or if this Policy is a renewal or continuation of a policy issued by the Company, then the Policy may be cancelled by the Company only for one or more of the reasons listed in paragraph F.2.(a), above, providing written notice stating the reason for cancellation is mailed or delivered to the *Named Insured* at the mailing address shown in this Policy, and the authorized agent or broker at least fifteen (15) days before the effective date of cancellation.

4. Return of Unearned Premium

If the *Named Insured* cancels the Policy, earned premium will be computed in accordance with the customary short rate table and procedure. If the Company cancels this Policy, earned premium shall be computed pro rata, and a refund of unearned premium, except a premium that has been financed, shall accompany the notice of cancellation.

5. Non-Renewal

(a) The Company will give the *Named Insured* written notice not less than sixty (60) days nor more than one hundred twenty (120) days prior to the expiration of this Policy if the Company does not intend to renew this insurance, or if the Company intends to condition the renewal upon a change of limits, reduction in coverage, change in type of coverage, increased deductible or addition of exclusion, or upon increased premiums in excess of ten percent (10%). The notice will include the Company's reason for non-renewal or conditional renewal and the effective date of cancellation, and will be mailed or delivered to the *Named Insured* at the last known mailing address and to the *Named Insured's* authorized agent or broker. If notice is mailed, proof of mailing will be sufficient proof of notice.

(b) If either one of the following occurs, the Company is not required to provide written notice of nonrenewal: (i) CAMICO or a company within the same insurance group has offered to issue a renewal policy; or (ii) the *Named Insured* has obtained replacement coverage or agreed in writing to do so.

(c) If the Company's notice of nonrenewal is not timely provided prior to the Policy's expiration date, coverage shall remain in effect at the same terms and conditions of the expiring policy and at the lower of the current rates or the prior period's rates, until sixty (60) days after such notice is mailed or delivered. If prior thereto, the *Named Insured* has replaced the coverage or elects to cancel, such cancellation shall be on a pro rata premium basis. If the Company's notice of nonrenewal is not provided by the Company until on or after the Policy's expiration date, coverage will remain in effect on the same terms and conditions of the expiring policy for another *Policy Period*, and at the lower of the current rates or the expiring *Policy Period's* rates unless the *Named Insured* has replaced the coverage or elects to cancel, in which event, such cancellation shall be on a pro rata premium basis.

#### **G. Payment of Premiums and Deductibles**

1. The Company will compute all premiums for this insurance in accordance with its rules and rates; and

2. The *Named Insured* shown in the Declarations is responsible for the payment of all premiums and Deductibles due and will be the payee for any return premiums the Company pays.

#### **H. Separation of Insureds**

Except with respect to the Limits of Liability, and any rights or duties specifically assigned in this Policy to the *Named Insured*, this insurance applies:

1. As if each *Named Insured* were the only *Named Insured*; and
2. Separately to each *Insured* against whom a *Claim* is made.

#### **I. Sole Agent**

The *Named Insured* is authorized to act on behalf of all *Insureds* as respects the giving or receiving of notice of cancellation or non-renewal, receiving premium refunds, requesting any Supplemental *Extended Reporting Period* and agreeing to any changes in this Policy.

#### **J. Changes**

This Policy contains all agreements between the *Named Insured* and the Company concerning the insurance afforded. The *Named Insured* shown in the Declarations is authorized to make changes in the terms of this Policy with the Company's consent. This Policy's terms can be amended or waived only by endorsement issued by the Company and made a part of this Policy.

#### **K. Bankruptcy**

Subject to section III. EXCLUSIONS, paragraph (f).1., the bankruptcy or insolvency of the *Insured* or of the *Insured's* estate will not relieve the Company of its obligations under this Policy.

**L. Mutual Policy Provisions: Dividends, Voting, Policy Non-Assessable**

1. The *Named Insured* is a member of CAMICO Mutual Insurance Company and shall participate in the distribution of dividends fixed and determined by the Board of Directors.

2. The *Named Insured* is entitled to vote, either in *Person* or by proxy, at all meetings of CAMICO Mutual Insurance Company, pursuant to the Company's Bylaws and Articles of Incorporation.

3. This Policy is not assessable.

**M. Entire Contract**

By accepting this policy, each *Insured* agrees that the statements in the Declarations and in each application for renewal or supplementary application are his/her agreements and representations, that this Policy is issued in reliance upon the truth of such representations, and that this Policy embodies all agreements existing between each *Insured* and the Company or any of its agents relating to this insurance.

**IN WITNESS WHEREOF**, the Company has caused this Policy to be signed by its President and a Secretary and countersigned on the Declarations page by a duly authorized representative of the Company.

**PRESIDENT**

**SECRETARY**