



A member of the American Fidelity Group

2000 N. Classen Boulevard, Oklahoma City, Oklahoma 73106

Combined Single Limit

EMPLOYERS OCCUPATIONAL ACCIDENT INSURANCE POLICY
Non-Participating

PLEASE READ CAREFULLY

Policyholder Name:

Principal Address:

Policy Number:

Effective Date:

Expiration Date:

Designated Third-Party Administrator:

This Policy is issued in consideration of the payment of premiums.

All periods of coverage will begin and end at 12:01 a.m. Standard Time at your Principal Address.

This Policy is governed by the laws of the state of your Principal Address.

This Policy is issued by us at our Underwriting Offices as of the Effective Date.

Secretary

President

WARNING: Any person who knowingly, and with intent to injure, defraud or deceive any insurer, makes any claim for the proceeds of an insurance policy containing any false, incomplete or misleading information may be guilty of insurance fraud.

THIS IS NOT A POLICY OF WORKERS' COMPENSATION INSURANCE. THE EMPLOYER DOES NOT BECOME A SUBSCRIBER TO THE WORKERS' COMPENSATION SYSTEM BY PURCHASING THIS POLICY, AND, IF THE EMPLOYER IS A NON-SUBSCRIBER, THE EMPLOYER LOSES THOSE BENEFITS WHICH WOULD OTHERWISE ACCRUE UNDER THE WORKERS' COMPENSATION LAWS. THE EMPLOYER MUST COMPLY WITH THE WORKERS' COMPENSATION LAW AS IT PERTAINS TO NON-SUBSCRIBERS AND THE REQUIRED NOTIFICATIONS THAT MUST BE FILED AND POSTED.

IMPORTANT NOTICE

To obtain information or make a complaint:

You may call American Fidelity Assurance Company's toll-free telephone number for information or to make a complaint at:

1-800-654-8489

You may also write to American Fidelity Assurance Company at:

2000 N. Classen Blvd.
Oklahoma City, OK 73106-6092

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

1-800-252-3439

You may write the Texas Department of Insurance at:

P.O. Box 149104
Austin, TX 78714-9104
FAX# (512) 475-1771
Web: <http://www.tdi.state.tx.us>
Email: ConsumerProtection@tdi.state.tx.us

PREMIUM OR CLAIM DISPUTES: Should you have a dispute concerning your premium or about a claim, you should contact American Fidelity Assurance Company first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR POLICY: This notice is for information only and does not become a part or condition of the attached document.

AVISO IMPORTANTE

Para obtener información o para someter una queja:

Usted puede llamar al número de teléfono gratis de American Fidelity Assurance Company para información o para someter una queja al:

1-800-654-8489

Usted también puede escribir a American Fidelity Assurance Company:

2000 N. Classen Blvd.
Oklahoma City, OK 73106-6092

Puede comunicarse con el Departamento de Seguros de Texas para obtener información acerca de compañías, coberturas, derechos o quejas al:

1-800-252-3439

Puede escribir al Departamento de Seguros de Texas

P.O. Box 149104
Austin, TX 78714-9104
Fax# (512) 475-1771
Web: <http://www.tdi.state.tx.us>
Email: ConsumerProtection@tdi.state.tx.us

DISPUTAS SOBRE PRIMAS O RECLAMOS: Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con American Fidelity Assurance Company primero. Si no se resuelve la disputa, puede entonces comunicarse con el Departamento de Seguros de Texas.

UNA ESTE AVISO A SU POLIZA: Este aviso es solo para propósito de información y no se convierte en parte o condición del documento adjunto.

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POLICY SCHEDULE

Policy Number:
Premium:

Item 1. NAMED INSURED AND ADDRESS

The Named Insured is:

- Individual LLC Partnership or Joint Venture Corporation
 Other:

Item 2. POLICY PERIOD:

From _____ to _____, 12:01 a.m. Standard Time, at the address of the Named Insured, as stated herein.

Item 3. **MAXIMUM COVERAGE PERIOD** / Weeks subsequent to each **occurrence**

Item 4. SELF-INSURED RETENTION

Accidental Bodily Injury per **employee** per **occurrence**\$
Occupational Disease or **Cumulative Trauma** per **employee** per **occurrence**

Item 5. COMBINED SINGLE INDEMNITY LIMIT (per **employee** per **occurrence**)\$

Item 6. GENERAL POLICY AGGREGATE LIMIT\$

Item 7. MEDICAL EXPENSE LIMIT (per **employee** per **occurrence**)\$

Item 8. TOTAL DISABILITY LIMIT

Maximum weekly indemnity (per **employee** per **occurrence**)\$
Days **waiting period** (per **employee** per **occurrence**)
Maximum weeks **total disability** duration (per **employee** per **occurrence**)

Item 9. ACCIDENTAL DEATH OR DISMEMBERMENT LIMIT (per **employee**)\$

Item 10. PAYROLL, RATE AND PREMIUM

<u>Estimated Payroll</u>	<u>Premium Rate</u>	<u>Deposit Premium</u>
\$		\$

NOTE: We reserve the right to adjust the Premium Rate if there is more than a _____ % change in the number of **employees** between the number of **employees** on any premium due date and the number of employees on the Policy Effective Date.

FORMS AND ENDORSEMENTS MADE A PART OF THIS POLICY AT INCEPTION:

DEPOSIT PREMIUM AND OTHER CHARGES:

Deposit Premium:	\$
Policy Fee:	\$
Inspection Fee:	\$
TPA Fee:	\$
Total:	\$

BROKER:

Combined Independent Agencies, Inc.
2304 Tarpley Rd., Suite 124
Carrollton, Texas 75006

Countersigned By: Blake Y Stock

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 schedule. The words we, us and our refer to American Fidelity Assurance Company. 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 VI, DEFINITIONS.

In consideration of the payment of premium, and subject to the terms, conditions and exclusions of this Policy, we agree with you as follows:

I. GENERAL SECTION

A. THE POLICY

This policy includes the Schedule and endorsements 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 Schedule. If this policy is cancelled 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.

C. MAXIMUM COVERAGE PERIOD

THE COVERAGE PERIOD UNDER THIS POLICY IS LIMITED. PLEASE READ YOUR POLICY CAREFULLY.

This policy provides indemnification coverage to you for a covered loss that has occurred during the policy period and has been paid by you within the specified period of time shown on the Schedule subsequent to the date of **occurrence** (the **maximum coverage period**). Each **occurrence** shall have a separate **maximum coverage period** that begins with the date of **occurrence**.

ANY LOSS THAT OCCURRED DURING THE POLICY PERIOD AND PAID BY YOU SUBSEQUENT TO THE EXPIRATION OF THE **MAXIMUM COVERAGE PERIOD** WILL BE EXCLUDED AND WILL NOT BE COVERED UNDER THIS POLICY.

D. OFFICE LOCATIONS AND COVERAGE TERRITORY

This policy shall apply to losses covered under the terms and conditions of this policy that are incurred by you and occur anywhere in the United States of America, its territories or possessions and Canada provided your **employees** are employed at your office locations in the State of Texas. Office locations shall mean your office locations reported by you to us. Upon our discovery of a new office location not reported to us, additional premium may become due for any such new office location.

II. INSURING AGREEMENT

We will indemnify you for losses paid by you during the **maximum coverage period** as **benefits** to which this insurance applies because of **accidental bodily injury, occupational disease or cumulative trauma**. Such losses shall be covered under this policy provided that the **occurrence** took place during the policy period within the **scope of employment** of your **employees**.

The total amount we will indemnify you for covered losses under this policy is the amount of covered losses that are in excess of your Self-Insured Retention, subject to our Limits of Insurance as

described in Section IV.

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 losses.

You are responsible for the investigation, settlement and defense of any claim, proceeding or suit against you. We have no duty or obligation to defend you under this policy.

III. WHO IS AN INSURED

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

- A. If the Named Insured on the Schedule 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 Schedule is a partnership or joint venture, then your members, partners, joint venturers and their spouses, but only with respect to the conduct of your business.
- C. If the Named Insured on the Schedule is a limited liability company, your members, but only with respect to the conduct of your business.
- D. If the Named Insured on the Schedule 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 Schedule, means the sum of the **benefits** paid by you that you must retain directly without the benefit of other insurance, indemnification or reimbursement before we will indemnify you for any covered losses under this policy. Your Self-Insured Retention shall apply per **employee** per **occurrence** to all losses resulting from **accidental bodily injury** covered under this policy. Your Self-Insured Retention shall apply per **employee** per **occurrence** to all losses resulting from **occupational disease** or **cumulative trauma** covered under this policy.
- 2. Naming more than one Named Insured on the Schedule does not increase your retention.
- 3. Amounts for **total disability losses** will not begin accruing towards the Self-Insured Retention until after the expiration of the days **waiting period** shown on the Schedule.
- 4. You must report to us all **benefits** paid by you to satisfy your Self-Insured Retention obligation.

B. LIMITS OF INSURANCE

- 1. The General Policy Aggregate Limit as shown on the Schedule is the most we will indemnify you for the sum of all covered losses under this policy that have been paid by you during the **maximum coverage period**.
- 2. Subject to the General Policy Aggregate Limit, the Combined Single Indemnity Limit

shown on the Schedule is the most we will indemnify you for the sum of all covered losses under this policy per **employee** per **occurrence** that have been paid by you during the **maximum coverage period**.

3. Subject to the General Policy Aggregate Limit and the Combined Single Indemnity Limit, the following Limits of Insurance shall apply for covered losses that have been paid by you during the **maximum coverage period**:

a. **Medical Expense Limit**

The **Medical Expense** Limit shown on the Schedule is the most we will indemnify you for covered **medical expenses** paid by you during the **maximum coverage period** for any one **employee** per **occurrence** during the policy period.

For covered **medical expenses**, we will indemnify you for the smaller of the **Medical Expense** Limit per **occurrence** shown on the Schedule or the actual amounts of covered **medical expenses** paid by you during the **maximum coverage period** per **employee** per **occurrence**.

b. **Total Disability Limit**

Subject to the expiration of the days **waiting period** per **employee** per **occurrence** and the limits for the maximum weekly indemnity per **employee** per **occurrence** and the maximum weeks **total disability** duration per **employee** per **occurrence** shown on the Schedule, the most we will indemnify you for covered **total disability losses** paid by you during the **maximum coverage period** to any one **employee** for any one **occurrence** during the policy period shall be limited under this policy as follows:

<u>Rate of Hourly Wage:</u>	<u>% Limitation</u>
Earning \$8.50 an hour or greater	70% of employee's hourly wage
Earning less than \$8.50 an hour	75% of employee's hourly wage

For covered **total disability losses**, we will indemnify you for the smaller of the maximum weekly indemnity limit per **employee** per **occurrence** shown on the Schedule times the maximum weeks **total disability** duration per **employee** per **occurrence** shown on the Schedule or the actual amount of covered **total disability losses** paid by you during the **maximum coverage period** per **employee** that is limited by the applicable percentage limitation shown above.

If an **occurrence** is covered as an accidental death or dismemberment loss under this policy and payments for **total disability losses** have been made by us to you under this policy for the same **occurrence**, such **occurrence** shall only be covered as an accidental death or dismemberment loss and any payments for **total disability losses** made by us under this policy for the same **occurrence** shall be used to reduce our liability for a covered accidental death or dismemberment loss.

c. **Accidental Death or Dismemberment Limit**

The Accidental Death or Dismemberment Limit shown on the Schedule is the most we will indemnify you for a covered accidental death or dismemberment loss paid by you during the **maximum coverage period** to any one **employee** or his beneficiaries for any one **occurrence** during the policy period.

For a covered accidental death or dismemberment loss, we will indemnify you for the smaller of the Accidental Death or Dismemberment Limit shown on the Schedule, or the actual amount of a covered accidental death or dismemberment loss paid by you during the **maximum coverage period** per **employee** per **occurrence**.

We will indemnify you either for a covered death loss or a covered dismemberment loss, but not for both a death loss and dismemberment loss. In the event of

multiple dismemberment losses, we will pay for only the covered dismemberment loss per **employee per occurrence** with the largest benefit.

If an **occurrence** is covered as an accidental death or dismemberment loss under this policy and payments for **total disability losses** have been made by us to you under this policy for the same **occurrence**, such **occurrence** shall only be covered as an accidental death or dismemberment loss and any payments for **total disability losses** made by us under this policy for the same **occurrence** shall be used to reduce our liability for a covered accidental death or dismemberment loss.

4. The Limits of Insurance apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Schedule, unless the policy period is extended after issuance for an additional period of less than 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.
5. Naming more than one Named Insured on the Schedule does not increase our Limits of Insurance.

V. EXCLUSIONS

This policy does not apply to any loss arising out of:

- A. any payment or agreement made by you to settle a claim or suit for **benefits** that was made after the expiration of the **maximum coverage period**; or
- B. liability assumed by you under any contract or agreement, including presentations, warranties or indemnities of any kind; or
- C. 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 Labor and Workers' Compensation section of the Texas Administrative 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 negligence claims under Texas common law seeking damages for **benefits** as a result of **accidental bodily injury, occupational disease or cumulative trauma** otherwise covered by Section II of this policy; or
- D. the following laws of the United States: the Federal Employers Liability Act, the Longshoremen's & 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 an **employee** due to bodily injury arising out of or in the course of employment or any other federal regulations or amendments to those laws. This exclusion does not apply to losses you pay that are specifically insured under Section II of this policy; or
- E. fines, assessments, penalties or interest, whether arising out of federal or state statute; or
- F. any workers' compensation law, unemployment compensation law, disabilities benefits law or other similar law; or
- G. 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; or

- H. an **employees** participation in:
1. a riot or act of civil disturbance;
 2. an assault or a felony, except an assault committed in defense of your business or property;
 3. war or act of war, whether declared or undeclared;
 4. any act or condition incident to war;
 5. any act of terrorism;
 6. any illegal act; or
 7. service in the military of any country or any civilian non-combatant unit serving with such forces;
- or
- I. any diagnostic procedure, treatment, service or supply which is not **medically necessary**; or
- J. that part of any **medical expense** that is in excess of the **usual and customary** charge for that good or service; or
- K. **accidental bodily injury, occupational disease or cumulative trauma** occurring while the **employee** was deemed to be **legally intoxicated**; or
- L. **accidental bodily injury, occupational disease or cumulative trauma** occurring while the **employee** was under the influence of any chemical substance that was obtained or consumed in violation of the U.S. Controlled Substance Act in force at the time and location of the **occurrence**; or
- M. **accidental bodily injury, occupational disease or cumulative trauma** to an **employee** while employed in violation of law with your actual knowledge or the actual knowledge of any of your executive officers; or
- N. the following:
1. asbestos, asbestos fibers or asbestos products;
 2. the hazardous properties, including radioactive, toxic or explosive properties, biological chemical agent of **nuclear material**; or
 3. any and all medical conditions that are associated with silica related conditions, this is to include exposure to any and all material, which also is known as silica dust, exposures to respirable crystalline silica, exposure to silicosis, exposure to material that may cause lung cancer, pulmonary tuberculosis, and airway **diseases**, autoimmune disorders, chronic renal **disease**, or other health conditions that are associated with exposure to silica based materials;
- or
- O. all statutory causes of action, 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. and Texas Bankruptcy Code, the Texas 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 losses you pay that are specifically insured under Section II of this policy; or
- P. the following common law causes of action by an **employee** against you:
1. breach of any contract of employment, whether written, oral or implied; or
 2. breach of duty of good faith and fair dealing; or
 3. breach of any non-competition agreements; or
 4. tortious interference with contractual relations; or
 5. negligent or intentional infliction of emotional distress; or
 6. negligent hiring, negligent promotion, or negligent retention (unless resulting in an **accidental bodily injury**); or

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;
- or
- Q. a heart attack unless the heart attack was proximately caused by and arose out of an **accident**;
- or
- R. 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; or
- S. Charges for:
1. biofeedback and other forms of self-care or self-help training or any related diagnostic testing;
 2. hypnosis or acupuncture;
 3. chiropractic treatment or chiropractic therapy;
 4. the purchase, rental or repair of environmental control devices, including but not limited to, air conditioners, humidifiers, or air purifiers; or
 5. services performed by a person who normally lives with an injured **employee**, the spouse of an injured **employee**, the parents of an injured **employee** or the injured **employee's** spouse, a child of the injured **employee** or the injured **employee's** spouse or a brother or sister of the injured **employee** or of the injured **employee's** spouse;
- or
- T. an **employee's** participation in any recreational, social or athletic activity not constituting part of the **employee's scope of employment**, whether or not such participation occurs on your premises or during your normal business hours; or
- U. any expenses for emotional, mental or nervous disorders unless such is necessitated by or the result of a covered **Accidental Injury**. Expenses for evaluation, diagnostic testing and diagnosis are not reimbursable expenses; or
- V. all amounts paid to obtain a release of liability from a work place negligence action brought by an **employee** due to an **occurrence**. This includes settlements, court costs, interest on judgments, investigations, adjustment expenses, mediation, arbitration and legal expenses to defend such a claim of an **employee** and amounts awarded for pain and suffering.

VI. DEFINITIONS

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

- A. Accident** means an event which:
1. was sudden, unforeseen, unplanned and unexpected; and
 2. occurred at a specifically identifiable time and place; and
 3. occurred by chance or from unknown causes.
- B. Accidental bodily injury** means an identifiable physical injury, including resulting death, caused by an **accident** that occurs within the **scope of employment** during the policy period. **Accidental bodily injury** does not include **occupational disease** or **cumulative trauma** unless it results directly from an **accident**.
- C. Cumulative trauma** means damage to the physical structure of the body 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 **accidental bodily injury** or **occupational disease**.

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

E. Employee means:

1. a person who is employed in your regular business, is under your direction and control, and receives pay by means of a salary, wage, or commission directly from you and for whom you file a Form W-2 with the Internal Revenue Service; or
2. a person (and any class of substantially similarly situated persons) determined to be your **employee** by a court of competent jurisdiction, by an arbitrator (where a sole arbitrator presides), or by an arbitration panel majority.

Provided, however, **employee** specifically includes executive officers unless excluded by endorsement. Under no circumstances, **employee** shall not include a leased **employee**, an independent contractor or a third-party agent.

F. Hospital means a lawful institution that:

1. is licensed as a **hospital**, if required in its location; and
2. is open at all times; and
3. functions chiefly for the care and treatment of sick and injured persons as admitted inpatients; and
4. has a staff of one or more licensed **physicians** present at all times; and
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.

G. Hourly wage, for purposes of calculating a **total disability loss**, means the average gross hourly compensation paid to an **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 **total disability**. For salaried **employees**, the **hourly wage** shall be the stated salary for the **employee** divided by the number of work hours applicable to that salary.

H. Legally intoxicated means intoxicated as defined by the penal statutes in effect at the time and location of the **occurrence** regardless of the cause of the **occurrence**.

I. Medical expenses means an expense that has been pre-approved or authorized by you, for medical or dental services, procedures or supplies, provided the expense is **medically necessary, usual and customary** and prescribed by a **physician** 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**, provided such expenses have been pre-approved or authorized by you.

J. Medically necessary means medical services, procedures or supplies that have been preapproved or authorized by you, and are:

1. required, recognized and professionally accepted nationally by **physicians** 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 **employee**; and
3. not primarily for the convenience of the **employee**, the **employee's** family or the **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.

- K. 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.
- L. Nurse** means a Registered Nurse (RN), Licensed Practical Nurse (LPN), Licensed Vocational Nurse (LVN) or person currently licensed in the state in which the service was performed, practicing within the scope of such license.
- M. Occupational disease** means a **disease** arising out of an **employee's** assigned duties in his **scope of employment** during the policy period that causes damage or harm to the physical structure of the body. **Occupational disease** does not include **accidental bodily injury** or **cumulative trauma**.
- Occupational disease** does not include ordinary **diseases** of life to which the general public is exposed outside of an **employee's** assigned duties in his **scope of employment** or a
- N. Occurrence** means an **accident** or series of **accidents** arising out of one event or incident. As respects **occupational disease** or **cumulative trauma**, **occurrence** means the **employee's** last day of last exposure to the conditions causing or aggravating such **occupational disease** or **cumulative trauma**.
- O. Payroll** means the sum of money or substitutes for money paid or allowed by you to your **employees**, and includes:
1. wages; and
 2. commissions; and
 3. bonuses; and
 4. extra pay for overtime work; and
 5. pay for holidays, vacations or periods of sickness; and
 6. payment by you of amounts otherwise required by law to be paid by **employees** to statutory insurance or pension plans, such as the Federal Social Security Act; and
 7. payments to **employees** on any basis other than time worked, such as piece work, profit sharing or incentive plans, but not tip income of **employees**; and
 8. payment or allowance for hand tools or power tools used by hand provided by **employees** and used in their work or operations for you; and
 9. the rental of an apartment or a house provided for an **employee** based on comparable accommodations; and
 10. the value of lodging, other than an apartment or a house, received by **employees** as part of their pay, to the extent shown in your records; and
 11. the value of meals received by **employees** as part of their pay to the extent shown in your records; and
 12. the value of store certificates, merchandise, credits or any other substitute for money received by **employees** as part of their pay; and
 13. **employee** contributions made in the form of an **employee**-authorized salary reduction, which are diverted by an **employee** for payment, by you, into a savings plan. Such contributions could be referred to as Salary Reduction Plans, Cafeteria Plans or Flexible Benefit Plans; and
 14. allocated business expenses such as housing, automobile, clothing, tools or moving; and
 15. automobile mileage allowances in excess of IRS guidelines; and
 16. per Diem allowances in excess of IRS guidelines.

In respect of each executive officer, **payroll** is limited to a maximum of \$62,400; or

- P. Physician** means a duly qualified **physician** who is legally licensed to practice medicine in the state where the service is performed.
- Q. Benefits** mean those benefits actually paid by you for claims and expenses that arise out of an **occurrence** during the policy period.

Benefits covered under this policy only include your payments for **medical expenses, total**

disability losses and accidental death or dismemberment losses arising out of **accidental bodily injury, occupational disease or cumulative trauma**. This policy is an indemnification policy between you and us and it does not provide for any benefits directly to your **employees**.

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

R. 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 **accidental bodily injury, occupational disease or cumulative trauma**.

S. Scope of employment means an activity of any kind or character that has to do with and originates in your work, business, trade or profession and is performed by an **employee** while engaged in or about the furtherance of your business including activities conducted on your premises or at other locations.

Scope of employment does not include an **employee's** transportation to and from his place of employment, unless:

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

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

1. provides room and board; and
 2. provides nursing care by or under the supervision of a **nurse**; and
 3. provides physical, occupational and speech therapy furnished by the facility or by others under arrangements made by the facility; and
 4. provides medical social services; and
 5. provides drugs, biologicals, supplies, appliances and equipment ordinarily furnished for use in such a facility; and
 6. provides medical services by staff **physicians**; and
 7. has an agreement with a **hospital** for diagnostic and therapeutic services, the transfer of patients and exchange of clinical records; and
 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;
- or

U. Total disability means a medically demonstrable anatomical or physiological abnormality that:

1. causes your **employee** to be unable to perform the normal duties for which he was employed; and
2. causes your **employee** to be under the regular care of a **physician**; and
3. causes your **employee** to be unable to engage in any other occupation for wage or profit;

or

V. Total disability loss means the benefit payment paid to your **employee** by you (as a percentage of **hourly wage**) as a result of a **total disability**.

W. Usual and customary means the expense:

1. is 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. is 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; and
3. has been pre-approved or authorized by you.

- X. **Waiting period** means the number of consecutive working days during which the injured **employee** must be totally disabled. A working day is considered any day on which the **employee** would normally be at work.

VII. PREMIUM

At the beginning of the policy period you must pay us the Deposit Premium and associated fees shown on the Schedule. At the end of the policy period, the final premium will be computed by applying the premium rate shown on the Schedule to the actual **payroll** for the policy period. If the final premium is less than the Deposit Premium shown on the Schedule, the Deposit Premium will apply and there will be no refund. If the final premium is more than the Deposit Premium shown on the Schedule, you agree to pay us the difference.

If we cancel your policy for any reason, the final premium will be calculated pro-rata for the time this policy was in force based on the Deposit Premium or on the premium developed using the actual audited **payroll**, whichever is greater.

If you cancel your policy, the final premium will be more than pro-rata. It will be the greater of:

- A. 25% of the Deposit Premium; or
- B. Pro-rata of the Deposit Premium plus a short-rate penalty of 10%; or
- C. The premium developed using the actual audited **payroll**.

Under all circumstances, the Policy Fee, the Inspection Fee, and the TPA fee, shown on the Schedule, are fully earned at inception and no part of these fees will be returned or refunded to you. Cancellation by anyone due to your failure to pay the premium on a timely basis shall be cancellation by you.

A grace period of 31 days from the due date will be allowed for the payment of each premium after the first premium payment. During the grace period, the coverage will remain in effect, provided the premium is paid before the end of the grace period. If you do not pay the premium during the grace period, this policy will terminate without further notice, as determined above.

VIII. CLAIMS

A. CLAIM HANDLING

It is your responsibility, subject to the conditions contained herein, to investigate, settle, defend and appeal any claim made, suit brought or other proceeding instituted against you arising out of any **accidental bodily injury, occupational disease or cumulative trauma**. Your claims administrator, as appointed by you, must be approved by us to coordinate and handle claims under this policy on your behalf. You and your claims administrator shall cooperate fully with us and shall, upon our request, supply such information as we require in order to complete our claim file under this policy.

No investigator, adjuster, or counsel shall be employed by you to represent our interest without prior written approval. We reserve the right to obtain other professional services as we deem necessary at our expense. You shall not make any payment nor incur any obligation to pay any sum regarding any covered loss in excess of your Self-Insured Retention without our prior written approval.

B. CLAIM REPORTING

- 1. You must give us written notice within 30 calendar days or as soon as practicable from the date of the **occurrence** of:
 - a. any claim involving payment under this policy; or
 - b. any claim involving:
 - i. **Benefits** denied to an **employee**; or
 - ii. a fatality; or

- iii. paraplegia or quadriplegia; or
 - iv. an amputation of a major extremity; or
 - v. serious head injury (including skull fracture, loss of sight of either or both eyes or loss of hearing); or
 - vi. injury to the spinal cord; or
 - vii. second or third degree burns of 25% or more of the body;
- or
- c. any suit or other proceedings against you as a result of **accidental bodily injury, occupational disease** or **cumulative trauma**.

Your failure to notify us of a claim within the time frame outlined above may result in a disclaimer of coverage for that particular claim. Failure to give notice within such time frame shall not invalidate nor reduce any claim if it can be shown not to have been reasonably possible to give notice and that notice was given as soon as was reasonably possible.

- 2. You must give us written notice within 90 calendar days or as soon as practicable from the date of the **occurrence** of any claim involving disability of eight weeks or more.

Your failure to notify us of a claim within the time frame outlined above may result in a disclaimer of coverage for that particular claim. Failure to give notice within such time frame shall not invalidate nor reduce any claim if it can be shown not to have been reasonably possible to give notice and that notice was given as soon as was reasonably possible and in no event, except in the absence of legal capacity of the claimant, later than one year from the time proof is otherwise required.

C. CLAIM INFORMATION

For any claim outlined in Paragraph VIII.B., you agree to promptly send such information required by us, including the following information, to P.O. Box 819045, Dallas, TX 753819045:

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

If Claim Notification Forms are not furnished before the expiration of 15 days after we received notice of a claim under the Policy, you shall be deemed to have complied with the requirements of the policy as to proof of loss upon submitting within the time fixed in the Policy for filing proof of loss, written proof covering the **occurrence**, character, and extent of the loss for which claim is made.

D. SETTLEMENTS

You agree not to make any voluntary settlements involving payment by us without our prior written approval. If you refuse to consent to any claim settlement recommended by us and elect to contest a claim, or to continue litigation at the trial level or at the appellate level in connection with such claim, then our liability for payment under this policy for such claim will not exceed the difference between our recommended settlement amount and the Self-Insured Retention. We may discharge our liability for such claim under this policy by paying you the difference between the amount recommended in settlement of such claim and the sum of all previous payments made by us on such claim and your Self-insured Retention. You agree to release us from any further payment for such claim upon receipt of our payment as outlined above.

E. 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. GENERAL CONDITIONS

A. AGREEMENT UPON TERMS

Your acceptance of this policy means that you agree with us that this policy contains all agreements between you and us, and any of our agents, relating to this insurance, and that your full compliance with all terms of this policy is a condition precedent to our payment hereunder.

B. ENTIRE CONTRACT

This entire contract consists of:

1. this Policy, including any Endorsements; and
2. your Schedule and any attachments thereto, a copy of which is attached to this Policy.

All statements made by you or any Covered Person are, in the absence of fraud, understood to be representations and not warranties. Such statements will not be used to contest coverage unless contained in the Schedule or any attachments to the Schedule.

We have relied on the information you provided to issue this Policy. You represent such information is accurate. Should we later learn such information was not correct, or in case of a substantial change in such information, we may modify the Policy as of the Effective Date to reflect the correct information. Or, we may terminate the policy on written notice as of the next premium due date.

Specimen Policy

C. SUBSIDIARIES, AFFILIATED COMPANIES UNDER YOUR PLAN

You must notify us in the event you acquire, sell or dissolve a subsidiary or affiliated company that will be or is included for coverage under this policy.

Acquisition, sale or dissolution of a subsidiary or affiliated company that will be or is included for coverage under this policy may affect your premium rates as described in Section VII PREMIUM. The premium rate may be adjusted for changes in the type of **employees** covered by this policy if the change is more than the percentage stated in the Schedule.

D. 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 **employees**.

E. ASSIGNMENT

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

F. 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 seven years after the expiration of the policy or seven 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 and retrieving data. We have the right to conduct audits during regular business hours. You agree to cooperate fully with us during such any audits.

G. CLERICAL ERROR

If you or we make a clerical error keeping records or calculating premiums or claims pertaining to this Policy, it will not invalidate this Policy. A clerical error will not expand our obligations under this Policy. A clerical error is a mistake in performing a clerical function, and does not include intentional acts or failure to comply with Policy provisions. A clerical error is not the failure to disclose the required disclosure of health history of Disabled Persons, Large Claims or Potentially Catastrophic Losses.

H. 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.

I. BINDING ARBITRATION

In the event of any dispute, controversy or claim between the parties to this policy, including their officers, directors, **employees**, 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 will be finally settled by binding arbitration pursuant to the procedures set forth in this arbitration provision.

The scope of this arbitration provision includes, but is not limited to, the performance of the respective obligations of the parties under this policy, any 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, statute, regulation or ordinance. The parties agree that the Federal Arbitration Act and related federal judicial procedure will govern arbitration and set forth in this provision to the fullest extent possible, and state arbitration law will not apply.

This arbitration will be governed by the Commercial Arbitration Rules of the American Arbitration Association unless specifically varied by the terms stated in this arbitration provision. Either party may make a written demand for arbitration, setting forth the nature of the dispute and naming an arbitrator with a minimum of 10 years experience in the insurance industry, by registered or certified mail, return receipt requested. Notice to the insured will be sent to the address furnished by the insured, unless we have received written notice of an address change from the insured. Notice to us will be sent to CT Corporation, 350 N. St. Paul Street, Dallas, Texas 75201, or any other last known address provided to you by us. We reserve the right to act on our own behalf in all aspects of this policy, including the arbitration process.

When a demand is made, the noticed party will have 30 days to respond and name a second arbitrator. If the noticed party does not respond by naming a second arbitrator within 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 30 days by naming a second arbitrator, the two arbitrators will select within 30 days a third arbitrator with a minimum of ten years experience in the insurance industry. If a panel of arbitrators is selected, each party will pay the cost of its own arbitrator and will share the cost of the third arbitrator. If the two arbitrators cannot agree upon a third arbitrator within 30 days, either may request that the selection of the third arbitrator be made by the Fresno, California, office of the American Arbitration Association. A decision agreed to by two of the arbitrators will be binding.

The parties agree that the policy is to be performed in Fresno, California. Unless both parties agree otherwise, arbitration will take place in Fresno, California. Arbitration will be conducted by written submission unless either party requests a live hearing before the arbitrator(s) at least 10 days prior to the due date for the written submission. Discovery will be limited to the exchange of documents. If there is to be a hearing, each side additionally will submit to the panel and the other party a detailed position brief, one week prior to the hearing, to include disclosure of witnesses to be called at the hearing. Affidavits of witnesses not testifying at a hearing will not be admitted.

The arbitrator(s) will not be bound by federal, state or local rules of evidence or procedure, other than as set forth by the Federal Arbitration Act, and will apply the substantive law of the State of Texas or the industry standard or practice relating to the issue under consideration. Failure to correctly apply Texas substantive law because industry standard or practice was applied in lieu thereof, will neither void the arbitration award nor provide grounds to appeal to a court to vacate the award. The arbitrator(s) will deliver a decision stating only the arbitrators' ultimate determination within 30 days after a hearing on the issues or the written submission, and payment of any amounts awarded to either party will be due within 30 days after the issuance of the award, after which time interest on the award will accrue from the date the award was issued at a rate of 12% per annum until the award is finally paid. Any decision or award resulting from any arbitration proceeding will include assessment of costs, expenses and reasonable attorneys' fees. Judgment on the award rendered by the arbitrators, including any post-award interest, may be entered in any Court having jurisdiction thereof, and any costs

obtaining or collecting on the judgment, including reasonable attorneys' fees, will be assessed against the party against whom the judgment is filed and granted. Arbitrators will be limited to the award of actual or compensatory damages and costs only (including consequential damages), and will not be permitted to award punitive or exemplary damages against either party.

This arbitration provision will not be construed to deny any court having competent jurisdiction the power to award, in appropriate circumstances, interim relief pending arbitration, including, but not limited to, temporary restraining orders and injunctions, provided that it is not feasible for the arbitrators to consider such relief rapidly enough to prevent serious harm to the party seeking the relief and, provided further, that the arbitrators have not already considered such relief and refused to allow it. Notwithstanding the need for interim relief, if any party to this policy pursues a claim covered by this arbitration provision by litigation rather than arbitration, the responding party will be entitled to the dismissal of such litigation along with the recovery of all costs, attorneys' fees, and actual losses directly related to such litigation.

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

J. CANCELLATION

You may cancel this policy at any time by giving us written notice by mail stating the cancellation date.

We may cancel this policy for non-payment of premium by giving you 10 days advance written notice by registered or certified mail or first class mail. We may cancel this policy by giving you at least 30 days advance written notice by registered or certified mail or first class mail if we elect to cancel the policy for any reason other than non-payment of premium. We may not cancel this policy solely because the Named Insured is an elected official.

Our mailing of registered or certified notice of cancellation to the first Named Insured at the address shown on the Schedule will be considered as notice to all Named Insureds and will be sufficient proof that we cancelled the policy.

If this policy is cancelled, we will send the first Named Insured any premium refund due in accordance with Section VII. PREMIUM.

We have no obligation to renew this policy.

K. 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.

L. 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.

M. INSPECTION

We have the right, but not the duty, to inspect your operations and office locations. Such inspections are not safety inspections. Inspections made by us or our designated representative shall be performed only to determine the insurability of your operations and office locations and the premium to be charged. At our option, we may provide information to you regarding our inspection. 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 office locations are safe or healthful or that they comply with any law, regulation, code or standard.

N. TAXES

If premium taxes should be assessed against you with respect to claims Paid, you shall hold us harmless from any tax liability.

O. POLICY NONPARTICIPATING

This policy does not entitle you to share in our earnings.

P. DUTIES AND RESPONSIBILITIES OF YOUR DESIGNATED THIRD PARTY ADMINISTRATOR(TPA)

Your TPA must be approved by us.

We agree to recognize your TPA as your agent for the administration of **benefits**. You agree that your TPA will:

1. audit, calculate and pay all claims eligible; and
2. prepare reports required by us and keep and make available to us data we may require; and
3. do what is necessary for you to comply with the terms of this Policy.

If you give your TPA a Power of Attorney, or revoke a Power of Attorney, neither is binding on us until we receive it.

You will pay your TPA for all administrative functions performed in relation to this Policy.

Your TPA is your agent and not ours. You authorize your TPA to:

1. submit Notice/ Proof of Loss;
2. certify the payment of claims;
3. transmit reports and payment of premiums to us; and
4. receive payments from us.

Payments by us to your TPA are payments to you.

All premium payments will be made payable to us, not your TPA.

Notice

For the purpose of any notice required from us under the terms of this Policy, notice to your TPA is notice to you and notice to you is notice to your TPA.

Q. DISCLAIMER

We act only as a provider of Employers Occupational Accident. We are not a fiduciary. We do not assume any duty to perform any of the functions or provide any of the reports required by the Employee Retirement Income Security Act of 1974, as amended.

We have no right or obligation to pay any **employee** or provider of professional or medical services. Our sole liability is to you, subject to the terms and conditions of this Policy. Nothing in this Policy shall be construed to permit a Covered Person to have a direct right of action against us.

R. INDEMNIFICATION, DEFENSE AND HOLD HARMLESS

You agree to indemnify, defend and hold us harmless from:

1. any liability related to any negligence, error, omission or defalcation by your TPA;
2. any liability related to:
 - a. any dispute involving a Covered Person unless it is a result of our sole negligence or intentional wrongful acts; and
 - b. any State premium taxes we are assessed with respect to funds paid by or to you. Taxes on amounts paid to us as premiums for this Policy are excluded.

We will notify you if you have obligations. We may participate in the defense at our expense. If you do not act promptly, we may defend and compromise or settle the claim or other matter on your behalf, for your account, and at your risk.

S. PARTIES TO THIS POLICY

You and we are the only parties to this Policy. Our sole liability under this Policy is to you. This Policy does not create any right or legal relation between us and an **employee**. This Policy will not make us a party to any agreement between you and your TPA.

T. PHYSICAL EXAMINATION AND MEDICAL EVIDENCE

We may require any medical evidence or other information, including a physical examination or health statement, regarding any Covered Person or whom YOU have Paid a claim and submitted such claim for reimbursement under this Policy. Such examination or evidence shall be provided as often as is reasonably necessary.

U. OFFSET

We may offset any balance, whether on account of premiums, claims, losses, adjustment expense, recoveries or any other amounts due from you to us under this policy.

V. OTHER INSURANCE

If any other insurance, indemnity or reimbursement agreement exists protecting you against loss covered by this insurance, this insurance shall apply in excess of your Self-Insured Retention under this policy and the other insurance, indemnity or reimbursement agreement.

W. 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 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, and hereby designate CT Corporation, 350 M. St. Paul Street, Dallas, Texas 75201, as the Company officer to whom the Superintendent, Commissioner or the Director of Insurance is authorized to mail such process or a true copy thereof.

X. SOLE REPRESENTATIVE

The Named Insured listed first on the Schedule will act on behalf of all Named Insureds to pay premium, change this policy, accept loss payments, receive return premium, engage arbitration and give or receive notice of cancellation.

Specimen Policy