



**STOP LOSS**  
Administrative Address:  
Wall Street Plaza  
88 Pine Street, 16<sup>th</sup> Floor  
New York, NY 10005

**QBE INSURANCE CORPORATION**

**QBSL – 0104 (07-02)**

**EXCESS LOSS INSURANCE POLICY  
Non – Participating**

**PLEASE READ CAREFULLY**

**Policyholder Name:**

**Principal Address:**

**Policy Number:**

**Effective Date:**

**Expiration Date:**

**YOUR Designated Third-Party Administrator:**

This Policy is issued in consideration of YOUR Application and the payment of premiums. The attached Application and a copy of YOUR Employee Welfare Benefit Plan on file with US form a part of this Policy.

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

This Policy is governed by the laws of the state of YOUR Principal Address except to the extent which is pre-empted by ERISA.

This Policy is issued by US or OUR Underwriting Offices as of the Effective Date.

In Witness Whereof, the Company has caused this Policy to be executed and attested, but this Policy shall not be valid unless countersigned by a duly authorized representative of the Company.

Secretary

President



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SAMPLE

## **SECTION I** **DEFINITIONS**

**Actively at Work** means that an employee is performing the ordinary duties of his or her job and is not confined to a hospital or other health care facility, or as defined by the Plan Document, or absent from the workplace because of any illness or accident. Ordinarily, scheduled vacation time is considered to be Actively at Work.

**Aggregate Reimbursement Percentage** means the percentage at which Eligible Expenses, in excess of YOUR Annual Aggregate Attachment Point, will be reimbursed by US.

**Aggregating Specific Deductible** means the amount retained and Paid by YOU during the Policy Period for Plan Benefits, which are in excess of the Specific Attachment Point, equal to Plan Benefits in excess of the Specific Attachment Point multiplied by the Specific Reimbursement Percentage.

**Annual Aggregate Attachment Point** means, for the Policy Period or any portion of the Policy Period, the Plan Benefits covered by this Policy and wholly retained by YOU. It is not considered for reimbursement under this Policy, and is the greater of:

1. the sum of Monthly Aggregate Factor amounts for each month of the Policy Period, determined by multiplying the total number of Covered Units by the Monthly Aggregate Factor amounts; or
2. the Minimum Annual Aggregate Attachment Point shown in the Schedule.

The maximum per Covered Person which may be applied annually to the Annual Aggregate Attachment Point, (i.e. Individual Claim Limit) is shown in the Schedule.

**Application** means that Excess Loss Insurance Application signed by YOU and attached to this Policy. The Application is subject to acceptance by US and, if accepted, will become a part of this Policy.

**Benefit Period** means the period of time during which Eligible Expenses must be Incurred by a Covered Person and Paid by YOU to be eligible for reimbursement under this Policy. This period does not alter the Policy Effective Date or Policy Period. It does not waive this Policy's eligibility requirements.

**COBRA Continuee** means a Covered Unit that elects to extend its group health coverage under the Plan as entitled under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA).

**Company** (WE, US, OUR) means QBE Insurance Corporation.

**Covered Family** means an employee and his or her dependents covered under the Plan.

**Covered Person means** an individual covered under the Plan.

**Covered Unit** means an employee, and employee with dependents, or such other defined unit as agreed upon between YOU and US, as shown in the Application.

**Disabled Persons** are those persons who are or become unable to perform the same lifestyles functions as a person of similar age and sex who is in good health.

**Eligible Expenses** means the eligible charges payable under YOUR Plan and for which the Covered Person is liable to pay. It does not include expenses specifically excluded or limited by this Policy, YOUR Application for this Policy, or any Endorsements.

**Endorsement** means a written amendment or addendum that alters the terms of this Policy.



**Experimental or Investigational** means medical services, supplies or treatments provided or performed in a special setting for research purposes, under a treatment protocol or as part of a clinical trial (Phase I, II or III). The covered service will also be considered Experimental/Investigational if the Covered Person is required to sign a consent form which indicates the proposed treatment or procedure is part of a scientific study or medical research to determine its effectiveness or safety. Medical treatment, which is not considered standard treatment by the majority of the medical community or by Medicare, Medicaid or any other government financed programs or the National Cancer Institute regarding malignancies, will be considered Experimental/Investigational. Treatment is also considered Experimental/Investigational if such treatment has not been granted, at the time services were rendered, any required approval by a federal or state governmental agency, including without limitation, the Federal Department of Health and Human Services, Food and Drug Administration (FDA), or any other comparable state governmental agency, and the Federal Health Care Finance Administration as approved for reimbursement under Medicare Title XVIII. A drug, device or biological product is considered Experimental/Investigational if it does not have FDA approval or it has FDA approval only under an interim step in the FDA process, i.e., an investigational device exemption or an investigational new drug exemption.

**Incurred** means:

1. with respect to medical services or supplies, the date on which the services are rendered or supplies are received by the Covered Person; and
2. with respect to disability income benefits, the date each periodic benefit payment becomes payable to the Covered Person (not the date the disability commences).

**Individual Claim Limit** means the maximum amount of Payments for Eligible Expenses that will be counted for any one Covered Person under Aggregate Excess Loss. The Individual Claim Limit is shown in the Schedule.

**Late Entrant** means a Covered Person whose coverage under the Plan was initiated at any time other than during an authorized enrollment period as allowed under the Plan.

**Large Claim (LC)** means Paid or pending claims reaching, or with the potential to reach, 50% of the Specific Attachment Point or PCL.

**Minimum Annual Aggregate Attachment Point** means the lowest amount of total Payments YOU must make under YOUR Plan before YOU are eligible for reimbursement under Aggregate Excess Loss coverage. The Minimum Annual Aggregate Attachment Point is shown in the Schedule.

**Monthly Aggregate Factor** means the factor(s) which is/are multiplied by the number of Covered Units for each Policy Month to determine the Annual Aggregate Attachment Point. The Monthly Aggregate Factor(s) is/are shown in the Schedule.

**Paid (Payment)** means that a claim has been adjudicated by the TPA and the funds are actually disbursed by the Plan prior to the end of the Benefit Period. Payment of a claim is the unconditional and direct payment of a claim to a Covered Person or their health care provider(s). Payment will be deemed made on the date that both:

1. the payor directly tenders payment by mailing (or by other form of delivery) a draft or check; and
2. the account upon which the payment is drawn contains, and continues to contain, sufficient funds to permit the check or draft to be honored by the institution upon which is drawn.

**Plan (Employee Welfare Benefit Plan)** means the self-insured health care plan YOU have agreed to make available to YOUR employees and their eligible dependents.

**Plan Benefits** means the health benefits covered by the Plan during the Policy Period which are:

1. Incurred on or after the Effective Date of this Policy; and
2. Incurred while this Policy is in force; and
3. Incurred and Paid during the Policy Period.



Plan Benefits will also include those health benefits covered by the Plan during the Policy Period which are Paid during any Run-Out Period or Incurred during any Run-In Period applicable to this Policy.

Plan Benefits do not include:

1. deductibles of the Plan;
2. co-insurance or co-payment amounts of the Plan;
3. expenses that are not covered by the Plan or this Policy;
4. amounts recoverable from any other source; or
5. amounts Paid under a previous policy or arrangement or excess loss coverage, whether issued by US or another entity.

**Plan Document** means the written instrument which describes the Plan and names the fiduciaries or trustees who jointly and separately have authority to control and manage the operations and administration of the Plan. The Plan Document must be in effect on the Effective Date of this Policy. The Plan Document shall be attached to and made a part of this Policy. Any changes to the Plan Document must be approved by US. (See the "Changes to YOUR Plan provision.")

**Policy** means this Excess Loss Policy issued by US to YOU.

**Policy Month** means, for the first Policy Month, the period beginning on the Effective Date of this Policy and ending on the corresponding date of the following month. Subsequent Policy Months begin on the corresponding date of each calendar month and continue until the corresponding date of the next month to the Policy Expiration Date.

**Policy Period** means the time period beginning on the Effective Date and ending on the Expiration Date.

**Policyholder** (Plan Sponsor, YOU or YOUR) means the Plan Sponsor, named on the face page, to whom this Policy is issued.

**Potentially Catastrophic Loss (PCL)** means a Paid or pending claim that has the potential to be catastrophic. PCL's include, but are not limited to the conditions listed in Exhibit I.

**Premium Due Date** is the first day of each calendar month. If the Effective Date of this Policy is other than the first day of a calendar month, the first month's premium will be pro-rated.

**Run-In-Limit** means the maximum benefit amount Paid by YOU under YOUR Plan for Eligible Expenses Incurred by a Covered Person during the Run-In-Period which will be applied toward payment under this Policy.

**Run-In-Period** means the period of time shown in the Schedule immediately prior to the first day of a Policy Period during which Eligible Expenses Incurred by a Covered Person, which are Paid by YOU during the Policy Period, will be considered when determining benefit payments under this Policy.

**Run-Out-Period** means the period of time shown in the Schedule immediately following this Policy's Expiration Date during which Plan Benefits Paid by YOU for Eligible Expenses Incurred by a Covered Person during the Policy Period will be considered when determining benefit payments under this Policy.

**Schedule** means the Schedule of Excess Loss Insurance.

**Specific Attachment Point** means the amount which is retained and Paid by YOU during the Policy Period. It is not considered for reimbursement under this Policy. The Specific Attachment Point applies separately to each Covered Person. The Specific Attachment Point is shown in the Schedule.



**Specific Lifetime Maximum Reimbursement** means the maximum amount WE will reimburse YOU with respect to any Covered Person under this and prior or later Policies issued by US. The Lifetime Maximum excludes the Specific Attachment Point amount. The Lifetime Maximum will not exceed the lesser of:

1. the amount shown in the Schedule; or
2. the lifetime amount set forth in the Plan.

**Specific Reimbursement Percentage** means the percentage at which Eligible Expenses, in excess of YOUR Specific Attachment Point, will be reimbursed by US.

**Third Party Administrator (TPA)** means a firm having a written agreement with YOU to process Plan Benefits and provide administrative services.

The term Third Party Administrator, as used in this Policy, does not refer to the Plan Administrator used in the Employee Retirement Income Security Act (ERISA) of 1974, as amended, unless YOU have specifically appointed the Third Party Administrator as such.

**Usual and Customary Charges** means the common charge for the same or comparable service or supply in the geographic area in which the service or supply is furnished. Usual and Customary Charges are determined based upon:

1. the amount of resources expended to deliver the treatment;
2. the complexity of the treatment rendered; and
3. charging protocols and billing practices generally accepted by the medical community.

## **SECTION II**

### **SPECIFIC EXCESS LOSS COVERAGE**

WE will reimburse YOU for Plan Benefits Paid in excess of the Specific Attachment Point, not to exceed the Specific Lifetime Maximum amount shown in the Schedule.

WE will reimburse YOU after YOU have provided an acceptable proof of loss and satisfactory proof of Paid Plan Benefits.

The Specific Excess Loss benefit applies to a Policy Period or fraction thereof (due to termination). As determined with regard to each Covered Person, it is the lesser of:

1. the Specific Lifetime Maximum; or
2. eligible Plan Benefit Payments made with regard to a Covered Person, less the Specific Attachment Point, the result of which is then multiplied by the Specific Reimbursement Percentage.

In addition, the Specific Excess Loss Benefits Payable under this Policy will be reduced by the Aggregating Specific Deductible.

If, for any reason, YOUR Specific Excess Loss coverage terminates before the end of the Policy Period:

1. all coverages under this Policy will end immediately;
2. the Run-Out Period, if any, will not apply; and
3. the Specific Attachment Point shown in the Schedule will continue to apply and it will not be reduced.

## **SECTION III**

### **AGGREGATE EXCESS LOSS COVERAGE**

The Aggregate Excess Loss benefit for the Policy Period, or fraction thereof (due to termination), is the Plan Benefit Payments made for Eligible Expenses during the Policy Period less;

1. the greater of the Minimum Annual Aggregate Attachment Point or the calculated Annual Aggregate Attachment Point; and less
2. the Specific Excess Loss benefits which have been or will be reimbursed by US under the Specific Excess Loss coverage except those contained in Special Limitations as identified in the Application; and less
3. any Payments which exceed any limitations of coverage under this Policy or which are excluded under this Policy; multiplied by
4. the Aggregate Reimbursement Percentage.

In no event will the Aggregate Excess Loss benefit exceed the Maximum Aggregate Reimbursement specified under Aggregate Excess Loss Coverage in the Schedule.

If for any reason, YOUR Aggregate Excess Loss coverage terminates before the end of the Policy Period:

1. all coverage under this Policy will end immediately;
2. the Run-Out Period, if any, will not apply; and
3. the Minimum Annual Aggregate Attachment Point shown in the Schedule will continue to apply and will not be reduced.

#### **SECTION IV REIMBURSEMENT OF ADDITIONAL COVERAGES**

Plan Benefits which YOU have Paid under YOUR prescription drug plan, vision plan, or dental plan will be considered for reimbursement under Specific Excess Loss coverage only if shown as included on the Schedule.

Plan Benefits which YOU have Paid under YOUR prescription drug plan, vision plan, dental plan, and/or weekly disability income plan will be considered for reimbursement under Aggregate Excess Loss coverage only if shown as included on the Schedule. The most WE will reimburse YOU for Plan Benefits YOU Pay under YOUR weekly disability income plan, if included for reimbursement, is shown in the Schedule.

#### **SECTION V LIMITATIONS**

##### **Actively at Work Status and Disabled Persons**

WE will not reimburse expenses Incurred by individuals who, on the latter of the Effective Date of their coverage under YOUR Plan or the Effective Date of this Policy:

1. are not Actively at Work, unless the Actively at Work requirement has been waived as indicated in the Schedule; or
2. are Disabled Persons, unless disclosed and accepted by US.
3. are excluded by name by way of an attachment to the Application or by Endorsement; or
4. are Late Entrants not accepted by US.

##### **Disabled Persons**

Expenses Incurred will not be eligible to satisfy the Specific Attachment Point or the Annual Aggregate Attachment Point until the day next following the date:

1. the Covered Person, with respect to an employee, returns to work on a full-time basis as defined in YOUR Plan; or
2. the Covered Person is no longer considered a Disabled Person; or
3. the Covered Person meets the eligibility requirements of YOUR Plan.



This limitation only applies to Covered Persons whose coverage under YOUR Plan is effective on or after the Effective Date of this Policy.

**Disclosure**

WE have relied upon the information provided by YOU and YOUR TPA in the issuance of this Policy. Should subsequent information become known which, if known prior to issuance of this Policy, would affect the premium rates, factors, terms or conditions for coverage thereunder, WE will have the right to revise the premium rates, factors, terms or conditions as of the Effective Date, by providing written notice to YOU. Any fraudulent statement will render this Policy null and void and claims, if any, will be forfeited.

**Retired Employees**

WE will reimburse Paid Plan Benefits for Retired Employees and their dependents, who are eligible under the Plan only if such persons are indicated as included in the Schedule.

**COBRA Continuees**

With respect to those persons qualifying as COBRA Continuees, and continuing coverage under YOUR Plan as such, prior to, on or after the Effective Date of this Policy, WE will reimburse Paid Plan Benefits for such individuals only if YOU make timely notification to such individuals of their rights to COBRA continuation coverage.

**Drug or Alcohol Abuse**

If YOUR Plan covers treatment of drug or alcohol abuse, Plan Benefits reimbursable under this Policy for such treatment will be limited to the amount stated in the Schedule.

**Medicare Benefits**

With respect to Covered Persons who are eligible for coverage under Medicare, any benefit reimbursable to YOU under this Policy shall be reduced by the amount of any similar Medicare benefit paid or reimbursable so that the total reimbursements hereunder with respect to a Covered Person or his or her dependents shall not exceed 100% of such person's actual expenses otherwise reimbursable under this Policy.

**Liability for Reimbursement**

WE shall not be liable under this Policy to directly reimburse any Covered Person or provider of professional or medical services for any benefits that YOU have agreed to provide under the terms of the Plan. OUR sole liability is to YOU, in accordance with the terms of this Policy. YOU may not assign any Excess Loss benefits to Covered Persons or providers of services.

**SECTION VI**  
**EXCLUSIONS**

WE will not reimburse YOU for any loss or expense caused by or resulting from:

1. expenses Incurred while the Plan is not in force with respect to the Covered Person, or for a person not covered under the Plan;
2. expenses covered by Plan changes made prior to OUR written approval of such changes;
3. expenses which result from any prescription care service, mail order prescription plan or any pre-paid prescription drug plan, dental, vision, or weekly disability income benefits, unless specifically included on the Schedule and approved by US.
4. liability or obligations assumed by YOU under any contract or service agreement other than the Plan;
5. expenses for services or supplies which are in violation of any law;
6. expenses for services or supplies billed above the Usual and Customary Charges for the area where provided or which are greater than the Plan benefit;

7. expenses resulting from or caused by war, whether declared or undeclared, civil war, invasion, hostilities, riot or resistance to armed aggression;
8. expenses for an injury or sickness arising out of, or in the course of an employment for wage or profit and for which the Covered Person is entitled to benefits under any Workers' Compensation or occupational disease law, whether or not the Covered person has applied for such benefits.
9. cost of the administration of claims, including cost of investigation, payments, or other service(s) provided by YOUR TPA, consulting fees and/or expenses of any litigation;
10. expenses from an act while committing a felony;
11. any amount used to satisfy deductibles or coinsurance amounts under the Plan;
12. expenses or costs resulting from noncontractual damages, court costs and legal fees, including but not limited to compensatory, exemplary and punitive damages, fines or statutory penalties;
13. medical expenses in connection with Experimental or Investigational surgery or treatment as defined in this Policy.
14. Payments recoverable through YOUR Plan's Coordination of Benefits or similar provision;
15. expenses Incurred by an employee or dependent of an employee of any affiliated or subsidiary company not included in the Application, unless added by Endorsement;
16. legal expenses and fees including legal expenses and fees Incurred on behalf of any Covered Person in obtaining medical treatment or expenses Incurred in connection with a judgment or settlement arising out of YOUR negligence in providing, arranging, or failing to provide or arrange a benefit to a Covered Person;
17. Payments YOU make under YOUR Plan for services and supplies which are not included in YOUR Plan or which are outside the requirements of YOUR Plan Document or this Policy;
18. expenses Incurred after the Expiration Date;
19. in the event this Policy is terminated before the Expiration Date, expenses Incurred after the date of such termination;
20. expenses Incurred by any COBRA Continuee whose COBRA continuation coverage was not offered in a timely manner;
21. YOUR TPA's failure to provide timely Payment to providers which results in non-receipt of any discounted fees for services or supplies. WE will reimburse only for the amount of the discounted amount had timely Payment been made by YOUR TPA.

## **SECTION VII PREMIUMS AND FACTORS**

### **Payments of Premiums**

No coverage under this Policy will be in effect until the first premium is paid. For coverage to remain in effect, each subsequent premium must be paid on or before the Premium Due Date. YOU are responsible for the payment of premiums. Payment of the premium to YOUR TPA does not constitute payment of the premium to US. Premium is not considered paid until the premium check is received at OUR Underwriting Office and sufficient funds are transferred from YOUR account into OUR account.

Upon termination of this Policy, or coverage hereunder, if the earned premium exceeds the premium paid, YOU will pay the excess to US; if less, WE will return to YOU the unearned portion of premium paid, subject to the minimum premium, if any, shown in the Schedule.

### **Grace Period**

A Grace Period of 31 days from the due date will be allowed for the payment of each premium after the first premium payment. During the Grace Period, the coverage will remain in effect, provided the premium is paid before the end of the Grace Period. If YOU do not pay the premium during the Grace Period, this Policy will terminate without further notice, retroactive to the date for which premiums were last paid.

### **Changes in Premium Rates or Factors**



WE may change YOUR premium rates and/or Monthly Aggregate Excess Loss Factors on any of the following dates:

1. The date when the terms of this Policy are changed.
2. The date YOU add or delete subsidiary or affiliated companies or divisions with OUR approval.
3. The date YOU change YOUR Plan with OUR written approval.
4. The date there is a change in the geographical area in which YOU are located.
5. The date there is a change in the nature of business in which YOU are engaged.

WE reserve the right to recalculate the premium rates and/or the Monthly Aggregate Excess Loss Factors retroactively for the Policy Period, if there is more than 10% variance between:

1. the number of Covered Units on any Premium Due Date; and
2. the number of Covered Units on the Policy Effective Date.

Otherwise, WE will not change YOUR premium rates or Monthly Aggregate Excess Loss Factors during the Policy Period.

### **SECTION VIII TERMINATION**

This Policy and all coverage hereunder will end upon the earliest of the following:

1. At the end of any period for which the premium is paid, if the subsequent premium is not paid as provided in the Grace Period provision.
2. On the date YOU tell US YOU want to cancel this Policy, provided YOU have given US at least 31 days advance written notice. If YOU cancel within 30 days after the Effective Date, YOU may ask for a full refund of the premium. If YOU do so, this Policy will terminate on the Effective Date. If YOU cancel this Policy at a later date, WE may keep the premium earned to the date of termination.
3. The Expiration Date of this Policy.
4. On the Effective Date, if, within 60 days after the Effective Date:
  - a. YOU fail to provide US any information or materials requested by US; or
  - b. YOU fail to comply with any condition imposed by US when this Policy is issued.If so, WE will return the premium paid by YOU, less the amount of any reimbursements WE made to YOU before the time this Policy was terminated. If the amount reimbursed to YOU exceeds the premium paid to US, YOU will pay US the difference.
5. The date the Plan terminates.
6. The date the administrative agreement between YOU and YOUR TPA terminates, unless WE consent in writing to YOUR naming of a new TPA.
7. The last day of the third consecutive month during which YOU fail to maintain the Minimum Plan Enrollment as stated in the Schedule, unless WE agree in writing to continue coverage;
8. The date YOU:
  - a. Suspend active business operations; or
  - b. are placed in bankruptcy or receivership, or
  - c. dissolve.
9. Any date on which YOU do not pay claims or make funds available to pay claims as required by the Plan.

#### **Concealment or Fraud**

This entire Policy will be void:

1. if, before or after a claim or loss, YOU or YOUR TPA have concealed or misrepresented any material fact or circumstance concerning this Policy, including any claim; (This includes failure to provide the required disclosure of health history of Disabled Persons, Large Claims or Potentially Catastrophic Losses.) or
2. in any case of fraud by YOU or YOUR TPA relating to this coverage.

## **SECTION IX REINSTATEMENT**

WE may, at OUR option, approve YOUR request to reinstate this Policy. YOU shall submit to US any forms and data WE may require, including YOUR representation as to losses Incurred or Paid as of the date of YOUR request for reinstatement. If this Policy is reinstated, YOU shall pay to US the premiums due from the date this Policy terminated.

## **SECTION X CLAIM PROVISIONS**

### **Administration of Claims under YOUR Plan**

WE have no duty to settle or adjust claims filed under YOUR Plan. YOU must retain and pay a TPA at all times. No one, including YOU, may pay benefits for YOUR Plan unless named as the TPA on YOUR Schedule and approved by US. WE will not reimburse YOU for Plan Benefits resulting from benefits paid by someone not authorized to do so.

YOU must make available sufficient funds to pay benefits when due.

The TPA shall:

1. supervise the administration and adjustment of all claims and verify the accuracy and computation of all claims, in accordance with the Plan;
2. maintain accurate records of all claim Payments;
3. maintain separate records of expenses not covered; and
4. provide US, on or before the 15<sup>th</sup> day of each Policy Month, the following data for the preceding Policy Month:
  - a. number of Covered Persons and/or Covered Units; and
  - b. a total of claims Paid.

### **Management of Large Claims (LC's) and Potentially Catastrophic Losses (PCL's)**

Notice of LC – YOU or YOUR TPA must notify US in writing of any LC (regardless of whether charges have been Paid or are pending Payment) as soon as practically possible when the claim exceeds or it appears that the claim will reach or exceed the defined limits for a LC.

Notice of PCL – YOU or YOUR TPA must notify US in writing of any PCL as soon as practically possible when receiving any information indicating that the claim (regardless of whether charges have been Paid or are pending Payment) is potentially catastrophic. (See Exhibit I of this Policy.)

Failure to Notify – If for any reason a LC or PCL is not properly submitted to the TPA, YOU shall promptly notify the TPA of the claim. In the event YOU or YOUR TPA fails to follow the notification requirements set forth in this provision, YOUR losses related to such LC or PCL may not be considered for reimbursement under this Policy.

If YOU receive information that any claim may be or become a PCL, YOU will immediately notify YOUR TPA.

### **Notice of Claim**

Specific Excess Loss – YOU must give written notice of claim to US within 30 days of the date YOU become aware of claims, with respect to a Covered Person, that have reached 50% of the Specific Attachment Point; however, LC's and PCL's should be reported within the time frame specified in the previous paragraph.

Aggregate Excess Loss – YOU must give written notice of claim to US within 30 days of the date YOU become aware of claims that have reached the Annual Aggregate Attachment Point.



YOUR failure to furnish written notice within the time required by this Policy will not invalidate or reduce any claim if it was not reasonably possible to provide written notice within such time. However, written notice must be furnished as soon as possible, but in no event later than one year after the date written notice is first required.

YOU or YOUR TPA shall submit on a timely basis all proofs of claims, reports and supporting documents WE may request.

**Proof of Loss**

Written proof of loss must be submitted within 60 days after the date of loss. Late proof will be accepted only if it is shown to have been furnished as soon as reasonably possible and within one year of the date of loss.

**Payment of Claims**

Amounts payable under this Policy will be paid upon receipt and acceptance by US of all the required material. Required material shall include proof of loss and proof of Payment for Eligible Expenses under the Plan and any reasonably requested supporting documentation. WE will have sole authority to reimburse or deny claims under this Policy.

**Benefit Determination**

Determination of benefits under YOUR Plan is YOUR sole responsibility. WE have no duty to settle or adjust claims filed under the Plan with YOU or YOUR TPA. WE have the right to review each claim YOU submit to US for reimbursement to determine if YOU are entitled to reimbursement. Only WE have the authority to reimburse losses covered by this Policy.

**Recoveries/Subrogation**

YOU are required to investigate and prosecute all valid claims that YOU may have against third parties arising out of any claim for which benefits were Paid by the Plan. YOU or YOUR TPA shall account to US for all amounts recovered. If YOU fail to pursue any action against a third party and WE have made benefit payments under this Policy, WE will be subrogated to all of YOUR rights to make recoveries. YOU are required to cooperate fully and do all things necessary and required for US to pursue any action to recover against the third party.

Any amounts recovered by YOU, YOUR TPA, or the Covered Person in such action shall be used first to reimburse US for any benefit Payments made on behalf of any Covered Person, and then to reimburse the expenses of recovery. Any amounts recovered by US shall be used to reimburse US for any amount that WE may have paid or become liable to reimburse to YOU under the terms of this Policy, and then to reimburse the expenses of collection. All remaining amounts shall be paid to YOU. If WE have reimbursed YOU for all or part of a particular loss and YOU or YOUR Plan later recover for that loss from a third party, YOU must repay US to the extent of OUR reimbursements, regardless of whether this Policy is still in force on the date YOU recover.

In the event YOU or YOUR TPA do not consider a third party to be liable for certain claims Paid under YOUR Plan but WE do, WE shall be subrogated to all of YOUR rights to make recoveries for such claims.

**Notice of Appeal**

Any objection, notice of legal action, or complaint received on a claim processed under YOUR Plan on which it reasonably appears an Excess Loss benefit will be payable to YOU under this Policy shall be brought to the immediate attention of OUR Underwriting Office.

**SECTION XI**  
**GENERAL PROVISIONS**

**Taxes**



If premium taxes should be assessed against YOU with respect to claims Paid under YOUR Plan, YOU shall hold US harmless from any tax liability.

**Entire Contract**

This entire contract consists of:

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

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

In case of a conflict between the Plan and this Policy, this Policy will prevail. WE have relied on the information YOU provided to issue this Policy. YOU represent such information is accurate. Should subsequent information become known which, if known prior to issuance of this Policy, would affect the premium rates, factors, terms or conditions for coverage thereunder, WE will have the right to revise the premium rates, factors, terms or conditions as of the Effective Date, by providing written notice to YOU. Any fraudulent statement will render this Policy null and void and claims, if any, will be forfeited.

**Policy Nonparticipating**

This Policy does not entitle YOU to share in OUR earnings.

**Records and Review**

YOU and/or YOUR TPA must:

1. keep appropriate records regarding administration of YOUR Plan; (YOUR records include records held by YOUR TPA.)
2. allow US to review and copy, during normal business hours, all records affecting OUR liability under this Policy;
3. maintain records of all Covered Persons under the Plan during the Policy Period and for a period of seven years after the termination of this Policy; and
4. maintain a separate record of any and all amounts YOU pay that exceed or are not covered by the benefits under YOUR Plan.

As a result of any audit, WE may readjust premiums, attachment points or reimbursements to YOU as may be necessary to reflect YOUR and OUR original intent in issuing this Policy.

**Clerical Error**

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

**Changes to This Policy**

Changes to this Policy may be made only by a Company officer or OUR Underwriting Office, with OUR approval. Any change must be by written Endorsement.

**Changes to YOUR Plan**

WE must be notified of any changes to the Plan. This notice must be in writing and provided to US at least 31 days prior to the effective date of the change. WE must approve the change in writing before coverage affected by this change will be provided by this Policy. If WE do not receive advance written notice of the change, or WE decline



coverage of the changes under this Policy, WE will be liable only for benefits provided by the Plan prior to the change YOU must provide US with a copy of YOUR written Plan and all amendments prior to the time the change becomes effective.

**Subsidiaries, Affiliated Companies Under YOUR Plan**

YOU must notify US in the event YOU acquire a subsidiary or affiliated company that will be included under YOUR Plan. If YOU do acquire a subsidiary or affiliated company that will be included under YOUR Plan, YOU must disclose certain required health history on persons whose coverage YOU will be assuming under YOUR Plan. Failure to do so will subject benefits under this Policy to certain limitations, as described in “Disclosure” in Section V.

Acquisition of a subsidiary of affiliated company that will be included under YOUR Plan may affect YOUR premium rates and/or Monthly Aggregate Excess Loss Factors, as described in “Changes in Premium Rates or Factors,” in Section VII.

YOU must notify US in the event YOU cede or dissolve a subsidiary or affiliated company that was included under YOUR Plan. Failure to do so may subject this Policy to termination (if Minimum Plan Enrollment is not maintained), or may affect YOUR premium rates and/or Monthly Aggregate Excess Loss Factors, as described in “Changes in Premium Rates and Factors,” in Section VII.

**Duties and Responsibilities of YOUR Designated Third –Party Administrator (TPA)**

YOUR TPA must be approved by US.

WE agree to recognize YOUR TPA as YOUR agent for the administration of YOUR Plan. YOU agree that YOUR TPA will:

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

If YOU give YOUR TPA a Power of Attorney, or revoke a Power of Attorney, neither is binding on US until WE receive it.

YOU will pay YOUR TPA for all administrative functions performed in relation to this Policy.

YOUR TPA is YOUR agent and not OURS. YOU authorize YOUR TPA to:

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

Payments by US to YOUR TPA are payments to YOU.

**Notice**

For the purpose of any notice required from US under the terms of this Policy, notice to YOUR TPA is notice to YOU and notice to YOU is notice to YOUR TPA.

**Disclaimer**

WE act only as a provider of Excess Loss Insurance coverage to YOUR Plan. WE are not a fiduciary. WE do not assume any duty to perform any of the functions or provide any of the reports required by the Employee Retirement Income Security Act of 1974, as amended.



WE have no right or obligation to pay any Covered Person or provider of professional or medical services. OUR sole liability is to YOU, subject to the terms and conditions of this Policy. Nothing in this Policy shall be construed to permit a Covered Person to have a direct right of action against US. WE will not be considered a party to YOUR Plan or to any supplement or amendment to it.

**Indemnification, Defense and Hold Harmless**

YOU agree to indemnify, defend and hold US harmless from:

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

WE will notify YOU if YOU have obligations. WE may participate in the defense at OUR expense. If YOU do not act promptly, WE may defend and compromise or settle the claim or other matter on YOUR behalf, for YOUR account, and at YOUR risk.

**Offset**

WE may offset payments due YOU under this Policy against claim overpayments and premium due and unpaid.

**Assignment**

YOU may not assign any of YOUR rights under this Policy.

**Severability**

Any clause deemed void, voidable, invalid, or otherwise unenforceable, whether or not such a provision is contrary to public policy, will not render any of the remaining provisions of this Policy invalid.

**Insolvency**

The insolvency, bankruptcy, financial impairment, receivership, voluntary plan or arrangement with creditors, or dissolution of YOU or YOUR TPA:

1. will not impose upon US any liability or additional duties other than those defined and provided for in this Policy; (For example, WE will have no responsibility to pay claims for YOUR Plan to ensure reimbursement under this Policy.) and
2. will not make US liable to YOUR creditors, including Covered Persons.

Claims under YOUR Plan must continue to be funded and Paid within contractual time frames in order to be eligible for reimbursement under this Policy.

**Parties To This Policy:**

YOU and WE are the only parties to this Policy. OUR sole liability under this Policy is to YOU. This Policy does not create any right or legal relation between US and a Covered Person under YOUR Plan. This Policy will not make US a party to any agreement between YOU and YOUR TPA.

**Legal Action**

No action at law or in equity shall be brought to recover on this Policy prior to the expiration of 60 days after written proof of loss has been furnished in accordance with the requirements of this Policy. No such action shall be brought after the expiration of 3 years after the time written proof of loss is required to be furnished.

**Time Limit on Certain Defenses**



In the absence of fraud, all statements made by YOU OR YOUR TPA shall be deemed representations and not warranties. If these statements appear as part of the written Application or other written instrument signed by YOU or YOUR TPA, WE may use them to contest the Contract. If WE do, WE will furnish YOU OR YOUR TPA with a copy of the document in question. After 2 years, only fraudulent misstatements may be used to contest the contract coverage under this Policy.

### **Arbitration**

Any controversy or claim arising out of or relating to this Policy, or the breach thereof, shall be settled by Arbitration in accordance with the rules of the American Arbitration Association, with the express stipulation that the arbitrator(s) shall strictly abide by the terms of this Policy and shall strictly apply rules of law applicable thereto. All matters shall be decided by a panel of three (3) arbitrators. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction. This provision shall survive the termination or expiration of this Policy. The parties hereto may alter any of the terms of this provision only by express written agreement, although such alteration may be before or after any rights or obligations arise under this provision.

SAMPLE

## **EXHIBIT I**

Potentially Catastrophic Losses (PCL's). Claims which qualify as PCL's are listed below. WE reserve the right to add to or delete from this list of PCL's with 31 days advance written notice to YOU.

### **HIGH RISK PREGNANCY AND PRE-TERM/NEONATAL**

- Premature births –weighing under four pounds and/or less than 36 weeks gestation
- Multiple births (three or more infants) or expected multiple births
- Abnormal respiration/respiratory failure (APNEA)
- Congenital heart defects:
  - Ventricular and atrial septal
  - Patent ductus arteriosus
- Congenital disorders:
  - Spina – Bifida
  - Encephalocele
  - Cephalohematoma
  - Hyaline Membrane Disease
- Birth injuries or major birth traumas
- Congenital Anomalies of Digestive System
- Lack of Expected Normal Physiological Development
- Maternal causes of Prenatal Morbidity and Mortality
- Other conditions originating in the Perinatal Period

### **CATASTROPHIC DISEASES AND ILLNESSES**

- Renal dysfunction/failure, including dialysis treatment
- Cerebral vascular accident (stroke)
- Diabetes with complications

### **TRAUMA**

- Spinal cord injuries
- Coma
- Massive internal injuries
- Traumatic brain injury
- Brain lesion or tumors
- Multiple or serious fractures
- Severe burns (10% or more of the body with 3rd degree burns, or 30% of the body with 2nd degree burns)
- Trauma to the elderly or chronically ill
- Paralysis of any kind

### **DISEASE OF THE HEART AND PERICARDIUM**

- Myocardial infarction
- Myocarditis
- Coronary Artery Disease
- Multiple Bypass
- Cardiomyopathy

### **CANCER**

HIV Positive or AIDS (Acquired Immune Deficiency Syndrome) Related Illnesses, such as;

- Kaposi's sarcoma



- Cytomegalovirus
- Pneumocystis carinii pneumonia

ORGAN TISSUE, BONE MARROW, OR STEM CELL TRANSPLANT EVALUATION, PROCEDURE OR SURGERY

EXTENDED ILLNESS OR INJURY

- Chronic Liver Disease
  - Multiple Sclerosis or Muscular Dystrophy or Cystic Fibrosis or Cerebral Palsy or Degenerative Muscular Disease
  - Any illness or injury which requires intensive and prolonged treatment (such as nutritional support systems, intravenous therapies, and ventilators)
- 
- Continuous hospitalization of 2 weeks or more
  - Amputations
  - Any serious condition which the Employer or the TPA thinks may require Large Claim management
  - Home health care greater than 20 days
  - Hospitalization of \$40,000 or more
  - Interim/Cycle hospital billings
  - Hospitalization during pregnancy, prior to delivery, or for high-risk pregnancy.
  - Mental disorders requiring hospital confinement
  - Hepatitis C
  - Multiple hospitalizations of three or more per year
  - Inpatient admission greater than 10 days.

SAMPLE