



PRIMARY EMPLOYERS INDEMNITY POLICY

THE PERIOD OF TIME TO MAKE A COVERED CLAIM UNDER THIS POLICY IS LIMITED. PLEASE READ THE ENTIRE POLICY CAREFULLY.

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 the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Company providing this insurance. The words "he", "his", "him", and "himself" shall include "she", "hers", "her" and "herself" respectively when referring to a female.

Other words and phrases that appear in bold print have special meaning. Refer to Section V, DEFINITIONS.

In consideration of the payment of premium, in reliance upon the statements in the Policy **application** and Declarations which are made a part of this Policy, and subject to the terms, conditions and exclusions of this Policy that are based upon the terms, conditions and exclusions of your **ERISA Plan**, we agree with you as follows:

I. GENERAL SECTION

A) THE POLICY

This Policy includes the Policy **application**, the request for proposal, the Declarations, endorsements, and schedules of insurance to the Policy. It is a contract of insurance between you and us. The only agreements relating to this insurance are stated in this Policy. The terms of this Policy may not be changed or waived except by written endorsement issued by us to be a part of this Policy.

B) POLICY PERIOD

The Policy Period is shown on the Declarations. If this Policy is canceled for any reason, the Policy Period will end at 12:01 a.m. on the cancellation date whether or not you have received any premium refund.

II. INSURING AGREEMENT

A) We will indemnify you for **plan benefits** and **employers liability bodily injury damages** paid by you because of **bodily injury**, to which this insurance applies.

B) This insurance applies to **bodily injury** only if:

1. The **bodily injury**, is caused by an **occurrence** that takes place while the **covered employee** is acting in the **scope of employment**; and

2. The **bodily injury**, is caused by an **occurrence** that takes place during the Policy Period;
- C) The total amount we will indemnify you under this Policy for covered **plan benefits** and **employers liability bodily injury damages** is the amount of covered **plan benefits** and **employers liability bodily injury damages** that are in excess of your Self-Insured Retention, subject to our Limits of Insurance as described in Section IV. B.
- D) We have no other obligation or liability to pay sums or perform acts or services under this Policy other than to reimburse you for covered **plan benefits** and **employers liability bodily injury damages**.
- E) We shall have the right, and the duty, to defend at our own expense any legal action, including, but not limited to claims or suits against you arising from a claim due to **bodily injury** resulting from an **occurrence**; or arising from a claim for **ERISA Plan Benefits** under your **ERISA Plan** that, in our opinion, may result in a payment under this Policy. We shall select legal counsel to represent you. Any legal defense costs incurred by us through counsel retained by us to defend a particular claim shall be paid by us. We have no duty to defend any legal action which does not arise from an **occurrence**. Also, we have no duty to defend you against any legal action seeking damages for **bodily injury** arising outside the **scope of employment**, or any other known or unknown claim to which this insurance does not apply.
- F) The legal defense and defense-related costs, paid at our expense, are not subject to and will not erode the Limits of Coverage.
- G) You must cooperate with us in the investigation, settlement and defense of the claim or legal action brought against you. You must immediately send us copies of any demands, notices, summonses or legal papers received in connection with such claim, proceeding or legal action; and cooperate with us with respect to coordinating with other applicable insurance available to you.

III. WHO IS AN INSURED

In addition to the person(s) or organization(s) named on the Declarations, each of the following is also a Named Insured:

- A) If the Named Insured on the Declarations is an individual, then his spouse, but only with respect to the conduct of a business of which the Named Insured is the sole owner.
- B) If the Named Insured on the Declarations is a partnership or joint venture, then your members, partners, joint ventures and their spouses, but only with respect to the conduct of your business.
- C) If the Named Insured on the Declarations is a limited liability company, your members, but only with respect to the conduct of your business.

- D) If the Named Insured on the Declarations is a corporation, then your directors, officers and shareholders of the corporation, but only with respect to the conduct of the corporation's business.
- E) Your managers, supervisors and superintendents, but only with respect to the conduct of your business and only for acts within the **scope of employment**.

IV. SELF-INSURED RETENTION AND LIMITS OF INSURANCE

A) SELF-INSURED RETENTION

1. Self-Insured Retention, as shown on the Declarations, means the sum of the **ERISA Plan benefits** and **employers liability bodily injury damages** paid by you, less recoveries, before we will indemnify you for any covered losses under this Policy. Your Self-Insured Retention shall apply per **covered employee** per **occurrence** to all losses resulting from **bodily injury** covered under this Policy.
2. Naming more than one Named Insured on the Declarations does not increase the amount of your Self-Insured Retention.
3. Amounts for **weekly indemnity** will not begin accruing towards the applicable Self-Insured Retention until after the expiration of the **elimination period** shown on the Declarations.
4. You must report to us all **ERISA Plan benefits** and **employers liability bodily injury damages** paid by you to satisfy your Self-Insured Retention obligations.
5. No payment shall be made by you in excess of your Self-Insured Retention without our prior written agreement.

B) LIMITS OF INSURANCE

1. The Policy Aggregate Limit, if any, as shown on the Declarations is the most we will indemnify you for the sum of all covered losses under this Policy that have been paid by you.
2. Subject to the Policy Aggregate Limit, if any, the Combined Single Limit Per **covered employee** shown on the Declarations is the most we will Indemnify you for the sum of all covered losses under this Policy per any one **covered employee** per any one **occurrence** that have been paid by you.
3. Subject to the Policy Aggregate Limit, if any, the Combined Single Limit per **occurrence** shown on the Declarations is the most we will indemnify you for the sum of all covered losses under this Policy per any one **occurrence** that have been paid by you.

4. Subject to the Policy Aggregate Limit, if any, and the Combined Single Limit, the following Limits of Insurance shall apply for covered losses that have been paid by you:

a. Medical Expense

For covered **medical expenses**, we will indemnify you for the smaller of the Combined Single Limit for any one **covered employee** for any one **occurrence** shown on the Declarations or the actual amounts of covered **medical expenses** paid under your **ERISA Plan** by you for any one **covered employee** for any one **occurrence**.

b. Weekly Indemnity

If a **covered employee** suffers a **disability**, we will indemnify you, subject to the **elimination period**, for the smaller of the maximum **Weekly Indemnity** limit per **covered employee** shown on the Declarations times the maximum weeks duration per **covered employee** per **occurrence** shown on the Declarations or the actual amounts of covered **weekly indemnity** losses paid under your **ERISA Plan** by you for any one **covered employee**.

The **disability** must commence within:

1. 90 days after the date of the **occurrence** that caused the **disability**; or
2. 180 days after the date of the **occurrence** that caused the **disability**, provided:

- a. the **covered employee** received medical treatment within 30 days from the date of the **occurrence** that caused the **disability**; and
- b. the **covered employee** has remained under the continuous care of a **physician**.

If an otherwise **disabled covered employee** returns to work for the Named Insured while in rehabilitative status, he or she will be deemed continually **disabled**. We will continue to indemnify you for amounts paid under your **ERISA Plan** for **weekly indemnity** losses. Such payment shall not exceed 100% of the **disabled covered employee's** average weekly wage.

We will indemnify you up to a maximum of 12 months in any one period of **disability** while rehabilitative status continues.

We may require you to submit proof of continued **disability** and of continuous care of a **covered employee**. This may be done as often as we consider necessary and reasonable. Failure to submit the requested proof will cause us to suspend indemnification until such proof is received.

c. Accidental Death, Dismemberment And Loss of Use

If a **covered employee** suffers an Accidental Death, Dismemberment or Loss of Use we will indemnify you, subject to the Combined Single Limit shown in Item 5 of the Declarations, for the lesser of the actual amounts of the Accidental Death, Dismemberment or Loss of Use benefit paid under your ERISA Plan or 10 times the **covered employee's** average annual earnings plus up to an additional \$5,000 for burial costs in the event of death.

In the event of multiple dismemberment losses, we will pay for only the covered dismemberment loss per **covered employee** with the largest benefit as specified below:

<u>Loss:</u>	<u>Amount of Coverage:</u> (Stated as a percentage of the Combined Single Limit)
Life.....	100%
Both Hands.....	100%
Both Feet.....	100%
Sight of Both Eyes.....	100%
One Hand and One Foot.....	100%
One Hand and Sight of One Eye.....	100%
One Foot and Sight of One Eye.....	100%
Speech and Hearing in Both Ears.....	100%
Use of Both Arms and Both Legs.....	100%
Use of Both Arms or Both Legs.....	75%
Use of One Arm and One Leg.....	75%
Speech.....	50%
Hearing in Both Ears.....	50%
One Hand.....	50%
One Foot.....	50%
Sight of One Eye.....	50%
Use of One Arm or One Leg.....	50%
One Thumb.....	25%

If a **bodily injury** is covered as an **accidental** death or dismemberment under this Policy, such **bodily injury** shall only be covered as an **accidental** death or dismemberment and any other payments made by us under this Policy for the same **bodily injury** shall be applied to reduce the Combined Single Limit per **covered employee** as shown in Item 5 of the Declarations.

d. Employers Liability **Bodily Injury** Damages

For covered Employers Liability **Bodily Injury** Damages, we will indemnify you for amounts paid by you for claims or demands asserted by a **covered employee**, or a deceased **covered employee's** estate, as a result of a covered **occurrence**.

If an **occurrence** is covered as an employers liability **bodily injury** damages loss under this Policy and payments have been made by us for the same **occurrence** to indemnify you for **medical expenses**, accidental death or dismemberment, or **weekly indemnity**, such payments made by us shall be applied to reduce the Combined Single Limit per **covered employee** as shown in Item 5 of the Declarations.

5. The Limits of Insurance 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 Limits of Insurance.
6. Naming more than one Named Insured on the Declarations does not increase our Limits of Insurance.

V. DEFINITIONS

The following terms shall have the following meaning when used in this Policy, whether capitalized or in bold font or not:

Accident or **Accidental** means an event which:

1. was sudden, unforeseen, unplanned or unexpected;
2. occurred at a specifically identifiable time and place; and
3. occurred during the Policy Period.

Application means the form(s) you filled out, or which were filled out on your behalf, to request coverage under the Policy, including but not limited to the **Application** for coverage, the loss verification form and the request for proposal.

Bodily injury means an identifiable physical injury to a **covered employee**, including resulting death, caused by an **accident** that occurs within the **scope of employment** during the Policy Period. **Bodily injury** includes occupational **disease** or **cumulative trauma** that arises from an **accident**.

Combined benefit period means the number of weeks shown on the Declarations. Each **occurrence** shall have a separate **combined benefit period** that begins with the date of **occurrence**.

Covered employee means a person who is employed in your regular business at one of your covered locations, or at a location outside of Texas for a period of less than 90 consecutive days during the Policy Period, is under your direction and control, and receives pay by means of a salary, wage, or commission directly from you as reported to the Internal Revenue Service. A **covered employee** must be acting within his or her **scope of employment** at the time and place of the **occurrence** causing the **bodily injury**.

Provided, however, the term **covered employee** specifically includes executive officers unless excluded by endorsement. Provided further that under no circumstances shall the term **covered employee** include a leased employee, an independent contractor, or a third-party agent.

Covered locations shall mean your work locations in the State of Texas that are reported by you to us as shown in your **application** or in a schedule of insurance to this Policy. Upon our discovery of a new work location not reported to us at the time of your **application**, additional

premium may become due for any such new office location.

Cumulative trauma means damage to the physical structure of the body of a **covered employee** occurring as a result of repetitious, physically traumatic activities that occur within the **scope of employment** during the Policy Period. **Cumulative trauma** does not include **bodily injury** or occupational **disease**.

Disease means a condition marked by a pronounced deviation from the normal healthy state or normal pregnancy of a **covered employee**.

Disability or **disabled** means **bodily injury**, **cumulative trauma** or occupational **disease** resulting from an **occurrence** which causes the **covered employee** to be unable to perform the material duties of the occupation, business or employment which the **covered employee** held at the time of the **bodily injury**. The **covered employee** must be under the continuous care of a **physician** during the period of **disability**.

Effective Date means the date stated in the Declarations.

Elimination period means the number of consecutive working days after **accidental bodily injury** occurs during which the injured **covered employee** must be **disabled**, but for which no indemnity is payable or reimbursable under this Policy. A working day is considered any day on which the **covered employee** would normally be at work.

Employers Liability Bodily Injury Damages means all reasonable and necessary amounts paid by you to obtain a release of liability, to settle a claim, to pay a judgment, and to defend, mediate or arbitrate in a workplace negligence action brought by a **covered employee** because of **bodily injury**, occupational **disease** or **cumulative trauma** occurring during the Policy Period. Employers liability **bodily injury** damages includes settlements, court costs, prejudgment interest, post-judgment interest, investigations, adjustment expenses, mediation, arbitration and legal expenses to defend the claim of a **covered employee** and amounts awarded by a court for pain and suffering and punitive or exemplary damages, unless indemnity for such damages is prohibited by law. **Employer's liability bodily injury damages** do not include your office expenses or salaries of your **covered employees**. Damages incurred or paid by you or your designated agent for claim handling, or the failure to pay, or the delay in payment of **Plan benefits** under your ERISA Plan are specifically excluded under this Policy. We have the sole discretion whether amounts sought to be reimbursed under this coverage are reasonable.

ERISA Plan or **Plan** means your occupational injury benefit plan, in a form satisfactory to us, complying with the federal Employee Retirement Income Security Act of 1974, as amended, ("ERISA") that provides occupational injury benefits to your **covered employees**. We must be notified in writing within 31 days of any and all amendments to your **ERISA Plan**. The acceptance of all changes by us must be in writing. If we are not notified, or if **Plan** changes are not approved by us, the Policy will provide coverage based on the Plan prior to such change.

Hospital means a lawful institution that:

1. is licensed and operated according to the law of the jurisdiction in which it is located pertaining to **hospitals** for the care and treatment of sick and injured

- persons;
2. is open at all times;
 3. functions chiefly for the care and treatment of sick and injured persons as admitted inpatients;
 4. is supervised by one or more licensed **physicians** at all times;
 5. provides 24 hour services of **nurses**; and
 6. has on its premises or available on a prearranged basis, organized facilities for diagnosis and major surgery.

An institution which provides for the care and treatment of mentally ill, emotionally ill or retarded persons, or persons confined for alcoholism or substance abuse may be considered a **hospital**, whether or not it has organized facilities on the premises for major surgery, so long as it meets the rest of the requirements listed above.

Hourly wage, for purposes of calculating a **weekly indemnity**, means the **payroll** paid to a **covered employee** for the most recent six weeks period, or shorter period if employed less than six weeks, prior to the **occurrence** giving rise to the **bodily injury, cumulative trauma, or occupational disease**. For salaried **covered employees**, the **hourly wage** shall be the **payroll** paid to the **covered employee** during the most recent six weeks period, or shorter period if employed less than six weeks, prior to the **occurrence**, divided by the number of work hours applicable to that salary if known, or by forty (40) hours per week, if not known. For **covered employees** paid on commission, the **covered employee's hourly wage** shall be his or her **payroll** divided by fifty two (52) to arrive at an average weekly wage. That average weekly wage will then be divided by forty (40) to determine the **covered employee's hourly wage** for purposes of calculating a **weekly indemnity**.

Medical expense means a **covered employee's** expense for medical or dental services, procedures or supplies, provided the expense is **medically necessary, usual and customary** and prescribed by a **physician** or dentist acting within the scope of his license. **Medical expense** includes confinement within a **hospital** or **skilled nursing facility** and the cost of **medically necessary** supplies and ambulance hire and those expenses incurred for **rehabilitation**.

Medically necessary means medical services, procedures or supplies that are:

1. required, recognized and professionally accepted nationally by **physicians** or dentists as the usual, customary and effective means of diagnosing or treating the condition;
2. the most economical supplies or levels of service that are appropriate and available for the safe and effective treatment of the **covered employee**; and
3. not primarily for the convenience of the **covered employee**, the **covered employee's** family or the **covered employee's physician** or other provider of medical services, supplies or procedures.

Even if the service, supply or procedure is **medically necessary**, this Policy will not cover services, procedures or supplies excluded under this Policy.

Nuclear material means "source material", "special **nuclear material**" or "by-product material", as these terms have been given meaning in the U.S. Atomic Energy Act of 1954 or in any law amendatory thereof.

Nurse means a Registered Nurse (RN), Licensed Practical Nurse (LPN), Licensed Vocational Nurse (LVN) or person currently licensed as a **nurse** in the state in which the service was performed, practicing within the scope of such license.

Occupational disease means a **disease** arising out of a **covered employee's** assigned duties in his/her **scope of employment** during the Policy Period that causes damage or harm to the physical structure of the body. Occupational **disease** does not include **bodily injury** or **cumulative trauma**.

Occupational disease does not include ordinary **diseases** of life to which the general public is exposed outside of a **covered employee's** assigned duties in his **scope of employment** or a **disease** resulting directly from an **accident**.

Occurrence means an **accident** or series of related **accidents** resulting in **bodily injury** to a **covered employee** that arises out of the **covered employee's scope of employment** and occurs while the Policy is in force. As respects occupational **disease** or **cumulative trauma**, **occurrence** means the **covered employee's** last date of last exposure to the conditions causing or aggravating such **occupational disease** or **cumulative trauma**.

Payroll means the amount of compensation paid by you to a **covered employee**, including overtime and commission as reported to the Internal Revenue Service. For **covered employees** receiving payment by commission, **payroll** shall mean the average annual earnings paid by you over the three year period immediately preceding the date of loss. For **covered employees** receiving payment by commission that have less than a three year employment history with you, average monthly earnings will be multiplied by 12 to calculate the **payroll**.

The maximum annual **payroll** that we will recognize per **covered employee** for coverage under this Policy is \$60,000, regardless of whether a **covered employee** has annual earnings in excess of this sum.

Physician means a duly qualified doctor of medicine or osteopathy who is legally licensed to practice medicine in the state where the service is performed.

Plan benefits means those benefits actually paid by you to or on behalf of a **covered employee** under the terms and conditions of your ERISA Plan for claims and expenses that arise out of an **occurrence** during the Policy Period.

Plan benefits covered under this Policy only include your payments under your ERISA Plan for **medical expenses**, **weekly indemnity**, and **accidental** death or dismemberment losses arising out of **bodily injury**, occupational **disease** or **cumulative trauma**. This Policy is an indemnification Policy between you and us, and it does not provide for payment of any benefits directly to your **covered employees**.

Plan benefits do not include any administration fees, office expenses or salaries of your employees or any third party in the administration of a claim.

Pre-existing condition means a health condition for which a **covered employee** has sought

or received medical advice or treatment at any time during the 90 days immediately preceding the **Effective Date** of coverage under this Policy.

Rehabilitation means only those procedures that are performed for the purpose of restoring the function of motion, speech or vision lost as a result of **bodily injury**, occupational **disease** or **cumulative trauma**.

Scope of employment means an activity of any kind or character that involves the furtherance of your business, trade or profession at your regular workplace(s) in any state(s) listed in the Declarations or while temporarily away from your regular workplace in furtherance of your business, trade or profession.

Scope of employment does not include a **covered employee's** transportation to and from your regular workplace, unless:

1. the transportation is furnished as a part of the contract of employment, or is paid for by you, or the means of such transportation are under your control; or
2. the **covered employee** is directed in his **scope of employment** by you to proceed from one place to another place.

Skilled nursing facility means a section, ward or wing of a **hospital** or a freestanding healthcare facility that:

1. provides room and board;
2. provides nursing care by or under the supervision of a **nurse**;
3. provides physical, occupational and speech therapy furnished by the facility or by others under arrangements made by the facility;
4. provides medical social services;
5. provides drugs, biologicals, supplies, appliances and equipment ordinarily furnished for use in such a facility;
6. provides medical services by staff **physicians**;
7. has an agreement with a **hospital** for diagnostic and therapeutic services, the transfer of patients and exchange of clinical records;
8. provides other services necessary to the health and care of patients that are generally provided by such facilities; and
9. is licensed or registered in accordance with local and state laws and regulations.

Usual and customary means the expense is:

1. usual when it is the fee regularly charged that the patient is responsible to pay, in the absence of insurance or other third party reimbursement, to a health care provider or **physician** for a given treatment, service or supply; and
2. customary in relation to what other **physicians** and health care providers in the same geographic area charge for the same and similar treatment, service or supply.

Weekly indemnity means the benefit payments paid to your **covered employee** by you under the terms and conditions of your **ERISA Plan** (as a percentage of **hourly wage**) as a result of a **bodily injury**, **cumulative trauma**, or occupational **disease**.

VI. EXCLUSIONS

This insurance does not apply to any **bodily injury, occupational disease, cumulative trauma** or loss arising out of:

- A) liability assumed by you under any contract or agreement, including representations, warranties or indemnities of any kind. This exclusion does not apply to payments you are obligated to make under your **ERISA Plan** which are specifically insured under Section II of this Policy.
- B) liability arising out of employment relationships including, without limitation, claims for any type of discrimination, discharge, coercion, criticism, demotion, reassignment, discipline, defamation, harassment, humiliation, sexual harassment, claims arising under the U.S. Americans with Disabilities Act, claims arising out of the Texas Labor Code, and all other claims affecting or arising out of the employment relationship whether arising out of state or federal statutes or regulations or the common law. This exclusion does not apply to nonsubscriber negligence claims under Texas common law, or as payments you are obligated to make as **plan benefits** under your **ERISA Plan**, which are otherwise covered by Section II of this Policy.
- C) the following laws of the United States: the Federal Employers Liability Act, the Longshore & Harbor Workers Compensation Act, the Jones Act, the Non-Appropriated Instrumentalities Act, the Defense Base Act, the Outer Continental Shelf Lands Act, the Federal Coal Mine Health and Safety Act of 1969, the Migrant and Seasonal Agricultural Worker Protection Act, the Employee Retirement Income Security Act of 1974 or any other federal workers or workmen's compensation law or other federal occupational **disease** law or any other federal laws obligating an employer to pay damages to a **covered employee** due to **bodily injury** arising out of or in the **scope of employment** or any other federal regulations or amendments to those laws. This exclusion does not apply to payments you are obligated to make under your ERISA Plan which are specifically insured under Section II of this Policy.
- D) fines, assessments, penalties or interest, other than interest included in the definition of Employers Liability **Bodily Injury** Damages, pursuant to federal, state, local, or other statute.
- E) any workers' compensation law, unemployment compensation law, disabilities benefits law or other similar law.
- F) an intentionally self-inflicted **bodily injury, occupational disease** or **cumulative trauma**, while either sane or insane, or **bodily injury, occupational disease** or **cumulative trauma** intentionally caused or intentionally aggravated by you.
- G) a **covered employee's** participation in:
 - 1. an assault or a felony, except an assault committed in defense of your persons, business or property;
 - 2. any illegal act; or
 - 3. service in the military of any country or any civilian non-combatant unit serving with such forces.

- H) directly or indirectly, contributed to, caused by, resulting from, or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:
1. war, invasion, acts of foreign enemies, hostilities, or warlike operations (whether war be declared or not), civil war, mutiny, revolution, rebellion, insurrection, uprising, military or usurped power, confiscation by order of any public authority or government de jure or de facto, martial law; or
 2. riots, strikes, or civil disturbance.

This exclusion also excludes from coverage all actual or alleged losses, liabilities, damages, injuries, defense costs, costs or expenses directly or indirectly arising out of, contributed to, caused by, resulting from, or in connection with any action taken in controlling, preventing, suppressing, retaliating against, or responding to 1. or 2. above.

- I) any diagnostic procedure, treatment, service or supply which is not **medically necessary**.
- J) that part of any **medical expense** that is in excess of the **usual and customary** charge for that good, product, or service.
- K) or occurring while the **covered employee** was under the influence of alcohol.
- L) or occurring while the **covered employee** was under the influence of any chemical substance that was obtained or consumed in violation of the U.S. Controlled Substances Act in force at the time and location of the **occurrence**.
- M) or occurring while employed in violation of law with your actual knowledge or the actual knowledge of any of your executive officers.
- N) exposure to the following:
1. asbestos, asbestos fibers or asbestos containing products;
 2. silicon or silica;
 3. mold, microbes or fungus;
 4. the hazardous properties, including radioactive, toxic or explosive properties, of **nuclear material** except nuclear or radiological medicine which is
 - a. used for patient care and diagnosis;
 - b. approved by OSHA, JCAHO, or the American **Hospital** Accreditation Association; and
 - c. not used for research purposes or clinical tests.
- O) all statutory causes of action, except those brought under the Texas Wrongful Death Statute, including, without limitation, Title VII of the U.S. Civil Rights Act of 1964, the U.S. Civil Rights Act of 1991, the U.S. Civil Rights Act of 1866, the U.S. Age Discrimination in Employment Act, the Employee Retirement Income Security Act, the U.S. Fair Labor Standards Act, the U.S. Bankruptcy Code, the Texas Commission on Human Rights Act, the Texas Workers' Compensation Act, the U.S. Railway Labor Act and the U.S. National Labor Relations Act. This exclusion does not apply to payments you are obligated to make under your **ERISA Plan** which are specifically insured under Section II of this Policy.

- P) the following common law causes of action by a **covered employee** against you:
1. breach of any contract of employment, whether written, oral or implied.
 2. breach of duty of good faith and fair dealing.
 3. breach of any non-competition agreement.
 4. tortious interference with contractual relations.
 5. negligent or intentional infliction of emotional distress.
 6. negligent hiring, negligent promotion, or negligent retention (unless resulting in a **bodily injury**).
 7. claims against you based on assault and battery by you or at your direction, defamation, invasion of privacy, false light publicity, negligent invasion of privacy, misrepresentation, fraud, false imprisonment, false arrest, malicious prosecution, unreasonable search or retaliatory discharge.
- Q) a heart attack, unless the heart attack was proximately caused by and arose out of an **accident**.
- R) errors and omissions by you or your claims administrator under your **ERISA Plan** arising out of claim handling or the failure to pay or the delay in payment of benefits by you or your designated agent under any voluntary occupational injury benefit plan, whether or not filed in conformance with ERISA.
- S) violations of ERISA by you or any other party, including outside counsel, involved in preparing, designing or administering your ERISA Plan.
- T) charges for:
1. biofeedback and other forms of self-care or self-help training or any related diagnostic testing;
 2. hypnosis, acupuncture, or chiropractic treatment unless referred by a **physician** ;
 3. the purchase, rental or repair of environmental control devices, including but not limited to, air conditioners, humidifiers or air purifiers; or
 4. services performed by a person who normally lives with an injured **covered employee**, the spouse of an injured **covered employee**, a parent of an injured **covered employee** or the injured **covered employee's** spouse, a child of the injured **covered employee** or the injured **covered employee's** spouse or a brother or sister of the injured **covered employee** or of the injured **covered employee's** spouse.
- U) a **covered employee's** participation in any recreational, social or athletic activity not constituting part of the **covered employee's scope of employment**, whether or not such participation occurs on your premises or during your normal business hours.
- V) claims for Employers Liability **Bodily Injury** Damages if you arbitrarily and capriciously withheld payment for a covered **occurrence**.
- W) any **pre-existing condition**.

VII. PREMIUM

- A) All premium for this Policy will be determined by our rules and rates. The premium may change to reflect changes in coverage, **payroll** or the number of **covered employees**.

For policies that are paid on an installment basis, the first Monthly Premium as shown in the Declarations is due on or before the **Effective Date**. All installment premiums must be paid on or before the premium due date. The premium due date is the monthly anniversary of the **Effective Date**.

The Annual Policy Fee and Monthly Administrative Fee shown in the Declarations are fully earned at inception and are non-refundable in the event of Policy cancellation.

Premium for this Policy shall be calculated by either: (a) multiplying the rates shown in the Declarations by **payroll(s)** (per \$100) in each respective classification; or (b) multiplying the number of **covered employees** by the monthly premium per **covered employee** shown in the Declarations, as applicable. The Policy is subject to an annual audit to develop the final premium.

- B) Reporting of Changes. The premium charged for this Policy is based on the workplaces and operations identified in the underwriting information submitted to us on behalf of the Insured at the time of Policy inception. The Insured shall report promptly to us any changes in premises or operations as described below, and we shall have the right to adjust the premium and/or the deductible for such changes, based solely on our assessment of the additional exposures presented.
- C) Changes to report:
- a. Any acquisition of additional manufacturing or servicing premises;
 - b. Any changes in operations which are likely to result in an annual increase in **payrolls** of 25% or more;
 - c. Any change in operations which are not accurately described by the classifications as shown in the Declarations.
- D) Incorrect premium payment. Premiums paid in error, for a person who is not covered, will be refunded. Such refunds are without interest and must be requested by you in writing. Except for fraud, premium adjustments or refunds, changes will be made only for:
- a. the current Policy year; and
 - b. the previous Policy year.

If we cancel your Policy for any reason, the final premium will be calculated pro-rata for the time this Policy was in force. Final premium will not be less than the pro rata share of the Minimum Premium.

If you cancel your Policy, the final premium will be more than pro-rata. It will be based on the time this Policy was in force, and increased by our short-rate cancellation table and procedure.

Final premium will not be less than the Minimum Premium.

Minimum Premium. We may require that you pay a Minimum Premium to keep the Policy in force.

VIII. CLAIMS

A) CLAIM HANDLING

The Claims Administrator shown in the Declarations, subject to the conditions contained herein, has been approved to handle any claim made by you, or any legal action brought or other proceedings instituted against you to which this insurance applies. You shall cooperate fully with the Claims Administrator and shall, upon the Claims Administrator's request, supply such information as the Claims Administrator may require in order to complete our claim file under this Policy. Your failure to exercise diligence, prudence and good faith, or your willful mishandling of any claim may result in the forfeiture of coverage for the claim.

We reserve the right to employ certain professionals including investigators, adjusters, or counsel at our expense as we deem necessary.

You shall not make any settlement or payment nor incur any obligation to pay any sum in excess of your Self-Insured Retention without our prior written approval.

B) CLAIM REPORTING

You shall notify the Claims Administrator immediately of a **bodily injury** sustained by a **covered employee**.

You must give us written notice as soon as practicable when you become aware that a claim exceeds or will likely exceed 50% of your Self-Insured Retention, or immediately for:

1. any claim involving:
 - a. **Plan benefits** denied to a **covered employee**;
 - b. a fatality;
 - c. spinal cord injury;
 - d. multiple fractures ;
 - e. nerve damage causing paralysis or loss of sensation;
 - f. massive internal injuries affecting body organs;
 - g. any claim which you reasonably anticipate may give rise to a legal action or other proceeding seeking employers liability **bodily injury** damages, including but not limited to any claim in connection with which you become aware any **covered employee** has retained an attorney;
 - h. an amputation of a major extremity;

- i. serious head injury (including skull fracture, loss of sight of either or both eyes or loss of hearing);
 - j. severe burn; or
 - k. any **occurrence** which results in **bodily injury** to two or more **covered employees**.
2. any legal action or other proceedings against you arising out of **bodily injury**, occupational **disease** or **cumulative trauma**.

Your failure to notify us of a claim as outlined above may result in a disclaimer of coverage for that particular claim.

Notice given to the Claims Administrator, with information sufficient to identify you and the **covered employee(s)**, or contained on forms supplied by us, shall be deemed notice to us.

C) CLAIM INFORMATION

For any claim outlined in paragraph VIII. B., you agree to promptly send the following information required to:

Freeman Administrative Solutions, Inc
P.O. Box 2309
Addison, Texas 75001-2309
Facsimile: 972-930-9479
Email: claims@fastpa.com

1. fully completed Claim Forms provided by the Claims Administrator;
2. copies of all notices and legal papers related to the claim, proceeding or any legal action;
3. copies of investigative reports made by you or any other person or organization working on your behalf;
4. copies of all bills and invoices relating to the claim, proceeding or any legal action; and
5. any other information we may request.

D) PAYMENT OF CLAIMS

Indemnification for any loss is due and payable within 30 days after the date we receive due written proof of loss. If a **covered employee** incurs a loss on or before the date the Policy terminates, payment for that loss will be made on the same basis as it would have been had the Policy not been terminated.

E) SUNSET CLAUSE

We will cover the losses described in the Policy occurring during the Policy Period provided that such losses are reported to us within 36 months from the Expiration Date or the date the Policy is canceled pursuant to Section IX, whichever is earlier. Losses

reported after such date, even if you only become aware of the loss after such date, are not eligible for indemnification under this Policy.

F) COMMUTATION CLAUSE

All claims under this Policy, if any, may at our option, be commuted 36 months after the end of the Policy Period. You will submit a list of all claims under the Policy 30 days prior to the commutation date. The claims listing you provide must include all pertinent information necessary to arrive at a valuation of all claims. The claim listing you provide will be submitted to an actuary or appraiser mutually acceptable to both you and us to determine the discounted net worth of all claims. We will pay you the discounted net worth of each claim that is in excess of your Self-Insured Retention, subject to the Policy's Limits of Insurance, within 30 days of receipt from the actuary or appraiser.

If the actuary or appraiser cannot be agreed upon by both you and us, each will appoint its own actuary or appraiser who will, in turn, appoint an independent actuary or appraiser who will establish the discounted net worth of each claim. We will pay you the discounted net worth of each claim that is in excess of your Self-Insured Retention, subject to the Policy's Limits of Insurance, within 30 days of receipt from the independent actuary or appraiser.

Payment by us to you in accordance with this provision will constitute a complete and final release of all present or future, known or unknown claims under the Policy.

G) SUBROGATION RECOVERY FROM OTHERS

We have the right to recover any payment we made to you or to seek payment from anyone liable for a loss covered by this insurance. You will do everything necessary to protect those rights for us and help us enforce them. Any amounts recovered by you or us will first be used to reduce our payment. Then, we will pay the remaining balance, if any, to you.

All expenses to recover from anyone liable for a loss covered by this insurance will be allocated between us and you in the same proportions as the recovery received. If there is no recovery as a result of proceedings instituted solely at our request, we will bear all expenses of such proceeding.

IX. OTHER CONDITIONS

A) AGREEMENT UPON TERMS

Your acceptance of this Policy means that you agree with us that the statements in the Declarations and **application** are your representations, that this Policy is issued in reliance upon such representations and your ERISA Plan provided by you to us, that this Policy contains all agreements between you and us, and any of our authorized representatives, relating to this insurance, and that your full compliance with all terms of this Policy is a condition precedent to our payment hereunder.

B) CONCEALMENT, MISREPRESENTATION OR FRAUD

This Policy is void in any case of fraud by you at any time as it relates to this Policy. It is also void, if you or any other Named Insured, at any time, intentionally conceal or misrepresent a material fact concerning this Policy or your obligations to your **covered employees** under your ERISA Plan.

C) ASSIGNMENT

Your rights or duties under this Policy may not be transferred or assigned without our written consent.

D) AUDIT

You agree to keep records of information needed by us to compute your premium. You agree to provide us with copies of those records, as we request, while this Policy is in force and within the later of three (3) years after the expiration of the Policy or three (3) years after the final settlement of all claims or indemnity payments made under this Policy. You agree to provide us with the information we request by mail, by other form of transmission or by letting us or our representative examine and audit all your **payroll** records, including ledgers, journals, registers, vouchers, contracts, tax reports, disbursement records and programs for storing or retrieving data. We have the right to conduct audits during regular business hours. You agree to cooperate fully with us during any such audits. If it is determined that premiums have been underpaid, we shall be entitled to recover such underpayments. If the final settlement of all premiums and claims under the Policy takes more than three (3) years, the right to inspect, audit, or review extends to the date of such settlement.

E) BANKRUPTCY OR INSOLVENCY

Your bankruptcy or insolvency will not relieve us from payment under this Policy. However, our payment will be the same as it would have been had your bankruptcy or insolvency not occurred.

F) BINDING ARBITRATION

In the event of any dispute, controversy or claim between the parties to this Policy, including their officers, directors, owners, heirs, assigns, affiliates, reinsurers, or agents, related to or arising out of the matters covered by this Policy or its breach, such dispute, controversy, or claim may be settled by binding arbitration. The parties agree that Arbitration includes all rights, obligations, and duties of the parties under this Policy including questions of interpretation of any article, clause, or other provision of this Policy or the formation of the Policy, any claim for breach of the duty of good faith and fair dealing, breach of contract, or any claim for violation of any state, federal or governmental law. The parties agree that the Federal Arbitration Act and related federal rules of civil procedure will govern arbitration as set forth in this provision to the fullest extent possible, and state arbitration law will not apply. Either party may make written demand for arbitration setting forth the nature of the dispute and naming an arbitrator with at least ten years experience from the insurance industry.

When a demand is made, the remaining party shall have thirty (30) days to respond and name a second arbitrator from within the insurance industry with at least ten years experience. If the remaining party does not respond by naming a second arbitrator within thirty (30) days, the arbitrator named by the demanding party will be the sole arbitrator to hear the dispute. If the noticed party responds within the thirty (30) days by naming a second arbitrator, the two arbitrators will select within thirty (30) days a third arbitrator with a minimum of ten years experience in the insurance industry. If the two arbitrators cannot agree upon a third arbitrator within thirty (30) days, either may request that the selection of the third arbitrator be made by a judge of a court having competent jurisdiction. Each party will pay the expenses it incurs and bear the expenses of the third party arbitrator equally. A decision agreed to by two arbitrators will be final and binding and not appealable. Unless both parties agree otherwise, arbitration will take place in Dallas, Texas.

This arbitration clause will survive the expiration or other termination of the Policy.

G) CANCELLATION

You may cancel this Policy at any time by giving us at least ten (10) days written notice by mail stating the cancellation date. If you request cancellation, we will return any unearned premium paid on a short-rate basis.

We may cancel this Policy for non-payment of premium by giving you ten (10) days advance written notice by registered or certified mail or first class mail. We may cancel this Policy by giving you at least thirty (30) days advance written notice by registered or certified mail if we elect to cancel the Policy for any reason other than non-payment of premium. If we cancel this Policy, any unearned premium will be returned on a pro-rata basis to the first Named Insured in accordance with Section VII. Premium.

Our notice of cancellation to the first Named Insured at the address shown on the Declarations will be considered as notice to all Named Insureds and will be sufficient proof that we canceled the Policy.

We have no obligation to reinstate or renew this Policy.

H) TERMINATION OF COVERED EMPLOYEE'S COVERAGE

Coverage on behalf of a **covered employee** will cease on the earliest of the following dates:

1. the date this Policy terminates;
2. the last day of this Policy Period for which premiums have been paid;
3. the date he or she no longer meets the eligibility requirements as stated in this Policy; or
4. the first day he or she no longer meets our definition of a **covered employee**.

I) CAPTIONS

The headings or captions used in this Policy are for the purposes of reference only and do not otherwise affect the meaning of this Policy.

J) CONFORMITY

If any terms of this Policy are in conflict with any law applicable to this Policy, the Policy is hereby amended to conform to such law.

In the event any portion of this Policy is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

K) INSPECTION

We have the right, but not the duty, to request inspection of your operations and covered locations. In the event of a requested inspection, you agree to secure, at your sole expense, a loss control inspection by a mutually acceptable inspection company, within 90 days of such request. Such inspections are not safety inspections. They relate only to the insurability of your operations and covered locations and the premium to be charged. We do not undertake any responsibility or obligation to provide for the health or safety of your employees or the public. We do not warrant that your covered locations are safe or healthful or that they comply with any law, regulation, code or standard. We are not responsible for any penalties or fines incurred as the result of any violation of such laws, regulations, codes or standards.

L) OTHER INSURANCE

If any other insurance, indemnity, reimbursement agreement or self insurance exists protecting you against loss, or have paid for any loss that may otherwise be covered by this insurance, this insurance shall apply in excess of the other insurance, indemnity, reimbursement agreement, or self insurance. This does not apply to any excess insurance, indemnity, reimbursement agreement or self insurance specifically purchased or structured by you to apply above our Limits of Insurance.

M) SERVICE OF SUIT

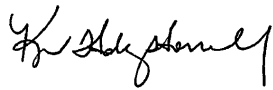
Pursuant to any statute of any state, territory or district of the United States which makes provision therefore, we hereby designate the Superintendent, Commissioner, or Director of Insurance or other officer specified for that purpose in the statute or his/her successor or successors in office as our true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted in any court of competent jurisdiction by or on behalf of the Named Insured or any beneficiary hereunder arising out of this contract of insurance to which this provision is attached, provided a copy of any process, suit, complaint or summons is sent by certified (return receipt requested) or registered mail to the attention of the Claims Administrator.

N) SOLE REPRESENTATIVE

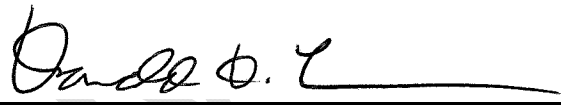
If more than one entity is named in Item 1 of the Declarations as the Named Insured, or if additional Named Insureds are added under this Policy by endorsement, the Named Insured first named in Item 1 of the Declarations will act on behalf of all insured entities to change this Policy, receive return premium or reimbursement, and give or receive notice of cancellation.

IN WITNESS WHEREOF, we have caused this Policy to be signed by our president and secretary, but this Policy will not be valid unless completed by the attachment to the Policy of a Declarations, and countersigned on the Declarations by an authorized surplus lines broker.

In Witness Whereof, the Company has caused this policy to be signed by its president and secretary and countersigned on the Information page by a duly authorized representative of the company.



Secretary



President