

REPUBLIC-VANGUARD INSURANCE COMPANY  
2304 Tarpley Rd., #124  
Carrollton, Texas 75006

**DECLARATIONS**

Item 1. NAMED INSURED AND ADDRESS

Policy Number:  
Endorsement Date:  
Endorsement #:  
Premium:  
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 occurrence \$ \_\_\_\_\_

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

Item 6. MEDICAL EXPENSE LIMIT  
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 occurrence \$ \_\_\_\_\_

Item 10. PAYROLLS, RATES AND PREMIUMS:

Estimated Payroll	Premium Rate	Minimum and Deposit Premium
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Item 11. FORMS AND ENDORSEMENTS MADE A PART OF THIS POLICY AT INCEPTION:

VIP-101 (6/2005), VIP-102 (5/2005), VIP-103 (5/2005), VIP-104 (6/2005),

Item 12. MINIMUM AND DEPOSIT PREMIUM, SURPLUS LINES TAXES AND OTHER CHARGES:

Minimum and Deposit Premium:	\$
Policy Fee:	\$
State Surplus Lines Taxes:	4.85% \$
Stamping Fee Tax:	.10% \$

SURPLUS LINES BROKER:

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

Countersigned By: \_\_\_\_\_

This insurance contract is with an insurer not licensed to transact insurance in this state and is issued and delivered as a surplus lines coverage pursuant to the Texas insurance statutes. The Texas Department of Insurance does not audit the finances or review the solvency of the surplus lines insurer providing this coverage, and this insurer is not a member of the property and casualty insurance guaranty association created under Article 21.28-C, Insurance Code. Article 1.14-2, Insurance Code, requires payment of 4.85 percent tax on gross premium.

## IMPORTANT NOTICE

To obtain information or make a complaint:

You may call the company's toll-free telephone number for information or to make a complaint at

**1-800-275-3193**

You may write the Company at

**REPUBLIC-VANGUARD INSURANCE COMPANY  
C/O COMBINED INDEPENDENT AGENCIES, INC.**

2304 Tarpley Rd., Suite 124  
Carrollton, Texas 75006  
Fax# (800) 275-3194

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

**1-800-252-3439**

You may also write the  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104  
Fax# (512) 475-1771

**PREMIUM OR CLAIM DISPUTES:** Should you have a dispute concerning your premium or about a claim you should contact the 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 informacion o para someter una queja:

Usted puede llamar al numero de telefono gratis de la compania para informacion o para someter una queja al

**1-800-275-3193**

Puede escribir

**REPUBLIC-VANGUARD INSURANCE COMPANY  
C/O COMBINED INDEPENDENT AGENCIES, INC.**

2304 Tarpley Rd., Suite 124  
Carrollton, Texas 75006  
Fax# (800) 275-3194

Puede comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca de companias, coberturas, derechos o quejas al

**1-800-252-3439**

Puede escribir al Departamento de Seguros de Texas  
P.O. Box 149104  
Austin, Texas 78714-9104  
Fax# (512) 475-1771

**DISPUTAS SOBRE PRIMAS O RECLAMOS:** Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con la compania primers. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).

### **UNA ESTE AVISO A SU POLIZA:**

Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.

## NOTICE TO TEXAS POLICYHOLDERS

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.

The Policy is issued and delivered in the State of Texas and is governed by the laws thereof and is subject to the terms and conditions recited on the subsequent pages, which are part of this agreement.

# VANGUARD INSURANCE PLUS 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. During the **maximum coverage period**, a claim is first made against you for **plan benefits or employers liability bodily injury damages** because of the **accidental bodily injury, occupational disease or cumulative trauma**;
4. During the **maximum claim period**, you first report to us in writing the claim made against you in 3. above for **plan benefits or employers liability bodily injury damages** because of the **accidental bodily injury, occupational disease or cumulative trauma**; and
5. During the **maximum claim period**, you pay the claim made against you in 3. above for **plan benefits or employers liability bodily injury damages** because of the **accidental bodily injury, occupational disease or cumulative trauma**.

ANY CLAIMS REPORTED BY YOU OR ANY PAYMENTS MADE BY YOU SUBSEQUENT TO THE EXPIRATION OF THE **MAXIMUM CLAIM PERIOD** WILL NOT BE COVERED UNDER THIS POLICY.

- 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 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.
- F. We shall have the right, but not the duty, to participate with you at our own expense in the defense of any claim or suit against you that, in our opinion, may result in a payment under this policy. In the event a claim or suit which in our reasonable judgment may result in payment in an amount in excess of the Self-Insured Retention, we may assume control of the defense or settlement of such claim or suit. If we assume control of the defense of a claim or suit, we will do so at our expense until such time that our limits of insurance have been exhausted by our payment of judgments or settlements or by our tender of our limits to you.
- G. If we elect to participate in or assume control of any claim or suit, you must cooperate with us in the investigation, settlement and defense of the claim or suit. 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.

### 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 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 **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 that have been paid by you during the **maximum claim period**.
2. 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 **occurrence** that have been paid by you during the **maximum claim 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 claim period**:
  - a. **Medical Expense Limit**

The Medical Expense Limit shown on the Declarations is the most we will indemnify you for covered **medical expenses** paid in accordance with your **ERISA Plan** by you during the **maximum claim period** for any one **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 Declarations or the actual amounts of covered **medical expenses** paid under your **ERISA Plan** by you during the **maximum claim period 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** 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** paid in accordance with your **ERISA Plan** by you during the **maximum claim 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 <b>employee's hourly wage</b>
Earning less than \$8.50 an hour:	75% of <b>employee's 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** paid under your **ERISA Plan** by you during the **maximum claim 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 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 paid in accordance with your **ERISA Plan** by you during the **maximum claim period** for any one **employee** 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 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 paid under your **ERISA Plan** by you during the **maximum claim period per employee**.

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**.

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.



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 covered **employers liability bodily injury damages** paid by you during the **maximum claim period** for each **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 amount of covered **employers liability bodily injury damages** paid by you during the **maximum claim period per occurrence**.

If an **occurrence** is covered as an **employers liability bodily injury damages** loss under this policy and payments have been made by us for the same **occurrence** to indemnify you for **medical expenses**, accidental death or dismemberment losses, or **total disability losses**, such payments made by us shall be applied to reduce our liability for a covered **employers liability bodily injury damages** loss.

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, directly or indirectly, out of:

- A. any payment or agreement made by you to settle a claim or suit for **plan benefits** or **employers liability bodily injury damages** that was made after the expiration of the **maximum claim period**.
- B. 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.
- 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 Texas Labor Code, and all other claims affecting or arising out of the employment relationship whether arising out of state or federal statutes or regulations or the common law. This exclusion does not apply to losses you pay under your **ERISA Plan** that are specifically insured under Section II of this policy.
- D. 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.
- E. fines, assessments, penalties or interest, whether arising out of federal or state statute.

- F. any workers' compensation law, unemployment compensation law, disabilities benefits law or other similar law.
- 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.
- H. 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.
- I. 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.
- J. any acts of terrorism not "certified," as defined under the Terrorism Risk Insurance Act of 2002, as amended.
- K. any diagnostic procedure, treatment, service or supply which is not medically necessary.
- L. that part of any medical expense that is in excess of the usual and customary charge for that good or service.
- M. accidental bodily injury, occupational disease or cumulative trauma occurring while the employee was deemed to be legally intoxicated by a law enforcement official.
- N. 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 Substances Act in force at the time and location of the occurrence.
- O. 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.
- P. 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.
- Q. 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.

- R. 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.
- S. a heart attack unless the heart attack was proximately caused by and arose out of an **accident**.
- T. errors and omissions by you or your claims administrator under your **ERISA Plan** arising out of claim handling or the failure to pay or the delay in payment of benefits by you or your designated agent under any voluntary occupational injury benefit plan, whether or not filed in conformance with ERISA.
- U. violations of ERISA by you or any other party, including outside counsel, involved in preparing, designing or administering your **ERISA Plan**.
- V. 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.
- W. 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.
- D. **Cumulative trauma** means damage to the physical structure of the body of an **employee** occurring as a result of repetitions, 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. **Disease** means a condition marked by a pronounced deviation from the normal healthy state or normal pregnancy of an **employee**.
- F. **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.
- G. **Employers liability bodily injury damages** means all reasonable amounts paid by you to obtain a release of liability, to settle a claim, to pay a judgment, and to defend, mediate or arbitrate a workplace negligence action brought by any **employee** because of **accidental bodily injury, occupational disease or cumulative trauma** occurring during the policy period. **Employers liability bodily injury damages** includes settlements, court costs, prejudgment interest, post-judgment interest, investigations, adjustment expenses, mediation, arbitration and legal expenses to defend the claim of an **employee** and amounts awarded by a court for pain and suffering and punitive or exemplary damages. **Employers liability bodily injury damages** does not include your office expenses or salaries of your **employees**. Damages incurred or paid by you or your designated agent for claim handling or the failure to pay or the delay in payment of **plan benefits** under your **ERISA Plan** are specifically excluded under this policy.
- H. **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**.
- I. **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.

- J. **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**.
- K. **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**.
- L. **Maximum claim period** means the **maximum coverage period** plus ninety (90) days.
- M. **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 any administration fees, office expenses or salaries of your employees or any third party in the administration of a claim.

- N. **Medical expense** means an **employee's** expense for medical or dental services, procedures or supplies, provided the expense is **medically necessary, usual and customary** and prescribed by a **physician** 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**.
- O. **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.

- P. **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.
- Q. **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.
- R. **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**.

- S. **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**.
- T. **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.
- U. **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;
  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;
  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**;

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;
9. The rental of an apartment or a house provided for an **employee** based on comparable accommodations;
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;
11. The value of meals received by **employees** as part of the pay to the extent shown in your records;
12. The value of store certificates, merchandise, credits or any other substitute for money received by **employees** as part of their pay;
13. **Employee** contributions made in the form of employee-authorized salary reduction, which are diverted by an **employee** for payment toward a savings plan. Such contributions could be referred to as Salary Reduction Plans, IRAs or Flexible Benefit Plans;
14. Allocated business expenses such as housing, automobile, clothing, tools or moving;
15. Automobile mileage allowances in excess of IRS guidelines; and
16. Per diem allowances in excess of IRS guidelines.

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

V. **Physician** means a duly qualified **physician** who is legally licensed to practice medicine in the state where the service is performed.

W. **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**.

X. **Hourly Wage**, for purposes of calculating a **total disability**, shall be 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 of the **employee** divided by the number of work hours applicable to that salary.

Y. **Scope of employment** means 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 or other 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.

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

1. provides room and board;
2. provides nursing care by or under the supervision of a **physician**;
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, apparatus and equipment ordinarily furnished for use in such a facility;
6. provides medical services by **physicians**;
7. has an agreement with a **hospital** for diagnostic and therapeutic services, the transfer of patients and exchange of patients;
8. provides services necessary to the health and care of patients that are generally provided by such **hospital**;
9. is licensed or registered in accordance with local and state laws and regulations.

AA. **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.

BB. **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**.

CC. **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.

DD. **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 more than pro-rata. It will be the greater of:

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

Under all circumstances, the Policy Fee shown on the Declarations is fully earned at inception and no part of this fee 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 other 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 payment under this policy;
2. any claim involving disability of eight (8) weeks or more;
3. any claim involving:
  - a. **Plan benefits denied to an employee;**
  - b. a fatality;
  - c. paraplegia or quadriplegia;
  - d. multiple fractures - involving more than one non-union;
  - 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
4. any suit or other proceedings against you arising out 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.

PROVIDED, HOWEVER, ANY CLAIMS REPORTED BY YOU OR ANY PAYMENTS MADE BY YOU SUBSEQUENT TO THE EXPIRATION OF THE **MAXIMUM CLAIM PERIOD** 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 these rights for us and help us enforce them. Any amounts recovered by you or us will first be used to reduce our payment. Then, we will pay the remaining balance, if any, to you.

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

IX. OTHER CONDITIONS

A. AGREEMENT UPON TERMS

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

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 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 any such 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 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 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 party 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 the insured will be sent to the address furnished by the insured in its application for coverage, unless we have received written notice of an address change from the insured. Notice to us shall be sent to us or our authorized representative, Combined Independent Agencies, Inc. at 2304 Tarpley Road, Suite 124, Carrollton, Texas 75006, 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, the noticed party will have thirty (30) days to respond and name a second arbitrator. If the noticed party does not respond by naming a second arbitrator within thirty (30) days, the arbitrator named by the demanding party will be the sole arbitrator to hear the dispute. If the noticed party responds within the thirty (30) days by naming a second arbitrator, the two arbitrators will select within thirty (30) days a third arbitrator with a minimum of ten years experience in the insurance industry. If 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 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.

The parties agree that the policy is to be performed in Dallas, Texas. Unless both parties agree otherwise, arbitration will take place in Dallas, Texas. Arbitration will be conducted by written submission unless either party requests 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 either party 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 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.

#### G. 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 ten (10) days advance written notice by registered or certified mail or first class mail. We may cancel this policy by giving you at least thirty (30) days advance written notice by registered or certified mail 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 Declarations will be considered as notice to all Named Insureds and will be sufficient proof that we cancelled the policy.

If this policy is canceled, 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.

#### 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 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

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 Michael E. Ditto, mailing address: P.O. Box 809063, Dallas, Texas 75380-9063, as the Company officer to whom the Superintendent, Commissioner, or Director of Insurance is authorized to mail such process or a true copy thereof.

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 by an authorized surplus lines broker.

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary