

**EMPLOYMENT PRACTICES LIABILITY INSURANCE POLICY
CLAIMS-MADE**

I. PREAMBLE

THIS IS A CLAIMS-MADE POLICY IN WHICH COSTS OF DEFENSE ARE INCLUDED WITHIN AND SUBJECT TO THE LIMITS OF INSURANCE. READ THIS POLICY CAREFULLY.

Throughout this policy, unless the context otherwise requires, the words **you** and **your** refer to the **Named Insured** as identified in the Declarations and any other person qualifying as an **Insured** under Section III of this policy (**WHO IS AN INSURED**). The words **we**, **us** and **our** refer to Lexington Insurance Company.

Words appearing in boldface type in this policy shall have the meaning as defined in the **DEFINITIONS** section or elsewhere in this policy.

This policy covers employment related **Wrongful Termination, Discrimination, Sexual Harassment** and **Workplace Torts** liability, all subject to the terms, definitions, conditions, limitations, exclusions and other provisions set forth in this policy.

This policy has been issued by **us** in reliance upon the statements made to **us** by **you** or **your** authorized representative in **your** application for this policy, which application is attached to and forms a part of this policy.

II. INSURING AGREEMENT

A. INDEMNITY

1. Subject to all of the terms, limitations, conditions, definitions, exclusions and other provisions of this policy, **we** will pay all **Loss Amounts** that the **Insured** is legally obligated to pay because of an **Insured Event** to which this insurance applies. The amount **we** will pay is limited as described in Item 3 of the Declarations and in the Sections of this policy dealing with **LIMITS OF INSURANCE, DEFENSE, DEDUCTIBLE** and **OTHER INSURANCE**.
2. This policy applies only if:
 - a. **Claim** because of an **Insured Event** is first made against any **Insured** during the **Policy Period** as set forth in Item 2 of the Declarations, and
 - b. the **Insured Event** out of which the **Claim** arises does not happen or commence prior to the Inception Date of the first Employment Practices Liability Policy issued by **us** to the **Named Insured**, or after the **Policy Period** has ended.
3. **We** have the right to investigate and settle up to the applicable Limits of Insurance any **Claim** in the manner and to the extent **we**, in **our** sole discretion, deem proper. Upon receipt by **us** of notice of circumstances which are likely to give rise to a **Claim**, **we** also have the right (but not the duty) to investigate and make such a settlement even before a **Claim** is made.

B. DEFENSE

1. **We** have the right and duty to defend any **Claim** because of an **Insured Event** to which this insurance applies made or brought against any **Insured(s)**. **We** have the right to select defense counsel with the consent of the **Insured**, which consent shall not be unreasonably withheld.
2.
 - a. **Our** duty to defend any **Claim** ends when the Limits of Insurance applicable to that **Insured Event** (Item 3A of the Declarations) or to the **Policy Period** (Item 3B of the Declarations) have been exhausted.
 - b. If the **Policy Period** Limit (Item 3B of the Declarations) is exhausted, **we** will notify the **Named Insured** of all outstanding **Claims** so that the **Insured** can assume control of the defense of all such **Claims**.
 - c. In the event of exhaustion of the per **Insured Event** Limit and/or the total **Policy Period** Limit (Items 3A and 3B of the Declarations, respectively,) so that a transfer of the control of the defense from **us** to **you** becomes appropriate, **we** agree to continue the defense of the **Claim(s)** during that reasonable period of time necessary for **you** to assume control of the defense. However, **you** agree that, by so doing, **we** do not waive or surrender any of **our** rights including the right to withdraw from the defense of such **Claim(s)**. **You** also agree to promptly reimburse **us** for the expenses **we** incur in continuing to conduct the defense during the transition period from the time the applicable Limits of Insurance were exhausted until the time **you** have assumed such defense.
 - d. In the event that a claimant offers a settlement and **we** recommend that such settlement be accepted, but the **Insured** withholds consent to so settle and the **Claim** later results in a judgment or settlement in excess of the amount of the earlier settlement offer, then **our** liability shall be limited to the amount of such settlement offer. In such event, the **Insured** shall also reimburse **us** for all **Defense Costs we** paid subsequent to the date the **Insured** withheld its consent to settle.
 - e. The costs of defense are not in addition to but rather are included within and subject to the Limits of Insurance.

C. OTHER BENEFITS

1. Pre-judgment Interest

We shall pay the amount of pre-judgment interest imposed on a verdict. However, **our** obligation to pay pre-judgment interest shall not be in addition to the applicable Limits of Insurance but rather shall be within and subject to said Limits of Insurance.

2. Post-judgment Interest

We shall pay the entire amount of post-judgment interest calculated upon the amount for which **we** are liable under this policy until such time as **we** have paid or tendered such amount.

III. WHO IS AN INSURED

- A. **Individual.** If **you** are shown in the Declarations as an individual, **you** are insured only for the conduct of a business of which **you** are the sole owner.
- B. **Corporation.** If **you** are shown in the Declarations as a corporation or organization other than a partnership or joint venture, **you**, and any entity in which **you** own a 50.1% or greater interest at the time of Inception Date of this policy or which is identified in the Declarations or by endorsement to this policy, are an **Insured**. **Your** officers and directors are **Insureds**, but only with respect to their duties as **your** officers or directors.
- C. **Partnership or joint venture.** If **you** are shown in the Declarations as a partnership or joint venture, **you** are an **Insured**. **Your** partners or joint venturers are also **Insureds** but only for the conduct of **your** business.

However, no person or organization is covered for the conduct of any current or past partnership or joint venture not named in the Declarations.

- D. **Acquisitions.** Any organization that **you** newly acquire or form during the **Policy Period** which at the time of acquisition or formation constitutes less than 20% of the overall total **employee** count of the **Insured** becomes an **Insured** when **you** own at least 50.1% of it, but no newly acquired or formed organization is covered for:

- a) any **Loss Amount** that results from an act or incident that happened or commenced before **you** acquired or formed it,
- b) any **Loss Amount** covered under other insurance.

Any newly acquired or formed organization which at the time of acquisition or formation constitutes 20% or more of the overall total **employee** count of the **Insured** becomes an **Insured** when **you** own at least 50.1% of it, but no newly acquired or formed organization is covered for

- a) any **Loss Amount** that results from an act or incident that happened or commenced before **you** acquired or formed it,
- b) any **Loss Amount** covered under other insurance,
- c) more than ninety (90) days or the remainder of the **Policy Period**, whichever is less, unless the **Named Insured** gives **us** written acceptance of any special terms, conditions, exclusions, or additional premium charge **we** may require.

- E. **Employees.** **Your Employees** are **Insureds** but only for the conduct of **your** business within the scope of their employment. **Your Employees'** status as **Insureds** will be determined as of the date of the alleged **Discrimination, Sexual Harassment, Wrongful Termination or Workplace Torts**.

IV. EXCLUSIONS

- A. **Workers' Compensation.** This policy does not cover any obligation under a workers' compensation, disability benefits or unemployment compensation law, or any similar law.

- B. **Liability Assumed by Contract.** This policy does not cover any **Loss Amount** which the **Insured** is obligated to pay by reason of the assumption of another's liability for an **Insured Event** in a contract or agreement.

This exclusion shall not apply to liability for damages because of an **Insured Event** that the **Insured** would have had even in the absence of such contract or agreement.
- C. **Employee Retirement Income Security Act.** This policy does not cover any liability imposed on the **Insured** under the Employee Retirement Income Security Act of 1974, Public Law 93-406, or any amendments thereto.
- D. **Strikes and Lockouts.** This policy does not cover any **Loss Amount(s)** or costs arising out of or associated with a lockout, strike, picket line, replacement or other similar actions in connection with labor disputes or labor negotiations. This exclusion shall not apply to a **Claim** brought by an **Employee(s)** alleging **Wrongful Termination** or retaliation as a result of strike activity or union involvement.
- E. **W.A.R.N. Act.** This policy does not cover any liability arising out of the Workers' Adjustment and Retraining Notification Act, Public Law 100-379 (1988), or any amendment thereto, or any similar federal, state or local law.
- F. This policy does not apply with respect to liability or costs incurred by any **Insured** to modify any building or property in order to make said building or property more accessible or accommodating to any disabled person.
- G. This policy does not apply, other than **Defense Costs**, to damages imposed as a result of the termination of an express contract of employment.
- H. **Wage Claims.** This policy does not cover any **Claim** brought against any **Insured** for failure to pay wages earned by an **employee**, including but not limited to any **claim** brought under the overtime compensation or minimum wage provisions of the Fair Labor Standards Act, 29 U.S.C. 201 et seq., or any state or local law governing the payment of overtime compensation or minimum wage. This exclusion does not apply to any **claim** brought pursuant to the Equal Pay Act, 29 U.S.C. s. 206 (d).

V. **LIMITS OF INSURANCE**

A. **Each Insured Event Limit.**

The amount shown as the **Each Insured Event** Limit in Item 3A of the Declarations is the most **we** will pay for all **Claims** made or brought arising out of one **Insured Event**, regardless of the number of **Claims** made, claimants, or **Insureds** against whom such **Claims** are made.

B. **Total Policy Period Limit.**

Subject to the **Each Insured Event** Limit, the amount shown as the **Total Policy Period** Limit in Item 3B of the Declarations is the most **we** will pay under this policy for all **Claims** made or brought during the **Policy Period**.

VI. WHEN COVERAGE IS PROVIDED

- A. Subject to the other provisions of this policy, including those regarding **Limited and Extended Reporting Periods**, if applicable, this policy applies only to **Claims** first made against any **Insured** during the **Policy Period**.
- B. A **Claim** shall be considered to be made on the earlier of:
1. the date any **Insured** receives a written notice of a **Claim** being made against any **Insured** seeking damages covered by this policy; or
 2. the date **we** make a settlement on account of an **Insured Event** but in advance of written **Claim** being made.
- C. All **Claims** arising out of one **Insured Event** shall be considered to be one **Claim** and shall be deemed to be made at the time the first of such **Claims** is made. If such **Claims** are made while this policy is in effect and also while predecessor or successor policies issued by **us** are in effect, all such **Claims** shall still be considered to have been made at the time the first of such **Claims** is made and only the policy in effect at that time shall apply to all such **Claims**.

VII. DEFINITIONS

- A. **Claim** means a written demand or notice received by an **Insured** in which damages likely to be covered by this policy are alleged. **Claim** includes a civil action, an administrative proceeding, alternative dispute resolution proceeding, or an action brought by a person or entity acting on behalf of an **Employee(s)** of the **Insured** to which **you** must submit or to which **you** submit with **our** consent. **Claim** shall include a proceeding for injunctive or non-monetary relief. **Claim** shall not include labor or grievance arbitration subject to a collective bargaining agreement. A class action lawsuit is considered one **Claim**.
- B. **Defense Costs** means those reasonable and necessary expenses that result from the investigation, settlement, defense of a specific **Claim**, including attorney fees and expenses, the cost of legal, administrative, or alternative dispute resolution proceedings, the cost of appeal bonds, the cost of bonds to release property being used to secure a legal obligation (but only for bond amounts within the Limit of Insurance that applies: **we** have no obligation to furnish such bonds), all reasonable expenses that any **Insured** incurs at **our** request while helping **us** investigate or defend a **Claim** and, subject to Section II, C of this policy, all costs taxed against any **Insured** in a suit.
- Salaries and expenses of any **Insured's Employees** shall not be deemed to be covered **Defense Costs**.
- Defense Costs** are included within, and are not in addition to, the applicable Limits of Insurance and Retention.
- C. **Discrimination** means termination of an employment relationship or a demotion or a failure or refusal to hire or promote or otherwise to take any action against any individual with respect to his or her compensation, terms, conditions, privileges or opportunities of employment because of race, color, religion, age, sex, disability, pregnancy, national origin, sexual orientation or other protected category or characteristic established pursuant to any applicable United States federal, state, or local statute or ordinance.

- D. **Employee** means an individual whose labor or service is engaged by and directed by an **Insured**. This includes part-time, seasonal and temporary **Employees** as well as any individual employed in a supervisory, managerial or confidential position. **Supervisory Employee** means an officer or director of an **Insured** or any **Employee** of an **Insured** who has the authority to employ or terminate the employment of other **Employees** of an **Insured**. An individual who is leased to the **Insured** shall be an **Employee**, but only if the **Insured** provides indemnification to such leased individual in the same manner as is provided to the **Insured's Employees**. Any other individual who is contracted to perform work for the **Insured**, or who is an independent contractor for the **Insured** shall also be an **Employee**, but only if the **Insured** provides indemnification to such individual in the same manner as that provided to the **Insured's Employees**, and such individual is scheduled by written endorsement attached hereto.
- E. **Insured Event** means (1) **your Employee** or former **Employee**, or an applicant for employment with **you**, alleging **Discrimination** by an **Insured**, or (2) **your Employee** or former **Employee** alleging **Sexual Harassment** by an **Insured**, or (3) **your** former **Employee** alleging **Wrongful Termination** by an **Insured**, (4) **your Employee** or former **Employee** or an applicant for employment with **you** alleging **Workplace Torts** by an **Insured**. Alleging means lodging an oral or written complaint or charge with **your** management or **Supervisory Employee(s)** or with **your** corporate legal or human resource departments.
- F. **Loss Amount** means all forms of compensatory damages, monetary damages, statutory damages, multiplied damages, punitive or exemplary damages, judgments, settlements, statutory attorney fees, and **Defense Costs** arising out of **Claim(s)** alleging **Discrimination**, **Sexual Harassment**, **Wrongful Termination** or **Workplace Torts**.

It is agreed that the law of the jurisdiction most favorable to the insurability of punitive or exemplary damages shall control for the purpose of resolving any issue or dispute regarding whether these damages are insurable under this policy.

Loss Amount shall not include criminal fines or penalties.

Loss Amount also shall not include payment of insurance plan benefits claimed by or on behalf of any retired **Employee**, or that a claimant would have been entitled to as an **Employee** had the **Insured** provided the claimant with a continuation of insurance.

Loss Amount also shall not include amounts awarded pursuant to a labor or grievance arbitration pursuant to a collective bargaining agreement.

Loss Amount also shall not include vested and non-vested stock options, retirement benefits, severance pay, bonus, prerequisites, commissions, fringe benefits, vacation days or sick days.

- G. **Policy Period** means the period of time commencing with the Inception Date shown in Item 2 of the Declarations and the earlier of the termination date shown in Item 2 of the Declarations or the date on which this policy is terminated by cancellation by **you** or by **us**.
- H. **Sexual Harassment** means unwelcome sexual advances and/or requests for sexual favors and/or other verbal or physical conduct of a sexual nature that: (1) are made a condition of employment and/or (2) are used as a basis for

employment decisions and/or (3) create a work environment that interferes with performance or creates an intimidating, hostile, or offensive work environment.

- I. **Workplace Torts** means retaliation, defamation, infliction of emotional distress, invasion of privacy, negligent evaluation, wrongful discipline, wrongful reference, failure to grant tenure, wrongful failure to employ or promote, or wrongful demotion.
- J. **Wrongful Termination** means termination of an employment relationship in a manner which is against the law and wrongful or in breach of an implied agreement to continue employment. Wrongful Termination shall include but shall not be limited to breach of an implied employment contract, retaliation, or the filing of a Claim under federal, state, local or foreign "whistleblower" laws.

VIII. DEDUCTIBLE

A. **Deductible**

Our obligation to pay under this policy applies only to the **Loss Amount** in excess of the deductible amount stated in Item 3C of the Declarations. The deductible shall apply separately to each **Claim**.

- B. The **Named Insured** shall reimburse **us** promptly for any amounts **we** have paid which are within the deductible amount.

IX. LIMITED AND EXTENDED REPORTING PERIODS

- A. **Limited Reporting Period** means the sixty (60) day period starting with the end of the **Policy Period**. Any **Claim** which is first made during the **Limited Reporting Period** because of an **Insured Event** which happened or commenced after the inception date of the first Employment Practices Liability Policy issued by **us** to the **Named Insured** because of an act or incident which happened or commenced prior to the end of the **Policy Period** shall be deemed to have been made on the last day of the **Policy Period**.
- B. When the **Limited Reporting Period** will apply. The **Limited Reporting Period** will apply only if this insurance is cancelled by **us** or not renewed by **us** for any reason other than **your** non-payment of a premium or deductible or non-compliance with the terms and conditions of this policy. An increase in premium or other changes in the terms and conditions of this coverage shall not constitute a non-renewal for the purpose of this provision. However, the **Limited Reporting Period** will not apply to **Claims** if other insurance you buy covers them or would cover them if its Limits of Insurance had not been exhausted.
- C. How to add an **Extended Reporting Period**. If the **Limited Reporting Period** applies, an **Extended Reporting Period**, starting at the end of the **Limited Reporting Period**, can be added by means of an **Extended Reporting Period Endorsement** and the payment of an additional premium. The **Extended Reporting Period Endorsement** attached to this policy sets forth the terms and conditions of the **Extended Reporting Period**.

Any **Claim** which is first made during the **Extended Reporting Period** because of an **Insured Event** which happened or commenced after the inception date of the first Employment Practices Liability Policy issued by **us** to the **Named Insured** because of an act or incident which happened or commenced prior to the end of the **Policy Period** shall be deemed to have been made on the last day of the **Policy Period**.

The **Extended Reporting Period Endorsement** will not be issued unless **we** receive a written request for it within sixty (60) days after the end of the **Policy Period**, nor will it take effect unless the additional premium is paid when due.

The additional premium for the **Extended Reporting Period** will be determined by **Us** pursuant to **Our** underwriting review and discretion.

- D. How the Limits of Insurance apply to the **Limited and Extended Reporting Periods**. The Limits of Insurance that remain at the end of the **Policy Period** after payment of all **Loss Amounts** and **Defense Costs** made on account of **Claims** made during the **Policy Period** are not reinstated, renewed or increased for **Claims** first made or brought during the **Limited Reporting Period** or the **Extended Reporting Period**. Any **Claim** first made or brought during the **Limited Reporting Period** or the **Extended Reporting Period** will be deemed to have been first made on the last day of the **Policy Period** which terminated immediately prior to the start of the **Limited Reporting Period**.

X. **CONDITIONS**

It shall be a condition precedent to our obligations under this policy that the Insureds comply with all of the Conditions.

A. **DUTIES IN THE EVENT OF AN INCIDENT, CLAIM OR SUIT**

1. **Notice of incident - You** shall give **us** written notice as soon as practicable after an **Insured** becomes aware of any incident which is likely to give rise to a **Claim** covered by this policy. Such notice shall include as much detail as possible and shall include, to the extent possible:
 - a. the identity of the person(s) alleging **Discrimination, Wrongful Termination, Sexual Harassment or Workplace Torts**;
 - b. the identities of the **Insured(s)** who allegedly committed the **Discrimination, Wrongful Termination, Sexual Harassment or Workplace Torts** and any witnesses;
 - c. the date the alleged incident took place; and
 - d. any other information or documentation pertinent to the alleged incident.

Notice of such an incident likely to give rise to a **Claim** nevertheless does not constitute a **Claim** being made.

2. If a **Claim** is made or suit is brought against any **Insured you** must:
 - a. immediately record the specifics of the **Claim** and the date received; and
 - b. notify **us** in writing as soon as practicable;
 - c. immediately send **us** copies of any demands, notices, summonses or legal papers received in connection with the **Claim**;
 - d. authorize **us** to obtain records and other information;

- e. cooperate with **us** in the investigation, settlement or defense of the **Claim**; and
 - f. assist **us**, upon **our** request, in the enforcement of any right against any person or organization which may be liable to any **Insured** because of injury or damage to which this insurance may also apply.
3. All notices hereunder of **Claims**, or of incidents which may reasonably be expected to give rise to a **Claim** being made against the **Insured**, shall be in writing to Lexington Insurance Company, 200 State Street, Boston, Massachusetts 02109; Attention: Supervisor of Professional Liability Claims.

B. OTHER INSURANCE

1. **Primary Insurance**-Unless expressly written to be excess over other applicable insurance, it is intended that this insurance be primary with respect to **Wrongful Termination, Discrimination, Sexual Harassment and Workplace Torts**.
2. **Excess Insurance**- When this insurance is specifically written to be excess of other insurance, **we** will have no duty to defend any **Claim** that any other insurer has a duty to defend until such time as the underlying insurance is exhausted by payment of **Loss Amounts** that would, in the absence of such primary policy, be recoverable under this policy. When this policy is excess, **we** will pay only that amount, in excess of the primary insurance, any deductible or self insured retention in connection with the primary insurance, and the deductible amount set forth in this policy.

C. VOLUNTARY PAYMENTS

No **Insured** shall, except at the **Insureds'** sole cost, make any payment, assume any obligation or incur any expense without **our** consent.

D. REPRESENTATIONS

By accepting this policy, **you** agree that:

1. the statements in the Application and Declarations are accurate and complete;
2. those statements are based upon representations **you** made to **us**;
3. **we** have issued this policy in reliance upon **your** representations; and
4. the representations made are binding on all **Insureds**.

E. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

If any **Insured** has rights to recover all or part of any payment **we** have made under this policy, those rights are transferred to **us**. The **Insured** must do nothing after an **Insured Event** or a **Claim** to impair them. At **our** request, the **Insured** will transfer those rights to **us** and help **us** enforce them.

F. BANKRUPTCY

The bankruptcy, insolvency or inability to pay of an **Insured** or of an **Insured's** estate will not relieve **us** of **our** obligations under this policy. However, neither shall such bankruptcy, insolvency or inability to pay increase **our** liability with respect to the deductible, nor in any other way.

G. CANCELLATION

1. The **Named Insured** shown in the Declarations may cancel this policy by mailing or delivering to **us** advance written notice of cancellation.
2. **We** may cancel this policy by mailing or delivering to the **Named Insured** written notice of cancellation at least:
 - a. 10 days before the effective time of cancellation if **we** cancel for nonpayment of premium; or
 - b. 30 days before the effective time of cancellation if **we** cancel for any other reason.
3. **We** will mail or deliver **our** notice to the **Named Insured's** last mailing address known to **us**.
4. Notice of cancellation will state the effective time of cancellation. The **Policy Period** will end at that time.
5. If this policy is cancelled, **we** will send the **Named Insured** any premium refund due in due course. If **we** cancel, the refund will be pro rata. If the **Named Insured** cancels, the refund will be on the customary short rate basis. The return or tender of a return premium shall not be a condition precedent to the cancellation becoming effective at the time stated in the cancellation notice.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.
7. If any law controlling requires a longer period of notice by **us**, **we** will give the longer notice.

H. CHANGES

This policy contains all the agreements between **you** and **us** concerning the insurance afforded. The **Named Insured** shown in the Declarations is authorized by all other **Insureds** to negotiate changes in the terms of this policy with **us** and to receive and give all notices under this policy. This policy's terms can be amended or waived only by endorsement issued by **us** and made part of the policy.

I. PREMIUMS

The **Named Insured** shown in the Declarations:

1. is responsible for the payment of all premiums; and
2. will be the payee for any return premiums **we** pay.

J. LEGAL ACTION AGAINST US

1. No person or organization has a right under this policy:
 - a. to join **us** as a party or otherwise bring **us** into a suit asking for damages from any **Insured**; or
 - b. to sue **us** on this policy unless all of its terms have been fully complied with.
2. A person or organization may sue **us** to recover on an agreed settlement or on a final judgment against the **Insured** obtained after an actual trial, but **we** will not be liable for any **Loss Amount** that is not payable under the terms of this policy or that is in excess of the applicable Limits of Insurance. An agreed settlement means a settlement and release of liability signed by **us**, the **Insured** and the claimant or the claimant's legal representative.

K. TAKEOVER OF INSURED

In the event 51% or more of the controlling interest of any **Insured** is changed during the **Policy Period**, then this policy shall automatically terminate upon the completion of such change in control. From that point forward, such insurance as is afforded by this policy shall apply only to **Claims** which had first been made prior to that change in control.

L. SERVICE OF SUIT

It is agreed that in the event of **our** failure to pay any amount claimed to be due hereunder, **we**, at the request of the **Insured**, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this condition constitutes or should be understood to constitute a waiver of **our** rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a 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 may be made upon Counsel, Legal Department, Lexington Insurance Company, 200 State Street, Boston, MA 02109, or his or her representative, and that in any suit instituted against **us** upon this policy, **we** will abide by the final decision of such court or of an appellate court in the event of any appeal.

Further, pursuant to any statute of any state, territory, or district of the United States which makes provision therefor, **we** 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 **our** true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of **you** or any beneficiary hereunder arising out of this contract of insurance, and hereby designate the Counsel, Legal Department, Lexington Insurance Company, 200 State Street, Boston, Massachusetts 02109, as the person to whom the said officer is authorized to mail such process or a true copy thereof.

M. ARBITRATION

Notwithstanding the Service of Suit condition above, in the event of a disagreement as to the interpretation of this policy, it is mutually agreed that such dispute shall be submitted to binding arbitration before a panel of three (3)

Arbitrators consisting of two (2) party-nominated (non-impartial) Arbitrators and a third (impartial) Arbitrator (hereinafter "umpire") as the sole and exclusive remedy. The party desiring arbitration of a dispute shall notify the other party, said notice including the name, address and occupation of the Arbitrator nominated by the demanding party. The other party shall, within 30 days following receipt of the demand, notify in writing the demanding party of the name, address and occupation of the Arbitrator nominated by it. The two (2) Arbitrators so selected shall, within 30 days of the appointment of the second Arbitrator, select an umpire. If the Arbitrators are unable to agree upon an umpire, each Arbitrator shall submit to the other Arbitrator a list of three (3) proposed individuals, from which list each Arbitrator shall choose one (1) individual. The names of the two (2) individuals so chosen shall be subject to a draw, whereby the individual drawn shall serve as umpire.

The parties shall submit their cases to the panel by written and oral evidence at a hearing time and place selected by the umpire. Said hearings shall be held within 30 days of the selection of the umpire. The panel shall be relieved of all judicial formality, shall not be obligated to adhere to the strict rules of law or of evidence, shall seek to enforce the intent of the parties hereto and may refer to, but are not limited to, relevant legal principles. The decision of at least two (2) of the three (3) panel members shall be binding and final and not subject to appeal except for grounds of fraud and gross misconduct by the Arbitrators. The award will be issued within 30 days of the close of the hearings. Each party shall bear the expenses of its designated Arbitrator and shall jointly and equally share with the other the expense of the umpire and of the arbitration.

The arbitration proceeding shall take place in or in the vicinity of Boston, Massachusetts. The procedural rules applicable to this arbitration shall, except as provided otherwise herein, be in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

IN WITNESS WHEREOF, **we** have caused this policy to be signed by our President and Secretary, but this policy shall not be valid unless also signed on the declarations page by **our** duly authorized representative.

Secretary

President