



**NORTH AMERICAN  
CAPACITY INSURANCE COMPANY**  
650 Elm Street  
Manchester, NH 03101-2524  
(800) 542-9200

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.

### SELECT EMPLOYERS INDEMNITY DECLARATIONS

Item 1. NAMED INSURED AND ADDRESS

Policy Number: \_\_\_\_\_  
Endorsement Date: \_\_\_\_\_  
Endorsement # : \_\_\_\_\_  
Premium: \$ \_\_\_\_\_  
Fees: \$ \_\_\_\_\_  
Surplus Lines Tax: \$ \_\_\_\_\_  
Stamping Fee: \$ \_\_\_\_\_  
Total: \$ \_\_\_\_\_

The Named Insured is:  Individual  Partnership or Joint Venture  Corporation  
 LLC  Other \_\_\_\_\_

Item 2. POLICY PERIOD: (Mo., Day, Yr.)

From To

12:01 A.M. Standard time at the address of the Named Insured as stated herein.

**MAXIMUM COVERAGE PERIOD**

Weeks subsequent to each **occurrence** \_\_\_\_\_

Item 3. SELF-INSURED RETENTION

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

Item 4. COMBINED SINGLE INDEMNITY LIMIT Per **employee** Per **occurrence** \$ \_\_\_\_\_  
Per **occurrence** \$ \_\_\_\_\_

Item 5. GENERAL POLICY AGGREGATE LIMIT \$ \_\_\_\_\_

Item 6. MEDICAL EXPENSE LIMIT Per **employee** Per **occurrence** \$ \_\_\_\_\_

Item 7. TOTAL DISABILITY LIMIT  
Maximum weekly indemnity per **employee** \$ \_\_\_\_\_  
Days **waiting period** per **employee** per **occurrence** \_\_\_\_\_  
Maximum weeks total disability duration per **employee** per **occurrence** \_\_\_\_\_

Item 8. ACCIDENTAL DEATH OR DISMEMBERMENT LIMIT

Per **employee** \$ \_\_\_\_\_

Item 9. EMPLOYERS LIABILITY BODILY INJURY DAMAGES LIMIT

Per **employee** Per **occurrence** \$ \_\_\_\_\_

Per **occurrence** \$ \_\_\_\_\_

Item 10. PAYROLLS, RATES AND PREMIUMS:

Estimated <b>Payroll</b>	Premium Rate	Minimum and Deposit Premium

Item 11. FORMS AND ENDORSEMENTS MADE A PART OF THIS POLICY AT INCEPTION:


Item 12. MINIMUM AND DEPOSIT PREMIUM AND OTHER CHARGES:

Minimum and Deposit Premium:	\$
* Fees:	\$
State Surplus Lines Tax: 4.85%	\$
Stamping Fee: %	\$
Total:	\$

\* Fees are retained by Combined Group Insurance Services, Inc. for services provided.

Combined Group Insurance Services, Inc.  
14785 Preston Road, Suite 350  
Dallas, TX 75254

Issue Date: \_\_\_\_\_

## SELECT 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 VI, 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** provided to us by you, we agree with you as follows:

### I. GENERAL SECTION

#### A. THE POLICY

This policy includes the policy application, the Declarations and 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 **accidental bodily injury** , **occupational disease** or **cumulative trauma** to which this insurance applies.

B. This insurance applies to **accidental bodily injury** , **occupational disease** or **cumulative trauma** only if:

1. The **accidental bodily injury** , **occupational disease** or **cumulative trauma** is caused by an **occurrence** that takes place in the **coverage territory** ;
2. The **accidental bodily injury** , **occupational disease** or **cumulative trauma** is caused by an **occurrence** that takes place during the policy period;
3. A claim is made against you for **plan benefits** or **employers liability bodily injury damages** that is first reported to us within 36 months from the date of **occurrence** ;

a. a claim is made against you by a minor **employee** for **plan benefits** or **employers liability bodily injury damages** that is first reported to us within 36 months from the date of said minor **employee's** eighteenth (18th) birthday; and

4. With respect to a claim for **plan benefits** , such **plan benefits** are incurred by you in accordance with your **ERISA plan** during the **maximum coverage period** and paid by you during the **maximum payment 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.
- 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** , **defense costs** and **employers liability bodily injury damages** .
- E. You are responsible for the investigation, settlement and defense of any claim, suit, arbitration or other proceeding against you. We have no duty or obligation to defend you under this policy. Provided you comply with the provisions of paragraph II.F. below, we shall **indemnify** you, at our sole expense and not subject to our limits of insurance, for all reasonable and necessary **defense costs** until such time as either the Combined Single Indemnity Limit or the General Policy Aggregate Limit under this policy, as applicable, has been exhausted by our total payments of **plan benefits** and/ or **employers liability bodily injury damages** or by our tender of either our Combined Single Indemnity Limit or the General Policy Aggregate Limit to you, as applicable.
- F. You must cooperate with us in the investigation, settlement and defense of any claim or suit or other proceeding against you. You must immediately send us copies of any demands, notices, summonses or legal papers received in connection with such claim, proceeding or suit; and cooperate with us with respect to coordinating other applicable insurance available to you.
- G. We shall have the right, but not the duty, to appoint legal counsel, assume control of the defense or participate with you in the defense of any claim or suit against you, at our sole expense and not subject to our limits of insurance, until such time as either the Combined Single Indemnity Limit or the General Policy Aggregate Limit under this policy, as applicable, has been exhausted by our payments of **plan benefits** or **employers liability bodily injury damages** or by our tender of either our Combined Single Indemnity Limit or the General Policy Aggregate Limit to you, as applicable.

### 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 venturers 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 **plan benefits** and **employers liability bodily injury damages** paid by you 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 **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 Declarations does not increase your retention.
3. Amounts for **total disability losses** will not begin accruing towards the applicable Self-Insured Retention until after the expiration of the days **waiting period** shown on the Declarations.
4. You must report to us all **plan benefits** and **employers liability bodily injury damages** paid by you to satisfy your Self-Insured Retention obligations.

## B. LIMITS OF INSURANCE

1. The General Policy Aggregate Limit as shown on the Declarations is the most we will **indemnify** you for the sum of all covered losses under this policy.
2. Subject to the General Policy Aggregate Limit, the Combined Single Indemnity 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 **occurrence**.
3. Subject to the General Policy Aggregate Limit, the Combined Single Indemnity Limit shown on the Declarations is the most we will **indemnify** you for the sum of all covered losses under this policy per **employee** per **occurrence**.
4. Subject to the General Policy Aggregate Limit and the Combined Single Indemnity Limit, the following Limits of Insurance shall apply for covered losses:
  - a. Medical Expense Limit
 

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

For covered **medical expenses** , we will **indemnify** you for the smaller of the Medical Expense Limit shown on the Declarations or the actual amounts of covered **medical expenses** incurred by you for any one **employee** for any one **occurrence** during the policy period .

### 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** and the maximum weeks total disability duration per **employee** per **occurrence** shown on the Declarations, the most we will **indemnify** you for covered **total disability losses** incurred by you for any one **employee** for any one **occurrence** during the policy period in accordance with your **ERISA Plan** during the **maximum coverage period** and paid in accordance with your **ERISA Plan** by you during the **maximum payment 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:	85% of <b>employees hourly wage</b>
Earning less than \$8.50 an hour:	90% of <b>employees hourly wage</b>

For covered **total disability losses** , we will **indemnify** you for the smaller of the maximum weekly indemnity limit per **employee** shown on the Declarations times the maximum weeks total disability duration per **employee** per **occurrence** shown on the Declarations

or the actual amounts of covered **total disability losses** incurred by you per **employee** per **occurrence** in accordance with your **ERISA Plan** during the **maximum coverage period** and paid in accordance with your **ERISA Plan** by you during the **maximum payment period** , subject to the applicable percentage limitation shown above.

c. Accidental Death or Dismemberment Limit

The Accidental Death and Dismemberment Limit shown on the Declarations, plus up to an additional \$5,000 for burial costs in the event of death, is the most we will **indemnify** you for a covered accidental death or dismemberment loss incurred by you for any one **employee** during the policy period in accordance with your **ERISA plan** during the **maximum coverage period** and paid in accordance with your **ERISA Plan** by you during the **maximum payment 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 Declarations plus up to an additional \$5,000 for burial costs in the event of death or the actual amount of a covered accidental death or dismemberment loss incurred by you per **employee** in accordance with your **ERISA plan** during the **maximum coverage period** and paid under your **ERISA Plan** by you during the **maximum payment period** .

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** with the largest benefit as specified under your **ERISA Plan** .

d. Employers Liability Bodily Injury Damages Limit

The Employers Liability Bodily Injury Damages Limit shown on the Declarations is the most we will **indemnify** you for amounts paid by you for covered **employers liability bodily injury damages** for any one **employee** for any one **occurrence** during the policy period.

For covered **employers liability bodily injury damages** , we will **indemnify** you for the smaller of the Employers Liability Bodily Injury Damages Limit shown on the Declarations or the actual amounts paid by you for covered **employers liability bodily injury damages** for any one **employee** for any one **occurrence** during the policy period.

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 **employee** in the same **occurrence** to **indemnify** you for **medical expenses** , accidental death or dismemberment losses, or **total disability losses** , such payments made by us shall reduce our liability for a covered **employers liability bodily injury damages** loss for the same **employee** for the same **occurrence** .

4. 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.
5. Naming more than one Named Insured on the Declarations does not increase our Limits of Insurance.

## V. EXCLUSIONS

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

- A. any claim for **plan benefits** or **employers liability bodily injury damages** that is not first reported to us within 36 months from the date of **occurrence** .
  1. any claim made against you by a minor **employee** for **plan benefits** or **employers liability**

**bodily injury damages** that is not first reported to us within 36 months from the date of said minor employee's eighteenth (18th) birthday.

- B. any payment or agreement made by you to settle a claim or suit for **plan benefits** that was made after the expiration of the **maximum payment period** .
  - C. liability assumed by you under any contract or agreement, including presentations, warranties or indemnities of any kind. This exclusion does not apply to losses you pay under your **ERISA Plan** that are specifically insured under Section II of this policy.
  - D. 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.
  - E. 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 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 under your **ERISA Plan** that are specifically insured under Section II of this policy.
  - F. fines, assessments, penalties or interest, whether arising out of federal or state statute.
  - G. any workers' compensation law, unemployment compensation law, disabilities benefits law or other similar law.
  - H. 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.
  - I. an **employee's** participation in:
    - 1. an assault or a felony, except an assault committed in defense of your business or property;
    - 2. any act of terrorism;
    - 3. any illegal act; or
    - 4. service in the military of any country or any civilian non-combatant unit serving with such forces.
  - J. directly or indirectly, contributed by, 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 commotion.
- 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 by, caused by, resulting from, or in connection with any action taken in controlling, preventing, suppressing, retaliating against, or responding to 1. or 2. above.
- K. any acts of terrorism not "certified," as defined under the Terrorism Risk Insurance Act of 2002.

- L. any diagnostic procedure, treatment, service or supply which is not **medically necessary** .
- 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.
- N. the following:
1. asbestos, asbestos fibers or asbestos products;
  2. lead or lead based products;
  3. the hazardous properties, including radioactive, toxic or explosive properties, of **nuclear material** ; or
  4. any and all medical conditions that are associated with silica related conditions, this is to include exposure to any 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.
- 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 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 losses you pay under your **ERISA Plan** that are specifically insured under Section II of this policy.
- 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.
  2. breach of duty of good faith and fair dealing.
  3. breach of any non-competition agreements.
  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 an **accidental 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 designated agent for claims arising out of claim handling or the failure to pay or the delay in payment of **plan benefits** under your **ERISA Plan** or any other benefits 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, chiropractic treatment or chiropractic therapy;
  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 **employee** , the spouse of an injured **employee** , a parent 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.
- U. 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.

## VI. DEFINITIONS

The following terms shall have the following meaning when used in this policy:

A. **Accident** means an event which:

1. was sudden, unforeseen, unplanned and unexpected;
2. occurred at a specifically identifiable time and place;
3. occurred by chance or from unknown causes; and
4. occurred during the policy period.

B. **Accidental bodily injury** means an identifiable physical injury to an **employee** , 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. **Coverage territory** means the United States of America (including its territories and possessions), Puerto Rico and Canada or outside the United States of America.

D. **Cumulative trauma** means damage to the physical structure of the body of an **employee** occurring as a result of repetitious, physically traumatic activities that occurs within the **scope of employment** during the policy period. **Cumulative trauma** does not include **accidental bodily injury** or **occupational disease** .

E. **Defense costs** mean all reasonable and necessary costs, charges, fees (including attorneys' fees, experts' fees and arbitrators' fees) and expenses incurred by you in investigating, defending, mediating or arbitrating any claims against you for covered **plan benefits** or **employers liability bodily injury damages** . **Defense costs** include the premium for appeal, attachment or similar bonds, but without any obligation to apply for or furnish any such bonds.

**Defense costs** do not include your office expenses; the regular or overtime wages, salaries, fees or benefits of your directors, officers or **employees** ; or any adjustment expenses incurred or paid by you or your designated agent for claim handling. **Defense costs** do not include any amounts incurred or paid by you or your designated agent arising out of claim handling or the failure to pay or the delay in payment of **plan benefits** under your **ERISA Plan** or any other benefits under any voluntary occupational injury benefit plan, whether or not filed in conformance with ERISA. **Defense costs** do not include **plan benefits** or **employers liability bodily injury damages** .

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

G. **Employee** means:

1. a person who is employed in your regular business at one of your **office locations** , 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, the term **employee** specifically includes executive officers unless excluded by endorsement. Provided further that under no circumstances shall the term **employee** include a leased employee, an independent contractor or a third-party agent.

H. **Employers liability bodily injury damages** mean all reasonable and necessary amounts paid by you to obtain a release of liability, to settle a claim and to pay a judgment because of **accidental bodily injury** , **occupational disease** or **cumulative trauma** occurring during the policy period.

**Employers liability bodily injury damages** include adjustment expenses, settlements, court costs, prejudgment interest, post-judgment interest and amounts awarded by a court for punitive or exemplary damages.

**Employers liability bodily injury damages** do not include your office expenses or the regular or overtime wages, salaries, fees or benefits of your directors, officers or **employees** . **Employers liability bodily injury damages** do not include any amounts incurred or paid by you or your designated agent arising out of claim handling or the failure to pay or the delay in payment of **plan benefits** under your **ERISA Plan** or any other benefits under any voluntary occupational injury benefit plan, whether or not filed in conformance with ERISA. **Employers liability bodily injury damages** do not include **defense costs** or **plan benefits** .

I. **ERISA Plan** means the written welfare benefit plan that you have provided to us, 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 **employees** .

J. **Hospital** means a lawful institution that:

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

K. **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.

L. **Indemnify** means reimburse.

M. **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** .

N. **Maximum coverage period** means the number of weeks shown on the Declarations. Each **occurrence** shall have a separate **maximum coverage period** that begins with the date of **occurrence** .

O. **Maximum payment period** means the **maximum coverage period** shown on the Declarations plus ninety (90) days. Each **occurrence** shall have a separate **maximum payment period** that begins with the date of **occurrence** .

P. **Medical expense** means an **employees** expense 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** .

Q. **Medically necessary** means medical services, procedures or supplies that 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.

- R. **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.
- S. **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.
- T. **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 **disease** resulting directly from an **accident** .

- U. **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** .
- V. **Office locations** shall mean your office 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 office location not reported to us at the time of your application, additional premium may become due for any such new office location.
- W. **Payroll** means the sum of money or substitutes for money paid or allowed by you to your **employees** , and includes:
1. Wages;
  2. Commissions;
  3. Bonuses;
  4. Extra pay for overtime work;
  5. Pay for holidays, vacations or periods of sickness;

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

- X. **Physician** means a duly qualified **physician** who is legally licensed to practice medicine in the state where the service is performed.
- Y. **Plan benefits** mean those benefits actually paid by you to or on behalf of an **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** , **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** .

**Plan benefits** do not include your office expenses; the regular or overtime wages, salaries, fees or benefits of your directors, officers or **employees** ; or any adjustment expenses incurred or paid by you or your designated agent for claim handling. **Plan benefits** do not include any amounts incurred or paid by you or your designated agent arising out of claim handling or the failure to pay or the delay in payment of **plan benefits** under your **ERISA Plan** or any other benefits under any

voluntary occupational injury benefit plan, whether or not filed in conformance with ERISA. **Plan benefits** do not include **defense costs** or **employers liability bodily injury damages** .

Z. **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** .

AA. **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.

BB. **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.

CC. **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;
2. causes your **employee** to be under the regular care of a **physician** ; and
3. causes your **employee** to be unable to engage in light or modified duty or any other occupation for wage or profit.

DD. **Total disability loss** means the benefit payments paid to your **employee** by you under the terms and conditions of your **ERISA Plan** (as a percentage of **hourly wage** ) as a result of a **total disability** .

EE. **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.

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

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 Minimum and 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 pro-rata. It will be the greater of:

- A. 25% of the Minimum and Deposit Premium; or
- B. The premium developed using the actual audited **payroll**.

Under all circumstances, the various fees shown on the Declarations 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.

## 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 for your **ERISA Plan**, as indicated on your application and 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 our prior written approval. We reserve the right to obtain professional services as we deem necessary at our expense.

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 must give us written notice within thirty (30) calendar days or as soon as practicable after the date of the **occurrence** of:

1. any claim involving disability of eight (8) weeks or more;
2. any claim involving:
  - a. a fatality;
  - b. paraplegia or quadriplegia;
  - c. multiple fractures involving more than one non-union;
  - d. brain injury;
  - e. nerve damage causing paralysis or loss of sensation;
  - f. massive internal injuries affecting body organs;
  - g. any claim involving **employers liability bodily injury damages**;
  - 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. injury to the spinal cord; or
  - k. second or third degree burns of twenty five (25%) or more of the body; or

3. any suit or other proceedings against you arising out of **accidental bodily injury** , **occupational disease** or **cumulative trauma** .
4. any claim in an amount excess of 50% of the Self-Insured Retention.

Your failure to notify us of a claim within the time frame outlined above may result in a denial of coverage for that particular claim.

PROVIDED, HOWEVER, ANY CLAIM(S) FIRST REPORTED TO US AFTER THIRTY-SIX (36) MONTHS FROM THE DATE OF OCCURRENCE WILL NOT BE COVERED UNDER THIS POLICY.

### **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, Texas 75381-9045:

1. a fully completed Claim Notification Form;
2. copies of all notices and legal papers related to the claim, proceeding or suit;
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 suit; and
5. any other information we may request.

### **D. 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 of any recoveries, 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.

### **E. PROCESSING AND PAYMENT OF CLAIMS**

Upon receipt of notice of a claim from either you, your representative, or a claimant, we will, within fifteen (15) business days, provide written acknowledgement of receipt of the claim to you, commence our procedures for resolving the claim, and request from appropriate parties all necessary statements, forms, and other items needed to properly resolve the claim.

After receipt of all necessary statements, forms, and other items needed to properly resolve the claim, we will, with fifteen (15) business days, provide written notice to the claimant and you of either acceptance or rejection of the claim.

If we accept the claim, we will then provide payment to you with five (5) business days, as well as written confirmation of settlement.

## **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.

If any changes or amendments are made by you that increase benefits to your **employees** under your **ERISA Plan** subsequent to the effective date of this policy, you agree that any such losses incurred by you under your changed or amended **ERISA Plan** that are in excess of the benefits described under the original **ERISA Plan** provided to us will not be covered by us under this policy, unless we have endorsed such changes in writing under this policy and have collected any additional resulting premium. If any changes or amendments are made by you that decrease benefits to your **employees** under your **ERISA Plan** subsequent to the effective date of this policy, you agree that such decreases in benefits under your **ERISA Plan** shall be automatically endorsed under this policy without any decrease in premium.

#### **B. CONCEALMENT, MISREPRESENTATION OR FRAUD**

This policy is void in any case of fraud or misrepresentation of material fact 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** 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 such any audits.

#### **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 you and us, including your or our 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 you and us 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. You and we agree that the Federal Arbitration Act and related federal judicial procedure will govern arbitration as 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 you or we may make a written demand for arbitration, setting forth the nature of the dispute and naming an arbitrator with a minimum of ten (10) years experience in the insurance industry, by registered or certified mail, return receipt requested. Notice to you will be sent to the address furnished by

you in your application for coverage, unless we have received written notice of an address change from you. Notice to us shall be sent to us or our authorized representative, Combined Independent Agencies, Inc. at 14785 Preston Road, Suite 350, Dallas, Texas 75254, or any other last known address provided to you by us. Combined Independent Agencies, Inc. is authorized to act on behalf of us in all aspects of the arbitration process. However, 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 by you or us, the other will have thirty (30) days to respond and name a second arbitrator. If the other does not respond by naming a second arbitrator within thirty (30) days, the arbitrator named by whichever of us made the original demand will be sole arbitrator to hear the dispute. If the other responds within 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 (10) years experience in the insurance industry. If a panel of arbitrators is selected, each of us will pay the cost of our own arbitrator and will share the cost of the third arbitrator. 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 the Dallas, Texas office of the American Arbitration Association. A decision agreed to by two of the arbitrators will be binding.

You and we agree that the policy is to be performed in Dallas, Texas. Unless you and we agree otherwise, arbitration will take place in Dallas, Texas. Arbitration will be conducted by written submission unless you or we request a live hearing before the arbitrator(s) at least ten (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 thirty (30) days after a hearing on the issues or the written submission, and payment of any amounts awarded to you or us will be due within thirty (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 twelve percent (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 of 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 you or us.

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 whichever of us is 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 you or we pursue a claim covered by this arbitration provision by litigation rather than arbitration, the other 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.

## **G. CANCELLATION**

1. We may cancel this policy by mailing or delivering to you written notice of cancellation, stating the reason for cancellation, at least ten (10) days before the effective date of cancellation. The permissible reasons for cancellation are as follows:



- a. If this policy has been in effect for sixty (60) days or less, we may cancel for any reason except that, under the provisions of the Texas Insurance Code, we may not cancel this policy solely because the policyholder is an elected official.
  - b. If this policy has been in effect for more than sixty (60) days, or if it is a renewal or continuation of a policy issued by us, we may cancel only for one or more of the following reasons:
    - (1) Fraud in obtaining coverage;
    - (2) Failure to pay premiums when due;
    - (3) An increase in hazard within your control which would produce an increase in rate;
    - (4) Loss of our reinsurance covering all or part of the risk covered by the policy; or
    - (5) If we have been placed in supervision, conservatorship, or receivership and the cancellation is approved or directed by the supervisor, conservator, or receiver.
2. You may cancel this policy at any time by giving us written notice by mail stating the cancellation date.
  3. We may elect not to renew this policy except that, under the provisions of the Texas Insurance Code, we may not refuse to renew this policy solely because the policyholder is an elected official.
    - a. If we elect not to renew this policy, we may do so by mailing or delivering to you, at your last known mailing address, written notice of non-renewal, stating the reason for non-renewal, at least sixty (60) days before the expiration date of the policy.
    - b. If our notice of non-renewal is mailed or delivered less than sixty (60) days before the expiration date of this policy, this policy will remain in effect until the 61st day after the date on which the non-renewal notice is mailed or delivered. Earned premium for any period of coverage that extends beyond the policy's expiration date will be computed pro-rata based on the previous year's premium.
  4. Our mailing or delivery of notice of cancellation or non-renewal to the first Named Insured at the address shown in Item 1. on the Declarations will be considered as notice to all Named Insureds and will be sufficient proof that we cancelled or non-renewed the policy.

#### **H. 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.

#### **I. 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.

#### **J. 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 on 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.

#### **K. 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.

**L. 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.

**M. SERVICE OF SUIT**

It is understood and agreed that in the event of the failure of the Company to pay any amount claimed to be due hereunder, the Company, at the request of the Named Insured, will submit to the jurisdiction of a court of competent jurisdiction within the United States of America. The foregoing shall not constitute a waiver of the right of the Company to remove, remand, or transfer such suit to any other court of competent jurisdiction in accordance with the applicable statutes of the state of United States pertinent hereto. In any suit instituted against them upon this contract, we will abide by the final decision of such court or of any appellate court in the event of an appeal.

It is further agreed that service of process in such suit may be made upon the Superintendent, Commissioner, or Director of Insurance or other person specified for that purpose in the Statute or his successor or successors in office as their true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of you or any beneficiary hereunder arising out of this contract of insurance.

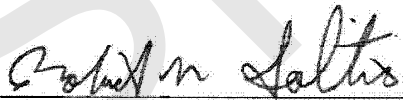
We hereby designate the President of North American Capacity Insurance Company, 650 Elm Street, 6th Floor, Manchester, NH 03101-2524, as the person to who the said Superintendent, Commissioner, or Director of Insurance is authorized to mail such process or a true copy thereof, in compliance with the applicable statutes governing said service of process in the state or jurisdiction in which a cause of action under this contract of insurance arises.

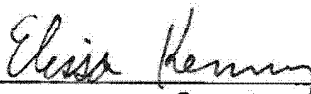
This shall not be deemed or construed to supersede the requirement to arbitrate as provided in the Binding Arbitration Provision as referenced in this policy.

**N. SOLE REPRESENTATIVE**

The Named Insured listed first on the Declarations will act on behalf of all Named Insureds to pay premiums, change this policy, accept loss payments, receive return premiums, engage arbitration 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.

  
\_\_\_\_\_  
President

  
\_\_\_\_\_  
Secretary