



# AGGREGATE EXCESS WORKERS' COMPENSATION AND EMPLOYERS LIABILITY INDEMNITY POLICY

In return for the payment of the premium and subject to all terms of this policy, we agree with you as follows:

## GENERAL SECTION

- A. Self-Insurance.** Your acceptance of this policy indicates that you are now and will remain until the end of the policy period a duly qualified self-insurer in each state named in Schedule Item 3. If you are not a duly qualified self-insurer with respect to any loss covered by this policy, this policy will apply as if you were.
- B. Insured.** The Insured is named in Item 1 of the Schedule. If the Insured is a partnership or joint venture, each partner or member of the joint venture is insured only in the capacity as employer of employees of the partnership or joint venture.
- C. The Policy.** This policy includes the Schedule and any attached endorsements. It is a contract of insurance between you (the Insured named in Schedule Item 1) and us (the Insurer named on the Schedule). 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 endorsement issued by us to be a part of this policy. Endorsements amending Schedule Items 1, 3, 4 or 6 apply with respect to accidents and disease exposures occurring at or after 12:01 A.M. on the endorsements' effective date.
- D. Policy Period** means the period of time covered by this policy as shown in Schedule Item 5. If this policy is cancelled, the policy period will end at 12:01 A.M. on the cancellation date.
- E. Workers' Compensation Law** includes occupational disease law. It does not include the provisions of any law that provides non-occupational disability benefits.
- F. State** means any state of the United States of America and the District of Columbia.

## PART ONE - WORKERS' COMPENSATION

- A. How This Part Applies.** Part One applies to loss paid by you because of liability imposed upon you by the workers' compensation law of any state named in Schedule Item 3. Part One also applies to loss paid by you because of liability imposed upon you by the workers' compensation law of any other state which is not shown in Schedule Item 4. **LIABILITY MUST RESULT FROM BODILY INJURY BY ACCIDENT OR BODILY INJURY BY DISEASE SUSTAINED BY AN EMPLOYEE YOU NORMALLY EMPLOY IN A STATE NAMED IN SCHEDULE ITEM 3.** Bodily injury includes resulting death.

Bodily injury by accident must occur during the policy period. A disease is not bodily injury by accident unless it results directly from bodily injury by accident.

Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period. Bodily injury by disease does not include disease that results directly from bodily injury by accident. Bodily injury by disease includes cumulative trauma.

- B. Your Retention.** The amount of loss you must retain as a result of all accidents and disease exposures occurring during the policy period will be computed as shown in Schedule Item 7(a). This retention applies to Part One loss and to Part Two loss together. In calculating your retention, loss pertaining to each accident or disease will be limited to the respective amount shown in Schedule Item 6. Unless we cancel this policy, your retention will not be less than the minimum retention shown in Schedule Item 7(c). If we cancel this policy, your retention will not be less than the pro rata portion of the minimum retention shown in Item 7(c). Naming more than one Insured in Schedule Item 1 does not increase your retention.

Normal premium means the sum of the products of your payroll within each classification shown in Schedule Item 9 for each named state multiplied by the rate shown in Item 9 for the classification, further multiplied by the Experience Modification Factor shown in Item 9(a) and/or any other Experience Modification Factor shown in Item 9(b).

- C. Our Indemnity.** We will indemnify you for loss paid by you in excess of your retention as a result of all accidents and disease exposures occurring during the policy period. In calculating our indemnity, loss pertaining to each accident or disease will be limited to the respective amount shown in Schedule Item 6.
- D. Our Limit.** The most loss we will reimburse you for as a result of all accidents and disease exposures occurring during the policy period is shown in Schedule Item 8. This limit applies to Part One loss and to Part Two loss together. Naming more than one Insured in Schedule Item 1 does not increase our limit.
- E. Loss** means the amount actually paid by you for regular benefits provided under the workers' compensation law in effect upon the date the accident or disease exposure occurs. Loss includes:
  1. The amount paid by you in settlement of claims for regular benefits under the workers' compensation law;
  2. The amount paid by you in satisfaction of awards or judgments for regular benefits under the workers' compensation law;
  3. Court costs, interest upon awards and judgments, and allocated investigation, adjustment and legal expenses pertaining to workers' compensation claims. This subparagraph 3 does not include:
    - (i) salaries paid to your employees;
    - (ii) service company fees;
    - (iii) claims administrator fees.

- F. Exclusions.** Part One does not cover:
1. Loss insured by full coverage workers' compensation or employers liability insurance;
  2. Loss payable under the workers' compensation law of any state which is not named in Schedule Item 3, if you are protected from the loss by any other insurance;
  3. Any loss arising out of operations for which you have rejected any workers' compensation law;
  4. Punitive or exemplary damages because of bodily injury sustained by any employee;
  5. Punitive, exemplary or compensatory damages because of your conduct, or the conduct of anyone acting for you;
    - (a) in the investigation, trial or settlement of any workers' compensation claim;
    - (b) in failing to pay or delay in payment of any workers' compensation claim.
  6. Any assessment made upon self-insurers, whether imposed by statute, regulation or otherwise.
- G. Payments You Must Make.** You are responsible (without reimbursement from us) for any payments in excess of the benefits regularly provided by the workers' compensation law including those required because:
1. Of your serious and willful misconduct;
  2. You knowingly employ an employee in violation of law;
  3. You fail to comply with a health or safety law or regulation;
  4. You discharge, coerce or otherwise discriminate against any employee in violation of the workers' compensation law; or
  5. You violate or fail to comply with any workers' compensation law.
- H. Other Insurance.** If, as respects any state named in Schedule Item 3, any other insurance exists protecting you against loss covered by this insurance, this insurance shall apply in excess of the other insurance.
- I. Recovery From Others.** We have your rights, and the rights of persons entitled to compensation benefits from you, to recover our loss from anyone liable for the injury. You will do everything necessary to protect those rights for us and to help us enforce them. The recovered loss will first be used to reduce our loss. The we will pay the balance, if any, to you. Expenses of all proceedings to recover from anyone liable for injury covered by this policy between you and us will be allocated in the ratio represented by the allocation of any damages which have been recovered.

## **PART TWO - EMPLOYERS LIABILITY**

- A. How This Part Applies.** Part Two applies to loss paid by you for damages imposed upon you by the laws of any state shown in Schedule Item 3. Part Two also applies to loss paid by you for damages imposed upon you by the law of any other state which is not shown in Schedule Item 4. **DAMAGES MUST RESULT FROM BODILY INJURY BY ACCIDENT OR BODILY INJURY BY DISEASE SUSTAINED BY AN EMPLOYEE YOU NORMALLY EMPLOY IN A STATE NAMED IN SCHEDULE ITEM 3.** Bodily injury includes resulting death.

Bodily injury must arise out of and in the course of the injured employee's employment by you.

Bodily injury by accident must occur during the policy period. A disease is not bodily injury by accident unless it results directly from bodily injury by accident.

Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period. Bodily injury by disease does not include disease that results directly from bodily injury by accident. **Bodily injury by disease includes cumulative trauma.**

- B. Your Retention.** The amount of loss you must retain as a result of all accidents and disease exposures occurring during the policy period will be computed as shown in Schedule Item 7(a). This retention applies to Part One loss and to Part Two loss together. In calculating your retention, loss pertaining to each accident or disease will be limited to the respective amount shown in Schedule Item 6. Unless we cancel this policy, your retention will not be less than the minimum retention shown in Schedule Item 7(c). If we cancel this policy, your retention will not be less than the pro rata portion of the minimum retention shown in Item 7(c). Naming more than one Insured in Schedule Item 1 does not increase your retention.

Normal premium means the sum of the products of your payroll within each classification shown in Schedule Item 9 for each named state multiplied by the rate shown in Item 9 for the classification, further multiplied by the Experience Modification Factor shown in Item 9 and/or any other Experience Modification Factor shown in Item 9.

- C. Our Indemnity.** We will indemnify you for loss paid by you in excess of your retention as a result of all accidents and disease exposures occurring during the policy period. In calculating our indemnity, loss pertaining to each accident or disease will be limited to the respective amount shown in Schedule Item 6.
- D. Our Limit.** The most loss we will reimburse you for as a result of all accidents and disease exposures occurring during the policy period is shown in Schedule Item 8. This limit applies to Part One loss and to Part Two loss together. Naming more than one Insured in Schedule Item 1 does not increase our limit.
- E. Loss** means the amount actually paid by you for damages imposed upon you by law. Loss includes:
1. The amount paid by you in settlement of claims for legal damages;
  2. The amount paid by you in satisfaction of awards or judgments for damages;
  3. Court costs, interest upon awards and judgments, and allocated investigation, adjustment and legal expenses pertaining to employers liability claims. This subparagraph 3 does not include:
    - (i) salaries paid to your employees;
    - (ii) service company fees;
    - (iii) claims administrator fees.
- F. Damages** includes:
1. Damages for which you are liable to a third party by reason of a claim or suit against you by that third party to recover the damages claimed against such third party as a result of injury to your employee; and
  2. Damages for care and loss of services; and
  3. Damages for consequential bodily injury to a spouse, child, parent, brother or sister of the injured employee; Provided that these damages are the direct consequences of bodily injury that arises out of and in the course of the injured employee's employment by you; and
  4. Damages because of bodily injury to your employee that arise out of and in the course of employment, claimed against you in a capacity other than as employer.

**G. Exclusions.** Part Two does not cover:

1. Liability assumed under a contract;
2. Loss payable under the law of any state which is not named in Schedule Item 3, if you are protected from the loss by any other insurance;
3. Punitive or exemplary damages because of bodily injury sustained by any employee;
4. Punitive, exemplary or compensatory damages because of your conduct, or the conduct of anyone acting for you;
  - (a) in the investigation, trial or settlement of any employers liability claim;
  - (b) in failing to pay or delay in payment of any employers liability claim.
5. Bodily injury to an employee while employed in violation of law with your actual knowledge or the actual knowledge of any of your executive officers;
6. Any obligation imposed by a workers' compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law;
7. Bodily injury intentionally caused or aggravated by you. This exclusion does not apply to claim expenses (listed in subparagraph 3 of the definition of loss) related to the injury;
8. Damages arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any employee, or any personnel practices, policies, acts or omissions;
9. Bodily injury occurring outside the United States of America. This exclusion does not apply to bodily injury to a citizen or resident of the state(s) listed in Item 3 who is temporarily working outside the United States for the Insured;
10. Damages arising out of operations for which you:
  - (a) have violated or failed to comply with any workers' compensation law, or
  - (b) have rejected any workers' compensation law.

**H. Other Insurance.** If, as respects any state named in Schedule Item 3, any other insurance exists protecting you against loss covered by this insurance, this insurance shall apply in excess of the other insurance.

**I. Recovery From Others.** We have your rights to recover our loss from anyone liable for an injury covered by this insurance. You will do everything necessary to protect those rights for us and to help us enforce them. The recovered loss will first be used to reduce our loss. Then we will pay the balance, if any, to you. Expenses of all proceedings to recover from anyone liable for injury covered by this policy will be allocated between you and us in the ratio represented by the allocation of any damages which have been recovered.

### **PART THREE - CLAIMS**

**A. Your Claims Handling Duties.** It is your responsibility to investigate, settle, defend and appeal any claim made against you. It is also your responsibility to investigate, settle, defend and appeal any suite brought or other proceeding instituted against you.

**B. Your Claims Reporting Duties.** Beginning with the first quarter following the inception date of the policy, you or your claim service administrator are required to send us quarterly reports showing the total incurred and the total remaining reserves for all claims for each year within the policy term in a form agreeable to us. You must also identify those claims that exceed the loss limitation shown in Schedule Item 6.

This information must be updated quarterly until all claims are closed.

**C. Claims Information.** You agree to send to us any claim information which we may request.

**D. Claims Participation By Us.** At our own election and expense, we have the right and shall be given the opportunity to participate with you in the settlement, defense or appeal of any claim, suite or proceeding which might involve a loss to us. We have no duty to investigate, handle, settle or defend any claims, suits, or proceedings against you.

**E. Good Faith Settlements.** You shall use diligence, prudence and good faith in the investigation, defense and settlement of all claims and shall not unreasonably refuse to settle any claim which, in the exercise of sound judgment, should be settled. You agree not to make any voluntary settlement involving loss to us without our written consent.

**F. Proof of Loss.** You must submit a detailed loss run listing each claim, date of loss, the amount paid to date and any remaining reserves in a form agreeable to us.

We will reimburse you the amount in excess of the Audited Aggregate Retention within 30 days of receiving the **properly** completed Proof of Loss.

**G. Commutation.** Beginning thirty-six (36) months after receipt of notice by us of a claim, we may then, or at any time after, submit the claim for commutation. If we so elect, the claim shall be submitted to an actuary or appraiser to be mutually appointed by us and you. Should we both fail to agree upon an actuary or appraiser, then each party shall select an actuary or appraiser who shall then select an independent actuary or appraiser who shall fix a lump sum amount. We may pay the lump sum amount, which payment shall constitute a full and final release of our liability for such claim. However, such lump sum payment shall not constitute a full and final release of our liability if, after the lump sum payment, any supplemental award is made increasing the amount of benefits payable to the Employee and his/her dependents. Any additional liability, at our election, may immediately be commuted via the process above and we may discharge such liability by payment of another lump sum.

**H. Loss Runs.** Within 20 days of our request, you must supply us with a complete loss run detailing all claims paid by you during the period and your current reserves for unpaid claims.

**I. Claim Audit.** You will let us or our representative examine and audit claim files upon our request. These audits may be conducted during your regular business hours.

### **PART FOUR - PREMIUM**

**A. Deposit and Adjustment Premiums.** At the beginning of the policy period you must pay us the deposit premium shown in the Schedule. At the end of the policy period:

1. You will owe us the amount by which the final premium is greater than the deposit premium; or
2. We will owe you the amount by which the deposit premium is greater than the final premium.

- B. Payroll Report.** Within 45 days after the end of the policy period, send us a report showing the amount of payroll earned by your employees during the policy period. The report must show payroll separately for each classification identified in Schedule Item 9.
- C. Final Premium.** The final premium due us for the policy period will be computed as shown in Schedule Item 10(a). Normal premium means the sum of the products of your payroll within each classification shown in Schedule Item 9 for each named state multiplied by the rate shown in Item 9 for the classification, further multiplied by the Experience Modification Factor shown in Item 9(a) and/or any other Experience Modification Factor shown in Item 9(b). Unless this policy is cancelled, final premium will be at least the minimum premium shown in the Schedule.  
  
If we cancel this policy, final premium will be calculated pro rata based on the time this policy was in force. Final premium will not be less than the pro rata share of the minimum premium.  
  
If you cancel this policy, final premium will be more than pro rata; it will be based on the time this policy was in force, and increased by the customary short rate table and procedure. Final premium will not be less than the short rate portion of the minimum premium.
- D. Payroll** means the gross pay of your employees for the policy period plus other amounts and items received by your employees as part of their pay for the policy period. We will send you a payroll reporting form describing what is included in payroll.
- E. Records.** You will keep records of information needed to compute premium. You will provide us with copies of those records when we ask for them.
- F. Audit.** You will let us or our representatives examine and audit all your payroll records. The audits may be conducted during your regular business hours.

## PART FIVE - CONDITIONS

- A. Agreement Upon Terms.** Your acceptance of this policy means that you agree with us upon the terms of this policy.
- B. Sole Representative.** The Insured first named in Schedule Item 1 will act on behalf of all Insureds to change this policy, accept loss payments, receive return premium and give or receive notice of cancellation.
- C. Bankruptcy or Insolvency.** Your bankruptcy or insolvency will not relieve us from the payment of any claim covered by this policy. After the retention shown on the Schedule has been paid, payments will be made by us as if you had not become bankrupt or insolvent but not in excess of the Insurers Limit of Indemnity. Payment will be made to the Trustee in Bankruptcy or as directed by an appropriate court.
- D. Transfer of Your Rights and Duties.** Your rights or duties under this policy may not be transferred without our written consent. This provision does not apply to duties transferred to a service company or a claims administrator.
- E. Service and Administration.** This Agreement contemplates the concurrent and continued existence of a separate service agreement between you and the Service Company named in Item 12 of the Schedule. You must notify us within 30 days should you decide to change the service company.
- F. Cancellation.** You may cancel this policy by giving us at least thirty (30) days advance notice by registered mail stating the cancellation date. We may cancel this policy by giving you at least thirty (30) days advance notice by registered mail stating the cancellation date. Our mailing of registered notice to your address shown in Schedule Item 2 will be sufficient proof that we cancelled this policy.

If you fail to pay premium, we can cancel with 10 days written notice to you.

We have executed this policy by printing below the facsimile signatures of our President and Secretary and by the actual signature of our authorized representative on the Schedule.

### MIDWEST EMPLOYERS CASUALTY COMPANY

Countersigned:

\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Signature  
Secretary

\_\_\_\_\_  
Signature  
President