



ENDORSEMENT NO. 13

This endorsement, effective 12:01 AM: March 1, 2014

Forms a part of policy no.: 6797441

Issued to: FAMILIES FIRST, INC DBA EMQ FAMILIES FIRST

By: LEXINGTON INSURANCE COMPANY

**ADDITIONAL INSURED'S ENDORSEMENT - PRIMARY AND NON-CONTRIBUTORY**

It is agreed the coverage provided under the Coverage Part(s) indicated by an 'x' below is amended by adding the following as Additional Insured but only with respect to any claim or suit arising out of the conduct of your business:

HEALTHCARE PROFESSIONAL LIABILITY COVERAGE PART

HEALTHCARE GENERAL LIABILITY COVERAGE PART

As per schedule on file  
with the Company

It is also agreed that the insurance afforded by this policy for the benefit of the Additional Insured shall be primary insurance and any insurance maintained by the Additional Insured shall be non-contributory.

All other terms, conditions and exclusions of the policy remain unchanged.



Authorized Representative  
or countersignature (where required by law)

**BUSINESS AUTO COVERAGE FORM**

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.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

**SECTION I – COVERED AUTOS**

Item Two of the Declarations shows the "autos" that are covered "autos" for each of your coverages. The following numerical symbols describe the "autos" that may be covered "autos". The symbols entered next to a coverage on the Declarations designate the only "autos" that are covered "autos".

**A. Description Of Covered Auto Designation Symbols**

Symbol	Description Of Covered Auto Designation Symbols	
1	Any "Auto"	
2	Owned "Autos" Only	Only those "autos" you own (and for Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" you acquire ownership of after the policy begins.
3	Owned Private Passenger "Autos" Only	Only the private passenger "autos" you own. This includes those private passenger "autos" you acquire ownership of after the policy begins.
4	Owned "Autos" Other Than Private Passenger "Autos" Only	Only those "autos" you own that are not of the private passenger type (and for Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" not of the private passenger type you acquire ownership of after the policy begins.
5	Owned "Autos" Subject To No-fault	Only those "autos" you own that are required to have no-fault benefits in the state where they are licensed or principally garaged. This includes those "autos" you acquire ownership of after the policy begins provided they are required to have no-fault benefits in the state where they are licensed or principally garaged.
6	Owned "Autos" Subject To A Compulsory Uninsured Motorists Law	Only those "autos" you own that because of the law in the state where they are licensed or principally garaged are required to have and cannot reject Uninsured Motorists Coverage. This includes those "autos" you acquire ownership of after the policy begins provided they are subject to the same state uninsured motorists requirement.
7	Specifically Described "Autos"	Only those "autos" described in Item Three of the Declarations for which a premium charge is shown (and for Liability Coverage any "trailers" you don't own while attached to any power unit described in Item Three).
8	Hired "Autos" Only	Only those "autos" you lease, hire, rent or borrow. This does not include any "auto" you lease, hire, rent or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.
9	Non-owned "Autos" Only	Only those "autos" you do not own, lease, hire, rent or borrow that are used in connection with your business. This includes "autos" owned by your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households but only while used in your business or your personal affairs.

19	Mobile Equipment Subject To Compulsory Or Financial Responsibility Or Other Motor Vehicle Insurance Law Only	Only those "autos" that are land vehicles and that would qualify under the definition of "mobile equipment" under this policy if they were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where they are licensed or principally garaged.
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**B. Owned Autos You Acquire After The Policy Begins**

1. If Symbols 1, 2, 3, 4, 5, 6 or 19 are entered next to a coverage in Item Two of the Declarations, then you have coverage for "autos" that you acquire of the type described for the remainder of the policy period.
2. But, if Symbol 7 is entered next to a coverage in Item Two of the Declarations, an "auto" you acquire will be a covered "auto" for that coverage only if:
  - a. We already cover all "autos" that you own for that coverage or it replaces an "auto" you previously owned that had that coverage; and
  - b. You tell us within 30 days after you acquire it that you want us to cover it for that coverage.

**C. Certain Trailers, Mobile Equipment And Temporary Substitute Autos**

If Liability Coverage is provided by this coverage form, the following types of vehicles are also covered "autos" for Liability Coverage:

1. "Trailers" with a load capacity of 2,000 pounds or less designed primarily for travel on public roads.
2. "Mobile equipment" while being carried or towed by a covered "auto".
3. Any "auto" you do not own while used with the permission of its owner as a temporary substitute for a covered "auto" you own that is out of service because of its:
  - a. Breakdown;
  - b. Repair;
  - c. Servicing;
  - d. "Loss"; or
  - e. Destruction.

**SECTION II – LIABILITY COVERAGE**

**A. Coverage**

We will pay all sums an "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of a covered "auto".

We will also pay all sums an "insured" legally must pay as a "covered pollution cost or expense" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of covered "autos". However, we will only pay for the "covered pollution cost or expense" if there is either "bodily injury" or "property damage" to which this insurance applies that is caused by the same "accident".

We have the right and duty to defend any "insured" against a "suit" asking for such damages or a "covered pollution cost or expense". However, we have no duty to defend any "insured" against a "suit" seeking damages for "bodily injury" or "property damage" or a "covered pollution cost or expense" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends when the Liability Coverage Limit of Insurance has been exhausted by payment of judgments or settlements.

**1. Who Is An Insured**

The following are "insureds":

- a. You for any covered "auto".
- b. Anyone else while using with your permission a covered "auto" you own, hire or borrow except:
  - (1) The owner or anyone else from whom you hire or borrow a covered "auto".

This exception does not apply if the covered "auto" is a "trailer" connected to a covered "auto" you own.

- (2) Your "employee" if the covered "auto" is owned by that "employee" or a member of his or her household.
- (3) Someone using a covered "auto" while he or she is working in a business of selling, servicing, repairing, parking or storing "autos" unless that business is yours.
- (4) Anyone other than your "employees", partners (if you are a partnership), members (if you are a limited liability company) or a lessee or borrower or any of their "employees", while moving property to or from a covered "auto".
- (5) A partner (if you are a partnership) or a member (if you are a limited liability company) for a covered "auto" owned by him or her or a member of his or her household.

c. Anyone liable for the conduct of an "insured" described above but only to the extent of that liability.

**2. Coverage Extensions**

**a. Supplementary Payments**

We will pay for the "insured":

- (1) All expenses we incur.
- (2) Up to \$2,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (3) The cost of bonds to release attachments in any "suit" against the "insured" we defend, but only for bond amounts within our Limit of Insurance.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$250 a day because of time off from work.
- (5) All court costs taxed against the "insured" in any "suit" against the "insured" we defend. However, these payments do not include attorneys' fees or attorneys' expenses taxed against the "insured".
- (6) All interest on the full amount of any judgment that accrues after entry of the judgment in any "suit" against the "insured" we defend, but our duty to pay interest ends when we have paid, offered to pay or deposited in court the part of the judgment that is within our Limit of Insurance.

These payments will not reduce the Limit of Insurance.

**b. Out-of-state Coverage Extensions**

While a covered "auto" is away from the state where it is licensed we will:

- (1) Increase the Limit of Insurance for Liability Coverage to meet the limits specified by a compulsory or financial responsibility law of the jurisdiction where the covered "auto" is being used. This extension does not apply to the limit or limits specified by any law governing motor carriers of passengers or property.
- (2) Provide the minimum amounts and types of other coverages, such as no-fault, required of out-of-state vehicles by the jurisdiction where the covered "auto" is being used.

We will not pay anyone more than once for the same elements of loss because of these extensions.

**B. Exclusions**

This insurance does not apply to any of the following:

**1. Expected Or Intended Injury**

"Bodily injury" or "property damage" expected or intended from the standpoint of the "insured".

**2. Contractual**

Liability assumed under any contract or agreement.

But this exclusion does not apply to liability for damages:

- a. Assumed in a contract or agreement that is an "insured contract" provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement; or
- b. That the "insured" would have in the absence of the contract or agreement.

**3. Workers' Compensation**

Any obligation for which the "insured" or the "insured's" insurer may be held liable under any workers' compensation, disability benefits or unemployment compensation law or any similar law.

HEALTHCARE PROFESSIONAL LIABILITY AND  
HEALTHCARE GENERAL LIABILITY

GENERAL POLICY PROVISIONS AND CONDITIONS

VARIOUS PROVISIONS IN THE GENERAL POLICY PROVISIONS AND CONDITIONS AND COVERAGE PARTS RESTRICT COVERAGE. THERE MAY BE BOTH OCCURRENCE COVERAGES AND CLAIMS MADE COVERAGES IN THIS POLICY. PLEASE READ ALL GENERAL POLICY PROVISIONS AND CONDITIONS AND COVERAGE PARTS CAREFULLY TO DETERMINE YOUR RIGHTS, DUTIES, AND WHAT IS AND WHAT IS NOT COVERED. A COMPLETE POLICY INCLUDES THE DECLARATIONS, GENERAL POLICY PROVISIONS AND CONDITIONS, AND THE APPLICABLE COVERAGE PARTS.

Throughout this Policy the words **you** and **your** mean the **First Named Insured**, including any other **Named Insured**. The words **we**, **us** and **our** mean the Company providing insurance under this Policy. Other words and phrases are defined in Section I. Definitions Applicable To General Policy Provisions and Conditions and All Coverage Parts. Further, words that appear in the General Policy Provisions and Conditions may be defined in other Coverage Parts forming part of this policy.

In consideration of the payment of the premium and in reliance upon the statements in the Application and upon the Declarations, we agree as follows:

**I. DEFINITIONS APPLICABLE TO GENERAL POLICY PROVISIONS AND CONDITIONS AND ALL COVERAGE PARTS**

- A. **Advertisement** means a notice that is broadcast or published to the general public or specific market segments about **your** goods, products or services for the purpose of attracting customers or supporters.
- B. **Auto** means a land motor vehicle, trailer, or semitrailer designed for travel on public roads, including any attached machinery or equipment. **Auto**, however, does not include **mobile equipment**.
- C. **Biomedical Waste** means a biological agent or condition including, but not limited to, an infectious organism or unsafe laboratory condition that may cause or result in **bodily injury** or **property damage**.
- D. **Bodily Injury** means physical injury, sickness or disease sustained by any person, including death resulting from any of these at any time. **Bodily injury** does not include emotional distress or mental anguish unless due to physical injury, sickness or disease.
- E. **Claim** means a written demand against an insured for monetary damages, including a **suit**.
- F. **Defense Costs** means costs and expenses incurred by **us** including fees charged by an attorney designated by **us** to investigate or defend any **claim** or **suit** brought against any **insured**.  
**Defense costs** does not include salary charges or the expenses of **our** regular employees.
- G. **Employee** means a person paid by **you** in connection with **your** business. It includes a **leased worker** but does not include a **temporary worker** or independent contractor.

- H. **Executive Officer** means a person holding any of the officer positions created by **your** charter, constitution, by-laws or any other similar governing document.
- I. **First Named Insured** means the **Named Insured** designated on Item 1. of the Declarations attached to this policy.
- J. **Impaired Property** means tangible property, other than **your product** or **your work**, that cannot be used or is less useful because:
1. It incorporates **your product** or **your work** that is known or thought to be defective, deficient, inadequate, or dangerous; or
  2. **You** have failed to fulfill the terms of a contract or agreement;
- if such property can be restored to use by:
1. The repair, replacement, adjustment or removal of **your product** or **your work**; or
  2. The fulfilling of the terms of the contract or agreement by **you**.
- K. **Insured Contract** means:
1. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to **you** or temporarily occupied by **you** with permission of the owner is not an **insured contract**;
  2. A sidetrack agreement;
  3. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
  4. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
  5. An elevator maintenance agreement; or
  6. That part of any other contract or agreement pertaining to **your** business (including an indemnification of a municipality in connection with work performed for a municipality) under which **you** assume the tort liability of another party to pay for **bodily injury** or **property damage** to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
- Paragraph 6. does not include that part of any contract or agreement:
- a. That indemnifies a railroad for **bodily injury** or **property damage** arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
  - b. That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
    - i. Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings, designs and specifications; or
    - ii. Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or



- c. Under which **you**, if an architect, engineer or surveyor, assumes liability for **bodily injury or property damage** arising out of **your** rendering or failure to render professional services, including those listed in b. above and supervisory, inspection, architectural or engineering activities.
- L. **Leased Worker** means a person leased to **you** by a labor leasing firm, under an agreement between **you** and the labor leasing firm, to perform duties related to the operations as described in the Declarations and which are at **your** direction. **Leased worker** does not include a **temporary worker**.
- M. **Loading or Unloading** means the handling of property:
- 1. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft, or **auto**;
  - 2. While it is in or on an aircraft, watercraft or **auto**; or
  - 3. While it is being moved from an aircraft, watercraft or **auto** to the place where it is finally delivered;
- But **loading** or **unloading** does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft, or **auto**.
- N. **Medical Incident** means any act, error or omission in the providing of or failure to provide **professional services**.
- O. **Mobile Equipment** means any of the following types of land vehicles, including any attached machinery or equipment and including, but not limited to:
- 1. Bulldozers, farm machinery, forklifts, and other vehicles designed for use principally off public roads;
  - 2. Vehicles maintained for use solely on or next to premises **you** own or rent;
  - 3. Vehicles that travel on crawler treads;
  - 4. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
    - a. Power cranes, shovels, loaders, diggers or drills; or
    - b. Road construction or resurfacing equipment such as graders, scrapers or rollers;
  - 5. Vehicles other than those described in Items 1, 2, 3, or 4 above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
    - a. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
    - b. Cherry pickers and similar devices used to raise or lower workers;
  - 6. Vehicles other than those described in Items 1, 2, 3, or 4 above that are maintained primarily for purposes other than the transportation of persons or cargo.
- However, self-propelled vehicles with the following types of permanently attached equipment are not **mobile equipment** but will be considered **autos**:
- a. Equipment designed primarily for:
    - i. Snow removal;



- ii. Road maintenance, but not construction or resurfacing; or
- iii. Street cleaning;
- b. Cherry pickers and similar devices mounted on auto or truck chassis and used to raise or lower workers; and
- c. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

P. **Occurrence** means:

- 1. As respects **bodily injury, property damage** or medical expense, an accident, including continuous or repeated exposure to substantially the same general conditions, which results in **bodily injury** or **property damage** neither expected nor intended from the standpoint of the **Insured**. All such exposure to substantially the same general conditions shall be considered as arising out of one **occurrence**;
- 2. As respects **personal injury**, an offense arising out of your business that results in **personal injury**. All **damages** that arise from the same or related injurious material or act shall be considered as arising out of one **occurrence**, regardless of the frequency of repetition thereof, the number and kind of media used and the number of claimants;
- 3. As respects **advertising injury**, an offense committed in the course of advertising your goods, products and services that results in **advertising injury**. All **damages** that arise from the same or related injurious material or act shall be considered as arising out of one **occurrence**, regardless of the frequency or repetition thereof, the number and kind of media used and the number of claimants.

Q. **Patient** means a person seeking or receiving, either on an inpatient, outpatient or emergency basis, any form of medical, surgical, dental or nursing care or any service or treatment.

R. **Personal and Advertising Injury** means injury, including consequential **bodily injury**, arising out of one or more of the following offenses:

- 1. False arrest, detention, or imprisonment;
- 2. Malicious prosecution;
- 3. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling, or premises that a person occupies, committed by or on behalf of its owner, landlord, or lessor;
- 4. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- 5. Oral or written publication of material that violates a person's right of privacy;
- 6. The use of another's advertising idea in **your advertisement**;
- 7. Infringing upon another's copyright, trade dress or slogan in **your advertisement**.

S. **Policy Period** means the period commencing on the inception date shown on the Declarations and ending on the earlier of the expiration date or the effective date of cancellation of the Policy.

T. **Pollutants** means any solid, liquid, gaseous, or thermal irritant or contaminant, including, but not limited to: smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes, but is not limited to, **biomedical waste** and materials to be recycled, reconditioned or reclaimed.

U. **Products-Completed Operations Hazard** includes all **bodily injury** and **property damage** occurring away from premises you own or rent and arising out of **your product** or **your work** except:

1. Products that are still in **your** physical possession; or
2. Work that has not yet been completed or abandoned. However, **your work** will be deemed completed at the earliest of the following times:
  - a. When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.
  - b. When all of the work called for in **your** contract has been completed.
  - c. When all of the work to be done at the job site has been completed if **your** contract calls for work at more than one job site.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

This hazard does not include **bodily injury** or **property damage** arising out of:

1. The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the **loading or unloading** of that vehicle by any Insured;
2. The existence of tools, uninstalled equipment, or abandoned or unused materials; or
3. Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.

V. **Professional Services** means:

1. Medical, surgical, dental, nursing or other health care services including but not limited to the furnishing of food or beverages in connection with such services; the practice of nuclear medicine; the furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances; or the handling or treatment of deceased human bodies, including, but not limited to, autopsies, organ donation or other procedures;
2. Services by any person as a member of a formal accreditation, standards review or similar professional board or committee of any Insured; or
3. Supervising, teaching, proctoring others at **your** request.

W. **Property Damage** means:

1. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
2. Loss of use of tangible property that is not physically injured. Solely with respect to any **bodily injury** and **property damage** coverage of this policy, all such loss of use shall be deemed to occur at the time of the **occurrence** that caused it.

X. **Suit** means a civil action in which damages are alleged because of an **occurrence, claim, medical incident, bodily injury, property damage, personal injury** or **advertising injury** to which this insurance applies. **Suit** includes:

1. An arbitration proceeding in which such damages are claimed and to which an Insured must submit or does submit with **our** consent; or

2. Any other alternative dispute resolution proceeding in which such damages are claimed and to which an Insured submits with our consent.
- Y. **Temporary Worker** means a person who is furnished to you to substitute for a permanent employee on leave or to meet seasonal or short-term work load requirements.
- Z. **Your Product** means:
1. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
    - a. You;
    - b. Others trading under your name; or
    - c. A person or organization whose business or assets you have acquired; and
  2. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

**Your product** includes:

1. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of your product; and
2. The providing of or failure to provide warnings or instructions.

**Your product** does not include vending machines or other property rented to or located for the use of others but not sold.

AA. **Your Work** means:

1. Work or operations performed by you or on your behalf; and
2. Materials, parts or equipment furnished in connection with such work or operations.

**Your work** includes:

1. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of your work; and
2. Providing of or failure to provide warnings or instructions.

## **II. DEFENSE AND OTHER PAYMENTS UNDER THIS POLICY - ALL COVERAGE PARTS**

- A. When we have the duty to defend any suit, we will defend such suit against the Insured for a covered claim seeking damages on account of a medical incident, bodily injury, property damage, personal injury or advertising injury even if such claim or suit is groundless, false or fraudulent. We have the right to investigate, defend, appoint an attorney to defend and settle the suit as we deem expedient.
- B. In addition to the Limits of Insurance applicable to this Policy, we shall pay, with respect to any suit we defend:
  1. All expenses we incur including defense costs.
  2. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which any bodily injury liability coverage applies. We do not have to furnish these bonds.

3. The cost of bonds to release attachments, but only for bond amounts within the applicable Limit of Insurance. **We** do not have to furnish these bonds.
  4. All reasonable expenses incurred by an **Insured** at **our** request to assist **us** in the investigation or defense of the **suit**, including actual loss of earnings up to \$500 a day because of time off from work.
  5. Pre-judgment interest awarded against the **Insured** on that part of the judgment **we** pay. If prior to judgment, **we** make an offer to pay the applicable Limit of Insurance, **we** will not pay any pre-judgment interest based on that period of time after the offer.
  6. All interest on the full amount of any judgment that accrues after entry of the judgment and before **we** have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable Limit of Insurance.
  7. All costs taxed against the **Insured** in the **suit**.
  8. Premiums on appeal bonds required by law to appeal any **suit we** defend, but only for bond amounts within the applicable Limits of Insurance. **We** are not obligated to apply for or furnish any such bond.
- C. With respect to the HEALTHCARE GENERAL LIABILITY COVERAGE PART only, if **we** defend an **Insured** against a **suit** and an indemnitee of the **Insured** is also named as a party to the **suit**, **we** will defend that indemnitee if all of the following conditions are met:
1. The **suit** against the indemnitee seeks damages for which the **Insured** has assumed the liability of the indemnitee in a contract or agreement that is an **Insured contract**;
  2. This insurance applies to such liability assumed by the **Insured**;
  3. The obligation to defend, or the cost of the defense of that indemnitee, has also been assumed by the **Insured** in the same **insured contract**;
  4. The allegations in the **suit** and the information **we** know about the **occurrence** are such that no conflict appears to exist between the interests of the **Insured** and the interests of the indemnitee;
  5. The indemnitee and the **Insured** ask **us** to conduct and control the defense of that indemnitee against such **suit** and agree that **we** can assign the same counsel to defend the **Insured** and the indemnitee; and
  6. The indemnitee agrees in writing to:
    - a. Cooperate with **us** in the investigation, settlement or defense of the **suit**,
    - b. Immediately send **us** copies of any demands, notices, summonses or legal papers received in connection with the **suit**;
    - c. Notify any other insurer whose coverage is available to the indemnitee; and
    - d. Cooperate with **us** with respect to coordinating other applicable insurance available to the indemnitee; and
  7. The indemnitee provides **us** with written authorization to:
    - a. Obtain records and other information related to the **suit**; and
    - b. Conduct and control the defense of the indemnitee in such **suit**.

So long as the above conditions are met, attorneys fees incurred by **us** in the defense of that indemnitee, necessary litigation expenses incurred by **us** and necessary litigation expenses incurred by the indemnitee at **our** request, will be paid as stated in Section II. Defense And Other Payments Under This

Policy-All Coverage Parts. Notwithstanding the provisions of Section III. S. 2. b. (Contractual Liability) of the HEALTHCARE GENERAL LIABILITY COVERAGE PART such payments will not be deemed to be damages for **bodily injury** and **property damage** and will not reduce the Limits of Insurance.

Our obligation to defend an Insured's indemnitee and to pay for attorney's fees and necessary litigation expenses as Other Payments Under This Policy ends when:

1. We have used up the applicable Limit of Insurance in the payment of judgments or settlements; or
  2. The conditions set forth above, or the terms of the agreement described in paragraph 6. above, are no longer met.
- D. Our duty to defend any **suit** ends, and we may withdraw from the defense, after the applicable Limit of Insurance has been exhausted by the payment of settlements, judgments or awards including pre-judgment interest.

### **III. CONDITIONS APPLICABLE TO ALL COVERAGE PARTS**

The following conditions apply to all coverage parts:

#### **A. Assistance and Cooperation**

The Insured shall:

- a. Cooperate with **us** in the investigation, settlement, or defense of the **claim** or **suit**; and
- b. Assist **us**, upon our request, in the enforcement of any right against any person or organization which may be liable to the Insured because of injury or damage to which this insurance may also apply.

The Insured shall not, except at the Insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

#### **B. Audit**

We may audit and examine **your** books and records as they relate to this policy at any time during the period of this policy and for up to three years after the expiration or termination of this policy.

#### **C. Changes**

Notice to any agent or knowledge possessed by any agent or any other person will not effect a waiver or a change in any part of this policy. This policy can only be changed by a written endorsement that becomes a part of this policy and that is signed by one of our authorized representatives.

#### **D. Knowledge and Notice of a Medical Incident or Occurrence**

Knowledge of a **medical incident** or **occurrence** on the part of the risk management department or on the part of an executive officer constitutes knowledge by the **First Named Insured**.

#### **E. Coverage Territory**

We will cover an **occurrence**, offense or **medical incident** in the United States of America, its territories and possessions, Canada and Puerto Rico, provided a **claim** is made and **suit** is brought in the United States of America, its territories and possessions, Canada or Puerto Rico.

#### F. Mergers/Acquisitions

We will cover any organization **you** newly acquire or form, other than a partnership, joint venture or limited liability company, and over which **you** maintain ownership or at least a majority interest, only for sixty (60) days or for the remainder of the **policy period**, whichever is less, from the date that **you** acquire or form it. **You** are not covered for damages that arise out of **bodily injury, property damage or medical incidents** that occurred before **you** acquired or formed the organization, or **personal and advertising injury** arising out of an **occurrence** which took place before **you** acquired or formed the organization. **You** shall notify **us** or **our** authorized representative in writing within sixty (60) days of such acquisition.

If any person or organization became an additional **Named Insured** under this policy after the inception date, the **policy period** for that person or organization begins on the date that such person or organization became an additional **Named Insured** and ends on the earlier of the expiration date or the effective date of cancellation of the policy.

For coverage to apply to the newly acquired or formed organization upon acquisition **you** must do the following within sixty (60) days:

1. Submit an underwriting application to **us**;
2. The application must be approved by **us**;
3. Pay any additional premium; and
4. Agree to any amendment of the provisions of this Policy required by **us** relating to such company.

If **you** are acquired or merged into another organization not named as an **Insured** in this policy, then this insurance shall cease immediately upon such acquisition or merger.

#### G. Legal Action Against Us

No person or organization has a right under this Policy:

1. To join **us** as a party or otherwise bring **us** into a **suit** asking for damages from **you**; or
2. To sue **us** under this Policy, unless all this Policy's terms have been complied with in full.

A person or organization may sue **us** to recover on an agreed settlement or on a final judgment against **you** obtained after an actual trial; but **we** will not be liable for damages that are not payable under the terms of any Insuring Agreement or that are in excess of the applicable Limit of Insurance. An agreed settlement means a settlement and release of liability signed by **us**, **you** and the claimant or the claimant's legal representative.

#### H. Other Insurance

If there is other insurance which applies to the loss resulting from an **occurrence, offense or medical incident**, the other insurance must pay first. This Policy applies to the amount of the loss which is more than:

1. The Limits of Insurance of the other insurance; and
2. The total of all deductibles and self-insured amounts under all such other insurance.

#### I. Multiple Policies

Two or more insurance policies may be issued by **us** or any company that controls, is controlled by, or is under common control with **us**. These policies may provide coverage for:

1. **Claims or suits arising from the same occurrence, offense or medical incident; or**
2. **Persons or organizations covered in those policies that are jointly and severally liable.**

In such a case, we shall not be liable under this Policy for an amount greater than the proportion of the loss that this Policy's applicable Limit of Insurance bears to the total applicable Limits of Insurance under all such policies.

In addition, the total amount payable under all such policies is the highest, single applicable Limit of Insurance among all such policies.

**J. Separation of Insureds**

Except with respect to the Limits of Insurance and deductible, and except with respect to any rights or duties specifically assigned in this Policy to the **Named Insured**, this insurance applies:

1. **As if each Insured were the only Insured; and**
2. **Separately to each Insured against whom a claim is made or suit is brought.**

**K. Bankruptcy/Insolvency**

**Your bankruptcy or insolvency will not relieve us of our obligations under this Policy.**

**L. Representations**

By accepting this Policy, the **First Named Insured** agrees that:

1. **The statements in the Declarations and/or Applications are accurate and complete;**
2. **Those statements are based upon representations made to us by you; and**
3. **We have issued this Policy in reliance upon your representations.**

**M. Subrogation**

If an **Insured** has rights to recover all or part of any payment we have made under this Policy, those rights are transferred to us. An **Insured** shall do nothing to impair these rights after a loss. At our request, an **Insured** will bring suit or transfer those rights to us and fully cooperate with us with respect to enforcing them.

Any recoveries will be applied in accordance with the following priorities:

1. **Any person or organization, including the Insured, that have paid an amount in excess of our payment under this policy will be reimbursed first;**
2. **We then will be reimbursed up to the amount we have paid; and**
3. **Lastly, any interests, including the Insured, over which our insurance is excess, are entitled to the residual.**

**N. Conformance To Statute**

To the extent that this Policy conflicts with any law, statute, or regulation applicable to this Policy, this Policy shall conform to the minimum requirements of that law, statute, or regulation.

**O. Transfer of Your Rights and Duties**



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

If you die or are legally declared bankrupt, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. However, notice of cancellation sent to the **First Named Insured** designated in Item 1 of the Declarations and mailed to the address shown in this policy will be sufficient notice to effect cancellation of this policy.

**P. Special Rights And Duties Of First Named Insured**

It is agreed by all **Insureds** that the **First Named Insured** is authorized to act on behalf of all **Insureds** as to:

1. Giving and receiving notice of cancellation;
2. Payment of premiums and receipt of return premiums;
3. Acceptance of any endorsements to this Policy;
4. Purchasing or deciding not to purchase the Optional Extended Reporting Period Endorsement, if applicable; or
5. Making changes in this Policy or any coverage part with our consent.
6. Making representation with respect to the issuance by us of this Policy.

This Policy can only be changed by a written endorsement we issue and make a part of this Policy.

**Q. Inspections And Surveys**

We have the right but are not obligated to:

1. Make inspections and surveys at any time;
2. Give the **First Named Insured** reports on the conditions we find; and
3. Recommend changes.

Any inspections, surveys, reports, or recommendations are related only to insurability and the premiums to be charged.

We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public.

We do not warrant that conditions:

1. Are safe or healthful; or
2. Comply with laws, regulations, codes, or standards.

This condition applies not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports, or recommendations.

**R. Omnibus Reconciliation Act**

We will comply with the requirements of section 952 of the Omnibus Reconciliation Act of 1980. Upon written request, the company will allow the secretary of health and human resources and the comptroller

general access to the policy and necessary books, documents and records to verify the cost of the policy, to the extent required by law. Access will also be allowed to subcontract between the Company and any affiliated organization of the Company and to its books, documents and records. Such access will be provided up to four years after the services furnished under this policy end.

#### S. Titles Of Paragraphs

Titles of paragraphs are inserted solely for convenience of reference and shall not be deemed to limit, expand or otherwise affect the provisions to which they relate.

#### T. Service Of Suit

In the event of our failure to pay any amount claimed to be due hereunder, we, at your request, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this condition constitutes or should be understood to constitute a waiver of our rights to commence an action in any court of competent jurisdiction in the United States to remove an action to a United States District Court or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such suit may be made upon Counsel, Legal Department, Lexington Insurance Company, 99 High Street, Boston, MA 02110-2378 or his or her representative, and that in any suit instituted against us upon this Policy, we will abide by the final decision of such court or of any appellate court in the event of any appeal.

Further, pursuant to any statute of any state, territory, or district of the United States which makes provision therefor, we hereby designate the Superintendent, Commissioner or Director of Insurance, or other officer specified for that purpose in the statute, or his or her successors in office, as our true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by you or on your behalf or any beneficiary hereunder arising out of this Policy of insurance, and hereby designates the above named Counsel as the person to whom the said officer is authorized to mail such process or a true copy thereof.

### IV. CANCELLATION/NON-RENEWAL

#### A. When We Do Not Renew

If we decide not to renew this Policy, we will mail or deliver to the **First Named Insured** at the address designated in the Declarations written notice of the non-renewal not less than thirty (30) days before the expiration date. If such notice is mailed, proof of mailing will be sufficient proof of notice. If we mail or deliver the notice less than thirty (30) days before the expiration, we will extend the **policy period** so that the expiration date will be thirty (30) days after we mail or deliver the notice. You will be charged a pro rata additional premium for such extension. Such extension shall be subject to the remaining Limits of Insurance of this Policy and there shall not be a reinstatement of the Aggregate Limits. You can terminate the extension at any time, but not retroactively.

#### B. Cancellation

This Policy may be canceled by the **First Named Insured** by surrendering it to us or any of our authorized representatives or by mailing to us written notice stating when thereafter the cancellation shall be effective.

We may cancel this Policy by mailing or delivering a written notice of cancellation to the **First Named Insured** at the address shown in this Policy stating when, not less than 30 days thereafter, cancellation will be effective. However, if we cancel this Policy because the **First Named Insured** has failed to pay a premium when due, this Policy may be canceled by us by mailing or delivering a written notice of cancellation to the **First Named Insured** at the address shown in this Policy stating when, not less than 10 days thereafter, such cancellation will be effective. The mailing of notice as aforesaid shall be sufficient proof of notice.

The time of the surrender or the effective date and hour of cancellation stated in the notice shall become the end of the **policy period**. Delivery of such written notice either by the **First Named Insured** or by **us** shall be the equivalent to mailing. If the **First Named Insured** cancels, the unearned premium shall be computed in accordance with the customary short rate table and procedure. If we cancel, unearned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

By signing below, the President and the secretary of the Insurer agree on behalf of the Insurer to all the terms of the Policy.



SECRETARY



PRESIDENT AND CHIEF EXECUTIVE OFFICER

This policy shall not be valid unless signed at the time of issuance by an authorized representative of the Insurer, either below or on the Declarations page of the policy.



AUTHORIZED REPRESENTATIVE