

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY  
CIVIL DIVISION

In re:

Laser Spine Institute, LLC,  
CLM Aviation, LLC,  
LSI HoldCo, LLC,  
LSI Management Company, LLC,  
Laser Spine Surgery Center of Arizona, LLC,  
Laser Spine Surgery Center of Cincinnati, LLC,  
Laser Spine Surgery Center of Cleveland, LLC,  
Laser Spine Surgical Center, LLC,  
Laser Spine Surgery Center of Pennsylvania, LLC,  
Laser Spine Surgery Center of St. Louis, LLC,  
Laser Spine Surgery Center of Warwick, LLC,  
Medical Care Management Services, LLC,  
Spine DME Solutions, LLC,  
Total Spine Care, LLC,  
Laser Spine Institute Consulting, LLC,  
Laser Spine Surgery Center of Oklahoma, LLC,

Case No. 2019-CA-2762  
Case No. 2019-CA-2764  
Case No. 2019-CA-2765  
Case No. 2019-CA-2766  
Case No. 2019-CA-2767  
Case No. 2019-CA-2768  
Case No. 2019-CA-2769  
Case No. 2019-CA-2770  
Case No. 2019-CA-2771  
Case No. 2019-CA-2772  
Case No. 2019-CA-2773  
Case No. 2019-CA-2774  
Case No. 2019-CA-2775  
Case No. 2019-CA-2776  
Case No. 2019-CA-2777  
Case No. 2019-CA-2780

Assignors,

To

Soneet Kapila,

Consolidated Case  
No. 2019-CA-2762  
Division L

Assignee.

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**NOTICE OF FILING PROOF OF CLAIM OF  
NATIONAL FIRE & MARINE INSURANCE COMPANY AGAINST  
ASSIGNOR, LASER SPINE SURGERY CENTER OF ST. LOUIS, LLC**

National Fire & Marine Insurance Company, through undersigned counsel, and pursuant to §727.112, Florida Statutes, hereby files and give notice of its Proof of Claim against Assignor, Laser Spine Surgery Center of St. Louis, LLC (Case No. 2019-CA-2772), by delivering the Proof of Claim and supporting documents attached hereto as Exhibit A, upon the Assignee, Soneet Kapila, and Edward J. Peterson, Esq., Stichter, Riedel, Blain & Postler, P.A.



Dated: July 12, 2019

/s/ Adam Lawton Alpert

Jeffrey W. Warren, Esq.

Florida Bar No. 0150024

Adam Lawton Alpert, Esq.

Florida Bar No. 0490857

BUSH ROSS, P.A.

P.O. Box 3913

Tampa, FL 33601-3913

(813) 224-9255 (telephone)

(813) 223-9620 (fax)

Email: [jwarren@bushross.com](mailto:jwarren@bushross.com)

Email: [aalpert@bushross.com](mailto:aalpert@bushross.com)

Email: [mlinares@bushross.com](mailto:mlinares@bushross.com)

Email: [ksprehn@bushross.com](mailto:ksprehn@bushross.com)

*Attorneys for non-party creditor National Fire &  
Marine Insurance Company*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I electronically filed the foregoing Notice of Filing Proof of Claim with the Clerk of this Court by using the Florida Courts E-Filing Portal system which will send a Notice of Electronic Filing to all counsel of record.

/s/ Adam Lawton Alpert

ATTORNEY



IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA  
CIVIL DIVISION

In re:

Laser Spine Institute, LLC  
CLM Aviation, LLC  
LSI HoldCo, LLC  
LSI Management Company, LLC  
Laser Spine Surgery Center of Arizona, LLC  
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Case No. 2019-CA-2773  
Case No. 2019-CA-2774  
Case No. 2019-CA-2775  
Case No. 2019-CA-2776  
Case No. 2019-CA-2777  
Case No. 2019-CA-2780

Assignors,  
To:

Consolidated Case No.  
2019-CA-2762

Soneet Kapila,

Division L

Assignee

/

**PROOF OF CLAIM**

**TO RECEIVE ANY DIVIDEND IN THESE PROCEEDINGS (THE "ASSIGNMENT CASES"), YOU  
MUST COMPLETE THIS PROOF OF CLAIM AND DELIVER IT TO THE ASSIGNEE, OR THE  
ASSIGNEE'S COUNSEL, NO LATER THAN:**

**JULY 12, 2019**

**THE ASSIGNEE'S NAME AND ADDRESS ARE AS FOLLOWS:**

**SONEET KAPILA, ASSIGNEE  
1000 SOUTH FEDERAL HIGHWAY, SUITE 200  
FORT LAUDERDALE, FL 33316**

**ASSIGNEE'S COUNSEL IS:  
EDWARD J. PETERSON, ESQUIRE  
STICHTER, RIEDEL, BLAIN & POSTLER, P.A.  
110 E. MADISON ST., SUITE 200  
TAMPA, FL 33602**



1. PLEASE SPECIFY THE ASSIGNOR AGAINST WHICH YOU ASSERT A CLAIM:  
Laser Spine Surgery Center of St. Louis LLC  
(IF YOU HAVE A CLAIM AGAINST MORE THAN ONE ASSIGNOR, YOU MUST FILE A SEPARATE CLAIM AGAINST EACH ASSIGNOR).

2. CREDITOR NAME (Your name): National Fire & Marine Insurance Company  
ADDRESS: c/o Bush Ross, P.A., Attn: Jeffrey W. Warren, Esq.  
ADDRESS: 1801 N. Highland Avenue  
CITY, STATE, ZIP: Tampa, Florida 33602  
TELEPHONE NUMBER: (813) 224-9255  
E-MAIL ADDRESS: jwarren@bushross.com

*Please be sure to notify us if you have a change of address.*

Check box if address on claim differs from address to which this notice was sent: [ ]

3. BASIS FOR CLAIM:
- |   |   |   |
|---|---|---|
| <input type="checkbox"/> Goods Sold         | <input type="checkbox"/> Wages, Salaries and Compensations        | <input type="checkbox"/> Secured Creditor |
| <input type="checkbox"/> Services Performed | <input type="checkbox"/> Taxes                                    |   |
| <input type="checkbox"/> Money Loaned       | <input type="checkbox"/> Customer Deposit                         |   |
| <input type="checkbox"/> Shareholder        | <input checked="" type="checkbox"/> Other: <u>See attachments</u> |   |

4. DATE DEBT WAS INCURRED: See attachments

5. AMOUNT OF CLAIM: See attachments

6. Does Claim amend, replace, or supplement a prior claim? If so, please state the date and amount of the prior claim(s):  
\_\_\_\_\_

7. SUPPORTING DOCUMENTS: Attach copies of supporting documents, such as promissory notes, purchase order, invoices, itemized statement of running accounts, court judgments, or evidence of security interests. If the documents are not available, explain. If the documents are voluminous, attach a summary.

8. SIGNATURE: Sign and print name and title, if any, of the creditor or other person authorized to file this claim:

As required by law, the proof of claim and any supporting documentation you submit shall become a part of the public record related to the Assignment Cases. As a result, the Assignee and his professionals shall be permitted, and may be directed by the Court, to include such documentation, including to the extent provided, protected health information, in any subsequent pleading, notice, document, list, or other public disclosure made in connection with the Assignment Cases. Such inclusion by the Assignee and his professionals shall not constitute a "wrongful disclosure" under HIPAA, the Florida Information Protection Act of 2014, or any regulations promulgated thereunder.

DATED: 1/11/19

BY: [Signature]  
Signature of Claimant or Representative

Paul C. Zalutsky, Claim Manager  
Print Name and Title Here

For Assignee's Use Only:

Claim Number: \_\_\_\_\_

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



**Attachment to National Fire & Marine Insurance Company's  
Proof of Claim in *In re Laser Spine Surgery Center of St. Louis, LLC*, Case No. 2019-CA-2772**

National Fire & Marine Insurance Company (“**Claimant**”) claims currently unliquidated amounts due from Laser Spine Surgery Center of St. Louis, LLC (the “**Assignor**”) arising from the Claimant’s issuance of certain excess liability insurance policies issued to the Assignor and others, including but not limited to the following policies (the “**Policies**”):

<u><b>Policy No.</b></u>	<u><b>First Named Insured</b></u>	<u><b>Policy Period</b></u>
EN004806	Laser Spine Institute, LLC	03/01/2015 to 03/01/2016
EN004806	Laser Spine Institute, LLC	03/01/2016 to 03/01/2017
EN004806	Laser Spine Institute, LLC	03/01/2017 to 03/01/2018
EN004806	LSI HoldCo LLC	01/01/2018 to 07/01/2019

The Policies include several different coverage parts, including but not limited to excess professional liability coverage. The Claimant is attaching as Exhibits 1 through 4, respectively, a copy of all declarations, schedules, forms, terms and conditions for each of the Policies listed above.

Under the Policies, the Claimant agreed to insure the Assignor and any additional named insureds in the respective Policies (collectively, the “**Insureds**”) on an excess basis during the respective policy periods, subject to specified limitations and conditions. Among other things, pursuant to the terms of the Policies, the Insureds have obligations to pay certain self-insured retention (“**SIR**”) amounts in the amount of \$1 million per claim up to \$6 million in the aggregate for all claims reported in the respective policy periods. Such SIR amounts are mandatory and may include both claims expenses (*i.e.*, defense costs) and indemnity payments (*i.e.*, judgments and settlements). The Policies define excess loss as “civil damages . . . which an Insured becomes legally obligated to pay through adjudication or settlement which exceed all applicable scheduled limits or any scheduled coverages.” Excess loss does not include “any damages which are not greater than the scheduled limit or any other applicable insurance.” Accordingly, the Claimant has no obligation to pay excess loss under a respective Policy unless and until the full SIR is satisfied with respect to any given claim.

Furthermore, the Policies state that the limits of insurance applicable to any SIR listed in the Schedule of Underlying Insurance may not be reduced or exhausted for any reason other than **payment** of



covered judgments or settlements and associated claims expenses where claims expenses actually paid by the Insureds reduces the SIR. To the best of Claimant's knowledge, the Insureds have not paid the SIR under any of the Policies on either a per claim or aggregate basis. To the extent that Claimant has paid or will be required to pay any claims expenses or indemnity without the Insureds' actual satisfaction of the SIR, Claimant asserts a claim against the Assignor arising from the Assignor's contractual obligations under the Policies and all indemnification, subrogation, and other common law rights that Claimant has to recover from the Assignor for such amounts.

To the extent that Soneet Kapila (the "**Assignee**"), as assignee of the Assignor's assets (the "**Assignor's Estate**"), asserts claims against the Claimant of any kind, the Claimant reserves the right to assert that such claims are subject to rights of setoff or recoupment. To the extent that the Assignee, Assignor, the Assignor's Estate, or any other party asserts any claims against the Claimant that would give rise to any counterclaim, cross-claim or other claim against the Assignee, Assignor, the Assignor's Estate, or any other party, the Claimant reserves all rights to assert such claims.

The Claimant reserves the right to (i) amend, clarify, modify, update or supplement this Proof of Claim at any time in any respect, including without limitation to assert additional claims and requests for payment or additional grounds for its claims, or to specify the amount of the Assignor's contingent, unmatured or unliquidated claims as they become, non-contingent, matured or liquidated; (ii) file additional proofs of claim at any time and in any respect; or (iii) file a request for payment of administrative or priority expense in accordance with § 727.114, Fla. Stat. By virtue of the filing of this Proof of Claim, the Claimant does not waive and hereby expressly reserves its right to pursue claims and requests for payment, including, but not limited to, the claims and requests for payment described herein against the Assignor or the Assignor's Estate based upon alternative legal theories.

By filing this Proof of Claim, the Claimant does not waive, and specifically preserves, its procedural and substantive defenses to any claim that may be asserted against it by the Assignee, Assignor, the Assignor's Estate, or any other party. The Claimant also reserves all rights accruing to it against the Assignee, Assignor, the Assignor's Estate, or any other party, and the filing of this Proof of



Claim is not intended to be and shall not be considered as (a) an election of remedies, or (b) a waiver or limitation of any rights of the Claimant. The Claimant reserves the right to withdraw this Proof of Claim with respect to any claims for any reason whatsoever.

This Proof of Claim shall not be deemed to be a waiver of the Claimant's rights (i) to trial by jury in any proceeding so triable in this case or any case, controversy, or proceeding related to this case, or (ii) to any other rights, claims, actions, setoffs, or recoupments to which the Claimant is or may be entitled, in law or in equity, all of which rights, claims, actions, defenses, setoffs, and recoupments the Claimant expressly reserves.



# Exhibit 1





Medical Protective  
Princeton Insurance Company  
PLICO  
MedPro RRG

01/31/2018

LSI HoldCo LLC  
5332 Avion Park Dr  
Tampa, FL 33607

**Re: Policy Number** EN004806  
**Policy Effective Date** 01/01/2018 to 07/01/2019

Thank you for trusting us to defend and protect your reputation and assets. Enclosed please find a copy of your policy issued by National Fire & Marine Insurance Company.

In the event you have questions about the claims process, please call us at 800-4MEDPRO (800-463-3776) to speak with a claims representative who will be able to answer your questions and discuss solutions for claim-related issues. Additionally, if you need to report a claim as required by the reporting requirements of this policy, please send your notice of claims as follows:

Via Email: [reportaclaim@medpro.com](mailto:reportaclaim@medpro.com)

Via Mail: MedPro Group  
Attn: First Claim Reports  
5814 Reed Road  
Fort Wayne, IN 46835

I also encourage you to visit [www.medpro.com](http://www.medpro.com) to access our Prevention & Education Center for up-to-date risk information and recommended strategies to help promote patient safety and satisfaction.

In closing, thank you for joining more than 200,000 clients who entrust MedPro Group to provide the peace of mind, expertise and choice they expect from their healthcare liability insurer.

Sincerely,

Tim Kenesey  
President and CEO

MedPro Group is the marketing name used to refer to the insurance operations of The Medical Protective Company, Princeton Insurance Company, PLICO, Inc. and MedPro RRG Risk Retention Group. All insurance products are administered by MedPro Group and underwritten by these and other Berkshire Hathaway affiliates, including National Fire & Marine Insurance Company. Product availability is based upon business and regulatory approval and may differ among companies. Visit [medpro.com/affiliates](http://medpro.com/affiliates) for more information.

PLCYCVLTR-00-1215



## Florida Surplus Lines Warning Statement

**THIS INSURANCE IS ISSUED PURSUANT TO THE FLORIDA SURPLUS LINES LAW. PERSONS INSURED BY SURPLUS LINES CARRIERS DO NOT HAVE THE PROTECTION OF THE FLORIDA INSURANCE GUARANTY ACT TO THE EXTENT OF ANY RIGHT OF RECOVERY FOR THE OBLIGATION OF AN INSOLVENT UNLICENSED INSURER.**

.....

**ANY FLORIDA REGULATORY AGENCY.**

Agent Name: \_\_\_\_\_

Agent Address: \_\_\_\_\_

Agent Identification Number: \_\_\_\_\_

Surplus Lines Broker Name: \_\_\_\_\_

Surplus Lines Broker Address: \_\_\_\_\_

Surplus Lines Broker Identification Number: \_\_\_\_\_



## **EXCESS HEALTHCARE LIABILITY POLICY DECLARATIONS**

### **NOTICE:**

**This policy may contain claims-made and reported coverage. Please read this policy carefully.**

**ISSUING COMPANY:** National Fire & Marine Insurance Company, as administered by a MedPro Group company  
Omaha, Nebraska

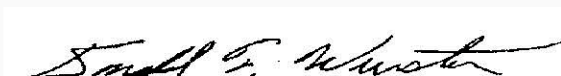
**POLICY NUMBER:** EN004806

ITEM 1	<b>FIRST NAMED INSURED:</b> LSI HoldCo LLC <b>ADDRESS:</b> 5332 Avion Park Dr Tampa, FL 33607 <input checked="" type="checkbox"/> Administrative First Named Insured														
ITEM 2	<b>POLICY PERIOD:</b> From 01/01/2018 to 07/01/2019 both days at 12:01 a.m. at the address of the First Named Insured stated herein.														
ITEM 3	<b>COVERAGE PARTS SELECTED:</b> (please refer to the applicable Schedule of Named Insureds for detailed Retroactive Dates, Limits of Liability, Retentions, etc.) <table style="width: 100%;"> <tr> <td style="width: 60%;"><b>Professional Liability:</b></td><td>Claims Made and Reported</td></tr> <tr> <td><b>General Liability:</b></td><td>Occurrence</td></tr> </table>	<b>Professional Liability:</b>	Claims Made and Reported	<b>General Liability:</b>	Occurrence										
<b>Professional Liability:</b>	Claims Made and Reported														
<b>General Liability:</b>	Occurrence														
ITEM 4	<b>RETROACTIVE DATE:</b> <table style="width: 100%;"> <tr> <td style="width: 60%;"><b>Professional Liability:</b></td><td>03/21/2005</td></tr> <tr> <td><b>General Liability:</b></td><td>n/a</td></tr> </table>	<b>Professional Liability:</b>	03/21/2005	<b>General Liability:</b>	n/a										
<b>Professional Liability:</b>	03/21/2005														
<b>General Liability:</b>	n/a														
ITEM 5	<b>LIMITS OF LIABILITY:</b> <table style="width: 100%;"> <tr> <td colspan="2"><b>Professional Liability:</b></td></tr> <tr> <td style="width: 60%;">Per Event Limit</td><td>\$20,000,000</td></tr> <tr> <td>Aggregate Limit</td><td>\$20,000,000</td></tr> <tr> <td colspan="2"><b>General Liability / Follow Form:</b></td></tr> <tr> <td>Per Event Limit</td><td>\$20,000,000</td></tr> <tr> <td>Aggregate Limit</td><td>\$20,000,000</td></tr> <tr> <td><b>Claims Expenses:</b></td><td>Defense Within Limits</td></tr> </table>	<b>Professional Liability:</b>		Per Event Limit	\$20,000,000	Aggregate Limit	\$20,000,000	<b>General Liability / Follow Form:</b>		Per Event Limit	\$20,000,000	Aggregate Limit	\$20,000,000	<b>Claims Expenses:</b>	Defense Within Limits
<b>Professional Liability:</b>															
Per Event Limit	\$20,000,000														
Aggregate Limit	\$20,000,000														
<b>General Liability / Follow Form:</b>															
Per Event Limit	\$20,000,000														
Aggregate Limit	\$20,000,000														
<b>Claims Expenses:</b>	Defense Within Limits														
ITEM 6	<b>MAINTENANCE RETENTION:</b> \$Nil														
ITEM 7	<b>PREMIUM:</b> <table style="width: 100%;"> <tr> <td style="width: 60%;">Policy Premium</td><td>\$1,985,892</td></tr> <tr> <td>Terrorism Premium (TRIA)</td><td>\$ 224</td></tr> <tr> <td>Total Premium</td><td>\$1,986,116</td></tr> </table> <p><b>(Does not include any applicable surplus lines taxes, which must be collected by the producer.)</b></p>	Policy Premium	\$1,985,892	Terrorism Premium (TRIA)	\$ 224	Total Premium	\$1,986,116								
Policy Premium	\$1,985,892														
Terrorism Premium (TRIA)	\$ 224														
Total Premium	\$1,986,116														
ITEM 8	<b>FORMS &amp; ENDORSEMENTS:</b> Refer to attached Schedule of Forms and Endorsements														



ITEM 9	<b>PRODUCER:</b> AB Risk Specialist Inc <b>ADDRESS:</b> 931 Tullis Rd Lawrenceville, GA 30043-4732
ITEM 10	<b>SERVICE OF SUIT:</b> Service of process in any lawsuit or mandated alternative dispute resolution (ADR) proceeding instituted against the company shall be made upon: General Counsel, National Fire & Marine Insurance Company, 1314 Douglas Street, Omaha, Nebraska 68102-1944. The General Counsel is authorized and directed to accept service of process on behalf of the company in any suit or ADR proceeding. Further, pursuant to any law which makes provision therefore, the company hereby designates the Superintendent, Commissioner, Director of Insurance, deputy, or department employee specified as attorney or agent for receipt of lawful service of process or ADR proceeding instituted by or on behalf of the insured or any ..... designee upon whom the service of process may be served.

IN WITNESS WHEREOF, National Fire & Marine Insurance Company has caused this policy to be signed by its President (and countersigned by its duly Authorized Representative, where necessary).

  
President

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



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**Forming Part of Policy No.:** EN004806

**Issued to:** LSI HoldCo LLC

**Policy Period:** From 01/01/2018 to 07/01/2019 at 12:01 a.m. at the address of the First Named Insured stated herein.

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### SCHEDULE OF FORMS AND ENDORSEMENTS

Forms and Endorsements attached to this Policy:

FORM NAME	FORM NUMBER	ENDORSEMENT NUMBER
Declarations - Excess	3001-TXX-00-1215	
Schedule of Forms and Endorsements	3002-TXX-00-1215	
Schedule of Underlying Coverage - Excess	3003-TXX-00-1215	
Schedule of Named Insureds - Excess	3004-TXX-00-1215	
Common Policy Provisions and Conditions - Excess	3010-TXX-00-1215	
Professional Liability Coverage Part - Excess - Facilities	3011-TPF-00-1215	
General Liability Coverage Part - Excess - Facilities	3012-TGF-00-1215	
Manuscript Endorsement	3102-TXX-00-1215	1
Administrative First Named Insured Endorsement	3117-TXX-00-1215	2
PL Intentional Acts Excl with Carveback for Innocent Insureds Endorsement HFL	3308-TPF-00-1215	3
GL Blanket AI - PNC Endorsement	3507-TGX-00-1215	4
GL Blanket Waiver of Subrogation Endorsement	3512-TGX-00-1215	5
Cap on Losses from Certified Acts of Terrorism Endorsement	3536-TGX-00-1215	6
Florida Amendatory Endorsement	3800-TXX-FL-1215	7



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**Forming Part of Policy No.:** EN004806

**Issued to:** LSI HoldCo LLC

**Policy Period:** From 01/01/2018 to 07/01/2019 at 12:01 a.m. at the address of the First Named Insured stated herein.

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### SCHEDULE OF UNDERLYING COVERAGE

**Professional Liability Coverage Part:**

NAME OF CARRIER/ POLICY NUMBER/ POLICY PERIOD	TYPE OF COVERAGE PROVIDED	LIMITS OF LIABILITY
Laser Spine Institute LLC Self Insured Retention 01-01-18 to 07-01-19	Professional Liability - Claims Made	The professional underlying SIR is a combined single limit of liability of \$1,000,000 per claim/\$6,000,000 aggregate for Indemnity and Expense
Mcare Fund 03-01-17 to 03-01-18	Professional Liability	\$500,000 each Loss Event \$1,500,000 Annual Aggregate  Excess of: National Fire & Marine Insurance Company Policy Number HN004806

**General Liability Coverage Part:**

NAME OF CARRIER/ POLICY NUMBER/ POLICY PERIOD	TYPE OF COVERAGE PROVIDED	LIMITS OF LIABILITY
Laser Spine Institute LLC Self Insured Retention 01-01-18 to 07-01-19	General Liability - Occurrence	The general liability underlying SIR is a combined single limit of liability of \$25,000 per claim/\$50,000 aggregate for indemnity and expense.

**Follow Form Coverage Part:**

NAME OF CARRIER/ POLICY NUMBER/ POLICY PERIOD	TYPE OF COVERAGE PROVIDED	LIMITS OF LIABILITY	FOLLOWED POLICY INDICATED BY X
The Hartford 20 UEN IA2588 03-01-17 to 03-01-18	Automobile Liability	\$1,000,000	X
The Hartford 20 WB AS7258 03-01-17 to 03-01-18	Employers Liability	Per Event Limit of Liability Employment-Related Accident: \$1,000,000 Per Employee Limit of Liability Employment-Related Disease:	X



		\$1,000,000 Policy Limit of Liability Employment-Related Disease: \$1,000,000	
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**Forming Part of Policy No.:** EN004806

**Issued to:** LSI HoldCo LLC

**Policy Period:** From 01/01/2018 to 07/01/2019 at 12:01 a.m. at the address of the First Named Insured stated herein.

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### SCHEDULE OF NAMED INSUREDS

In consideration of the premium due, and in reliance upon the representations of all **insureds**, the **company** and the **insureds** agree the organizations and persons listed below are designated as **named insureds** and the Retroactive Dates shown on the Declarations are amended as follows, but only with respect to the designated **named insureds**.

SCHEDULE OF NAMED INSUREDS				
NAMED INSURED	ID NUMBER	RETROACTIVE DATE: PROFESSIONAL LIABILITY	RETROACTIVE DATE: GENERAL LIABILITY	TERMINATION DATE
Laser Spine Institute, LLC	241482	03/21/2005	n/a	
Ambulatory Anesthesia Resource Group LLC	1317741	06/30/2017	n/a	
James S St Louis, DO, PC	626965	09/09/2009		12/31/2011
Laser Spine Institute Consulting LLC	626955	06/30/2011	n/a	
Laser Spine Institute of Arizona, LLC	626966	03/14/2008		12/31/2010
Laser Spine Institute of California, LLC	626960	07/31/2008		12/31/2012
Laser Spine Institute of Colorado, LLC	626968	09/03/2009		12/31/2009
Laser Spine Institute of Oklahoma, LLC	626969	09/17/2010		12/31/2010
Laser Spine Institute of Pennsylvania, LLC	626967	04/22/2009		12/31/2010
Laser Spine Medical Clinic, LLC	626958	01/03/2005		12/31/2012
Laser Spine Physical Therapy, LLC	626959	01/03/2005		12/31/2012
Laser Spine Surgery Center of Arizona, LLC	254295	05/30/2008	n/a	
Laser Spine Surgery Center of Cincinnati, LLC	637293	06/30/2014	n/a	
Laser Spine Surgery Center of Cleveland, LLC	637292	06/30/2014	n/a	
Laser Spine Surgery Center of Oklahoma, LLC	254297	03/23/2011	n/a	
Laser Spine Surgery Center of Pennsylvania, LLC	254296	04/22/2009	n/a	
Laser Spine Surgery Center of St. Louis, LLC	637294	06/30/2014	n/a	
Laser Spine Surgery Center of Tampa, LLC	943051	03/01/2015	n/a	
Laser Spine Surgery Center of Warwick, LLC	943052	03/01/2015	n/a	
Laser Spine Surgical Center, LLC	626953	01/03/2005	n/a	
LSI Aspen Back and Body, LLC	626962	09/03/2009		12/31/2011
LSI HoldCo LLC	626956	12/05/2012	n/a	



<b>SCHEDULE OF NAMED INSURED</b>				
<b>NAMED INSURED</b>	<b>ID NUMBER</b>	<b>RETROACTIVE DATE: PROFESSIONAL LIABILITY</b>	<b>RETROACTIVE DATE: GENERAL LIABILITY</b>	<b>TERMINATION DATE</b>
LSI Houston, PA	616898	01/03/2005	n/a	
LSI Management Company, LLC	626954	09/03/2009	n/a	
Medical Care Management Services, LLC	626957	06/11/2013	n/a	
Michael William Perry, MD, PC	626961	07/25/2008		12/31/2011
Spine DME Solutions LLC	1317738	06/30/2017	n/a	
Total Spine Care LLC	1317734	10/16/2015	n/a	
Total Spine Health Products, LLC	626964	09/03/2009		12/31/2011
Physician FTE 1		03/21/2005		
See Schedule of Insured Physicians on File with Company	921217			
Provider FTE 1		03/21/2005		
All Physician Assistants Employed or Contracted by Laser Spine Institute, LLC	626636			
Provider FTE 2		03/21/2005		
All Nurse Practitioners Employed or Contracted by Laser Spine Institute, LLC	626639			
Provider FTE 3		03/21/2005		
See Schedule of Insured Chiropractors on File with Company	921218			
Provider FTE 4		03/21/2005		
All Certified Registered Nurse Anesthetics Employed or Contracted by Laser Spine Institute, LLC	945592			

**All other terms and conditions of the policy remain unchanged.**



***EXCESS HEALTHCARE LIABILITY POLICY***  
***COMMON POLICY PROVISIONS AND CONDITIONS***

**NOTICE:**

**This policy may contain claims-made and reported coverage. Please read this policy carefully.**

In consideration of the payment of the premium due, and in reliance upon the representations of all **insureds**, the **company** and all **insureds** agree as follows, subject to the terms and conditions of this policy, including the applicable Limits of Liability:

**I. DEFINITIONS**

These definitions apply to all Coverage Parts:

- A. **Additional insured** means any person or organization listed on a Schedule of Additional Insureds.
- B. **Advertisement** means a notice that is broadcast or published to the general public or specific market segments about any . . . . . ~~goods, products,~~ or services for the purpose of attracting customers or supporters. For the purposes of this definition:
  - 1. notices that are published include material placed on the internet or on similar electronic means of communication; and
  - 2. regarding websites, only that part of a website that is about any . . . . . ~~goods, products,~~ or services for the purposes of attracting customers or supporters is considered an **advertisement**.
- C. **Application** means all information, documents and material provided to the **company**, or to any other insurer on any **underlying coverage**, including any information, documents or material included within the definition of **application** set forth in a **followed policy**.
- D. **Authorized insured** means any **insured** authorized by the **first named insured** to give notice of a **claim** or **potential claim** to the **company**.
- E. **Automobile** or **auto** means:
  - 1. any land motor vehicle, trailer or semi-trailer, including any attached machinery and equipment, designed for use on public roads; or
  - 2. any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.

However, **automobile** or **auto** does not include **mobile equipment**.

- F. **Bodily injury** means any damage to the human body, including sickness or disease and any mental injury, shock, emotional distress, or death arising therefrom. In addition, it includes damages claimed for the cost of any care, loss of services, or loss of consortium arising therefrom.
- G. **Case management** means identifying patients with specific health care needs and developing a plan to ensure an efficient use of resources to achieve the best outcome.
- H. **Claim** means an express, written demand upon an **insured** for money or services as compensation for damages, . . . . . ~~es to which this insurance~~ . . . . . applies are alleged. Suit also includes an arbitration or other alternative dispute resolution proceeding in which such damages are claimed and to which an **insured** must submit or does submit with the . . . . . ~~consent~~. However, with respect to coverage provided under the Follow Form Coverage Part, to the extent that this definition conflicts with or differs from the definition of the same or a similar term in any applicable **followed policy**, the definition



in that **followed policy** will apply.

I. **Claims expense** means all costs and expenses incurred in connection with the investigation, adjustment, and defense of any **claim** or **potential claim**. Such costs and expenses:

1. shall only include:

- a. ~~.....insured;~~
- b. court costs;
- c. expert fees;
- d. reporter fees;
- e. the cost of any alternative dispute resolution ordered by a court, otherwise required by law, or pre-approved by the **company**;
- f. post-judgment interest on that portion of the judgment that does not exceed the Limit of Liability available under the particular coverage provided; and
- g. such other costs and expenses that the **company** determines to be reasonably related to the defense of a **claim** or **potential claim**.

2. shall not include:

- a. **loss**;
- b. ~~.....~~
- c. the salary of any **employee** of an **insured**; or
- d. the forgiveness of any amounts owed for the cost of care or services rendered by an **insured**.

However, with respect to coverage provided under the Follow Form Coverage Part, to the extent that this definition conflicts with or differs from the definition of the same or a similar term in any applicable **followed policy**, the definition in that **followed policy** will apply.

J. **Company** means the Issuing Company shown on the Declarations.

K. **Employee** means any person who receives a W-2 or 1099 IRS tax form from any **named insured** that is an organization, and who was acting within the scope of his or her duties on behalf of that **named insured** at the time of the **event**, offense, **health care event** or any other act or omission that results in a **claim** or **potential claim** that is otherwise covered under this policy. **Employee** also includes any leased worker, temporary worker or volunteer so long as such person is or was acting within the scope of his or her duties on behalf of a **named insured** that is an organization.

As used in this definition:

1. ~~.....named insured that is an organization~~ through a labor leasing firm or a locum tenens or staffing organization under an agreement between a **named insured** and the labor leasing firm, or locum tenens or staffing organization, to perform duties related to the conduct of that ~~.....business.~~ Leased worker does not include a temporary worker;
2. ~~.....named insured that is an organization~~ to substitute for a permanent **employee** on leave or to meet seasonal or short-term workload conditions. A temporary worker does not include a leased worker; and
3. ~~.....named insured that is an organization~~ organization, without being paid by that **named insured**, under the supervision or direction of the **named insured**. Volunteer does not include any independent contractor or staff physician.

However, only with respect to the coverage provided under the Professional Liability Coverage Part, **employee** does not mean any physician, surgeon, podiatrist, chiropractor, dentist, certified registered nurse anesthetist, midwife, resident or intern.

L. **Event** means an accident. All injuries arising out of, or in connection with:

1. the same or related acts or omissions; or
2. the continuous or repeated exposure to substantially the same harmful conditions;



will be considered one **event**. For the purposes of this definition, all injuries to a mother and fetus (or fetuses) from conception through delivery shall constitute one **event**.

- M. **Extended reporting period** means the period of time after the cancellation or nonrenewal of any Coverage Part ..... ~~insured may~~ report a **claim** or **potential claim**.
- N. **First named insured** means the person or organization shown as the First Named Insured on the Declarations.
- O. **Followed policy** means any policy designated as such on the Schedule of Underlying Coverage.
- P. **Health care event** means any **event** in the rendering of, or failure to render, **professional services** that results in injury. All injuries arising out of, or in connection with, the same or related acts or omissions in furnishing **professional services** shall be considered one **health care event**.
- Q. **Impaired property** means tangible property, other than the ..... ~~or the~~ ..... , which ..... cannot be used or becomes less useful because:
1. it incorporates the ..... ~~or~~ ..... that is known or thought to be defective, deficient, inadequate, or dangerous; or
  2. an **insured** has failed to fulfill the terms of a contract or agreement if such property can be restored to use by:
    - a. the repair, replacement, adjustment, or removal of the ..... ~~or~~ ..... ; or
    - b. an ..... fulfillment of the terms of the contract.
- R. **Insured** means:
1. the **first named insured**;
  2. any **named insured**;
  3. any **employee**;
  4. any administrator, partner, superintendent, director, officer, member, trustee, stockholder, medical director, department head or head of the medical staff, student, board or committee member or staff member, but only to the extent that he or she is acting within the scope of his or her duties on behalf of any **named insured**. As used to define **insured**, student means an unlicensed person, other than a resident, enrolled in a licensed or accredited training program operated by any **named insured** that is an organization relative to the delivery of **professional services**;
  5. any spouse or domestic partner of any individual **insured**, but only with respect to the conduct of the business of a **named insured** ..... qualifying as such under any federal, state or local laws or under a ..... ~~employee benefit plans~~ or employee benefits program;
  6. any organization formed or acquired by a **named insured** that is an organization during the **policy period**, over which that **named insured** maintains at least majority ownership; however, coverage under this subparagraph is afforded only:
    - a. until the 90th day after the **named insured** acquires or forms the organization or the end of the **policy period**, whichever is earlier;
    - b. for a **loss, event, offense, health care event, bodily injury, property damage or personal and advertising injury** or other **claim** or **potential claim** otherwise covered by this policy that occurred after the organization was formed or acquired by the **named insured**; and
    - c. unless otherwise stated on a Schedule of Named Insureds, the newly formed or acquired organization will share Limits of Liability with the **named insured** that formed or acquired that newly formed or acquired organization;
  7. the estate, heirs, executors, administrators, assigns and legal representatives of an **insured** in the event of such ..... ~~death, incapacity, insolvency or bankruptcy~~, but only to the extent that such **insured** would have been provided coverage under this policy; or
  8. any organization, or any person other than an **employee**, while acting as a ..... ~~real estate~~ ..... manager.



However, with respect to coverage provided under the Follow Form Coverage Part, to the extent that this definition conflicts with or differs from the definition of the same or a similar term in any applicable **followed policy**, the definition in that **followed policy** will apply.

S. **Insured contract** means:

1. a contract for a lease of premises, except for 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 an **insured** or temporarily occupied by an **insured** with permission of the owner;
2. an agreement between a railroad and an **insured** under which the **insured** will hold the railroad harmless for certain liability arising out of the use of a sidetrack;
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, law or regulation, to indemnify a municipality, except in connection with work for a municipality; or
5. any agreement to maintain an elevator;
6. any provision in any other contract or agreement pertaining to an ~~.....business~~ (including an indemnification of a municipality in connection with work performed for a municipality) under which an **insured** assumes the tort liability of another party to pay for **bodily injury** or **property damage** to a third person or .....  
absence of any contract or agreement. This does not include any provision:
  - 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, roadbeds, tunnel, underpass or crossing;
  - b. that indemnifies an architect, engineer or surveyor for injury or damage arising out of:
    - (1) preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
    - (2) giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
  - c. under which the **insured**, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the **insured's** rendering or failure to render professional services, including those listed in b. above and supervisory, inspection, architectural or engineering activities.

T. ~~.....product~~

1. means:
  - a. any goods or products, other than real property, manufactured, sold, handled, distributed, or disposed of by:
    - (1) a **named insured**;
    - (2) others trading under a ~~... .. name, or .....~~
    - (3) a person or organization whose business or assets a **named insured** has acquired.
  - b. containers (other than vehicles), materials, parts, or equipment furnished in connection with such goods or products.
2. includes:
  - a. warranties or representations made at any time with regard to the fitness, quality, durability, performance, or use of the goods or the ~~.....; or .....~~
  - b. the providing of, or the failure to provide, warnings or instructions.
3. does not include:
  - a. vending machines; or
  - b. other property rented to, or located for, the use of others, but not sold to others by a **named insured**.



U. ~~.....work....~~

1. means:
  - a. work or operations performed by, or on behalf of, a **named insured**; or
  - b. materials, parts, or equipment furnished in connection with such work or operations.
2. includes:
  - a. warranties or representations made at any time with regard to the fitness, quality, durability, performance, or use of the work or operations; or
  - b. the providing of, or the failure to provide, warnings or instructions.

V. **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.

It does not include the movement of property by means of a mechanical device, other than a hand truck, which is not attached to the aircraft, watercraft, or **auto**.

W. **Location** means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

X. **Loss**

1. Means civil damages, including prejudgment interest, which an **insured** becomes legally obligated to pay through adjudication or settlement.
2. Does not include:
  - a. any damages that are greater than any applicable Limit of Liability;
  - b. any injunctive or other equitable relief;
  - c. **claims expense**;
  - d. ~~.....fees~~ awarded to a claimant as a fine, penalty, or sanction based upon any ~~.....misconduct;~~  
~~.....claim for any other.....~~  
purpose will be included as **loss**;
  - e. the salary of any **employee**; or
  - f. the forgiveness of any amounts owed for the cost of care or services rendered by an **insured**.

However, with respect to coverage provided under the Follow Form Coverage Part, to the extent that this definition conflicts with or differs from the definition of the same or a similar term in any applicable **followed policy**, the definition in that **followed policy** will apply.

Y. **Managed care services** means services provided to manage and/or administer a health care plan. As used in this

~~.....~~  
preferred provider organization, or other similar organization which provides, or arranges to provide, healthcare services to members under a written contract or agreement. These services can include any of the following acts provided on behalf of the health care plan:

1. the creation, sale, and marketing of a health care plan;
2. the selection, credentialing, and contracting of health care providers;
3. the evaluation of the cost, quality and proper utilization of treatment options available or being provided to participants;
4. the adjustment, investigation, and processing of claims for benefits; or
5. **case management**.

However, **managed care services** do not include **treatment** rendered, or which should have been rendered, to a patient.



## Z. Mobile equipment

1. Means any of the following types of land vehicles, including any attached machinery or equipment:
  - a. bulldozers, farm machinery, forklifts, and other vehicles designed for use principally off public roads;
  - b. vehicles maintained for use only on, or next to, premises owned or rented by a **named insured**;
  - c. vehicles that travel on crawler treads;
  - d. vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
    - (1) power cranes, shovels, loaders, diggers, or drills; or
    - (2) road construction or resurfacing equipment, such as graders, scrapers, or rollers;
  - e. vehicles not described in subparagraphs 1.a, b, c, or d above, that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
    - (1) air compressors, pumps, and generators, including spraying welding, building cleaning, geophysical exploration, lighting, and well-servicing equipment; or
    - (2) cherry pickers and similar devices used to raise or lower workers; or
  - f. vehicles not described in subparagraphs 1.a, b, c, or d above, maintained primarily for purposes other than the transportation of persons or cargo.
2. Does not include self-propelled vehicles with the following types of permanently attached equipment, but will be considered **autos**:
  - a. equipment designed primarily for:
    - (1) snow removal,
    - (2) road maintenance (but not construction or resurfacing); or
    - (3) street cleaning;
  - b. cherry pickers and similar devices mounted on car 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.
3. Does not include land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered **autos**.

AA. **Named insured** means any of the following, but only if listed by name on a Schedule of Named Insureds:

1. any organization, including any corporations, partnerships or joint ventures;
2. any individual person, but only to the extent that such person was acting in the course and scope of his or her duties of employment with the **first named insured** or another **named insured**; or
3. a **location**.

BB. **Personal and advertising injury** means injury, including consequential **bodily injury**, arising from 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, in any manner, of material that slanders or libels a person or organization or  
.....
5. ....  
.....advertisement.



CC. **Pollutants** means any solid, liquid, gaseous, fuel, lubricant, thermal, acoustic, electrical, or magnetic irritant or contaminant, including but not limited to smoke, vapor, soot, fumes, fibers, radiation, acid, alkalis, petroleum, ~~.....~~ ~~other~~ materials to be disposed of, recycled, stored, reconditioned or reclaimed.

DD. **Policy period** means the period of time shown on the Declarations as the Policy Period. However, if the policy is terminated before the later of the dates shown on the Declarations, **policy period** means the period between the first date shown on the Declarations and the date the policy was terminated.

EE. **Potential claim** means an **event**, including an incident arising from, or in connection with, that **event**, which an **insured** knows or reasonably should know is likely to result in a **claim**. However, with respect to coverage provided under the Follow Form Coverage Part, to the extent that this definition conflicts with or differs from the definition of the same or a similar term in any applicable **followed policy**, the definition in that **followed policy** will apply.

FF. **Products completed operations hazard**

1. Means all **bodily injury** and **property damage** occurring away from any premises an **insured** owns or rents, and arising out of the ~~.....~~ ~~except~~ ~~.....~~
  - a. products that are still in the physical possession of an **insured**; or
  - b. work that has not yet been completed or has been abandoned. However, the ~~.....~~ ~~will be~~ ~~.....~~ deemed completed at the earliest of the following times:
    - (1) when all of the work called for in the ~~.....~~ ~~contract~~ has been completed;
    - (2) when all of the work to be done at the job site has been completed if the contract calls for work at more than one job site; or
    - (3) when that part of the work 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.Work that may need service, maintenance, correction, repair, or replacement, but which is otherwise complete, will be deemed completed.
2. Does not include **bodily injury** or **property damage** arising out of, or in connection with:
  - a. the transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by an **insured** and that condition was created by the **loading or unloading** of the vehicle by an **insured**;
  - b. the existence of tools, uninstalled equipment, or abandoned or unused materials; or
  - c. products or operations for which the classification, shown on the Declarations or in a policy schedule, states that **products completed operations hazard** is subject to the General Aggregate Limit.

GG. **Professional services** means **treatment**, peer review and utilization management not involving **managed care services**. As used in this definition:

1. ~~.....~~ ~~treatment~~ ~~.....~~ by a professional review board or committee through formally adopted, written procedures for the purposes of granting, determining or revoking clinical staff privileges at a hospital, clinic or other medical facility that is a **named insured**, and which results in a patient alleging damages arising from a **health care event**; and
2. ~~.....~~ ~~treatment to a patient for its appropriateness or~~ necessity which results in a patient alleging damages arising from a **health care event**. In clarification and not in limitation of the foregoing, utilization management will include prospective review of proposed **treatment**, concurrent review of **treatment**, retrospective review of already rendered **treatment**, disease management, **case management**, and the use of predictive modeling to identify individuals or populations for disease management or **case management**.

HH. **Property damage** means:

1. physical injury to tangible property, including any 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. All such loss of use shall be deemed to occur at the time of the **event** that caused it.



II. **Scheduled limit** means the limits of liability shown for the applicable **underlying coverage** on the Schedule of Underlying Coverage.

JJ. **Treatment** means:

1. medical, surgical, dental, mental health, or nursing services, including those rendered in connection with a clinical trial. This shall also include first aid rendered at the scene of an accident without expectation of monetary compensation, unless such accident occurred on the premises;
2. ....  
an ..... practice as a licensed health care provider;
3. postmortem handling of bodies, including autopsies, organ donation or harvesting or other procedures; or
4. the furnishing of any of the following, but only as it relates to the rendering of medical, surgical, dental, or nursing services:
  - a. food and beverages;
  - b. blood, blood products, medications, supplies, equipment, or appliances; or
  - c. counseling or other social services.

.....  
institutional review board, an independent ethics committee, an ethical review board or a research ethics board which has been formally designated to approve, monitor, and review research involving humans in order to develop effectiveness or safety data or treatment plans, pharmaceutical products or medical devices.

KK. **Underlying coverage(s)** means any insurance policy, program of indemnity, self-insured retention or retained amount as shown on the Schedule of Underlying Coverage. **Underlying coverage(s)** also includes any policies scheduled on any **underlying coverage(s)**, even if such policies are not specifically listed on the Schedule of Underlying Coverage.

## II. **DEFENSE AND SUPPLEMENTAL PAYMENTS**

These provisions apply to all Coverage Parts:

### A. **DEFENSE**

When there is **underlying coverage** that applies to a **claim**, the **company** may, at its sole discretion, elect to associate in the investigation, settlement, or defense of any **claim** or **potential claim** against an **insured** to which this policy applies. If the **company** so elects, the **insured** will cooperate with the **company** and will make available all such information and records as the **company** may reasonably require.

If the obligation of all applicable **underlying coverage** either to investigate and defend the **claim** or pay the cost of **claims expense** ceases through the exhaustion of all applicable **scheduled limits** resulting solely from payment of a combination of **claims expense**, settlements or judgments, then the **company** will assume the investigation and defense of the **insured** against covered claims.

Upon the exhaustion of the applicable Limit of Liability provided under this policy, the **insured** shall become responsible for all further **claims expense** arising from any **claim** or **potential claim** and the **company** has the right to withdraw from the further defense of such **claim** or **potential claim** by tendering such defense to the **insured**. If the **insured** cannot come to an agreement with the attorney assigned by the **company** regarding the payment of future fees and costs, the **insured** shall take all steps necessary to allow the attorney to withdraw from the matter.

### B. **SUPPLEMENTAL PAYMENTS**

The **company** shall also pay, in addition to the Limits of Liability:

1. the premium on any bond required to proceed with an appeal approved by the **company** or to release attachments to an .....**property**; however, the face value of the bond may not exceed the applicable Limit of Liability or the total **loss** payable under the policy, whichever is less; in addition, the **company** has no duty to apply for or furnish any such bond; and
2. reimbursement of reasonable expenses incurred by an **insured** at the .....**request** to assist in the investigation and defense of a **claim** or **potential claim**; payment for actual loss of earnings shall not exceed



\$500 for each day an individual **insured** is required to attend hearings, trials, or an ~~own deposition~~.

C. DEFENSE OUTSIDE THE LIMITS/WITHIN THE LIMITS SHOWN ON DECLARATIONS

The ~~duty to defend~~ shall also include a duty to pay **claims expenses** either:

1. in addition to the applicable Limits of Liability such that payment of **claims expense** and other supplemental  
.....
2. as part of the applicable Limits of Liability such that payment of **claims expense** and other supplemental  
.....

**III. EXCLUSIONS**

The coverage provided under the Professional Liability Coverage Part and the General Liability Coverage Part of this policy does not apply to:

A. ADA

Any **claim** or **potential claim** arising out of, or in connection with, an ~~insured's duty to comply~~ with the Americans with Disabilities Act of 1990 (ADA). This also includes any amendment or regulation that applies thereto or any comparable federal, state, or local law. This exclusion does not apply to any such **claim** or **potential claim** that is based on an ~~insured's alleged negligence~~ in the rendering of or failure to render **professional services**.

B. ANTITRUST

Any **claim** or **potential claim** arising out of, or in connection with, an ~~insured's antitrust activity~~, except to the extent such **claim** or **potential claim** arises out of any **insured's** alleged rendering of, or failure to render, **professional services**.....~~means any actual or alleged price fixing,~~ restraint of trade, price discrimination, predatory pricing, monopolization, unfair business practices, or violation of common law or the Federal Trade Commission Act of 1914, the Sherman Antitrust Act of 1890, the Clayton Act of 1914, any similar federal, state, or local antitrust statute or law, or any rule or regulation promulgated under the Act, statute, or law.

C. BUSINESS PRACTICES

Any **claim** or **potential claim** arising out of, or in connection with, an ~~insured's billing practices~~ or advertising activities. However, this exclusion does not apply to the coverage provided under the Personal and Advertising Injury Liability Insuring Clause.

D. CLAIM OR POTENTIAL CLAIM REPORTED OR DISCOVERED PRIOR TO THE POLICY PERIOD

- .....
1. any **claim** or **potential claim** which has or which should have been reported to any insurer, including through any self-insured or captive program, prior to the **policy period**; and
  2. any **potential claim** that was first known about or discovered, or should reasonably have been known about or discovered by, an **authorized insured** prior to the **policy period**.

E. CRIMINAL ACTS

Any **claim** or **potential claim** arising out of, or in connection with, any criminal act committed by, or at the direction of, the **insured**.

F. DEFAULT JUDGMENT AND FAILURE TO COOPERATE

Any **claim** or **potential claim** that the **company** was unable to timely investigate or defend due to the acts or omissions of any **insured**, including any resulting damages from a default judgment.

G. DISCRIMINATION

Any **claim** or **potential claim** arising out of, or in connection with, the violation of any statute, law, ordinance or regulation prohibiting discrimination or humiliation because of race, creed, color, national origin, religion, age, gender or any other protected class as defined by statute, law, ordinance or regulation.



#### H. ECONOMIC SANCTIONS EXCLUSION

Whenever coverage provided by this policy would be in violation of any U.S. economic trade sanctions such as, but not limited to, the Assets Control, such coverage shall be null and void. Similarly, any coverage relating to or referred to in any certificates or other evidences of insurance or any **claim** or **potential claim** that would be in violation of U.S. economic or trade sanctions as described above shall also be null and void.

#### I. EMPLOYEE BENEFITS LIABILITY

Any **claim** or **potential claim** arising out of, or in connection with, any group benefits administered on behalf of a **named insured**, including:

1. group insurance plans or programs, such as life, health, accident, dental, or legal advice;
2. individual retirement accounts, salary reduction plans under I.R.S. Code 401(k), or any amendment thereto, savings plans, or employee stock subscription plans;
3. travel or vacation plans; or
4. ~~group-term life insurance, health, dental, vision, disability, or Social Security~~ **group-term life insurance, health, dental, vision, disability, or Social Security**, or disability benefits insurance.

#### J. BODILY INJURY EXCLUSION

Any **claim** or **potential claim** arising out of, or in connection with, **bodily injury** to:

1. an **employee** of a **named insured** arising out of, or in connection with, and in the course of:
  - a. employment by that **named insured**; or
  - b. performing duties related to the conduct of that **named insured's business**; or
2. the spouse, child, parent, brother, or sister of that **employee** as a consequence of subparagraph 1 above.

This exclusion shall apply whether a **named insured** may be held liable as an employer, or in any other capacity, and to any obligation to share damages with, or repay someone else who must pay damages, because of the injury. This exclusion does not apply to liability assumed by an **insured** under an **insured contract**.

#### K. EMPLOYMENT PRACTICES

Any **claim** or **potential claim** brought by an **employee**, or applicant for employment, which alleges an **insured**:

1. breached an actual or implied contract of employment;
2. violated an anti-discrimination statute;
3. engaged in any form of harassment;
4. engaged in libel or slander related to an employment relationship;
5. retaliated for the exercise of a public right or duty;
6. engaged in intentional or negligent infliction of emotional distress arising out of, or in connection with, an employment relationship;
7. wrongfully failed to hire, promote, or grant tenure;
8. wrongfully demoted; or
9. wrongfully terminated employment.

#### L. ERISA

Any **claim** or **potential claim** seeking to impose liability under the Employee Retirement Income Security Act of 1974 (ERISA), or any amendment or regulation that applies thereto.

#### M. FRAUDULENT CLAIMS

Any **claim** or **potential claim** made by an **insured** who knows that the **claim** or **potential claim** is false or fraudulent, as regards to amount or otherwise; additionally, this policy shall become void and all **claims** and **potential claims** hereunder shall be forfeited.



N. GOVERNMENTAL IMMUNITY AND OTHER PROTECTIONS

Any **claim** or **potential claim** for which an **insured** has:

1. immunity as a volunteer or as an employee or contractor of a federal, state, or local government; or
2. immunity, insurance, indemnity, or any other protection pursuant to any federal, state, or local laws, including but not limited to the Federal Tort Claims Act.

O. INJUNCTIVE RELIEF, TAXES, FINES AND PENALTIES

Any **claim** or **potential claim** or other matter seeking:

1. injunctive relief;
2. any relief other than **loss**; or
3. the award of taxes, fines, penalties, or sanctions.

P. INSURED VERSUS INSURED

Any **claim** or **potential claim** initiated, alleged, or caused to be brought about, by any **insured** covered by this policy against any other **insured** covered by this policy. This exclusion does not apply if the **claim** or **potential claim** arises out of an **insured** providing **professional services** to another **insured**.

Q. MANAGED CARE SERVICES

Any **claim** or **potential claim** arising out of, or in connection with, any **managed care services**.

R. MEDICARE OR MEDICAID

Any **claim** or **potential claim** arising out of, or in connection with, any Medicare/Medicaid Claim. As used in this ..... ~~based on or arising out of, or in connection with, any actual~~ or alleged violation of law, regulation or rule with respect to Medicare, Medicaid, Tricare or any similar federal, state or local governmental program.

S. MULTI-POLICY AND ANTI-STACKING

If more than one policy, Coverage Part or Insuring Clause applies, the following multi-policy and anti-stacking exclusions apply:

1. if more than one policy issued by the **company** or by a past, present or future parent, subsidiary or affiliate applies to the liability of an **insured**, the ~~.....duty to pay~~ for a **loss** will be confined to the policy containing the largest applicable Limit of Liability; or
2. if more than one Coverage Part or Insuring Clause under this policy applies to the liability of an **insured**, the ~~.....duty to pay~~ **loss** will be confined to the Coverage Part or Insuring Clause containing the largest applicable Limit of Liability.

T. NUCLEAR ENERGY LIABILITY

Any **claim** or **potential claim**:

1. for which an **insured** has coverage under a nuclear energy liability policy issued by the:
  - a. Nuclear Energy Liability Insurance Association;
  - b. Mutual Atomic Energy Liability Underwriters;
  - c. Nuclear Insurance Association of Canada; or
  - d. any successor or assign of the entities set forth in the subparagraphs above.

This policy also does not apply if such coverage did exist, but was terminated by the exhaustion of the ~~.....limit of liability~~.

2. resulting from the hazardous properties of nuclear material for which an **insured**:
  - a. was required to maintain financial protection under the Atomic Energy Act of 1954 or any amendment or regulation that applies thereto; or
  - b. was entitled to indemnity by the United States government or any agency thereof or would have been entitled to had this policy not been issued.



U. OWNERSHIP OR MANAGEMENT OF NON-INSURED ENTITIES

Any **claim** or **potential claim** arising out of, or in connection with, the acts or omissions of any organization, partnership, joint venture, or other business enterprise that is not a **named insured**, but which is owned, managed or supervised by an **insured**. However, this exclusion does not apply to an organization defined as an **insured**.

V. RICO

Any **claim** or **potential claim** arising out of, or in connection with, an ~~.....violation~~ of the Racketeer Influenced Corrupt Organizations Act (RICO), or any comparable federal, state or local laws or any amendment or regulation that applies thereto.

W. WAR

Any **claim** or **potential claim** arising out of, or in connection with:

1. war, including undeclared or civil war;
2. warlike action by a military force, including action in hindering or defending against an actual or expected attack by any governmental, sovereign, or other authority using military personnel or other agents; or
3. insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

X. ~~.....N-AND-OTHER-SIMILAR-LAWS~~

Any **claim** or **potential claim** arising out of, or in connection with, any obligation or damages arising under any law related to:

1. ~~.....compensation~~;
2. occupational disease;
3. unemployment compensation;
4. disability benefits; or
5. other similar law that provides for scheduled benefits as a result of an injury or disease.

#### IV. MAINTENANCE RETENTION

These provisions apply to all Coverage Parts:

A. LOSS AND CLAIMS EXPENSE

If a Maintenance Retention is shown on the Declarations it is agreed and understood that the ~~... ..duty to~~ pay **loss** and **claims expense** for any **claim** or **potential claim** thereunder will be limited in the following manner:

1. the **company** shall have a duty to pay **loss** and **claims expense** only in excess of the Maintenance Retention. The Maintenance Retention shall be applied to **claims expense** first, then to **loss**;
2. the **first named insured** shall have a duty to pay all **loss** and **claims expense** up to the amount of the Maintenance Retention, payment of which shall not be unreasonably withheld;
3. unless prohibited by law, the **company** has complete discretion to pay the entire **loss** and **claims expense** and seek reimbursement from the **first named insured** for the Maintenance Retention. If this occurs, the **first named insured** shall reimburse the **company** within 30 days of the ~~... ..payment~~ of the Maintenance Retention amount;
4. the applicable Limits of Liability shall not be reduced by the amount of the Maintenance Retention;
5. if a Maintenance Retention is shown on the Declarations, the Maintenance Retention shall apply to all **loss** and **claims expense** arising from a single **event, health care event**, offense or other covered incident, regardless of the number of **insureds** found liable for the **loss** and/or **claims expense**; and
6. the Maintenance Retention applies only after the **scheduled limits** have been exhausted by the payment of **loss** and/or **claims expense**.



## V. CONDITIONS

These conditions apply to all Coverage Parts:

### A. ACTION AGAINST THE COMPANY

1. No action shall lie against the **company** unless each **insured** is in full compliance with all of the terms of this policy.
2. No person shall have the right to join the **company** as a party to a **claim** to determine an ~~.....liability..~~ under this policy. Further, an **insured** shall not interplead the **company** into a **claim**.
3. No action shall lie against the **company** until the amount of **loss** has been finally determined by entry of judgment or written agreement between the **insured**, the claimant, and the **company**. Once the amount of **loss** has been finally determined, the claimant shall be entitled to recover under the terms of this policy.

### B. ARBITRATION

1. The **company** and the **insureds** agree that in any dispute, **claim**, **potential claim** or controversy arising out of, relating to, or in connection with this policy, whether brought by or on behalf of an **insured**, the **company**, or any other party, the **company** may elect to submit any such dispute, **claim**, **potential claim** or controversy to binding arbitration, in accordance with Title 9 USC Sec. 1 et seq. (the Federal Arbitration Act) and shall be governed by the Commercial Arbitration Rules of the American Arbitration Association.
2. The arbitration shall be presided over by three arbitrators chosen from the Commercial Insurance Panel of the American Arbitration Association. The arbitrators shall be governed by the law of the state of the address of the **first named insured**, as shown on the Declarations. The arbitration shall take place in the county that the capital of that state is located.
3. The arbitrators shall have the discretion to order pre-arbitration discovery, including an exchange of documents and deposition of potential witnesses. Each party shall bear its own arbitration costs and expenses including .....
4. Any arbitration award shall be in writing and shall specify the factual and legal bases of the award. Judgment on the award rendered by the arbitrator shall be final and may be entered in any court having jurisdiction thereof. Furthermore, this arbitration provision shall be a complete defense to any suit, action or proceeding in any federal, state or local court or before any administrative tribunal with respect to any dispute, **claim**, **potential claim** or controversy arising out of, relating to or in connection with this policy.

### C. ASSISTANCE AND COOPERATION

1. After any **claim** is made, or any **potential claim** is first discovered, the **insured** shall not contract any expense, voluntarily assume any liability in any situation, nor make or contract any settlement of the **claim** or **potential claim** within the ~~.....Limits of Liability~~, except at the ~~.....own cost~~ and responsibility, without the written authorization of the **company**.
2. The ~~.....duty to defend~~ and pay **loss** for any **claim** or **potential claim** otherwise covered under this policy is strictly conditioned upon all ~~.....cooperation~~ with the **company** in the investigation, defense, and/or settlement of any matter to which this policy applies. Such cooperation shall include, but is not limited to:
  - a. attendance at any deposition, hearing, or trial, as requested by the **company**;
  - b. assistance in securing and giving evidence;
  - c. obtaining the attendance of witnesses;
  - d. doing nothing to prejudice the ~~.....ability to~~ investigate, defend, and/or manage any matter to which this policy applies;
  - e. submitting to recorded and/or sworn statements and to examinations under oath as requested by the **company**; and
  - f. promptly producing, at the ~~.....request~~, any records, documents and other information in an ~~.....possession~~, custody or control.
3. If a **claim** or **potential claim** is, or might be, covered under any other policy of insurance, the **insured** shall promptly give notice to such other insurers. The **insured** shall also provide the **company** with copies of the



applicable policies. The **insured** shall further act in good faith to enforce any rights held under such policies, including the right to a defense.

D. BANKRUPTCY OR INSOLVENCY

The bankruptcy or insolvency of an **insured** or an ~~estate~~, or the non-payment by an **insured** or by any other organization responsible for a Maintenance Retention, shall not act to modify any duty owed by an **insured** or the **company** under the policy. Under no circumstances will such bankruptcy, insolvency or non-payment require the **company** to assume or in any way be responsible for any Maintenance Retention, or otherwise assume any obligation owed by any **insured** under this policy. The **company** will have no duty to pay **loss** or **claims expense** for any **claim** or **potential claim** unless the **insured** or any other organization responsible for the Maintenance Retention timely pays the Maintenance Retention in full.

E. CANCELLATION, NONRENEWAL AND/OR TERMINATION OF COVERAGE

1. This policy may be canceled by the **first named insured**. The **first named insured** shall provide written notice to the **company** requesting cancellation. The cancellation shall be effective on the date requested by the **first named insured** or the date the notice is received by the **company**, whichever is later.
2. Any coverage contained within this policy may be terminated by the **first named insured**. The **first named insured** shall provide written notice to the **company** requesting the coverage termination. The termination shall be effective on the date requested by the **first named insured** or the date the notice is received by the **company**, whichever is later.
3. This policy, or any coverage contained therein, may also be canceled, terminated or nonrenewed by the **company**. The **company** will send notice to the **first named insured** at the last address on record with the **company**.
4. If the **first named insured** cancels this policy, or terminates any coverage contained therein, earned premium shall be computed in accordance with the standard short rate tables and procedure. If the **company** cancels this policy, or terminates any coverage contained therein, earned premium shall be computed pro rata. Premium adjustments shall be made within a reasonable period of time after cancellation. However, payment or tender of unearned premium shall not be a condition of cancellation.
5. If the **company** cancels or nonrenews this policy for any reason other than non-payment of premium, the **company** shall provide written notice to the **first named insured** not less than 30 days prior to the effective date of such cancellation or nonrenewal. If the **company** cancels this policy for nonpayment of premium, the **company** shall provide written notice to the **first named insured** not less than 10 days prior to the effective date of such cancellation or nonrenewal.
6. If the **company** cancels or nonrenews this policy, coverage under the policy shall terminate on the earlier of:
  - a. the date stated on the cancellation or nonrenewal notice; or
  - b. the date an **insured** procures replacement coverage.

F. COVERAGE TERRITORY

This policy applies to **claims** or **potential claims** arising from acts, omissions, occurrences or offenses (including offenses that take place through the Internet or similar electronic means of communication) occurring anywhere in the world, with the exception of any country or jurisdiction which is subject to trade or other economic sanction or embargo by the United States of America, provided that the **claim** or **potential claim** is made and any legal proceedings are pursued within the United States, its territories and possessions, including Puerto Rico.

G. EXTENDED REPORTING PERIOD

Only with respect to ..... provisions apply:

1. Automatic Limited Extended Reporting Period

- a. In the event that coverage under this policy is terminated for any reason, the **company** will provide an automatic limited **extended reporting period** of 30 days, starting with the end of the **policy period**, during which **claims** and **potential claims** arising out of any specific coverage(s) may be reported to the **company** in writing. However, the **claim** must have been first made against an **insured** during the **policy period**, or the **potential claim** must have been first discovered by an **insured** during the **policy period**.



- b. This automatic limited **extended reporting period** shall not extend the **policy period** or change the scope of the coverage provided. Any **claim** or **potential claim** first reported to the **company** during the automatic limited **extended reporting period** will be deemed to have been made on the last date on which this policy is in effect. The Limits of Liability that apply at the end of the **policy period** are not renewed or increased for **claims** or **potential claims** first reported during the automatic limited **extended reporting period**.

## 2. Optional Extended Reporting Period

- a. The **company** shall, upon written request by or on behalf of the **first named insured**, make an offer for an **extended reporting period** to the **first named insured** if coverage is or will be canceled or nonrenewed, subject to the following:
  - (1) any such written request by or on behalf of the **first named insured** must be received by the **company** no later than 30 days after the cancellation or nonrenewal of the coverage;
  - (2) the **company** shall be required to send the offer for an **extended reporting period** only to the **first named insured** or its authorized representative; and
  - (3) the coverage has been or will be canceled or nonrenewed with respect to the entire policy or a Coverage Part.
- b. The **first named insured** may accept the ~~... .. offer of an~~ **extended reporting period** by paying the premium due within 30 days from either the date on which the policy expires or the date on which the **company** receives the request for an **extended reporting period**, whichever is later. Failure to pay the full premium within this 30-day period will be deemed a rejection of the offer.
- c. In the event of the purchase of an **extended reporting period**, the entire premium for such **extended reporting period** shall be deemed earned at its commencement.
- d. If an **extended reporting period** is purchased, a **claim** or **potential claim** otherwise covered by this policy may be reported for the period of time set forth in the applicable **extended reporting period** endorsement issued after termination of the **policy period**. The **extended reporting period** will begin at the end of the **policy period**. However, the **extended reporting period** shall not:
  - (1) extend the **policy period**;
  - (2) apply to any **claim** or **potential claim** that took place after the **policy period**; or
  - (3) otherwise expand the coverage provided under this policy.

## H. FIRST NAMED INSURED

- 1. The **first named insured** shall be authorized to act on behalf of all **insureds** with respect to this policy, with full authority to bind all **insureds**. The ~~... .. authority shall include,~~ but is not limited to, the following actions:
  - a. receipt of notices of cancellation or nonrenewal;
  - b. requesting or receiving endorsements issued to form a part of this policy;
  - c. payment of premiums due;
  - d. receiving return premium; and
  - e. receiving and/or responding to an offer for an **extended reporting period** for any **insured**.
- 2. The **first named insured** shall notify the **company** in writing of any changes that might affect the insurance provided under this policy, including cancellation and nonrenewal.

## I. FRAUD WARNING

Any person, who knowingly and with intent to defraud any insurance company or other person, files an application for insurance or statement of claim containing any materially false information or conceals, for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties, which may include voiding of the policy if allowed by law.

## J. GOVERNMENTAL ACCESS TO RECORDS

If required by section 952 of the Omnibus Reconciliation Act of 1980, and after receipt of written request from the



**first named insured**, the **company** will allow the U.S. Secretary of Health and Human Services or the U.S. Comptroller General access to this policy as well as all books, documents and records necessary to verify the cost of this policy. The **company** will also allow access to subcontracts between the **company** and any of its related .....  
to the extent that the **company** has possession, custody or control of such books, documents and records. Access will be provided for up to 4 years after the services provided pursuant to this policy cease.

K. INSPECTION AND AUDIT

The **company** shall be permitted, at its own discretion and for its own benefit, to audit an **insured's** property, operations, and any business records. The **company** shall also have the right to obtain a copy of any current or prior insurance records. Any findings or recommendations made by the **company** as a result of an audit shall inure only to the **company's** benefit. As a result, they may not be used as evidence of the **company's** compliance with any safety regulations or other industry standards.

L. MAINTENANCE OF UNDERLYING COVERAGES, TERMINATION AND RENEWAL

1. The limits of liability of the **underlying coverage** must be maintained in full effect during the **policy period**, except for any reduction or exhaustion of such limits of liability solely by reason of actual payment of a claim covered by the **underlying coverage**. Failure to comply with this condition will not invalidate this policy; however, the **company** will not be liable under this policy to any greater extent than it would have been had there been full compliance with this condition. If any **underlying coverage** is not maintained, or the company or other entity which issued the **underlying coverage** is unable to pay or has filed for bankruptcy or has become insolvent, the **insured** will be deemed to be self-insured for the limits of liability of such **underlying coverage**. The insolvency of, or filing of bankruptcy or non-payment by the company or entity issuing any **underlying coverage** shall not act to modify any duty owed by the **company** under this policy. Under no circumstances will such insolvency, bankruptcy or non-payment require the **company** to assume, or in any way be responsible for any **underlying coverage**, or otherwise assume any obligation owed by any **insured** under this policy. Notwithstanding anything to the contrary in this policy, all coverage under this policy will be void from its inception in the event that any **underlying coverage** is rescinded by agreement or legal process for fraud or other material misrepresentation by the **insured**.
2. Unless specifically indicated in any endorsement, this policy shall not drop down for any reason other than the exhaustion of the limits of liability of the **underlying coverages**, including without limitation the inability to collect (in whole or in part) any limits of liability of the **underlying coverage**. The risk of any inability to collect any limits of liability (in whole or in part) whether by reason of financial impairment or insolvency of any issuer of any **underlying coverage** or for any other reason, is expressly retained by the **insured** and is not insured or assumed by the **company**.
3. In the event of a material modification to any **underlying coverage** by endorsement or otherwise, the coverage under this policy will become subject to such modification, only if, and to the extent that, the **company** consents to such modification by written agreement.
4. If any **underlying coverage** is terminated during the term of this policy, the **first named insured** shall notify the **company** of such termination immediately, along with the particulars and details and a copy of any notice of termination received.

M. MODIFICATIONS

Except as provided herein, this policy may not be modified except by written endorsement attached to and made a part of this policy by the **company**. The **company's** decision not to insist on an **insured's** compliance with any provision of this policy shall not operate to waive, modify, or void that provision, or any other provision, condition or term of this policy.

N. NON-ASSIGNABILITY

No interest of an **insured** under this policy shall be assignable without the prior written consent of the **company**. However, if the **insured** is a person and dies, the coverage afforded by this policy shall inure to the benefit of that **insured's** estate.

O. OTHER INSURANCE

1. If any other valid and collectible insurance is available to any **insured** with respect to a liability covered by this policy, and such insurance is afforded under a policy issued by a past, present or future parent, subsidiary or affiliate of the **company**, then the maximum limits of liability under all policies shall not exceed the highest



remaining applicable limit of liability under any one policy;

2. If any other valid and collectible insurance is available to any **insured** for a **claim** or **potential claim** under a policy not issued by a past, present or future parent, subsidiary or affiliate of the **company**, then this insurance will be excess over such other insurance even if such other insurance is stated to be primary, excess, contingent or otherwise. The **company** will pay only the ~~... share of the loss~~, if any, that exceeds the sum of:
  - a. the **underlying coverage** or Maintenance Retention;
  - b. the total amount that all such other insurance would pay for the **loss** in the absence of this insurance; and
  - c. the total of all deductible and self-insured amounts under all such other insurance.
3. This condition shall not apply if such other valid insurance is written to be specifically excess of this policy.

#### P. PREMIUMS

1. The ~~... obligation~~ to perform any duty under the policy is strictly conditioned upon the payment of the premium when due. Therefore, this policy shall not be deemed to have been issued, delivered, or renewed and shall not be applicable to any matter which would otherwise be covered herein, until:
  - a. the premium has been paid in full; or
  - b. if the **company** has agreed to finance the policy, the first installment has been paid in full.

If ~~... ..~~  
~~... ..~~

2. Premiums for this policy shall be computed in accordance with the ~~... ..~~ **rules, rates**, and rating plans.
3. Any premium designated as deposit premium is merely a deposit on the actual amount owed. At the close of the **policy period**, the **company** will compute the earned premium for that period. The deposit premium will then be credited to that amount. If the deposit premium exceeds the earned premium, the **company** will refund the difference to the **first named insured**. If the earned premium exceeds the deposit premium, the **company** will bill the **first named insured** for the difference.
4. The **first named insured** shall maintain records of the information necessary for premium computation. The **first named insured** shall send copies of these records to the **company** at the end of the **policy period** as directed by the **company**. Such information shall be subject to audit and verification by the **company**.

#### Q. REPORTING REQUIREMENTS

1. The ~~... ..~~ **duty to defend** and pay **loss** for any **claim** or **potential claim** otherwise covered under this policy is strictly conditioned upon an ~~... ..~~ **forwarding**, as soon as practicable, notice of every **claim, potential claim**, demand, suit, summons, or legal paper the **insured** receives that:
  - a. an **authorized insured** believes will results in damages that exceed any **underlying coverage** or Maintenance Retention;
  - b. has a loss reserve exceeding 50% of any **underlying coverage** or Maintenance Retention;
  - c. ~~... ..~~ **any underlying coverage** or Maintenance Retention;
  - d. contains allegations of unfair claim practices or bad faith;
  - e. involves a suit naming the **company** or its affiliates as defendants; or
  - f. that caused:
    - (1) neurological injury, such as brain injury, spinal cord injury or nerve injury resulting in paralysis;
    - (2) injury during pregnancy or delivery;
    - (3) significant limitation of daily activities, such as feeding, continence or sexual function;
    - (4) loss of sight or hearing;
    - (5) severe disfigurement, such as burns, amputation or scarring;
    - (6) loss of any organ; or



(7) death.

2. All such reports and documents shall be:
  - a. directed to the **company** using the contact information listed on the contact sheet attached to this policy;
  - b. in writing; and
  - c. include the following information:
    - (1) the identity of all **insureds** implicated;
    - (2) all reasonably obtainable information with respect to the time, place and circumstances of the **health care event, event**, offense or other matter for which coverage is sought under this policy;
    - (3) the nature and extent of the injury;
    - (4) the names and addresses of any injured persons;
    - (5) the names and addresses of available witnesses; and
    - (6) the basis for the ~~belief that~~ **belief** that a **claim** is reasonably likely to be made, as well as the date the **insured** first came to this belief.
3. A **health care event, event**, offense, accident or other matter reported to the **company** as part of risk management or loss control services shall not constitute the report of a **claim** or **potential claim** for purposes of coverage under this policy.

#### R. REPRESENTATIONS

1. By acceptance of this policy, each **insured** agrees, represents, and warrants that the statements and particulars made in all **applications** are true and correct. It is further understood and agreed that any **application** is incorporated into, and shall form a part of, this policy. Therefore, this policy and any endorsements hereto, and all **applications**, embody all agreements between the **company** and any of its authorized representatives, and all **insureds** relating to this insurance.
2. In the event any **application** was executed or endorsed by an ~~insurance~~ **insurance** producer, the **insured** acknowledges that the insurance producer has acted under the ~~express~~ **express** authority and that the **insured** has thoroughly reviewed the information contained on any **application**.
3. The representations made by an **insured** in the **applications** are the basis for the coverage provided, as well as the ~~company~~ **company** ~~of the applicable premium~~. Therefore, it is understood and agreed that, to the extent permitted by law, the **company** reserves all rights, including the right to rescind this policy, or deny any coverage provided for a **claim** or **potential claim**, based upon any material misrepresentation made by any **insured** ~~omission or fraud which, if known by the company, would have led to refusal by the company to make this contract or provide coverage, or to make this contract or provide coverage on different terms or conditions.~~
4. No knowledge or information possessed by any **insured** shall be imputed to any other **insured**, except for material facts or information known to the person or persons who signed the **application**. In the event of any material misrepresentation in connection with any of the particulars or statements in the **application**, this policy shall be void with respect to any **insured** who knew of such material misrepresentation or to whom such knowledge is imputed.

#### S. SEPARATION OF INSURED

Except for any duties specifically assigned to the **first named insured** and Limits of Liability applicable to any **insured**, this policy applies:

1. separately to each **insured** against whom a **claim** or **potential claim** is made; and
2. as if each **insured** were the only **insured** under this policy.

#### T. SETTLEMENT

After providing written notice to the **first named insured**, the **company** may, at its discretion, settle any **claim**, **potential claim** or other matter brought against any **insured**.



U. SUBROGATION

The **company** shall be subrogated to the rights of any **insured** to the extent of any payments made, or as allowed by law. **Insureds** shall do nothing to prejudice those rights. At the . . . . . request, an **insured** shall bring suit or transfer those rights to the **company**. **Insureds** shall also help the **company** enforce its rights.

V. TERMINATION DATES

If a **named insured** or **location** has a date listed under the Termination Date column in a Schedule of Named Insureds, any **health care event, event** or offense must have taken place before that date, and after any applicable Retroactive Date, to be covered under the applicable Coverage Part. However, coverage for such **named insured** or **location** shall automatically terminate in the event that the policy is canceled or nonrenewed, unless an **extended reporting period** is purchased for that **named insured** or **location** under the applicable Coverage Part.

W. TERMS CONFORM TO STATUTE OR REGULATION

If any term of this policy, or any duty arising therefrom, would cause the **company** to violate any federal, state or local law or regulation, the policy is amended to bring the **company** into compliance with such statute or regulation.

X. UNDERLYING SUBLIMITS

If any **loss** or **claims expense** covered under any **underlying coverage** is subject to a sublimit, then this policy provides no coverage excess of such sublimit unless that sublimit is scheduled on the Schedule of Underlying Coverage. However, if the **underlying coverage** provides that payment of such sublimit reduces and can exhaust the **scheduled limit**, then this policy will also provide that the **scheduled limit** can be reduced and exhausted by payments of any such sublimit.



***EXCESS HEALTHCARE LIABILITY POLICY***  
***PROFESSIONAL LIABILITY COVERAGE PART***

**NOTICE:**

**This Coverage Part may contain claims-made and reported coverage. Please read this Coverage Part carefully.**

**I. INSURING CLAUSES**

**A. PROFESSIONAL LIABILITY**

**1. Claims-Made and Reported:**

.....  
provisions apply:

- a. The **company** will pay on behalf of any **insured** all **loss** and **claims expense**, which is excess of any **underlying coverage**, and subject to any applicable Maintenance Retention, up to the Limits of Liability shown on the Declarations with respect to this Coverage Part, arising from a **health care event** that took place on or after the applicable Retroactive Date shown on the Declarations. Moreover, to be covered under this policy, the **loss** or **claims expense** must arise from:
  - (1) a **claim** that was first made against, and received by, an **insured** during the **policy period**, and reported to the **company**, in writing, during the **policy period** or within any applicable **extended reporting period**; or
  - (2) a **potential claim** that was first known about or discovered by an **insured** during the **policy period**, and reported to the **company**, in writing, during the **policy period** or within the automatic limited **extended reporting period**.
- b. All **claims** and **potential claims** for damages arising out of, or in connection with the same **health care event** will be deemed to have been first made on the date that the first of those **claims** is made against any **insured**, or the date the first of such **potential claims** is discovered by an **authorized insured**, whichever date is earlier. Only the policy in effect when the first such **claim** is made and reported to the **company**, or the first such **potential claim** is discovered and reported to the **company**, whichever is earlier, will apply to all related **claims** and **potential claims**, no matter when those related **claims** are made or reported, or **potential claims** are discovered and reported. If, prior to the effective date of this policy, the first such **claim** is made, or the first such **potential claim** is discovered, this policy will not apply to that **claim** or **potential claim**, nor to any related **claim** or **potential claim** made during this **policy period** or any **extended reporting period**.

**2. Occurrence:**

- .....
- a. The **company** will pay on behalf of an **insured** all **loss** and **claims expense** which is excess of any **underlying coverage**, and subject to any applicable Maintenance Retention, up to the Limits of Liability shown on the Declarations with respect to this Coverage Part, arising from a **health care event** that occurred during the **policy period**.
  - b. A **health care event** will be deemed to have occurred on the earliest date of any related acts or omissions that gave rise to or contributed to the **health care event**.



## II. EXCLUSIONS

The coverage provided under this Coverage Part does not apply to:

### A. CONTRACTUAL LIABILITY

Liability for the acts of another assumed by an **insured** under any contract or agreement, whether written, oral or implied. This exclusion does not apply to liability for damages that the **insured** would have in the absence of the contract or agreement.

### B. ELECTRONIC DATA

Any **claim** or **potential claim** arising out of, or in connection with, the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data, information, facts, or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices, or any other media that are used with electronically controlled equipment or by means of the internet.

### C. INTENTIONAL ACTS

Any **loss** for any **claim** or **potential claim** arising out of, or in connection with, any act listed in the subparagraphs below:

1. any criminal, intentional, dishonest or fraudulent act;
2. any romantic relationship, or any actual or threatened sexual conduct, with a current, former or prospective patient;
3. any willful violation of any law, statute, or regulation;
4. any breach of contract or guaranty regarding the efficacy of **treatment**;
5. **professional services** by the **insured** while under the influence of alcohol, drugs or intoxicants of any kind; or
6. any creation, alteration, modification or destruction, with deceptive intent, of any medical record.

However, the **company** will pay **claims expense** to defend any **insured** against any **claim** or **potential claim** involving any excluded act listed above when intertwined with any other act triggering any insuring agreement.

### D. LICENSURE

Any **claim** or **potential claim** arising from, or in connection with, any **treatment** rendered by any individual who was not authorized to provide such **treatment** due to the suspension, revocation, surrender, or restriction of, or failure to obtain, the proper professional license, certification or authorization.

### E. PRIVACY

Any **claim** or **potential claim** arising out of, or in connection with, the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate financial information, patents, trade secrets, processing methods, customer lists, credit card information, health information, or any other type of nonpublic information. This exclusion applies even if the **claim** or **potential claim** is for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other **loss, claims expense**, cost or expense incurred by an **insured** or others resulting from the excluded **claims** or **potential claims**.

### F. TREATMENT BY AN ADMINISTRATOR OR COMMITTEE MEMBER

Any **claim** or **potential claim** arising out of, or in connection with, the rendering of, or failure to render, **treatment** by an administrator or committee member, unless it was provided in an emergency without an expectation of compensation. As used in this exclusion:

1. **owner, partner, stockholder, director, trustee, executive officer, medical director, department head, or faculty member of a named insured;** and
2. **means a person serving as a member of a committee or board formed or controlled by a named insured.** It also includes any person executing the directives of such a committee or board.



### **III. LIMITS OF LIABILITY**

#### **A. PER EVENT LIMIT**

The Per Event Limit shown on the Declarations is the most the **company** will pay under this Coverage Part for **loss** and **claims expense**, if shown ..... ~~health care event~~ ..... regardless of the number of:

1. **insureds** who share a Per Event Limit;
2. **claims** made or **potential claims** first discovered; or
3. persons or organizations making **claims** or **potential claims**.

#### **B. AGGREGATE LIMIT**

The Aggregate Limit shown on the Declarations is the most the **company** will pay under this Coverage Part for **loss** and **claims expense** ..... ~~health care events~~ ..... regardless of the number of:

1. **health care events**;
2. **insureds** who share an Aggregate Limit;
3. **claims** made or **potential claims** first discovered; or
4. persons or organizations making **claims** or **potential claims**.



**EXCESS HEALTHCARE LIABILITY POLICY**  
**GENERAL LIABILITY COVERAGE PART**

**NOTICE:**

**This Coverage Part may contain claims-made and reported coverage. Please read this Coverage Part carefully.**

**I. INSURING CLAUSES**

**A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**

**1. Claims-Made and Reported**

.....  
provisions apply:

- a. The **company** will pay on behalf of any **insured** all **loss** and **claims expense** which is excess of any **underlying coverage**, and subject to any applicable Maintenance Retention, up to the Limits of Liability shown on the Declarations with respect to this Coverage Part, arising from an **event** resulting in **bodily injury** or **property damage** that took place on or after the applicable retroactive date shown on the Declarations. Moreover, to be covered under this policy, the **loss** or **claims expense** must arise from:
- (1) a **claim** that was first made against, and received by, an **insured** during the **policy period**, and reported to the **company**, in writing, during the **policy period** or within any applicable **extended reporting period**; or
- (2) a **potential claim** that was first known about or discovered by an **insured** during the **policy period**, and reported to the **company**, in writing, during the **policy period** or within the automatic limited **extended reporting period**.
- b. All **claims** and **potential claims** for damages arising out of, or in connection with, **bodily injury** to the same person, including damages claimed by any person or organization for care, loss of services, or death resulting at any time from **bodily injury**, will be deemed to have been first made on the date that the first of those **claims** is made against any **insured**, or the date the first of such **potential claims** is discovered by an **authorized insured**, whichever date is earlier. Additionally, all **claims** and **potential claims** for damages because of **property damage** causing **loss** to the same person or organization will be deemed to have been first made on the date that the first of those **claims** is made against any **insured**, or the date the first of the **potential claims** is discovered by an **authorized insured**, whichever date is earlier. Only the policy in effect when the first such **claim** is made and reported to the **company**, or the first such **potential claim** is discovered and reported to the **company**, whichever is earlier, will apply to all related **claims** and **potential claims**, no matter when those related **claims** are made or reported, or **potential claims** are discovered and reported. If, prior to the effective date of this policy, the first such **claim** is made, or the first such **potential claim** is discovered, this policy will not apply to that **claim** or **potential claim**, nor to any related **claim** or **potential claim** made during this **policy period** or any **extended reporting period**.

**2. Occurrence**

- .....
- a. The **company** will pay on behalf of an **insured** all **loss** and **claims expense** which is excess of any **underlying coverage**, and subject to any applicable Maintenance Retention, up to the Limits of Liability shown on the Declarations with respect to this Coverage Part, arising from an **event** resulting in **bodily injury** or **property damage** that occurred during the **policy period**.



- b. An **event** will be deemed to have occurred on the earliest date of any related acts or omissions that gave rise to or contributed to the **event**.

## B. PERSONAL AND ADVERTISING INJURY LIABILITY

### 1. Claims-Made and Reported

.....  
provisions apply:

- a. The **company** will pay on behalf of any **insured** all **loss** and **claims expense** which is excess of any **underlying coverage**, and subject to any applicable Maintenance Retention, up to the Limits of Liability shown on the Declarations with respect to this Coverage Part, arising from an offense resulting in **personal and advertising injury** that took place on or after the applicable retroactive date shown on the Declarations. Moreover, to be covered under this policy, the **loss** or **claims expense** must arise from:
  - (1) a **claim** that was first made against, and received by, an **insured** during the **policy period**, and reported to the **company**, in writing, during the **policy period** or within any applicable **extended reporting period**; or
  - (2) a **potential claim** that was first known about or discovered by an **insured** during the **policy period**, and reported to the **company**, in writing, during the **policy period** or within the automatic limited **extended reporting period**.
- b. All **claims** and **potential claims** for damages arising out of, or in connection with the same **personal and advertising injury** will be deemed to have been first made on the date that the first of those **claims** is made against any **insured**, or the date the first of such **potential claims** is discovered by an **authorized insured**, whichever date is earlier. Only the policy in effect when the first such **claim** is made and reported to the **company**, or the first such **potential claim** is discovered and reported to the **company**, whichever is earlier, will apply to all related **claims** and **potential claims**, no matter when those related **claims** are made or reported, or **potential claims** are discovered and reported. If, prior to the effective date of this policy, the first such **claim** is made, or the first such **potential claim** is discovered, this policy will not apply to that **claim** or **potential claim**, nor to any related **claim** or **potential claim** made during this **policy period** or any **extended reporting period**.

### 2. Occurrence

- .....
- a. The **company** will pay on behalf of an **insured** all **loss** and **claims expense**, which is excess of any **underlying coverage**, and subject to any applicable Maintenance Retention, up to the Limits of Liability shown on the Declarations with respect to this Coverage Part, arising from an offense resulting in **personal and advertising injury** that occurred during the **policy period**.
  - b. An offense will be deemed to have occurred on the earliest date of any related acts or omissions that gave rise to or contributed to the offense.

## II. EXCLUSIONS

### A. EXCLUSIONS APPLICABLE TO THIS COVERAGE PART

The coverage provided under this Coverage Part does not apply to:

#### 1. Contractual Liability

Any **claim** or **potential claim** arising out of, or in connection with, an ..... obligation to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- a. that the **insured** would have in the absence of the contract or agreement; or
- b. assumed in a contract or agreement that is an **insured contract**, provided the **bodily injury, property damage** or **personal and advertising injury** occurred subsequent to the execution of the contract or agreement. Only for the purposes of liability assumed in an **insured contract**, reasonable ..... and necessary litigation expenses incurred by or for a party, other than an **insured**, are deemed to be damages because of **bodily injury, property damage** or **personal and advertising injury**, provided:



- (1) ..... ~~insured contract, and~~ .....
- (2) .....  
resolution proceeding in which damages to which this insurance applies are alleged.

2. Electronic Data

Any **claim** or **potential claim** arising out of, or in connection with, the loss of, loss of use of, damage to, ..... ~~electronic~~ .....  
.....  
computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices, or any other media that are used with electronically controlled equipment or by means of the internet.

3. Employees

Any **claim** or **potential claim** arising out of, or in connection with, the acts or omissions of an **employee**, involving:

a. **bodily injury** or **personal and advertising injury**:

- (1) to another **employee** or agent of a **named insured**;
- (2) to the spouse, relative or dependent as a consequence of subparagraph a.(1), above; or
- (3) for which there is any duty to share damages or loss with, or repay, another party liable for the loss as a consequence of subparagraphs a.(1) and a.(2), above.

b. **property damage** to property:

- (1) owned, occupied, or used by an **insured**;
- (2) rented to an **insured**; or
- (3) in the care, custody, or control of an **insured**.

4. Privacy

Any **claim** or **potential claim** arising out of, or in connection with, .....  
.....  
financial information, patents, trade secrets, processing methods, customer lists, credit card information, health information, or any other type of nonpublic information. This exclusion applies even if the **claim** or **potential claim** is for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other **loss, claims expense**, cost or expense incurred by an **insured** or others resulting from the excluded **claims** or **potential claims**.

5. Professional Liability

Any **claim** or **potential claim** arising out of, or in connection with, a **health care event**.

6. Recording And Distribution Of Material Or Information In Violation Of Law

Any **claim** or **potential claim** arising out of, or in connection with, any act or omission that violates or is alleged to violate:

- a. the Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- b. the CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- c. the Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act; or
- d. any federal, state or local statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

7. Sexual Acts

Any **claim** or **potential claim** arising out of, or in connection with, any actual or threatened sexual conduct by any person of another person while in the care, custody, or control of any **insured**.



Under this exclusion, the ~~... duty to defend the~~ **insured** for such **claim** or **potential claim** will cease when it is established by trial or arbitration verdict, court ruling, regulatory ruling or legal admission that the **insured** engaged in any act excluded in this exclusion.

**B. EXCLUSIONS APPLICABLE TO THE BODILY INJURY AND PROPERTY DAMAGE LIABILITY INSURING CLAUSE**

The coverage provided under the Bodily Injury and Property Damage Liability Insuring Clause does not apply to:

1. Aircraft, Auto Or Watercraft

**Bodily injury or property damage** arising out of, or in connection with, the ownership, maintenance, use, or entrustment to others of any aircraft, **auto**, or watercraft owned or operated by or rented to or loaned to any **insured**. Use includes operation and **loading or unloading**.

- a. This exclusion applies even if the **claims** or **potential claims** against any **insured** allege negligence or other wrongdoing in the supervision, hiring, employment, training, or monitoring of others by that **insured** if the **event** or accident which caused the **bodily injury** or **property damage** involved the ownership, maintenance, use, or entrustment to others of any aircraft, **auto**, or watercraft that is owned or operated by or rented or loaned to any **insured**.
- b. This exclusion does not apply to:
  - (1) the loading or unloading of a patient;
  - (2) a watercraft while on shore on premises owned or rented by the **insured**;
  - (3) a watercraft that is:
    - a) not owned by an **insured**;
    - b) less than 26 feet long; and
    - c) not being used to carry persons or property for a charge.
  - (4) parking an **auto** on or next to a site owned or occupied by an **insured**, but only if the **auto** is not owned, rented, or being used by an **insured**;
  - (5) liability assumed under an **insured contract** for the ownership, maintenance, or use of an aircraft or watercraft; or
  - (6) **bodily injury** or **property damage** arising out of, or in connection with:
    - a) the operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of **mobile equipment** if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or
    - b) the operation of any of the machinery or equipment listed in subparagraph 2.a or 2.b of the definition of **mobile equipment**.

## 2. Asbestos

Any **claim** or **potential claim** arising out of, or in connection with, asbestos, or any materials containing asbestos in whatever form or quantity.

### 3. Damage To Impaired Property Or Property Not Physically Injured

**Property damage** to **impaired property** or property that has not been physically injured arising out of, or in connection with:

- a. a defect, deficiency, inadequacy, or dangerous condition in the **insured** or
- b. a delay or failure by an **insured** to perform under the terms of a contract or agreement.

This exclusion does not apply to the loss of use of other property arising out of, or in connection with, sudden and accidental physical injury to the ~~..... or the ..... after it has been put to its intended use.~~

4. ....



**Property damage** to the .....arising out of, or in connection with, it or any part of it.

5. ....

**Property damage** to the ..... arising out of, or in connection with, the ..... or any part of it, and included in the **products completed operations hazard**. This exclusion does not apply if the damaged work, or the work out of which the damage arises, was performed by a subcontractor on behalf of the **insured**.

6. Damage To Property

**Property damage** to:

- a. property an **insured** owns, rents, or occupies, including any costs or expenses incurred by an **insured**, or any other person or organization for repair, replacement, enhancement, restoration, or maintenance of .....
- b. premises an **insured** sells, gives away, or abandons if the **property damage** arises out of, or in connection with, any part of those premises;
- c. property loaned to an **insured**;
- d. personal property in the care, custody, or control of an **insured**;
- e. that particular part of real property on which an **insured** or any contractors or subcontractors, working directly or indirectly on behalf of an **insured**, are performing operations if the **property damage** arises out of those operations; or
- f. that particular part of any property that must be restored, repaired, or replaced because the ..... **work** was incorrectly performed on it.

Subparagraph b of this exclusion does not apply if the premises are the .....**work** and were never occupied, rented, or held for rental by an **insured**.

Subparagraph f of this exclusion does not apply to **property damage** included in the **products completed operations hazard**.

7. Expected Or Intended Injury

**Bodily injury** or **property damage** arising out of, or in connection with, any act expected or intended by an **insured** to cause **bodily injury** or **property damage**. This exclusion applies even if an ..... ~~act causes~~ **bodily injury** or **property damage**:

- a. of a different type or degree than expected or intended; or
- b. to a different person or organization than expected or intended.

However, this exclusion does not apply to **bodily injury** arising out of, or in connection with, an ..... use of reasonable force to protect persons or property.

8. Fungi And Bacteria

- a. **Bodily injury** or **property damage** arising out of, or in connection with, the actual, alleged or threatened inhalation of, injection of, contact with, exposure to, existence of, or presence of any fungi or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.
- b. Any **loss**, cost or expense arising out of, or in connection with, the abating, testing, monitoring, cleaning, removing, containing, treating, detoxifying, neutralizing, remediating, or disposing of, or in any way responding to, or assessing the effects of, fungi or bacteria, by any **insured** or by any other person or organization.

This exclusion shall not apply to any fungi or bacteria contained in a good or product intended for bodily consumption. For the purposes of this exclusion, the term fungi includes any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents, or byproducts produced or released by fungi.

9. Liquor Liability

**Bodily injury** or **property damage** arising out of, or in connection with, any ..... ~~liability~~ by reason of:



- a. causing or contributing to the intoxication of any person;
- b. the furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- c. any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if the **insured** is in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

#### 10. Mobile Equipment

**Bodily injury** or **property damage** arising out of, or in connection with:

- a. the transportation of **mobile equipment** by an **auto** owned or operated by or rented or loaned to an **insured**; or
- b. the use of **mobile equipment** in, while in practice for, or while being prepared for any prearranged racing, speed, demolition, or stunting activity.

#### 11. Personal And Advertising Injury

**Bodily injury** arising out of, or in connection with, **personal and advertising injury**.

#### 12. Pollution

- a. Any **bodily injury** or **property damage** arising out of, or in connection with, the actual, alleged, or threatened discharge, dispersal, seepage, migration, release, or escape of **pollutants**:

- (1) at or from any premises, site, or location that is or was at any time owned or occupied by or rented or loaned to any **insured**. However, this does not apply to:

- a) **bodily injury** if sustained within a building and caused by smoke, fumes, vapor, or soot produced by or originated from equipment that is used to heat, cool, or dehumidify the building or equipment

- b) **bodily injury** or **property damage** for which an **insured** may be held liable, if it is a contractor, and the owner or lessee of such premises, site, or location has been added to the policy as an **additional insured** with respect to an ~~ongoing~~ operations performed for that **additional insured** at that premises, site, or location, and such premises, site, or location is not or never was owned or occupied by or rented or loaned to any **insured**, other than that **additional insured**; or

- c) **bodily injury** or **property damage** arising out of, or in connection with, heat, smoke, or fumes from a fire that becomes uncontrollable or breaks out from where it was intended to be.

- (2) at or from any premises, site, or location that is or was at any time used by or for any **insured** or others for the handling, storage, disposal, processing, or treatment of waste.

- (3) which are or were at any time transported, handled, stored, treated, disposed of or processed as waste by or for any **insured** or any other person or organization for whom an **insured** may be legally responsible.

- (4) at or from any premises, site, or location on which any **insured** or any contractors or subcontractors, working directly or indirectly on any ~~behalf~~, are performing operations if the **pollutants** were brought on or to the premises, site, or location in connection with such operations by such **insured**, contractor, or subcontractor. However, this subparagraph does not apply to:

- a) **bodily injury** or **property damage** arising out of, or in connection with, the escape of fuels, lubricants, or other operating fluids, which are needed to perform the normal electrical, hydraulic, or mechanical functions necessary for the operation of **mobile equipment** or its parts, if such fuels, lubricants, or other operating fluids escape from a vehicle part designed to hold, store, or receive them. This exception does not apply if the **bodily injury** or **property damage** arises out of the intentional discharge, dispersal, or release of fuels, lubricants, or other operating fluids or if such fuels, lubricants, or other operating fluids are brought on or to the premises, site, or location with the intent that they be discharged, dispersed, or released as part of the operations being performed by such **insured**, contractor, or subcontractor;



- b) **bodily injury** and **property damage** sustained within a building and caused by the release of gases, fumes, or vapors from materials brought into the building in connection with operations being performed by an **insured**, or on its behalf by a contractor or subcontractor; or
  - c) **bodily injury** or **property damage** arising out of, or in connection with, heat, smoke, or fumes from a fire that becomes uncontrollable or breaks out from where it was intended to be.
- (5) arising out of, or in connection with, any premises, site, or location on which any **insured** or any contractors or subcontractors, working directly or indirectly on any ~~.....behalf~~, are performing operations if such operations are to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize, or in any other way respond to or assess the effects of, **pollutants**.
- b. Any damages, **loss**, cost, or expense arising out of, or in connection with, any:
    - (1) request, demand, order, or statutory or regulatory requirement that any **insured** or others test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize, or in any way respond to or assess the effects of, **pollutants**; or
    - (2) **claim** or **potential claim** by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, or neutralizing, or in any way responding to or assessing the effects of **pollutants**.

However, this subparagraph does not apply to liability for damages because of **property damage** that an **insured** would have in the absence of such request, demand, order, or statutory or regulatory requirement, or such **claim** or **potential claim** by or on behalf of a governmental authority.

### 13. Recall Of Products, Work, Or Impaired Property

Any **claim** or **potential claim** arising out of, or in connection with, any **loss**, cost, or expense incurred by an **insured** or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal, or disposal of:

- a. the ~~.....product~~;
- b. the ~~.....work~~; or
- c. **impaired property**

if such product, work, or property is withdrawn or recalled from the market or from use due to a known or suspected defect, deficiency, inadequacy, or dangerous condition to it.

### 14. Silica

Any **claim** or **potential claim** arising out of, or in connection with, silica, including, but not limited to:

- a. inhaling, ingesting or physical exposure to silica directly or through any goods, products, structures, real estate or land containing silica;
- b. the use or presence of silica in any process or operation of any type, including but not limited to construction, manufacturing, sandblasting, cleaning, drilling, farming or mining;
- c. the use or presence of silica in any good, product, structure, real estate or land, or any component part of any good, product, structure, real estate or land; or
- d. the manufacture, sale, transportation, handling, storage or disposal of silica or any goods, products, structures, real estate or land containing silica;
- e. any disease actually or allegedly caused by, contributed to or aggravated by silica, including but not limited to silicosis, chronic silicosis, accelerated silicosis, acute silicosis, conglomerate silicosis, any auto-immune disorder, tuberculosis, silicoproteinosis, cancer, scleroderma, emphysema, pneumoconiosis, pulmonary fibrosis, progressive massive fibrosis, any lung disease or any other ailment actually or allegedly caused by, contributed to or aggravated by silica;
- f. any costs of medical or other testing, monitoring or diagnosis arising out of, or in connection with, any actual, alleged, threatened or feared **bodily injury** arising in whole or in part, directly or indirectly, out of silica; or
- g. any costs of investigations, feasibility studies, cleaning, removal or remediation of the actual or alleged presence of silica in or on any goods, products structures, real estate or land.



.....  
to silica dust, silicon dioxide (SiO<sub>2</sub>), crystalline silica, quartz, or non-crystalline (amorphous) silica.

C. EXCLUSIONS APPLICABLE TO PERSONAL AND ADVERTISING INJURY LIABILITY INSURING CLAUSE

The coverage provided under the Personal and Advertising Injury Liability Insuring Clause does not apply to:

1. Breach Of Contract

**Personal and advertising injury** arising out of, or in connection with, a breach of contract, except an implied  
.....~~advertisement~~.....

2. Electronic Chatrooms Or Bulletin Boards

**Personal and advertising injury** arising out of, or in connection with, an electronic chatroom or bulletin board an **insured** hosts, owns, or over which an **insured** exercises control.

3. Infringement Of Copyright, Patent, Trademark, Or Trade Secret

**Personal and advertising injury** arising out of, or in connection with, the infringement of copyright, patent, trademark, trade secret, or other intellectual property rights. However, this exclusion shall not apply to the infringement of copyright, trade, dress, or slogan in an .....  
.....

4. Insureds In Media And Internet Type Businesses

**Personal and advertising injury** committed by an **insured** whose business is:

- a. advertising, broadcasting, publishing, or telecasting;
- b. designing or determining content for the websites of others; or
- c. an internet search, access, content, or service provider.

However, this exclusion does not apply to **claims** arising from false arrest, detention or imprisonment, malicious prosecution, or the wrongful eviction from, or wrongful entry into, or invasion of the private occupancy of a room dwelling or premises occupied by, or on behalf of, its owner, landlord, or lessor.

For the purposes of this exclusion, the placing of frames, borders, or links, or advertising for an **insured** or others is not considered, by itself, to be the business of advertising, broadcasting, publishing, or telecasting.

5. Knowing Violation Of Rights Of Others

**Personal and advertising injury** caused by, or at the direction of, an **insured** with the knowledge that the act would violate the rights of another and would inflict **personal and advertising injury**.

6. Material Published Prior To Policy • Claims-Made and Reported Only

.....~~personal~~.....  
**and advertising injury** arising out of, or in connection with, oral or written publication of material whose first publication took place before the applicable retroactive date shown on the Declarations.

7. Material Published Prior To Policy • Occurrence Only

.....~~personal and advertising~~.....  
**injury** arising out of, or in connection with, oral or written publication of material whose first publication took place prior to the **policy period**.

8. Material Published With Knowledge Of Falsity

**Personal and advertising injury** arising out of, or in connection with, oral or written publication of material if done by, or at the direction of, an **insured** with knowledge of its falsity.

9. Quality Or Performance Of Goods • Failure To Conform To Statements

**Personal and advertising injury** arising out of, or in connection with, the failure of goods, products, or services to conform to any statement of quality or performance in an .....  
.....

10. ....

**Personal and advertising injury** arising out of, or in connection with, .....  
name or product in an .....~~email~~ address, domain name, or metatag, or other similar tactics to mislead  
.....



11. Wrong Description Of Prices

**Personal and advertising injury** arising out of, or in connection with, the wrong description of the price of the goods, products, or services in an .....

**III. LIMITS OF LIABILITY**

A. PER EVENT LIMIT

The Per Event Limit shown on the Declarations is the most the **company** will pay under this Coverage Part for **loss** and **claims expense**..... ~~event or offense regardless~~..... of the number of:

1. **insureds** who share a Per Event Limit;
2. **claims** made or **potential claims** first discovered; or
3. persons or organizations making **claims** or **potential claims**.

B. AGGREGATE LIMIT

The Aggregate Limit shown on the Declarations is the most the **company** will pay under this Coverage Part for **loss** and **claims expense**..... ~~events or offenses~~..... regardless of the number of:

1. **Events** or offenses;
2. **insureds** who share an Aggregate Limit;
3. **claims** made or **potential claims** first discovered; or
4. persons or organizations making **claims** or **potential claims**.



***THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.***

---

<b>Endorsement No.:</b>	1
<b>Forming Part of Policy No.:</b>	EN004806
<b>Issued to:</b>	LSI HoldCo LLC
<b>Effective Date of Endorsement:</b>	001/01/2018 at 12:01 a.m. at the address of the First Named Insured stated herein.

---

**MANUSCRIPT ENDORSEMENT**

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **insureds**, the **company** and the **insureds** agree to amend the policy as follows:

The following subsection is deleted from the Intentional Acts Exclusion of the Exclusions section of the Professional Liability Coverage Part:

5. **professional services** by the **insured** while under the influence of alcohol, drugs or intoxicants of any kind.

**All other terms and conditions of the policy remain unchanged.**



***THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.***

---

<b>Endorsement No.:</b>	2
<b>Forming Part of Policy No.:</b>	EN004806
<b>Issued to:</b>	LSI HoldCo LLC
<b>Effective Date of Endorsement:</b>	01/01/2018 at 12:01 a.m. at the address of the First Named Insured stated herein.

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**ADMINISTRATIVE FIRST NAMED INSURED ENDORSEMENT**

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **insureds**, the **company** and the **insureds** agree to amend the policy as follows:

The definition of **insured** in the Definitions section of the Common Policy Provisions and Conditions is amended to remove reference to the **first named insured**.

The following exclusion is added to the Exclusions section of the Common Policy Provisions and Conditions:

**ADMINISTRATIVE FIRST NAMED INSURED**

Any **claim** or **potential claim** arising out of, or in connection with, the acts or omissions of the **first named insured**. This exclusion applies even if the **first named insured** has Limits of Liability shown on the Declarations or listed in a Schedule of Named Insureds.

The following provision is added to the Limits of Liability section in the Additional Conditions section of the Professional Liability Coverage Part:

Notwithstanding the above, the **first named insured** will have no coverage under this policy, even if it is listed in a Schedule of Named Insureds with an amount listed under the Limits of Liability column. However, if a **named insured** ..... Limits of Liability in .....  
an amount equal to that listed for the **first named insured** with all other **named insureds** .....  
under the Limits of Liability column.

**All other terms and conditions of the policy remain unchanged.**



***THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.***

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<b>Endorsement No.:</b>	3
<b>Forming Part of Policy No.:</b>	EN004806
<b>Issued to:</b>	LSI HoldCo LLC
<b>Effective Date of Endorsement:</b>	01/01/2018 at 12:01 a.m. at the address of the First Named Insured stated herein.

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**INTENTIONAL ACTS EXCLUSION WITH CARVEBACK FOR INNOCENT INSUREDS ENDORSEMENT  
(PROFESSIONAL LIABILITY)**

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **insureds**, the **company** and the **insureds** agree to amend the policy as follows:

The Intentional Acts exclusion in the Exclusions section of the Professional Liability Coverage Part is deleted and replaced with the following:

**INTENTIONAL ACTS**

Any **loss** for any **claim** or **potential claim** arising out of, or in connection with, any act listed below:

1. any criminal, intentional, dishonest or fraudulent act;
2. any romantic relationship, or any actual or threatened sexual conduct, with a current, former, or prospective patient;
3. any willful violation of any law, statute, or regulation;
4. any breach of contract or guaranty regarding the efficacy of **treatment**;
5. **professional services** by the **insured** while under the influence of alcohol, drugs or intoxicants of any kind; or
6. any creation, alteration, modification or destruction, with deceptive intent, of any medical record.

However, the **company** will pay **claims expense** to defend any **insured** against any **claim** or **potential claim** involving any excluded act listed above when intertwined with any other act triggering any insuring agreement.

This exclusion does not apply to any **claim** or **potential claim** brought against any **insured** who did not direct or act in concert to commit, directly participate in or direct another in connection with any of the acts excluded from coverage under this exclusion.

**All other terms and conditions of the policy remain unchanged.**



***THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.***

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<b>Endorsement No.:</b>	4
<b>Forming Part of Policy No.:</b>	EN004806
<b>Issued to:</b>	LSI HoldCo LLC
<b>Effective Date of Endorsement:</b>	01/01/2018 at 12:01 a.m. at the address of the First Named Insured stated herein.

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**BLANKET ADDITIONAL INSURED • PRIMARY AND NON-CONTRIBUTORY ENDORSEMENT  
(GENERAL LIABILITY)**

Only with respect to coverage provided under this endorsement and under the General Liability Coverage Part, and in consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **insureds**, the **company** and the **insureds** agree to amend the policy as follows:

The definition of **additional insured** in the Definitions section of the Common Policy Provisions and Conditions is deleted and replaced with the following:

**Additional insured** means any person or organization with which the **insured** has entered into a written contract or agreement prior to the **loss** agreeing:

1. to add the person or organization as an **additional insured**; or
2. to hold harmless or indemnify such person or organization.

However, such person or organization is not an **additional insured** with respect to **losses** arising from, or in connection with, any acts or omissions alleged to have been committed by that **additional insured**.

The following subparagraph is added to the Other Insurance condition of the Conditions section of the Common Policy Provisions and Conditions:

Only if required by written contract or agreement with the **insured**, coverage for any **additional insured** shall be primary and non-contributory as respects any other insurance policy issued to such **additional insured**.

The following subparagraph is added to all Insuring Clauses of the General Liability Coverage Part policy:

The . . . . . ~~duty to~~ defend and pay **losses** or **claims expense** on behalf of any **insured** shall extend to any **additional insured** meeting the terms and conditions of this policy, but only with respect to any **loss** or **claims expense** payable as the result of the . . . . . ~~vicarious liability for~~ the acts or omissions of an **insured** otherwise covered under this Coverage Part.

However, the coverage provided to an **additional insured** shall not be broader than that which an **insured** is required by written contract or agreement to provide to that **additional insured**. Additionally, coverage shall not apply to structural alterations, new construction or demolition operations performed by or on behalf of an **additional insured**.

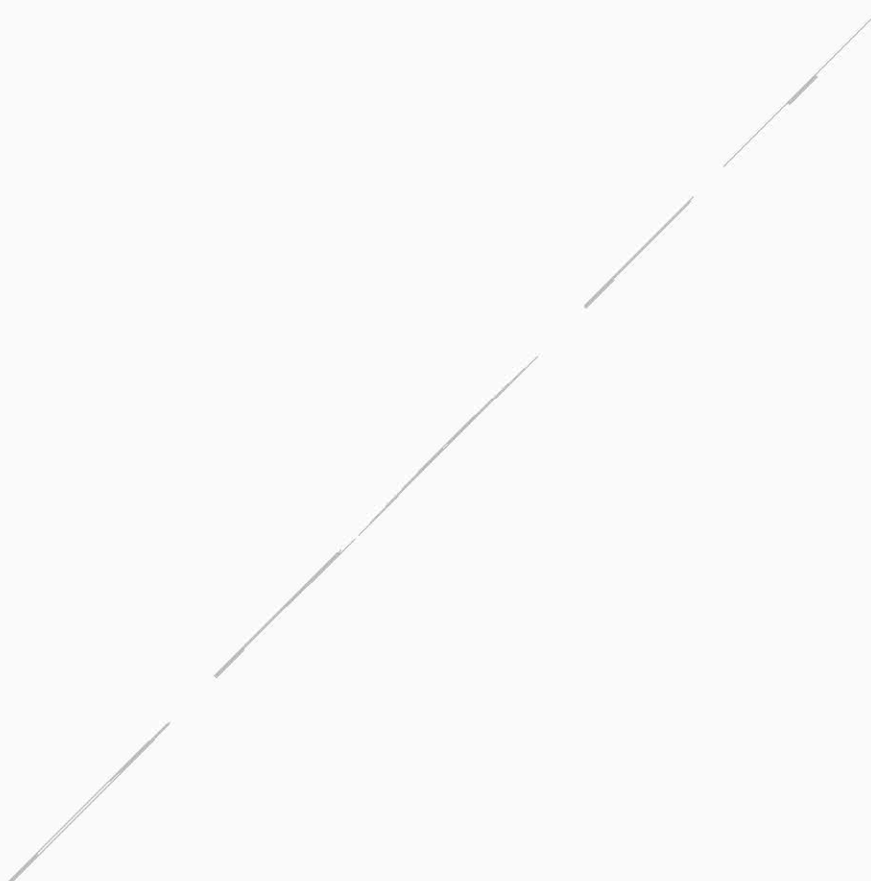
The following provision is added to the Limits of Liability section of the General Liability Coverage Part:



#### ADDITIONAL INSUREDS

All **additional insureds** share the Limits of Liability applicable to any **claim** with any **insured** for which the **additional insured** is alleged to be vicariously liable with respect to that same **claim**.

**All other terms and conditions of the policy remain unchanged.**





***THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.***

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<b>Endorsement No.:</b>	5
<b>Forming Part of Policy No.:</b>	EN004806
<b>Issued to:</b>	LSI HoldCo LLC
<b>Effective Date of Endorsement:</b>	01/01/2018 at 12:01 a.m. at the address of the First Named Insured stated herein.

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**BLANKET WAIVER OF SUBROGATION ENDORSEMENT  
(GENERAL LIABILITY)**

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **insureds**, the **company** and the **insureds** agree to amend the policy as follows:

Only with respect to coverage provided under the General Liability Coverage Part, the following condition is added to the Conditions section of the Common Policy Provisions and Conditions:

**WAIVER OF SUBROGATION**

The **company** shall waive any right of recovery the **company** may have against a person or organization to the extent that the **insured** has agreed in writing prior to the date of loss to waive the ~~its~~ **rights** of recovery against that person or organization.

**All other terms and conditions of the policy remain unchanged.**



***THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.***

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<b>Endorsement No.:</b>	6
<b>Forming Part of Policy No.:</b>	EN004806
<b>Issued to:</b>	LSI HoldCo LLC
<b>Effective Date of Endorsement:</b>	01/01/2018 at 12:01 a.m. at the address of the First Named Insured stated herein.

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**CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM ENDORSEMENT**

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **insureds**, the **company** and the **insureds** agree to amend the policy as follows:

The following exclusion is added to the policy:

If losses covered by insurance that are attributable to **certified acts of terrorism** in a calendar year exceed \$100 billion in the aggregate, and the **company** has met its deductible amount under the **TRIA Act** for that calendar year, the **company** shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion. In such case, the losses are subject to pro rata allocation in accordance with the procedures established by the Secretary of the Treasury.

The following definitions are added to the Definitions section of the policy:

**Certified act of terrorism** means an act that is certified by the Secretary of the Treasury in accordance with the provisions of the **TRIA Act**, to be an act of terrorism pursuant to the **TRIA Act**. The **TRIA Act** sets forth the following criteria for a **certified act of terrorism**:

1. The act resulted in losses covered by insurance in excess of \$5,000,000 in the aggregate, attributable to all types of insurance subject to the **TRIA Act**;
2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion. The act must have resulted in damage within the United States including its territories and possessions and Puerto Rico, or outside the United States in cases of an air carrier or vessel meeting the definitions of such as provided in the **TRIA Act**, or the premises of a United States mission; and
3. No act of terrorism shall be certified if the act is committed as a part of the course of a war declared by Congress.

**TRIA Act** means the federal Terrorism Risk Insurance Act of 2002, as extended on December 22, 2005, and amended on December 31, 2007 and January 12, 2015.

**All other terms and conditions of the policy remain unchanged.**



***THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.***

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<b>Endorsement No.:</b>	7
<b>Forming Part of Policy No.:</b>	EN004806
<b>Issued to:</b>	LSI HoldCo LLC
<b>Effective Date of Endorsement:</b>	01/01/2018 at 12:01 a.m. at the address of the First Named Insured stated herein.

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**FLORIDA AMENDATORY ENDORSEMENT**

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **insureds**, the **company** and the **insureds** agree to amend the policy as follows:

The Cancellation, Nonrenewal and/or Termination of Coverage condition in the Conditions section of the Common Policy Provisions and Conditions is deleted and replaced by the following:

**CANCELLATION, NONRENEWAL AND/OR TERMINATION OF COVERAGE**

1. This policy may be canceled by the **first named insured**. The **first named insured** shall provide written notice to the **company** requesting cancellation. The cancellation shall be effective on the date requested by the **first named insured** or the date the notice is received by the **company**, whichever is later.
2. Any coverage contained within this policy may be terminated by the **first named insured**. The **first named insured** shall provide written notice to the **company** requesting the coverage termination. The termination shall be effective on the date requested by the **first named insured** or the date the notice is received by the **company**, whichever is later.
3. This policy may also be canceled by the **company**. The **company** will provide written notice of the cancellation, including the specific reason for the cancellation, to the **first named insured** at its last known address.
  - a. If the policy has been in effect for less than 90 days and is not a renewal policy, the **company** may cancel for any reason by providing written notice that states when, not less than 20 days thereafter, such cancellation shall be effective.
  - b. If the policy has been in effect for 90 days or more, or is a renewal policy, the **company** may cancel by providing written notice that states when, not less than 45 days thereafter, such cancellation shall be effective.
  - c. However, only 10 days notice will be required to cancel:
    - (1) for nonpayment of premium; or
    - (2) for policies cancelled for material misrepresentation.
4. If the **first named insured** cancels this policy, or terminates any coverage contained therein, earned premium shall be computed in accordance with the standard short rate tables and procedure. If the **company** cancels this policy, or terminates any coverage contained therein, earned premium shall be computed pro rata. Premium adjustments shall be made within a reasonable period of time after cancellation. However, payment or tender of unearned premium shall not be a condition of cancellation.
5. This policy may be nonrenewed by the **company** by providing written notice of nonrenewal to the **first named insured** at its last known address at least 45 days prior to the end of the **policy period**. The notice will also contain the specific reason for the nonrenewal.
6. If the **company** cancels or nonrenews an **individual policy**, the **insured's** coverage under that policy shall terminate on the earlier of:



- a. the date stated on the cancellation or nonrenewal notice; or
- b. the date the **insured** procures replacement coverage.

**All other terms and conditions of the policy remain unchanged.**



***THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.***

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**Endorsement No.:** 8  
**Forming Part of Policy No.:** EN004806  
**Issued to:** LSI HoldCo LLC  
**Effective Date of Endorsement:** 01/01/2018 at 12:01 a.m. at the address of the First Named Insured stated herein.

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**CHANGE ENDORSEMENT**

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **insureds**, the **company** and the **insureds** agree to amend the policy as follows:

The following item(s) are added to the Declarations:

ITEM 3	<b>COVERAGE PARTS SELECTED:</b> (please refer to the applicable Schedule of Named Insureds for detailed Retroactive Dates, Limits of Liability, Retentions, etc.)  <b>Follow Form:</b>	<b>Claims Made and Reported</b> as per <b>underlying coverage</b> , if any
ITEM 4	<b>RETROACTIVE DATE:</b>  <b>Follow Form:</b>	as per <b>underlying coverage</b> , if any
ITEM 6	<b>MAINTENANCE RETENTION:</b>	\$ Per Event

Premium Adjustment: \$0

**All other terms and conditions of the policy remain unchanged.**



***THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.***

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**Endorsement No.:** 9  
**Forming Part of Policy No.:** EN004806  
**Issued to:** LSI HoldCo LLC  
**Effective Date of Endorsement:** 01/01/2018 at 12:01 a.m. at the address of the First Named Insured stated herein.

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**CHANGE ENDORSEMENT**

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **insureds**, the **company** and the **insureds** agree to amend the policy as follows:

The Excess Healthcare Liability Policy Follow Form Coverage Part, 3014-TFX-00-1215, has been added.

Premium Adjustment: \$0

**All other terms and conditions of the policy remain unchanged.**



**EXCESS HEALTHCARE LIABILITY POLICY  
FOLLOW FORM COVERAGE PART**

**NOTICE:**

**This Coverage Part may contain claims-made and reported coverage. Please read this Coverage Part carefully.**

**I. INSURING CLAUSES**

**A. EXCESS FOLLOW FORM LIABILITY**

1. The **company** will pay on behalf of any **insured** all **loss** and **claims expense**, which is excess of any **underlying coverage**, and subject to any applicable Maintenance Retention, up to the Limits of Liability shown on the Declarations with respect to this Coverage Part, that is covered by such **underlying coverage**.
2. Except as stated otherwise in this policy, coverage under this Coverage Part follows the coverages, terms, warranties, limitations, conditions, agreements, exclusions, definitions and endorsements of any applicable **followed policy**. However coverage under this Coverage Part does not conform to any **followed policy** with respect to premium, **policy period**, deductible or retention, renewal, **extended reporting period** (if any), limits of liability, or any provision which imposes a duty to defend. Additionally, to the extent that any provision of any applicable **followed policy** conflicts with or differs from any provisions contained in this policy, the provisions of this policy will apply.
3. Except to the extent specifically set forth herein, this Coverage Part does not provide broader coverage than is provided by the most restrictive terms of any applicable **followed policy**.

**II. EXCLUSIONS**

The coverage provided under this Coverage Part does not apply to:

**A. CLAIM OR POTENTIAL CLAIM REPORTED OR DISCOVERED PRIOR TO THE POLICY PERIOD**

..... **Made and Rep** .....

1. any **claim** or **potential claim** which has or which should have been reported to any insurer, including through any self-insured or captive program, prior to the **policy period**; and
2. any **potential claim** that was first known about or discovered, or should reasonably have been known about or discovered by, an **authorized insured** prior to the **policy period**.

**B. DEFAULT JUDGMENT AND FAILURE TO COOPERATE**

Any **claim** or **potential claim** that the **company** was unable to timely investigate or defend due to the acts or omissions of any **insured**, including any resulting damages from a default judgment.

**C. FRAUDULENT CLAIMS**

Any **claim** or **potential claim** made by an **insured** who knows that the **claim** or **potential claim** is false or fraudulent, as regards to amount or otherwise; additionally, this policy shall become void and all **claims** and **potential claims** hereunder shall be forfeited.

**D. GOVERNMENTAL IMMUNITY AND OTHER PROTECTIONS**

Any **claim** or **potential claim** for which an **insured** has:

1. immunity as a volunteer or as an employee or contractor of a federal, state, or local government; or
2. immunity, insurance, indemnity, or any other protection pursuant to any federal, state, or local laws, including



but not limited to the Federal Tort Claims Act.

E. INJUNCTIVE RELIEF, TAXES, FINES AND PENALTIES

Any **claim** or **potential claim** or other matter seeking:

1. injunctive relief;
2. any relief other than **loss**; or
3. the award of taxes, fines, penalties, or sanctions.

F. MULTI-POLICY AND ANTI-STACKING

If more than one policy, Coverage Part or Insuring Clause applies, the following multi-policy and anti-stacking exclusions apply:

1. if more than one policy issued by the **company** or by a past, present or future parent, subsidiary or affiliate applies to the liability of an **insured**, the ... ~~duty to pay~~ for a **loss** will be confined to the policy containing the largest applicable Limit of Liability; or
2. if more than one Coverage Part or Insuring Clause under this policy applies to the liability of an **insured**, the ... ~~duty to pay~~ **loss** will be confined to the Coverage Part or Insuring Clause containing the largest applicable Limit of Liability.

### **III. LIMITS OF LIABILITY**

A. PER EVENT LIMIT

The Per Event Limit shown on the Declarations is the most the **company** will pay under this Coverage Part for any circumstance that initiates the application of the **followed policy**, subject to all other terms and conditions of this Coverage Part.

B. AGGREGATE LIMIT

The Aggregate Limit shown on the Declarations is the most the **company** will pay under this Coverage Part for all circumstances that initiate the application of the **followed policy**, subject to all other terms and conditions of this Coverage Part.



***THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.***

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<b>Endorsement No.:</b>	10
<b>Forming Part of Policy No.:</b>	EN004806
<b>Issued to:</b>	LSI HoldCo LLC
<b>Effective Date of Endorsement:</b>	01/01/2018 at 12:01 a.m. at the address of the First Named Insured stated herein.

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**SCHEDULE OF ADDITIONAL INSUREDS • NOTICE OF CANCELLATION ENDORSEMENT**

Only with respect to coverage provided under this endorsement, and in consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **insureds**, the **company** and the **insureds** agree to amend the policy as follows:

The definition of **additional insured** in the Definitions section of the Common Policy Provisions and Conditions is deleted.

As used in this endorsement, and only with respect to the Coverage Part(s) listed in the Schedule of Additional Insureds below, **additional insured** means any person or organization listed in that Schedule of Additional Insureds; however, any such person or organization is not an **additional insured** with respect to **losses** arising from, or in connection with, any acts or omissions alleged to have been committed by that person or organization.

The following subparagraph is added to the Cancellation, Nonrenewal and/or Termination of Coverage condition of the Conditions section of the Common Policy Provisions and Conditions:

It is further agreed that in the event that the **company** cancels this policy for any reason other than either non-payment of premium before the expiration date of the **policy period** or at the request of the **first named insured**, the **company** shall provide prior notice of such cancellation to the **additional insured** listed in a Schedule of Additional Insureds at the same time notice is provided to the **first named insured**.

The following subparagraph is added to the Insuring Clause(s) of the Coverage Part(s) listed in the Schedule of Additional Insureds below:

The . . . . . ~~duty to~~ defend and pay **losses** or **claims expense** on behalf of any **insured** shall extend to any **additional insured** meeting the terms and conditions of this policy, but only with respect to any **loss** or **claims expense** payable as the result of the **additional** . . . . . ~~vicarious~~ liability for the acts or omissions of an **insured** otherwise covered under this Coverage Part.

However, the coverage provided to an **additional insured** shall not be broader than that which an **insured** is required by written contract or agreement to provide to that **additional insured**. Additionally, coverage shall not apply to structural alterations, new construction or demolition operations performed by or on behalf of an **additional insured**.



The following provision is added to the Limits of Liability section(s) of the Coverage Part(s) listed in the Schedule of Additional Insureds below:

**ADDITIONAL INSUREDS**

All **additional insureds** share the Limits of Liability applicable to any **claim** with any **insured** for which the **additional insured** is alleged to be vicariously liable with respect to that same **claim**.

SCHEDULE OF ADDITIONAL INSUREDS		
ADDITIONAL INSURED	ADDRESS / DESCRIPTION OF OPERATIONS	COVERAGE PART
GE HFS, LLC		General Liability

**All other terms and conditions of the policy remain unchanged.**



***THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.***

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<b>Endorsement No.:</b>	11
<b>Forming Part of Policy No.:</b>	EN004806
<b>Issued to:</b>	LSI HoldCo LLC
<b>Effective Date of Endorsement:</b>	01/01/2018 at 12:01 a.m. at the address of the First Named Insured stated herein.

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**BLANKET ADDITIONAL INSURED • PRIMARY AND NON-CONTRIBUTORY ENDORSEMENT  
(PROFESSIONAL LIABILITY)**

Only with respect to coverage provided under this endorsement and under the Professional Liability Coverage Part, and in consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **insureds**, the **company** and the **insureds** agree to amend the policy as follows:

The definition of **additional insured** in the Definitions section of the Common Policy Provisions and Conditions is deleted and replaced with the following:

**Additional insured** means any person or organization with which the **insured** has entered into a written contract or agreement prior to the **loss** agreeing:

1. to add the person or organization as an **additional insured**; or
2. to hold harmless or indemnify such person or organization.

However, such person or organization is not an **additional insured** with respect to **losses** arising from, or in connection with, any acts or omissions alleged to have been committed by that **additional insured**.

The following subparagraph is added to the Other Insurance condition of the Conditions section of the Common Policy Provisions and Conditions:

Only if required by written contract or agreement with the **insured**, coverage for any **additional insured** shall be primary and non-contributory as respects any other insurance policy issued to such **additional insured**.

The following subparagraph is added to all Insuring Clauses of the Professional Liability Coverage Part:

The ~~... duty to~~ defend and pay **losses** or **claims expense** on behalf of any **insured** shall extend to any **additional insured** meeting the terms and conditions of this policy, but only with respect to any **loss** or **claims expense** payable as the result of the ~~... vicarious liability for~~ the acts or omissions of an **insured** otherwise covered under this Coverage Part.

However, the coverage provided to an **additional insured** shall not be broader than that which an **insured** is required by written contract or agreement to provide to that **additional insured**. Additionally, coverage shall not apply to structural alterations, new construction or demolition operations performed by or on behalf of an **additional insured**.



The following provision is added to the Limits of Liability section of the Professional Liability Coverage Part:

**ADDITIONAL INSURED**

All **additional insureds** share the Limits of Liability applicable to any **claim** with any **insured** for which the **additional insured** is alleged to be vicariously liable with respect to that same **claim**.

**All other terms and conditions of the policy remain unchanged.**



***THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.***

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<b>Endorsement No.:</b>	12
<b>Forming Part of Policy No.:</b>	EN004806
<b>Issued to:</b>	LSI HoldCo LLC
<b>Effective Date of Endorsement:</b>	01/01/2018 at 12:01 a.m. at the address of the First Named Insured stated herein.

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**BLANKET WAIVER OF SUBROGATION ENDORSEMENT  
(PROFESSIONAL LIABILITY)**

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **insureds**, the **company** and the **insureds** agree to amend the policy as follows:

Only with respect to coverage provided under the Professional Liability Coverage Part, the following condition is added to the Conditions section of the Common Policy Provisions and Conditions:

**WAIVER OF SUBROGATION**

The **company** shall waive any right of recovery the **company** may have against a person or organization to the extent that the **insured** has agreed in writing prior to the date of loss to waive the ~~insured's~~ **rights of recovery** against that person or organization.

**All other terms and conditions of the policy remain unchanged.**



***THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.***

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<b>Endorsement No.:</b>	13
<b>Forming Part of Policy No.:</b>	EN004806
<b>Issued to:</b>	LSI HoldCo LLC
<b>Effective Date of Endorsement:</b>	03/01/2018 at 12:01 a.m. at the address of the First Named Insured stated herein.

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**CHANGE ENDORSEMENT**

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **insureds**, the **company** and the **insureds** agree to amend the policy as follows:

The Excess Schedule of Underlying Insurance has been amended for the Professional Liability Coverage Part.

Premium Adjustment: \$0

**All other terms and conditions of the policy remain unchanged.**



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**Forming Part of Policy No.:** EN004806

**Issued to:** LSI HoldCo LLC

**Policy Period:** From 01/01/2018 to 07/01/2019 at 12:01 a.m. at the address of the First Named Insured stated herein.

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**SCHEDULE OF UNDERLYING COVERAGE****Professional Liability Coverage Part:**

NAME OF CARRIER/ POLICY NUMBER/ POLICY PERIOD	TYPE OF COVERAGE PROVIDED	LIMITS OF LIABILITY
Laser Spine Institute LLC Self Insured Retention 03-01-2018 - 03-01-2019	Professional Liability - Claims Made	The professional underlying SIR is a combined single limit of liability of \$1,000,000 per claim/\$6,000,000 aggregate for Indemnity and Expense



***THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.***

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<b>Endorsement No.:</b>	14
<b>Forming Part of Policy No.:</b>	EN004806
<b>Issued to:</b>	LSI HoldCo LLC
<b>Effective Date of Endorsement:</b>	03/16/2018 at 12:01 a.m. at the address of the First Named Insured stated herein.

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**CHANGE ENDORSEMENT**

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **insureds**, the **company** and the **insureds** agree to amend the policy as follows:

The Producer Name shown on the Declarations is changed to :  
CRC Insurance Services Inc  
550 W Van Buren Fl 15  
Chicago, IL 60607.

**All other terms and conditions of the policy remain unchanged.**



# Exhibit 2



## **Florida Surplus Lines Warning Statement**

**THIS INSURANCE IS ISSUED PURSUANT TO THE FLORIDA SURPLUS LINES LAW. PERSONS INSURED BY SURPLUS LINES CARRIERS DO NOT HAVE THE PROTECTION OF THE FLORIDA INSURANCE GUARANTY ACT TO THE EXTENT OF ANY RIGHT OF RECOVERY FOR THE OBLIGATION OF AN INSOLVENT UNLICENSED INSURER.**

**SURPLUS LINES INSURERS' POLICY RATES AND FORMS ARE NOT APPROVED BY ANY FLORIDA REGULATORY AGENCY.**

Agent Name: \_\_\_\_\_

Agent Address: \_\_\_\_\_

Agent Identification Number: \_\_\_\_\_

Surplus Lines Broker Name: \_\_\_\_\_

Surplus Lines Broker Address: \_\_\_\_\_

Surplus Lines Broker Identification Number: \_\_\_\_\_



# National Fire & Marine Insurance Company

Omaha, Nebraska

## EXCESS DECLARATIONS

**NOTICE: This policy may contain claims-made coverage. Please read this policy carefully.**

Policy Number: EN004806

ITEM 1	<b>FIRST NAMED INSURED:</b> LSI HoldCo LLC <b>ADDRESS:</b> 5332 Avion Park Dr Tampa, FL 33607														
ITEM 2	<b>POLICY PERIOD:</b> From 03/01/2017 to 03/01/2018 Both days at 12:01 a.m. at the address of the First Named Insured as stated herein.														
ITEM 3	<b>COVERAGES SELECTED:</b> (Please refer to the applicable Schedule of Insureds for limits, deductibles, retentions, etc.) <table border="1" data-bbox="240 829 1526 1018"><thead><tr><th></th><th>Occurrence</th><th>Claims-Made</th></tr></thead><tbody><tr><td>EXCESS PROFESSIONAL LIABILITY</td><td></td><td>X</td></tr><tr><td>EXCESS COMMERCIAL GENERAL LIABILITY</td><td>X</td><td></td></tr><tr><td>EXCESS EMPLOYER'S LIABILITY</td><td>X</td><td></td></tr></tbody></table>				Occurrence	Claims-Made	EXCESS PROFESSIONAL LIABILITY		X	EXCESS COMMERCIAL GENERAL LIABILITY	X		EXCESS EMPLOYER'S LIABILITY	X	
	Occurrence	Claims-Made													
EXCESS PROFESSIONAL LIABILITY		X													
EXCESS COMMERCIAL GENERAL LIABILITY	X														
EXCESS EMPLOYER'S LIABILITY	X														
ITEM 4	<b>COVERAGES NOT SELECTED:</b>														
ITEM 5	<b>TOTAL PREMIUM:</b> \$ 1,491,078 (May reflect deposit premium, which is subject to audit. The premium does not include any surplus lines tax, which must be collected by the producer. Terrorism premium is not reflected in the total premium amount.)														
ITEM 6	<b>PRODUCER:</b> AB Risk Specialist Inc 931 Tullis Rd Lawrenceville, GA 30043-4732														

IN WITNESS WHEREOF, National Fire & Marine Insurance Company has caused this policy to be signed by its President (and countersigned by its duly Authorized Representative, where necessary).

  
President

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

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

## EXCESS DECLARATIONS

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Edition Date: 1/2014



# National Fire & Marine Insurance Company

Omaha, Nebraska

## *EXCESS POLICY GUIDE*

This Policy Guide has been developed to describe how your policy is formatted. This guide does not change any of the terms and conditions contained in the policy.

Your policy consists of the following items:

The Declarations: This page designates the first named insured, the policy number, the policy period, the coverages selected, the total premium, and the producer.

Schedules of Underlying Insurance: These schedules list the liability coverage(s) over which this policy will provide excess coverage.

Schedule of Insureds: These schedules define your coverage by designating who will be insured under a particular Insuring Agreement and what limits of liability will apply. If an Insuring Agreement is attached to your policy without a corresponding Schedule of Insureds, there is no coverage under that Insuring Agreement.

Insuring Agreements: These documents define the scope of the particular coverage that is being provided and any unique provisions (Additional Definitions, Additional Conditions, etc.) that will apply to it. For example, they indicate the types of claims that are covered and who is eligible to request indemnity under the policy. However, as mentioned above, these Insuring Agreements only provide coverage when attached to a corresponding Schedule of Insureds.

Defense and Supplemental Payments: If a claim or potential claim is covered under one of the Insuring Agreements, our Company may have a duty to pay supplemental damages on the Insured's behalf. This form defines the scope of our duty to pay those damages, and what duties the Company has, if any, to defend an Insured in the event of a claim.

General Definitions: This form contains the definitions that apply to every Insuring Agreement under your policy, unless otherwise noted. Additional or alternative definitions can be found within the definitions section of the relevant Insuring Agreement. Each word or phrase listed in **bold print** has been specifically defined within the policy. If a word has not been bolded, then its commonly understood meaning will apply.

General Exclusions: This form contains exclusions that apply to every Insuring Agreement under your policy, unless otherwise noted. Additional exclusions may also be found within the *ADDITIONAL EXCLUSIONS* section of the relevant Insuring Agreement.

General Conditions: This form defines the general duties our Company and the Insureds owe to each other under the terms of this policy contract, such as the requirements for reporting claims, the duty to maintain underlying insurance, the duties of the first named insured, etc.

Endorsements: Endorsements modify the terms and conditions of all or part of the policy and become a part of your policy. If an endorsement modifies one or more parts of the policy, but less than the entire policy, the endorsement will specify which parts of the policy are modified. It is important to understand that this is also the only method by which the terms and conditions of your policy can be altered.

If you have any questions regarding a particular provision or the coverage that is being provided to you, please contact your producer. We appreciate your patronage.

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### EXCESS DECLARATIONS

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Edition Date: 1/2014



# National Fire & Marine Insurance Company

Omaha, Nebraska

## EXCESS SCHEDULE OF UNDERLYING INSURANCE

Policy Number: EN004806	First Named Insured: Laser Spine Institute, LLC
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### Professional Liability:

Primary Policy Information	Limits (as defined below)	Self-Insured Retention (SIR) (as defined below)
Carrier:		Laser Spine Institute, LLC
Policy Number:		**The professional underlying SIR is a combined single limit of liability \$1,000,000/\$6,000,000 for Indemnity and Expense
Policy Period:		03/01/2017 – 03/01/2018
Retroactive Date (if any):		Refer to schedule of Excess Professional Liability Insureds
<input type="checkbox"/> Claims-made basis	Per Event Limit: \$1,000,000	<input checked="" type="checkbox"/> Claims-made basis
<input type="checkbox"/> Occurrence basis	Aggregate Limit: \$6,000,000	<input type="checkbox"/> Occurrence basis
		<input checked="" type="checkbox"/> Defense Costs inside SIR Limits
		<input type="checkbox"/> Defense costs outside SIR Limits

## EXCESS SCHEDULE OF UNDERLYING INSURANCE

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Edition Date: 11/2015



**Commercial General Liability:**

Primary Policy Information		Limits (as defined below)	Self-Insured Retention (SIR) (as defined below)
Carrier:			Laser Spine Institute, LLC
Policy Number:			***The general liability underlying SIR is a combined single limit of liability \$25,000/\$50,000 for Indemnity and Expense
Policy Period:			03/01/2017 – 03/01/2018
Retroactive Date (if any):			<input checked="" type="checkbox"/> Claims-made basis <input type="checkbox"/> Occurrence basis
<input type="checkbox"/> Claims-made basis	Per Event Limit:	\$25,000	<input checked="" type="checkbox"/> Defense costs within SIR Limits
<input type="checkbox"/> Occurrence basis	Aggregate Limit:	\$50,000	<input type="checkbox"/> Defense costs outside SIR Limits

**Employers Liability:**

Primary Policy Information		Limits (as defined below)
Carrier:	The Hartford	
Policy Number:	20 WB AS7258	
Policy Period:	03/01/2017 – 03/01/2018	
	Per Event Limit of Liability Employment-Related Accident:	\$1,000,000
	Per Employee Limit of Liability Employment- Related Disease:	\$1,000,000
	Policy Limit of Liability Employment-Related Disease:	\$1,000,000



**Commercial Automobile Liability:**

Primary Policy Information		Limits (as defined below)
Carrier:	The Hartford	
Policy Number:	20 UEN IA2588	
Policy Period:	03/01/2017 – 03/01/2018	
	Combined Single Limit	
	Auto	\$1,000,000
	Ambulance	N/A



# National Fire & Marine Insurance Company

Omaha, Nebraska

## *SCHEDULE OF EXCESS PROFESSIONAL LIABILITY INSUREDS* *EXCESS PROFESSIONAL LIABILITY* *(CLAIMS-MADE)*

### DECLARATIONS

Policy Number: EN004806

First Named Insured: LSI HoldCo LLC

### LIMITS OF LIABILITY

Per Event Limit of Liability: \$ 20,000,000

Aggregate Limit of Liability: \$ 20,000,000

### SCHEDULE OF INSUREDS

In consideration of the payment of the premium due, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree as follows, subject to the terms and conditions of this policy, including the applicable limits of liability:

SCHEDULED EXCESS PROFESSIONAL LIABILITY INSURED	ID NUMBER	RETROACTIVE DATE
Laser Spine Institute Consulting LLC	626955	06/30/2011
Laser Spine Institute, LLC	241482	03/21/2005
Laser Spine Surgery Center of Arizona, LLC	254295	05/30/2008
Laser Spine Surgery Center of Cincinnati, LLC	637293	06/30/2014
Laser Spine Surgery Center of Cleveland, LLC	637292	06/30/2014
Laser Spine Surgery Center of Oklahoma, LLC	254297	03/23/2011
Laser Spine Surgery Center of Pennsylvania, LLC	254296	04/22/2009
Laser Spine Surgery Center of St. Louis, LLC	637294	06/30/2014
Laser Spine Surgery Center of Tampa, LLC	943051	03/01/2015
Laser Spine Surgery Center of Warwick, LLC	943052	03/01/2015
Laser Spine Surgical Center, LLC	626953	01/03/2005
LSI HoldCo LLC	626956	12/05/2012
LSI Houston, PA	616898	01/03/2005
LSI Management Company, LLC	626954	09/03/2009
Medical Care Management Services, LLC	626957	06/11/2013
Physician FTE 1		03/21/2005
See Schedule of Insured Physicians on File with Company	921217	

### EXCESS PROFESSIONAL LIABILITY

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Edition Date: 1/2011



Policy Number: EN004806	First Named Insured: LSI HoldCo LLC
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SCHEDULED EXCESS PROFESSIONAL LIABILITY INSURED	ID NUMBER	RETROACTIVE DATE
Health Care Provider FTE 1		03/21/2005
All Physician Assistants Employed or Contracted by Laser Spine Institute, LLC	626636	
Health Care Provider FTE 2		03/21/2005
All Nurse Practitioners Employed or Contracted by Laser Spine Institute, LLC	626639	
Health Care Provider FTE 3		03/21/2005
See Schedule of Insured Chiropractors on File with Company	921218	
Health Care Provider FTE 4		03/21/2005
All Certified Registered Nurse Anesthetics Employed or Contracted by Laser Spine Institute, LLC	945592	

EXCESS PROFESSIONAL LIABILITY

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Edition Date: 1/2011



# National Fire & Marine Insurance Company

Omaha, Nebraska

## *EXCESS PROFESSIONAL LIABILITY INSURING AGREEMENT (CLAIMS-MADE)*

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### NOTICE:

**This Insuring Agreement contains claims-made and reported coverage.  
Please read this policy carefully.**

In consideration of the payment of the premium due, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree as follows, subject to the terms and conditions of this policy, including the applicable limits of liability:

#### *I. INSURING AGREEMENT - EXCESS LOSS*

- A. The **Company** will pay, on behalf of any **scheduled excess professional liability insured**, including agents, all **excess loss** arising from a **health care event**. However, the **health care event** must have resulted from professional services rendered, or which should have been rendered, while the **scheduled excess professional liability insured** was employed by, or under contract with, any **scheduled excess professional liability insured**. For coverage to exist, the **excess loss** must also arise from an event that took place on or after the **retroactive date**. In addition, the **excess loss** must arise from a **claim** that was **first reported** during the **policy period**.
- B. All **claims** arising out of the same **health care event** will be deemed to have been made at the time the first such **claim** is made against any **Insured**. Only the policy in effect when the first such **claim** is made and reported to the **Company** in writing will apply to all related **claims** no matter when those related **claims** are made or reported. If the first such **claim** is made prior to the effective date of this policy, this policy will not apply to that **claim** nor to any related **claim** made during this **policy period** or any **extended reporting period**.

#### *II. WHO IS INSURED*

For the purposes of this Insuring Agreement, an **Insured** is:

- A. a **scheduled excess professional liability insured**;
  - B. a **new excess professional liability insured**; or,
  - C. an **agent**
- as defined below.

#### *III. ADDITIONAL DEFINITIONS*

In addition to the Excess General Definitions, the following definitions are added to this Insuring Agreement:

- A. **Scheduled excess professional liability insured** means any person or entity that is listed on the Schedule of Excess Professional Liability Insureds. A **scheduled excess professional liability insured** shares in the limits provided to the **first named insured**.
- B. **New excess professional liability insured** means an entity formed or acquired by the **scheduled excess professional liability insured** during the **policy period**, over which the **scheduled excess professional liability insured** maintains at least majority ownership.
  - 1. A **new excess professional liability insured** is not covered:
    - a. after 60 days have elapsed from the date the entity was formed or acquired by the **scheduled excess professional liability insured**; or,
    - b. for an **excess loss** or **health care event** that occurred before the entity was formed or acquired by the **scheduled excess professional liability insured** or after the **policy period**.
  - 2. A **new excess professional liability insured** shares the coverage provided to the **scheduled excess professional**



liability insured, including its limits of liability.

**C. Agent**

1. **Agent** means a person who was acting within the scope of his or her duties as:
  - a. an **employee, administrator, committee member, or student** of the **scheduled excess professional liability insured** at the time of the **health care event**; or,
  - b. a trustee, assign, or legal representative of the **scheduled excess professional liability insured** or of a person described in C.1.a. above in the event of bankruptcy, incapacity, or death.
2. An **agent** shares the coverage provided to the **scheduled excess professional liability insured**, including its limits of liability and any applicable restrictions.
3. An **agent** is not, however, an **Insured**, when the **agent** has other valid and collectible insurance to cover the **claim**.
4. As used to define an **agent**, above:
  - a. **employee** means any person employed by, or under contract with, the **scheduled excess professional liability insured** at the time of the **health care event**. It includes any authorized volunteer worker, **administrator, committee member or student**. **Employee** does not include:
    - (1) physician or dentist, including residents; or,
    - (2) certified registered nurse anesthetist, nurse midwife, nurse practitioner, physician's assistant, podiatrist, or surgical assistant.
  - b. **administrator** means an owner, partner, stockholder, director, trustee, executive officer, medical director, department head, or faculty member of the **scheduled excess professional liability insured**.
  - c. **committee member** means a person serving as a member of a committee or board formed or controlled by the **scheduled excess professional liability insured**. It also includes any person executing the directives of such a committee or board.
  - d. **student** means an unlicensed person, other than a resident, enrolled in a licensed or accredited training program operated by the **scheduled excess professional liability insured** relative to the delivery of professional services.

**IV. ADDITIONAL EXCLUSIONS**

In addition to any exclusions listed in the Excess General Exclusions, this Insuring Agreement does not apply to:

- A. any **claim** that was **first reported** by, or on behalf of, any **Insured** prior to the **policy period**;
- B. any **claim** arising from, or in connection with, any **professional services** rendered, or which should have been rendered, outside of the **scheduled excess professional liability insured's** employment, or contract for services with any **Insured** listed on the Schedule of Excess Professional Liability Insured's as a **scheduled excess professional liability insured**. This exclusion shall not apply to **professional services** rendered, or which should have been rendered, by a **scheduled excess professional liability insured** at the scene of an accident without expectation of monetary compensation;
- C. any **claim** arising from, or in connection with, an **Insured's** ownership, supervision or management of any organization, partnership, joint venture, or other business enterprise that is not a **scheduled excess professional liability insured**;
- D. any **claim** arising from, or in connection with, **treatment** rendered, or which should have been rendered, by an **administrator or committee member** unless it was provided in an emergency without an expectation of compensation;
- E. any **business practices claim**;
- F. any **employment practices claim**;



- G. any **product liability claim**;
- H. liability for the acts of another assumed by an **Insured** under any contract or agreement, except as otherwise noted in this policy;
- I. any **claim** seeking to impose liability under the Employee Retirement Income Security Act of 1974 (ERISA), or any amendment or regulation that applies thereto; or,
- J. any liability for the acts of another assumed by the **Insured** under any contract or agreement, whether written or oral, which shall include any hold harmless or indemnification agreement entered into by the **Insured**, provided that this exclusion shall not serve to exclude coverage to any third party for any liability imposed upon such third party solely as the result of the **Insured's** rendering of, or failure to render, **professional services**.

#### V. LIMITS OF LIABILITY

##### *PER EVENT LIMIT*

The **Company's** duty to pay excess loss on behalf of a **scheduled excess professional liability insured** for any **health care event** covered under this Insuring Agreement shall not exceed the Per Event Limit of Liability shown for Excess Professional Liability on the Schedule of Excess Professional Liability Insureds. This limit shall apply regardless of the number of:

1. persons who sustain injury;
2. claimants;
3. **claims**;
4. policies issued by the **Company**; or,
5. **Insureds** who share the Per Event limit.

##### *AGGREGATE LIMIT*

The **Company's** duty to pay excess loss on behalf of all **scheduled excess professional liability insureds** for all **health care events** covered under this Insuring Agreement shall not exceed the Aggregate Limit of Liability shown for Excess Professional Liability on the Schedule of Excess Professional Liability Insureds. This limit shall apply regardless of the number of:

1. **health care events**;
2. persons who sustain injury;
3. claimants;
4. **claims**;
5. policies issued by the **Company**; or,
6. **Insureds** who share the Aggregate limit.

#### VI. ADDITIONAL CONDITIONS

In addition to the conditions contained in the Excess General Conditions, the following conditions apply to this Insuring Agreement:

##### A. Settlement.

The **Company** may pay any excess loss as it deems expedient, unless prohibited by statute, regulation, rule or order, after first providing written notice to the **first named insured**.

##### B. Extended Reporting Period Option.

Purchase of an **extended reporting period**:

1. If the entire policy is canceled or nonrenewed, the **Company** shall, upon written request by or on behalf of the **first named insured**, make an offer for an **extended reporting period**.
  - a. Any such written request by or on behalf of the **first named insured** must be received by the **Company** within 30 days of the expiration of the policy.
  - b. The **Company** shall be required to offer an **extended reporting period**, if requested, only to the **first named**



**insured** for all risks covered under the policy.

- c. The **Company** shall be required to offer an **extended reporting period** only if the **first named insured** has purchased an **extended reporting period** for all **scheduled coverages** that provide coverage on a claims-made basis.
2. If the **first named insured** accepts the offer of the **extended reporting period**, all **scheduled excess professional liability insureds** that were afforded coverage by this policy shall be included in the **extended reporting period**. However, the **Company** has no duty to offer a separate **extended reporting period** to any **scheduled excess professional liability insured** or any other **Insured**. In addition, the **Company** has no duty to inform any **scheduled excess professional liability insured** or any other **Insured** whether the **first named insured** has accepted its offer.
3. The **first named insured** may accept the **Company's** offer of an **extended reporting period** by paying the premium due within 30 days from either the date on which the policy expires or the date on which the **Company** receives the request for an **extended reporting period**, whichever is later. Failure to pay the full premium within this 30-day period will be deemed a rejection of the offer.
4. If purchased, the **extended reporting period** will begin at the end of the **policy period** and shall not reinstate the limits of liability of this Insuring Agreement. Thereafter, any **claim** against a **scheduled excess professional liability insured**, which is otherwise covered by the policy, may be reported for an unlimited duration. However, the **extended reporting period** shall not:
  - a. extend the **policy period**;
  - b. apply to any **claim** arising from a **health care event** that took place after the **policy period**; or,
  - c. otherwise expand the coverage provided under this policy.



# National Fire & Marine Insurance Company

Omaha, Nebraska

## *SCHEDULE OF EXCESS INSURED BUSINESSES EXCESS COMMERCIAL GENERAL LIABILITY (OCCURRENCE)*

### DECLARATIONS

Policy Number: EN004806

First Named Insured: LSI HoldCo LLC

### LIMITS OF LIABILITY

Per Event Limit of Liability: \$ 20,000,000

General Aggregate Limit of Liability: \$ 20,000,000

### SCHEDULE OF INSURED

In consideration of the payment of the premium due, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree the following entities are designated as **scheduled excess insured businesses**.

All **scheduled excess insured businesses** listed below share in the limits of liability identified above.

SCHEDULED EXCESS INSURED BUSINESS	ID NUMBER
Laser Spine Institute Consulting LLC	626955
Laser Spine Institute, LLC	241482
Laser Spine Surgery Center of Arizona, LLC	254295
Laser Spine Surgery Center of Cincinnati, LLC	637293
Laser Spine Surgery Center of Cleveland, LLC	637292
Laser Spine Surgery Center of Oklahoma, LLC	254297
Laser Spine Surgery Center of Pennsylvania, LLC	254296
Laser Spine Surgery Center of St. Louis, LLC	637294
Laser Spine Surgery Center of Tampa, LLC	943051
Laser Spine Surgery Center of Warwick, LLC	943052
Laser Spine Surgical Center, LLC	626953
LSI HoldCo LLC	626956
LSI Houston, PA	616898
LSI Management Company, LLC	626954
Medical Care Management Services, LLC	626957

### EXCESS GENERAL LIABILITY

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Edition Date: 1/2011



# National Fire & Marine Insurance Company

Omaha, Nebraska

## *EXCESS COMMERCIAL GENERAL LIABILITY INSURING AGREEMENT (OCCURRENCE)*

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree as follows, subject to the terms and conditions of this policy, including the applicable limits of liability.

### *I. INSURING AGREEMENT—COVERAGE A BODILY INJURY AND PROPERTY DAMAGE*

- A. The **Company** will pay those sums that the **scheduled excess insured business** including its agents becomes legally obligated to pay as **excess loss** because of **bodily injury** or **property damage** to which this insurance applies. The **Company** will have no duty to defend the **Insured** against any suit seeking those damages. However, the **Company** may, at its discretion, investigate any event and settle any claim or suit. The amount the **Company** will pay for damages is limited as described in the *LIMITS OF LIABILITY – ALL EXCESS COMMERCIAL LIABILITY COVERAGES* section. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under *DEFENSE AND SUPPLEMENTAL PAYMENTS – ALL EXCESS COMMERCIAL GENERAL LIABILITY COVERAGES*.
- B. This insurance applies to **bodily injury** and **property damage** only if:
1. the **bodily injury** or **property damage** is caused by an event that takes place in the **coverage territory**;
  2. the **bodily injury** or **property damage** is caused by an event that occurs during the **policy period**; and
  3. prior to the **policy period**, no **scheduled excess insured business** or agent authorized by the **scheduled excess insured business** to give or receive notice of an event knew that the **bodily injury** or **property damage** had occurred, in whole or in part. If such a **scheduled excess insured business**, or agent authorized by the **scheduled excess insured business** to give or receive notice of an event, knew prior to the **policy period** that the **bodily injury** or **property damage** occurred, then any continuation, change, or resumption of such **bodily injury** or **property damage** during or after the **policy period** will be deemed to have been known prior to the **policy period**.
- C. **Bodily injury** or **property damage**, which occurs during the **policy period** and was not, prior to the **policy period**, known to have occurred by a **scheduled excess insured business** or agent authorized by the **scheduled excess insured business** to give or receive notice of an event. This includes any continuation, change, or resumption of that **bodily injury** or **property damage** after the **policy period**.
- D. **Bodily injury** or **property damage** will be deemed to have been known to have occurred at the earliest time when any **scheduled excess insured business** or agent authorized by the **scheduled excess insured business** to give or receive notice of an event:
1. reports all, or any part, of the **bodily injury** or **property damage** to the **Company** or any other insurer;
  2. receives a written or verbal demand or claim for damages because of the **bodily injury** or **property damage**;
  - or,
  3. becomes aware by any other means that **bodily injury** or **property damage** has occurred or has begun to occur.
- E. Damages because of **bodily injury** include damages claimed by any person or organization for care, loss of services, or death resulting at any time from the **bodily injury**.



## II. EXCLUSIONS — COVERAGE A: BODILY INJURY AND PROPERTY DAMAGE

This insuring agreement does not apply to:

### A. Professional Services.

**Bodily injury or property damage** arising out of the rendering or failure to render any **professional services** or other professional service. Other professional service includes, but is not limited to:

1. legal, accounting or advertising services;
2. preparing, approving or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications by any architect, engineer or surveyor performing services on a project on which the **Insured** serves as construction manager;
3. inspection, supervision, quality control, architectural or engineering activities done by or for you on a project on which the **Insured** serves as project manager;
4. engineering services, including related supervisory or inspection services;
5. medical, surgical, dental, x-ray or nursing services treatment, advice or instruction;
6. any health or therapeutic service treatment, advice or instruction;
7. any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement, or personal grooming or therapy;
8. any service, treatment, advice or instruction relating to physical fitness, including service, treatment, advice or instruction in connection with diet, cardiovascular fitness, body building or physical training programs;
9. optometry or optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;
10. body piercing services;
11. services in the practice of pharmacy; but this exclusion does not apply if the **Insured** is a retail druggist or the **Insured's** operations are those of a retail drugstore;
12. law enforcement or firefighting services; and,
13. handling, embalming, disposal, burial, cremation or disinterment of dead bodies.

### B. Ownership of Non-insured Entities.

Any **claim** arising from, or in connection with, an **Insured's** ownership, supervision or management of any organization, partnership, joint venture, or other business enterprise that is not a **scheduled excess insured business**.

### C. Expected or Intended Injury.

**Bodily injury or property damage** arising from, or in connection with, any act expected or intended by an **Insured** to cause **bodily injury or property damage**. This exclusion applies even if an **Insured's** act causes **bodily injury or property damage**:

1. of a different type or degree than expected or intended; or,
2. to a different person or entity than expected or intended.

However, this exclusion does not apply to **bodily injury** arising from, or in connection with, an **Insured's** use of reasonable force to protect persons or property.

### D. Contractual Liability.

**Bodily injury or property damage** arising from, or in connection with, an **Insured's** obligation to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

1. that the **Insured** would have in the absence of the contract or agreement; or,
2. 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. Solely for the purposes of liability assumed in an **insured contract**, reasonable attorney fees and necessary litigation expenses incurred by or for, a party other than an **Insured**, are deemed to be damages because of **bodily injury or property damage**, provided:
  - a. liability to or for that party's defense has also been assumed in the same **insured contract**; and,
  - b. attorney fees and litigation expenses are for the defense against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

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EXCESS GENERAL LIABILITY

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Edition Date: 10/2016



E. Liquor Liability.

**Bodily injury or property damage** arising from, or in connection with, any **Insured's** liability by reason of:

1. causing or contributing to the intoxication of any person;
2. the furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or,
3. any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if the **Insured** is in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

F. Employment-Related Practices Liability.

**Bodily injury to:**

1. a person arising from, or in connection with, any:
  - a. refusal to employ that person;
  - b. termination of that person's employment; or
  - c. employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or
2. the spouse, child, parent, brother, or sister of that person as a consequence of **bodily injury** to that person at whom any of the employment-related practices described in Paragraphs (a), (b) or (c) above is directed.

This exclusion applies:

1. whether the injury-causing event described in Paragraphs (a), (b) or (c) above occurs before, during, or after employment of that person;
2. whether the **Insured** may be liable as an employer or in any other capacity; and,
3. to any obligation to share damages with or repay someone else who must pay damages because of injury.

G. Employer's Liability.

**Bodily injury to:**

1. an **employee** of the **Insured** arising out of and in the course of:
  - a. employment by the **Insured**; or,
  - b. performing duties related to the conduct of an **scheduled excess insured business**.
2. the spouse, child, parent, brother, or sister of that **employee** as a consequence of Paragraph 1 above.

This exclusion shall apply:

1. whether the **scheduled excess insured business** may be held liable as an employer, or in any other capacity; and,
2. to any obligation to share damages with, or repay someone else who must pay damages, because of the injury.

This exclusion does not apply to liability assumed by the **Insured** under an **insured contract**.

H. Workers' Compensation and Other Similar Laws.

Any **claim** arising from, or in connection with, any obligation of an **Insured**, or damages awardable against an **Insured**, under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

I. Pollution.

**Bodily injury or property damage** arising from a **pollution event**. This policy also does not apply to **clean-up costs**.

J. Aircraft, Auto or Watercraft.

**Bodily injury or property damage** arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, **auto**, or watercraft owned or operated by or rented or loaned to any **Insured**. Use includes operation and **loading or unloading**.

1. This exclusion applies even if the **claims** against any **Insured** allege negligence or other wrongdoing in the supervision, hiring, employment, training, or monitoring of others by that **Insured** if the event which caused the **bodily injury or property damage** involved the ownership, maintenance, use, or entrustment to others of

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any aircraft, **auto**, or watercraft that is owned or operated by or rented or loaned to any **Insured**.

2. This exclusion does not apply to:
  - a. the **loading or unloading** of a patient;
  - b. a watercraft while on shore and on premises owned or rented by the **scheduled excess insured business**;
  - c. a watercraft that is:
    - (1) not owned by an **Insured**,
    - (2) less than 26 feet long, and
    - (3) was not being used to carry persons or property for a charge.
  - d. parking an **auto** on or next to a site owned or occupied by an **scheduled excess insured business**, but only if the **auto** is not owned, rented, or being used by an **Insured**;
  - e. liability assumed under an **insured contract** for the ownership, maintenance, or use of an aircraft or watercraft; or,
  - f. **bodily injury or property damage** arising from, or in connection with:
    - (1) the operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of **mobile equipment** if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or,
    - (2) the operation of any of the machinery or equipment listed in Paragraph 2.a or 2.b of the definition of **mobile equipment**.

K. Mobile Equipment.

**Bodily injury or property damage** arising from, or in connection with:

1. the transportation of **mobile equipment** by an **auto** owned or operated by or rented or loaned to an **Insured**; or,
2. the use of **mobile equipment** in, while in practice for, or while being prepared for any prearranged racing, speed, demolition, or stunting activity.

L. War.

**Bodily injury or property damage**, however caused, arising out of, or in connection with:

1. war, including undeclared or civil war;
2. warlike action by a military force, including action in hindering or defending against an actual or expected attack by any governmental, sovereign, or other authority using military personnel or other agents; or,
3. insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

M. Damage to Property.

**Property damage** to:

1. property the **scheduled excess insured business** owns, rents, or occupies, including any costs or expenses incurred by the **scheduled excess insured business**, or any other person, organization, or entity, for repair, replacement, enhancement, restoration, or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
2. premises the **scheduled excess insured business** sells, gives away, or abandons if the **property damage** arises out of, or in connection with, any part of those premises;
3. property loaned to a **scheduled excess insured business**;
4. personal property in the care, custody, or control of an **Insured**;
5. that particular part of real property on which the **scheduled excess insured business** or any contractors or subcontractors, working directly or indirectly on behalf of the **scheduled excess insured business**, are performing operations if the **property damage** arises out of those operations; or,
6. that particular part of any property that must be restored, repaired, or replaced because the **insured's work** was incorrectly performed on it.



Paragraphs 1, 3, and 4 of this exclusion do not apply to **property damage** (other than damage by fire) to a premises, including the contents of such premises, rented to a **scheduled excess insured business** for a period of seven or fewer consecutive days.

Paragraph 2 of this exclusion does not apply if the premises are the **insured's work** and were never occupied, rented, or held for rental by the **scheduled excess insured business**.

Paragraph 6 of this exclusion does not apply to **property damage** included in the **products completed operations hazard**.

N. *Damage to the Insured's Product.*

**Property damage** to an **insured's product** arising from, or in connection with, it or any part of it.

O. *Damage to the Insured's Work.*

**Property damage** to an **insured's work** arising from, or in connection with, the **insured's work**, or any part of it, and included in the **products completed operations hazard**. This exclusion does not apply if the damaged work, or the work out of which the damage arises, was performed by a subcontractor on behalf of the **Insured**.

P. *Damage to Impaired Property or Property Not Physically Injured.*

**Property damage to impaired property** or property that has not been physically injured arising from, or in connection with:

1. a defect, deficiency, inadequacy, or dangerous condition in the **insured's product** or **insured's work**; or,
2. a delay or failure by an **Insured** to perform under the terms of a contract or agreement.

This exclusion does not apply to the loss of use of other property arising from, or in connection with, sudden and accidental physical injury to the **insured's product** or the **insured's work** after it has been put to its intended use.

Q. *Recall of Products, Work, or Impaired Property.*

**Claims** arising from, or in connection with, any loss, cost, or expense incurred by a **scheduled excess insured business** or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal, or disposal of:

1. the **insured's product**;
2. the **insured's work**; or,
3. **impaired property**,

if such product, work, or property is withdrawn or recalled from the market or from use due to a known or suspected defect, deficiency, inadequacy, or dangerous condition to it.

Exclusions E through Q do not apply to damage by fire to premises while rented to a **scheduled excess insured business** or temporarily occupied by a **scheduled excess insured business** with the permission of its owner.

R. *Personal and Advertising Injury.*

**Bodily injury** arising from, or in connection with, **personal and advertising injury**.

S. *Electronic Data.*

Any **property damage** or other intangible damages arising from, or in connection with, the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate, **electronic data**. As used in this exclusion, **electronic data** means information, facts, or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices, or any other media that are used with electronically controlled equipment.

T. *Recording and Distribution of Material or Information in Violation of Law.*

**Bodily injury** or **property damage** arising from, or in connection with, any action or omission that violates or is alleged to violate:



1. the Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
2. the CAN-SPAM Act of 2003, including any amendment of or addition to such law;
3. the Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or,
4. any federal, state or local statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

U. Sexual Acts.

**Bodily injury or property damage:**

1. arising from, or in connection with, any actual or threatened sexual act, behavior or conduct, including, but not limited to, assault, exploitation, harassment or molestation, by any person of another person while in the care, custody, or control of any **Insured**; or,
2. the negligent:
  - a. employment;
  - b. investigation;
  - c. supervision;
  - d. reporting to the proper authorities, or failure to so report; or,
  - e. retention;

of a person for whom any **Insured** is or ever was legally responsible and whose conduct would be excluded by Paragraph 1. above.

V. Fines, Penalties, and Sanctions.

Any **claim** seeking injunctive relief, the award of fines, penalties or sanctions, or for any relief other than for damages which an **Insured** becomes legally obligated to pay through adjudication or settlement for **bodily injury or property damage**.

W. Directors and Officers Liability.

Any **claim** that is covered under an **Insured's** directors and officers liability insurance policy; or any **claim** subject to a directors and officers liability insurance policy, including, but not limited to, (1) employment practices claims, (2) internal corporate or business disputes, and (3) claims by organizations against their directors and officers for business practices.

X. Default Judgment.

Damages that an **Insured** becomes legally obligated to pay for **bodily injury or property damage** resulting from a default judgment or other **claim** that the **Company** was unable to timely investigate or defend due to the acts or omissions of the **Insured**.

Y. Nuclear Energy Liability.

**Bodily injury or property damage:**

1. for which an **Insured** has coverage under a nuclear energy policy issued by the:
  - a. Nuclear Energy Liability Insurance Association;
  - b. Mutual Atomic Energy Liability Underwriters;
  - c. Nuclear Insurance Association of Canada; or,
  - d. any successor of the proceeding entities.

This policy also does not apply if such coverage did exist but was terminated by the exhaustion of the **Insured's** limit of liability.

2. resulting from the hazardous properties of nuclear material for which the **Insured**:
  - a. was required to maintain financial protection under the Atomic Energy Act of 1954, or any amendment or regulation that applies thereto; or,
  - b. was entitled to indemnity by the United States government, or any agency thereof, or would have been entitled to had this policy not been issued.

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Z. ADA.

Any **claim** arising from, or in connection with, an **Insured's** failure to comply with the Americans with Disabilities Act of 1990 (ADA), or any similar federal, state, or local law, including any amendment of or addition to such law

AA. RICO.

Any **claim** arising from, or in connection with, an **Insured's** violation of the Racketeer Influenced Corrupt Organizations Act (RICO), or any similar federal, state, or local law, including any amendment of or addition to such law.

BB. Financial Services / Violation of Securities Laws.

**Bodily injury or property damage** arising from, or in connection with, the rendering of or the failure to render financial services by any **Insured** to others. For purposes of this exclusion, financial services include, but are not limited to:

1. planning, administering or advising on:
  - a. any:
    - (1) investment;
    - (2) pension;
    - (3) annuity;
    - (4) savings;
    - (5) checking; or,
    - (6) individual retirement account, plan, fund or account;
  - b. the issuance or withdrawal of any bond, debenture, stock or other securities;
  - c. the trading of securities, commodities, or currencies; or,
  - d. any acquisitions or mergers;
2. acting as a dividend disbursing agent, exchange agent, redemption or subscription agent, warrant or scrip agent, fiscal or paying agent, tax withholding agent, escrow agent, clearing agent, or electronic funds transfer agent;
3. lending, or arranging for the lending of, money, including credit card, debit card, leasing or mortgage operations or activities or interbank transfers;
4. repossessing of real or personal property from a borrower or acting as an assignee for the benefit of creditors;
5. checking or reporting of credit;
6. maintaining of financial accounts or records;
7. tax planning, tax advising or the preparation of tax returns; or,
8. selling or issuing travelers checks, letters of credit, certified checks, bank checks or money orders.

This exclusion includes damages arising from an **Insured's** violation of any federal, state, or local securities law or regulation, including any amendment of or addition to such law.

CC. Fungi and Bacteria.

1. **Bodily injury or property damage** arising from, or in connection with, the actual, alleged or threatened inhalation of, injection of, contact with, exposure to, existence of, or presence of any fungi or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.
  2. Any loss, cost or expense arising from, or in connection with, the abating, testing, monitoring, cleaning, removing, containing, treating, detoxifying, neutralizing, remediating, or disposing of, or in any way responding to, or assessing the effects of, fungi or bacteria, by any **Insured** or by any other person or entity.
- This exclusion shall not apply to any fungi or bacteria contained in a good or product intended for bodily consumption. For the purposes of this exclusion, the term fungi includes any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents, or byproducts produced or released by fungi.

DD. Insured Versus Insured.

Any **claim** which is initiated, alleged, or caused to be brought about, by any **Insured** covered by this policy against any other **Insured** covered by this policy.

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EE. Multiple Policies Issued by Company.

If more than one policy issued by the **Company** applies to a **claim** brought against an **Insured**, the **Company's** duty to pay for any damages will be confined to the policy containing the largest applicable limit.

FF. Anti-Stacking.

If more than one Insuring Agreement under this policy applies to a **claim** brought against an **Insured**, the **Company's** duty to pay any damages will be confined to the Insuring Agreement containing the largest applicable limit.

GG. Governmental Immunity and Other Protections.

Any **claim**:

1. for which the **Insured** has, or is eligible for, complete immunity as a volunteer or as an employee or contractor of a federal, state, or local government; or,
2. involving an **Insured** who has, or is eligible for, insurance, indemnity, or any other protection pursuant to any federal, state or local laws, including but not limited to the Federal Tort Claims Act.

HH. Employees.

Any **claim** arising from, or in connection with, the acts or omissions of an **employee**, involving:

1. **bodily injury**:
  - a. to another **agent**;
  - b. to the spouse, relative or dependant as a consequence of Paragraph 1.a, above; or,
  - c. for which there is any duty to share damages or loss with, or repay, another party liable for the loss as a consequence of Paragraphs 1.a and 1.b, above.
2. **property damage** to property:
  - a. owned, occupied, or used by an **Insured**;
  - b. rented to an **Insured**; or,
  - c. in the care, custody, or control of an **Insured**.

II. Cyber and Privacy Insurance.

Any **claim** arising from, or in connection with, any loss or damages covered under any cyber or privacy insurance coverage, including but not limited to, any coverage for network security and privacy, regulatory fines and penalties, patient notification and credit monitoring, or data recovery cost.

JJ. Economic Sanctions Exclusion.

Whenever coverage provided by this policy would be in violation of any U.S. economic trade sanctions such as, but not limited to, those sanctions administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control, such coverage shall be null and void. Similarly, any coverage relating to or referred to in any certificates or other evidences of insurance or any **claim** that would be in violation of U.S. economic or trade sanctions as described above shall also be null and void.

III. INSURING AGREEMENT— COVERAGE B: PERSONAL AND ADVERTISING INJURY

- A. The **Company** will pay those sums that the **scheduled excess insured business** including its **agents**, become legally obligated to pay as **excess loss** because of **personal and advertising injury** to which this insurance applies. The **Company** will have no duty to defend the **Insured** against any **suit** seeking those damages. However, the **Company** may, at its discretion, investigate any offense and settle any **claim** or **suit**. The amount the **Company** will pay for damages is limited as described in the *LIMITS OF LIABILITY – ALL EXCESS COMMERCIAL LIABILITY COVERAGES* section. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under *DEFENSE AND SUPPLEMENTAL PAYMENTS – ALL EXCESS COMMERCIAL GENERAL LIABILITY COVERAGES*.
- B. This insurance applies to **personal and advertising injury** caused by an offense arising out of the **scheduled excess insured business**, but only if the offense was committed in the **coverage territory** during the **policy period**.

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IV. *EXCLUSIONS—COVERAGE B: PERSONAL AND ADVERTISING INJURY*

This insurance does not apply to:

A. *Professional Services.*

**Personal and advertising injury** arising out of the rendering or failure to render any **professional services** or other professional service. Other professional service includes, but is not limited to:

1. legal, accounting or advertising services;
2. preparing, approving or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications by any architect, engineer or surveyor performing services on a project on which the **Insured** serves as construction manager;
3. inspection, supervision, quality control, architectural or engineering activities done by or for you on a project on which the **Insured** serves as project manager;
4. engineering services, including related supervisory or inspection services;
5. medical, surgical, dental, x-ray or nursing services treatment, advice or instruction;
6. any health or therapeutic service treatment, advice or instruction;
7. any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement, or personal grooming or therapy;
8. any service, treatment, advice or instruction relating to physical fitness, including service, treatment, advice or instruction in connection with diet, cardiovascular fitness, body building or physical training programs;
9. optometry or optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;
10. body piercing services;
11. services in the practice of pharmacy; but this exclusion does not apply if the **Insured** is a retail druggist or the **Insured's** operations are those of a retail drugstore;
12. law enforcement or firefighting services; and,
13. handling, embalming, disposal, burial, cremation or disinterment of dead bodies.

B. *Ownership of Non-insured Entities.*

**Personal and advertising injury** arising from, or in connection with, an **Insured's** ownership, supervision or management of any organization, partnership, joint venture, or other business enterprise that is not an **insured business**.

C. *Knowing Violation of Rights of Others.*

**Personal and advertising injury** caused by, or at the direction of, an **Insured** with the knowledge that the act would violate the rights of another and would inflict **personal and advertising injury**.

D. *Material Published With Knowledge of Falsity.*

**Personal and advertising injury** arising from, or in connection with, oral or written publication of material if done by, or at the direction of, an **Insured** with knowledge of its falsity.

E. *Material Published Prior to Policy.*

**Personal and advertising injury** arising from, or in connection with, oral or written publication of material whose first publication took place before the **retroactive date**, if any, shown on the Schedule of Excess Insured Businesses.

F. *Employment-Related Practices Liability.*

**Personal and advertising injury** to:

1. a person arising from, or in connection with, any:
  - a. refusal to employ that person;
  - b. termination of that person's employment; or
  - c. employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or

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2. the spouse, child, parent, brother, or sister of that person as a consequence of **personal and advertising injury** to that person at whom any of the employment-related practices described in Paragraphs (a), (b) or (c) above is directed.

This exclusion applies:

1. whether the injury-causing event described in Paragraphs (a), (b) or (c) above occurs before, during, or after employment of that person;
2. whether the **Insured** may be liable as an employer or in any other capacity; and,
3. to any obligation to share damages with or repay someone else who must pay damages because of injury.

G. Employer's Liability.

**Bodily injury to:**

1. an **employee** of the **Insured** arising out of and in the course of:
  - a. employment by the **Insured**; or,
  - b. performing duties related to the conduct of an **insured business**.
2. the spouse, child, parent, brother, or sister of that **employee** as a consequence of Paragraph 1 above.

This exclusion shall apply:

1. whether the **insured business** may be held liable as an employer, or in any other capacity; and,
2. to any obligation to share damages with, or repay someone else who must pay damages, because of the injury.

This exclusion does not apply to liability assumed by the **Insured** under an **insured contract**.

H. Criminal Acts.

**Personal and advertising injury** arising from, or in connection with, any criminal act committed by, or at the direction of, an **Insured**.

I. Contractual Liability.

**Personal and advertising injury** arising from or in connection with, an **Insured's** obligation to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the **Insured** would have in the absence of the contract or agreement.

J. Breach of Contract.

**Personal and advertising injury** arising from, or in connection with, a breach of contract, except an implied contract to use another's advertising idea in the **Insured's advertisement**.

K. Quality or Performance of Goods – Failure to Conform to Statements.

**Personal and advertising injury** arising from, or in connection with, the failure of goods, products, or services to conform to any statement of quality or performance in the **Insured's advertisement**.

L. Wrong Description of Prices.

**Personal and advertising injury** arising from, or in connection with, the wrong description of the price of the goods, products, or services in the **Insured's advertisement**.

M. Infringement of Copyright, Patent, Trademark, or Trade Secret.

**Personal and advertising injury** arising from, or in connection with, the infringement of copyright, patent, trademark, trade secret, or other intellectual property rights. However, this exclusion shall not apply to the infringement of copyright, trade, dress, or slogan in the **Insured's advertisement**.

N. Insureds in Media and Internet Type Businesses.

**Personal and advertising injury** committed by an **Insured** whose business is:

1. advertising, broadcasting, publishing, or telecasting;
2. designing or determining content for the websites of others; or,
3. an internet search, access, content, or service provider.

However, this exclusion does not apply to **claims** arising from, or in connection with, false arrest, detention or imprisonment, malicious prosecution, or the wrongful eviction from, or wrongful entry into, or invasion of the

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private occupancy of a room dwelling or premises occupied by, or on behalf of, its owner, landlord, or lessor.

For the purposes of this exclusion, the placing of frames, borders, or links, or advertising for an **Insured** or others is not considered, by itself, to be the business of advertising, broadcasting, publishing, or telecasting.

O. Electronic Chatrooms or Bulletin Boards.

**Personal and advertising injury** arising from, or in connection with, an electronic chatroom or bulletin board an **Insured** hosts, owns, or over which the **Insured** exercises control.

P. Unauthorized Use of Another's Name or Product.

**Personal and advertising injury** arising from, or in connection with, the unauthorized use of another's name or product in an **Insured's** email address, domain name, or metatag, or other similar tactics to mislead another's potential customers.

Q. Pollution.

**Personal and advertising injury** arising from, or in connection with, the actual or threatened discharge, dispersal, seepage, migration, release, or escape of **pollutants** at any time.

R. Pollution Related.

Any **claim** arising from, or in connection with any loss, cost, or expense arising out of, any:

1. request, demand, order, or statutory or regulatory requirement that any **Insured** or others test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize, or in any way respond to or assess the effects of, **pollutants**; or,
2. **claim** or **suit** by or on behalf of a governmental authority for damages because of testing, monitoring, cleaning up, removing, containing, treating, detoxifying, or neutralizing, or in any way responding to or assessing the effects of, **pollutants**.

S. War.

**Personal and advertising injury**, however caused and arising from, or in connection with:

1. war, including undeclared or civil war;
2. warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any governmental, sovereign, or other authority using military personnel or other agents; or,
3. insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

T. Sexual Acts.

**Personal and advertising injury:**

1. any actual or threatened sexual act, behavior or conduct, including, but not limited to, assault, exploitation, harassment or molestation, by any person of another person while in the care, custody, or control of any **Insured**; or,
2. the negligent:
  - a. employment;
  - b. investigation;
  - c. supervision;
  - d. reporting to proper authorities, or failure to so report; or,
  - e. retention;of a person for whom any **Insured** is or ever was legally responsible and whose conduct would be excluded by Paragraph 1 above.

U. Fines, Penalties, or Sanctions.

Any **claim** seeking injunctive relief, the award of fines, penalties, or sanctions, or for any relief other than for damages which an **Insured** becomes legally obligated to pay through adjudication or settlement for **personal or advertising injury**.

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V. Directors and Officers Liability.

Any **claim** for **personal and advertising injury** that is covered under an **Insured's** directors and officers liability insurance policy; or any **claim** subject to a directors and officers liability insurance policy, including, but not limited to, (1) employment practices claims, (2) internal corporate or business disputes, and (3) claims by organizations against their directors and officers for business practices..

W. Default Judgment.

Damages that an **Insured** becomes legally obligated to pay for **personal and advertising injury** resulting from a default judgment or other **claim** that the **Company** was unable to timely investigate or defend due to the acts of omissions of the **Insured**.

X. Financial Services / Violation of Securities Laws.

**Personal and advertising injury** arising from, or in connection with, the rendering of or the failure to render financial services by any **Insured** to others. For purposes of this exclusion, financial services include, but are not limited to:

1. planning, administering or advising on:
  - a. any:
    - (1) investment;
    - (2) pension;
    - (3) annuity;
    - (4) savings;
    - (5) checking; or
    - (6) individual retirement account, plan, fund or account;
  - b. the issuance or withdrawal of any bond, debenture, stock or other securities;
  - c. the trading of securities, commodities, or currencies; or
  - d. any acquisitions or mergers;
2. acting as a dividend disbursing agent, exchange agent, redemption or subscription agent, warrant or scrip agent, fiscal or paying agent, tax withholding agent, escrow agent, clearing agent, or electronic funds transfer agent;
3. lending, or arranging for the lending of, money, including credit card, debit card, leasing or mortgage operations or activities or interbank transfers;
4. repossessing of real or personal property from a borrower or acting as an assignee for the benefit of creditors;
5. checking or reporting of credit;
6. maintaining of financial accounts or records;
7. tax planning, tax advising or the preparation of tax returns; or
8. selling or issuing travelers checks, letters of credit, certified checks, bank checks or money orders.

This exclusion includes **personal and advertising injury** arising from, or in connection with, an **Insured's** violation of any federal, state, or local securities law or regulation.

Y. Nuclear Energy Liability.

**Personal and advertising injury:**

1. for which an **Insured** has coverage under a nuclear energy policy issued by the:
  - a. Nuclear Energy Liability Insurance Association;
  - b. Mutual Atomic Energy Liability Underwriters;
  - c. Nuclear Insurance Association of Canada; or,
  - d. any successor of the proceeding entities.

This policy also does not apply if such coverage did exist but was terminated by the exhaustion of the **Insured's** limit of liability.
2. resulting from the hazardous properties of nuclear material for which the **Insured**:
  - a. was required to maintain financial protection under the Atomic Energy Act of 1954, or any amendment or regulation that applies thereto; or,
  - b. was entitled to indemnity by the United States government, or any agency thereof, or would have been

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entitled to had this policy not been issued.

Z. ADA.

Any **claim** arising from, or in connection with, an **Insured's** failure to comply with the Americans with Disabilities Act of 1990 (ADA), or any similar federal, state or local law, including any amendment of or addition to such law.

AA. RICO.

Any **claim** arising from, or in connection with, an **Insured's** violation of the Racketeer Influenced Corrupt Organizations Act (RICO), or any similar federal, state or local law, including any amendment of or addition to such law.

BB. Insured Versus Insured.

Any **claim** which is initiated, alleged, or caused to be brought about, by any **Insured** covered by this policy against any other **Insured** covered by this policy.

CC. Multiple Policies Issued by Company.

If more than one policy issued by the **Company** applies to a **claim** brought against an **Insured**, the **Company's** duty to pay for any damages will be confined to the policy containing the largest applicable limit.

DD. Anti-Stacking.

If more than one Insuring Agreement under this policy applies a **claim** brought against an **Insured**, the **Company's** duty to pay any damages will be confined to the Insuring Agreement containing the largest applicable limit.

EE. Governmental Immunity and Other Protections.

Any **claim**:

1. for which the **Insured** has, or is eligible for, complete immunity as a volunteer or as an employee or contractor of a federal, state, or local government; or,
2. involving an **Insured** who has, or is eligible for, insurance, indemnity, or any other protection pursuant to any federal, state or local laws, including but not limited to the Federal Tort Claims Act.

FF. Employees

Any **claim** arising from, or in connection with, the acts or omissions of an **employee**, involving:

1. **personal and advertising injury**:
  - a. to another agent;
  - b. to the spouse, relative or dependant as a consequence of Paragraph 1.a, above; or,
  - c. for which there is any duty to share damages or loss with, or repay, another party liable for the loss as a consequence of Paragraphs 1.a and 1.b, above.
2. **property damage** to property:
  - a. owned, occupied, or used by an **Insured**;
  - b. rented to an **Insured**; or,
  - c. in the care, custody, or control of an **Insured**.

GG. Electronic Data.

Any **personal and advertising injury** arising from, or in connection with, the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate, **electronic data**. As used in this exclusion, **electronic data** means information, facts, or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices, or any other media that are used with electronically controlled equipment.

HH. Recording and Distribution of Material or Information in Violation of Law.

**Personal and advertising injury** arising from, or in connection with, any action or omission that violates or is alleged to violate:

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1. the Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
2. the CAN-SPAM Act of 2003, including any amendment of or addition to such law;
3. the Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or,
4. any federal, state or local statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

II. Cyber and Privacy Insurance.

Any **claim** arising from, or in connection with, any loss or damages covered under any cyber or privacy insurance coverage, including but not limited to, any coverage for network security and privacy, regulatory fines and penalties, patient notification and credit monitoring, or data recovery cost.

JJ. Economic Sanctions Exclusion.

Whenever coverage provided by this policy would be in violation of any U.S. economic trade sanctions such as, but not limited to, those sanctions administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control, such coverage shall be null and void. Similarly, any coverage relating to or referred to in any certificates or other evidences of insurance or any **claim** that would be in violation of U.S. economic or trade sanctions as described above shall also be null and void.

V. *DEFENSE AND SUPPLEMENTAL PAYMENTS – ALL EXCESS COMMERCIAL GENERAL LIABILITY COVERAGES*

A. No Duty to Defend.

In any **claim** or **suit** covered under this policy, regardless of whether the **Insured** is entitled to a defense under a **scheduled coverage**, the **Company** shall have no duty to defend the **Insured** or pay any **claims expense** under this Insuring Agreement. However, the **Company** shall have the right to participate in the defense and investigation of any **claim** or **suit** that may, in the **Company's** sole determination, exceed the **scheduled limit**, including the right to defend the **Insured**, if the **Company** so chooses. In addition, the **Company** has no duty to:

1. defend an **Insured** against a **claim** or **suit** after the **Insured's** applicable limit of liability is exhausted by the payment of judgments or settlements; or,
2. appeal any judgment. However, the **Company** has the right, but not the duty, to appeal any judgment that exceeds the **scheduled limit**. If the **Company** decides to appeal any judgment, all costs directly related with the appeal shall be payable by the **Company**, and shall not reduce the applicable limit of liability.

B. Supplemental Payments.

If the **Company** elects to appeal a judgment that exceeds the **scheduled limit**, the **Company** shall pay:

1. **claims expense** directly related to the appeal; and,
2. the premium on any bond required to proceed with such an appeal approved by the **Company** or to release attachments to the **Insured's** property. However, the **Company** has no duty to apply for or furnish any such bond. In addition, the **Company** shall have no duty to pay the premium on any bond which has a face value in excess of the remaining limit of liability under the policy.

The **Company** has no duty to pay any **claim** or **claims expense** after the **Insured's** applicable limit of liability is exhausted.

VI. *WHO IS INSURED – ALL EXCESS COMMERCIAL GENERAL LIABILITY COVERAGES*

- A. If a company is designated on the Schedule of Excess Insured Businesses as a **scheduled excess insured business**, it is an **Insured**, but only if the **scheduled excess insured business** is covered under a **scheduled coverage**.

- B. Each of the following is also an **Insured**:

1. a **new business**; or,
2. an **agent** of a **scheduled excess insured business**,  
but only if the **new business** or **agent** is also covered under a **scheduled coverage**.

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*VII. LIMITS OF LIABILITY – ALL EXCESS COMMERCIAL GENERAL LIABILITY COVERAGES*

- A. The Per Event Limits of Liability for the **scheduled excess insured business** shown on the Schedule of Excess Insured Businesses shall be the most the **Company** will pay, regardless of the number of:
1. **Insureds**;
  2. **claims** made or **suits** brought;
  3. persons or organizations making **claims** or bringing **suits**; or,
  4. **policies** issued by the **Company**.
- B. The General Aggregate Limit is the most the **Company** will pay for the sum of:
1. damages under COVERAGE A, including damages because of **bodily injury** and **property damage** included in the **products completed operations hazard**; and,
  2. damages under COVERAGE B.
- C. The Limits of Liability of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the **policy period** shown in the Schedule of Excess Insured Businesses, unless the **policy period** is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

*VIII. DEFINITIONS– ALL EXCESS COMMERCIAL GENERAL LIABILITY COVERAGES*

Whenever used in this insuring agreement:

- A. **Additional Insured** means any person or entity listed on the applicable Excess Schedule of Additional Insureds.
- B. **Administrator** means an owner, partner, stockholder, director, trustee, or **executive officer** of a **scheduled excess insured business**.
- C. **Advertisement** means a notice that is broadcast or published to the general public or specific market segments about the **scheduled excess insured business**' goods, products, or services for the purpose of attracting customers or supporters. For the purposes of this definition:
1. notices that are published include material placed on the Internet or on similar electronic means of communication; and,
  2. regarding websites, only that part of a website that is about the **Insured's** goods, products, or services for the purposes of attracting customers or supporters is considered an advertisement.
- D. **Agent** means a person who was acting within the scope of his or her duties as:
1. an **employee, administrator, committee member, or real estate manager** of a **scheduled excess business**, at the time of the event or offense; or,
  2. a trustee, assign, or legal representative of the **scheduled excess insured business**.
- An **agent** shares the coverage provided to the **scheduled excess insured business**, including its limits of liability.
- E. **Authorized insured** means any **Insured** authorized by the **first named insured** to give or receive notice of a **claim** to the **Company**.
- F. **Auto** means:
1. a land motor vehicle, trailer, or semi-trailer, including any attached machinery and equipment, designed for travel on public roads; or,
  2. any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.
- However, **auto** does not include **mobile equipment**.
- G. **Bodily injury** means any damage to the human body, including sickness or disease and any mental injury, shock,

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emotional distress, or death arising therefrom. In addition, it includes damages claimed for the cost of any care, loss of services, or loss of consortium arising therefrom.

- H. **Case management** means identifying patients with specific health care needs and developing a plan to ensure an efficient use of resources to achieve the best medical outcome.
- I. **Claim** means an express written demand upon an **Insured** for money or services as compensation for civil damages. It also includes an **event** or offense for which coverage was provided under a **scheduled coverage**.
- J. **Claims expense** means all costs and expenses incurred in connection with the investigation, adjustment, and defense of any **claim**. Such costs and expenses shall include:
1. attorney fees paid to the law firm selected by the **Company** to defend an **Insured**;
  2. court costs;
  3. expert fees;
  4. reporter fees;
  5. the cost of any alternative dispute resolution ordered by a court, otherwise required by law or pre-approved by the **Company**;
  6. post judgment interest on that portion of the judgment that does not exceed the applicable limit of liability available under the policy; and,
  7. such other costs and expenses that the **Company** determines to be reasonably related to the defense of a **claim**.
- However, **claims expenses** does not include:
1. **excess loss**;
  2. attorney fees awarded to a claimant;
  3. the salary of any employee of an **Insured**; or,
  4. the forgiveness of any amounts owed for the cost of care or services rendered by an **Insured**.
- K. **Clean-up costs** means any cost, expense, or duty:
1. claimed to be owed by the **Insured** under the statutory authority of a governmental agency; or,
  2. incurred by the **Insured** or others to test for, monitor, clean-up, remove, contain, treat, detoxify, or neutralize, or in any way respond to or assess the effects of, any **pollutant**.
- L. **Committee member** means a person serving as a member of a committee or board formed or controlled by a **scheduled excess insured business**. It also includes any person executing the directives of such a committee or board.
- M. **Company** means the insurance company listed on the Declarations.
- N. **Counseling** means formal therapy rendered to a patient by a licensed professional approved and credentialed by the **Insured** to provide such therapy.
- O. **Coverage Territory** means:
1. the United States of America (including its territories and possessions);
  2. international waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in subsection 1 above; or,
  3. all other parts of the world if the injury or damage arises out of:
    - a. goods or products made or sold by the **scheduled excess insured business** in the territory described above,
    - b. the activities of a person whose home is in the territory described above, but is away for a short time on the **Insured's** business; or,
    - c. **personal and advertising injury** offenses that take place through the internet or similar electronic means of communication,provided the **Insured's** responsibility to pay damages is determined in a **suit** on the merits in the territory described in subsection 1 above or in a settlement to which the **Company** agrees.

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- P. **Employee** means any person employed by, or acting under the direction and control of, a **scheduled insured** at the time of the event or offense.
- Q. **Environmental damage** means the injurious presence in, or upon, land, the air, or any watercourse or body of water of any **pollutants**.
- R. **Event** means accident. All injuries arising from:
1. the same or related acts, errors, or omissions; or,
  2. the continuous or repeated exposure to substantially the same harmful conditions,
- will be considered one event.
- S. **Excess Loss**
1. **Excess loss** means civil damages, including prejudgment interest, which an **Insured** becomes legally obligated to pay through adjudication or settlement which exceed:
    - a. all applicable **scheduled limits** of any **scheduled coverages**; and,
    - b. all applicable limits of any other valid and collectible insurance policies or other program of indemnity that applies to the **Insured's** liability for the event or offense.
  2. **Excess loss** does not include:
    - a. any damages which are greater than the applicable limit of liability;
    - b. any damages which are not greater than the **scheduled limit** or any other applicable insurance;
    - c. any injunctive or other equitable relief;
    - d. **claims expense**;
    - e. attorneys fees awarded to a claimant as a fine, penalty or sanction based upon the **Insured's** misconduct; however, attorney fees awarded as part of the claimant's damages in a covered **claim** for any other purpose will be included as **excess loss**;
    - f. the salary of any **employee** of an **Insured**; or,
    - g. the forgiveness of any amounts owed for the cost of care or services rendered by an **Insured**.
- T. **Executive Officer** means a person holding any of the officer positions created by an **Insured's** charter, constitution, bylaws, or any other similar governing document.
- U. **Extended reporting period** means the period of time after the cancellation or nonrenewal of claims-made coverage during which the **Insured** may report a **claim**.
- V. **First made** refers to the date on which the **Insured** first received a **claim**. All **claims** arising from, or in connection with, damages or loss suffered by the same claimant(s) shall be considered as having been **first made** when the first such **claim** is received by the **Insured**.
- W. **First named insured** (or FNI) means the entity or person listed as the First Named Insured on the Declarations.
- X. **Health care event** means any event in the rendering of, or failure to render, **professional services** that results in injury to a patient. All injuries arising from the same or related acts, errors, and omissions in the furnishing of **professional services** shall be considered one **health care event**.
- Y. **Health care plan** means a medical benefits plan administered by a health care maintenance organization (HMO), preferred provider organization (PPO), or other similar managed care organization or self-insured managed care organization.
- Z. **Hostile fire** means a fire that becomes uncontrollable or breaks out from where it was intended to be.
- AA. **Impaired property** means tangible property, other than the **insured's product** or the **insured's work**, which

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cannot be used or becomes less useful because:

1. it incorporates the **insured's product** or **insured's work** that is known or thought to be defective, deficient, inadequate, or dangerous; or,
2. the **Insured** has failed to fulfill the terms of a contract or agreement if such property can be restored to use by:
  - a. the repair, replacement, adjustment, or removal of the **insured's product** or **insured's work**, or
  - b. the **Insured's** fulfillment of the terms of the contract.

BB. **Insured** means any person or entity entitled to coverage as specified under the *WHO IS INSURED – ALL EXCESS COMMERCIAL GENERAL LIABILITY COVERAGES* section above.

CC. **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 an **Insured** or temporarily occupied by an **Insured** with permission of the owner is not an **insured contract**;
2. any easement or license agreement, except in connection with construction or demolition operations on, or within 50 feet of, a railroad;
3. an obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality; or,
4. an elevator maintenance agreement.

DD. **Insured's product**

1. means:
  - a. any goods or products, other than real property, manufactured, sold, handled, distributed, or disposed of by:
    - (1) a **scheduled excess insured business**;
    - (2) others trading under its name; or,
    - (3) a person or organization whose business or assets the **scheduled excess insured business** has acquired.
  - b. containers (other than vehicles), materials, parts, or equipment furnished in connection with such goods or products.
2. includes:
  - a. warranties or representations made at any time with regard to the fitness, quality, durability, performance, or use of the goods or the **insured's products**; and,
  - b. the providing of, or the failure to provide, warnings or instructions.
3. does not include:
  - a. vending machines; or,
  - b. other property rented to or located for the use of others, but not sold to others by an **Insured**.

EE. **Insured's work**

1. means:
  - a. work or operations performed by, or on behalf of, an **scheduled excess insured business**; and,
  - b. materials, parts, or equipment furnished in connection with such work or operations.
2. includes:
  - a. warranties or representations made at any time with regard to the fitness, quality, durability, performance, or use of the work or operations; and,
  - b. the providing of, or the failure to provide, warnings or instructions.

FF. **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.

It does not include the movement of property by means of a mechanical device, other than a hand truck, which is not attached to the aircraft, watercraft, or **auto**.

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GG. **Managed care event** means any event in rendering of, or failure to render, **managed care services** that result in injury. All injuries arising from the same or related acts, errors, or omissions in the furnishing of **managed care services** shall be considered one **managed care event**.

HH. **Managed care services** means services provided to manage and/or administer a **health care plan**. These services can include any of the following acts provided on behalf of the **health care plan**:

1. the creation, sale, and marketing of a **health care plan**;
2. the selection, credentialing, and contracting of health care providers;
3. the evaluation of the cost, quality, and proper utilization of treatment options available or being provided to participants;
4. the adjustment, investigation, and processing of claims for benefits; or,
5. **case management**.

However, **managed care services** do not include **treatment** rendered to a patient.

## II. **Mobile equipment:**

1. means any of the following types of land vehicles, including any attached machinery or equipment:
  - a. bulldozers, farm machinery, forklifts, and other vehicles designed for use principally off public roads;
  - b. vehicles maintained for use solely on, or next to, premises owned or rented by a **scheduled excess insured business**;
  - c. vehicles that travel on crawler treads;
  - d. vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
    - (1) power cranes, shovels, loaders, diggers, or drills; or,
    - (2) road construction or resurfacing equipment, such as graders, scrapers, or rollers;
  - e. vehicles not described in Paragraphs a, b, c, or d above, that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
    - (1) air compressors, pumps, and generators, including spraying welding, building cleaning, geophysical exploration, lighting, and well-servicing equipment; or,
    - (2) cherry pickers and similar devices used to raise or lower workers;
  - f. vehicles not described in Paragraphs a, b, c, or d above, maintained primarily for purposes other than the transportation of persons or cargo.
2. does not include self-propelled vehicles with the following types of permanently attached equipment, but will be considered **autos**:
  - a. equipment designed primarily for:
    - (1) snow removal;
    - (2) road maintenance (but not construction or resurfacing); or,
    - (3) street cleaning;
  - b. cherry pickers and similar devices mounted on car 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.
3. does not include land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered **autos**.

JJ. **New business** means an entity formed or acquired by a **scheduled excess insured business** during the **policy period**. However, a **new business** is not covered:

1. after 60 days have elapsed from the date the **new business** was formed or acquired by the **scheduled excess insured business**, unless it has been Schedule of Excess Insured Businesses or as an **additional excess insured** on a Schedule of Additional Excess Insureds;
2. for **bodily injury** or **property damage** that occurred before the entity was formed or acquired by the **scheduled excess insured business**; or,
3. for **personal and advertising injury** that arose out of an offense committed before the entity was formed or

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acquired by the **scheduled excess insured business**.

A **new business** shares the coverage provided to the **scheduled excess insured business**, including its limits of liability.

- KK. **Peer review** means the evaluation of a health care provider's fitness and qualification to provide **treatment** by a professional review board or committee through formally adopted, written procedures for the purposes of granting, determining or revoking clinical staff privileges at a hospital, clinic or other medical facility that qualifies as an **Insured** and which results in a patient alleging damages arising from a **health care event**.
- LL. **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, in any manner, 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, in any manner, of material that violates a person's right of privacy; or,
  6. the use of another's advertising idea in the **Insured's advertisement**.
- MM. **Policy period** means the period of time listed on the Declarations as the Policy Period. If, however, the policy is terminated before the later of the dates listed on the Declarations, **policy period** means the period between the first date indicated on the Declarations and the date the policy is terminated.
- NN. **Pollutants** means any solid, liquid, gaseous, fuel, lubricant, thermal, acoustic, electrical, or magnetic irritant or contaminant, including but not limited to smoke, vapor, soot, fumes, fibers, radiation, acid, alkalis, petroleums, chemicals or "waste." "Waste" includes medical waste, biological infectants, and all other materials to be disposed of, recycled, stored, reconditioned or reclaimed.
- OO. **Pollution event** means an actual, alleged, or threatened emission, discharge, release, or escape of any **pollutants** which caused **bodily injury**, **property damage**, or **environmental damage**. The entirety of all such emission, discharge, release, or escape of any **pollutants** shall be deemed to be one **pollution event**.
- PP. **Products completed operations hazard**
1. **Products completed operations hazard** means all **bodily injury** and **property damage** occurring away from premises an **Insured** owns or rents, and arising out of the **insured's product** or **insured's work** except:
    - a. products that are still in the physical possession of an **Insured**;
    - b. work that has not yet been completed or has been abandoned. However, the **insured's work** will be deemed completed at the earliest of the following times:
      - (1) when all of the work called for in the **Insured's** contract has been completed;
      - (2) when all of the work to be done at the job site has been completed if the contract calls for work at more than one job site; or,
      - (3) when that part of the work 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.Work that may need service, maintenance, correction, repair, or replacement, but which is otherwise complete, will be deemed completed.
  2. **Products completed operations hazard** does not include **bodily injury** or **property damage** arising out of:
    - a. the transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by an **Insured** and that condition was created by the **loading or unloading** of the vehicle by an **Insured**;
    - b. the existence of tools, uninstalled equipment, or abandoned or unused materials; or,
    - c. products or operations for which the classification, listed in the Schedule of Excess Insured Businesses or in a policy schedule, states that Product/Completed Work Liability are subject to the General Aggregate

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Limit.

- QQ. **Professional services** means treatment, utilization management and peer review not involving managed care services.
- RR. **Property damage** means:
1. physical injury to tangible property, including any 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. All such loss of use shall be deemed to occur at the time of the event that caused it.
- SS. **Real estate manager** means a person, who manages any property owned or used by an **scheduled excess insured business**. It does not include an **employee**.
- TT. **Retroactive date** means the date prior to which an **Insured** has no coverage under this Insuring Agreement. The **retroactive date** is listed for the particular **Insured** on the applicable Schedule of Excess Insured Businesses.
- UU. **Scheduled coverage** means any policy of underlying insurance, or other program of indemnity, as shown on the Excess Schedule of Underlying Insurance that applies to the **Insured's** liability for an event or offense. However, it does not include any policy that is specifically designed to provide coverage in excess of this policy.
- VV. **Scheduled limit** means the amount shown as the Scheduled Limit for the applicable **scheduled coverage** on the corresponding Excess Liability Schedule of Underlying Insurance.
- WW. **Scheduled excess insured business** means any business scheduled as a **scheduled excess insured business** in the Schedule of Excess Insured Businesses.
- XX. **Scheduled insured** means any company listed on a Schedule of Excess Insured Businesses.
- YY. **Social services** means programs provided by an **Insured** to help maintain or improve the quality of life for the patient, including family counseling and educational programs. These programs do not include therapy for the direct benefit of anyone other than the patient.
- ZZ. **Suit** means a civil proceeding in which damages because of **bodily injury, property damage, or personal and advertising injury**, to which this insurance applies, are alleged. **Suit** includes:
1. an arbitration proceeding in which such damages are claimed and to which the **Insured** must submit or does submit with the **Company's** consent; or,
  2. any other alternative dispute resolution proceeding in which such damages are claimed and to which the **Insured** submits with the **Company's** consent.
- AAA. **Treatment** means:
1. the rendering of medical, surgical, dental, nursing services, **counseling** or **social services** to a patient. This shall include first aid rendered at the scene of an accident without expectation of monetary compensation;
  2. the provision of medical examinations, opinions, or consultations regarding a person's medical condition within the **Insured's** practice as a licensed health care provider;
  3. the handling of dead bodies, including autopsies, organ donation or harvesting or other procedures; and,
  4. the furnishing of any of the following, but only as it relates to the rendering of medical, surgical, dental, nursing services, **counseling** or **social services** to a patient:
    - a. food and beverages; and,
    - b. medical, surgical, or dental supplies, appliances, or drugs.
- BBB. **Utilization management** means the process of evaluating treatment to a patient for its appropriateness or necessity that results in a patient alleging damages arising from a **health care event**. In clarification and not in limitation of the foregoing, **utilization management** will include prospective review of proposed **treatment**,

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concurrent review of **treatment**, retrospective review of already rendered **treatment**, disease management, **case management**, and the use of predictive modeling to identify individuals or populations for disease management or case management.



# National Fire & Marine Insurance Company

Omaha, Nebraska

## *SCHEDULE OF EXCESS INSURED EMPLOYERS EXCESS EMPLOYER'S LIABILITY (OCCURRENCE)*

### DECLARATIONS

Policy Number: EN004806

First Named Insured: LSI HoldCo LLC

### LIMITS OF LIABILITY

#### Employment-Related Accidents

Per Event Limit of Liability Employment-Related Accident: \$ 20,000,000

#### Employment-Related Diseases

Per Employee Limit of Liability Employment-Related Disease: \$ 20,000,000

Policy Limit of Liability Employment-Related Disease: \$ 20,000,000

### SCHEDULE OF INSURED

In consideration of the payment of the premium due, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree the following entities are designated as **scheduled excess insured employers**:

SCHEDULED EXCESS INSURED EMPLOYER	ID NUMBER
Laser Spine Institute Consulting LLC	626955
Laser Spine Institute, LLC	241482
Laser Spine Surgery Center of Arizona, LLC	254295
Laser Spine Surgery Center of Cincinnati, LLC	637293
Laser Spine Surgery Center of Cleveland, LLC	637292
Laser Spine Surgery Center of Oklahoma, LLC	254297
Laser Spine Surgery Center of Pennsylvania, LLC	254296
Laser Spine Surgery Center of St. Louis, LLC	637294
Laser Spine Surgery Center of Tampa, LLC	943051
Laser Spine Surgery Center of Warwick, LLC	943052
Laser Spine Surgical Center, LLC	626953
LSI HoldCo LLC	626956
LSI Houston, PA	616898
LSI Management Company, LLC	626954
Medical Care Management Services, LLC	626957

### EXCESS EMPLOYERS LIABILITY

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# National Fire & Marine Insurance Company

Omaha, Nebraska

## *EXCESS EMPLOYER'S LIABILITY INSURING AGREEMENT (OCCURRENCE)*

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In consideration of the payment of the premium due, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree as follows, subject to the terms and conditions of this policy, including the applicable limits of liability:

### *I. INSURING AGREEMENTS – EXCESS LOSS*

The **Company** will pay, on behalf of any **scheduled excess insured employer**, all excess loss arising from an event that took place during the **policy period** and resulted in **bodily injury**:

- A. to an **employee**; however, the **bodily injury** must have been caused by an **employment-related accident** or **employment-related disease**;
- B. for which a **scheduled excess insured employer** is liable to a third party by reason of a **claim** or suit against an **scheduled excess insured employer** by that third party to recover the damages claimed against such third party as a result of injury to an **employee**;
- C. for consequential **bodily injury** to a spouse, child, parent, brother or sister of the injured **employee**;
- D. because of **bodily injury** to an **employee** that arises out of and in the course of employment, claimed against an **Insured** in a capacity other than as employer.

In addition, a **claim** regarding an **employment-related disease** must be reported to the **Company** within three years after the expiration of the **policy period** to be covered under this policy.

### *II. WHO IS INSURED*

For the purposes of this Insuring Agreement, an **Insured** is:

- A. a **scheduled excess insured employer**; or,
- B. a **new employer**  
as defined below.

### *III. ADDITIONAL DEFINITIONS*

In addition to the Excess General Definitions, the following definitions are added to this Insuring Agreement:

- A. **Scheduled excess insured employer** means any entity listed as a **scheduled excess insured employer** on the Schedule of Excess Insured Employers.
- B. **New employer** means an entity formed or acquired by a **scheduled excess insured employer** during the **policy period**. However, a **new employer** is not covered:
  - 1. after 60 days have elapsed from the date the **new employer** was formed or acquired; or,
  - 2. for an event that took place before the **new employer** was formed or acquired, or after the **policy period**.A **new employer** shares the coverage provided to a **scheduled excess insured employer**, including its limits of liability
- C. **Employee** means any person who, at the time of the **employment-related accident** or **employment-related disease**, qualifies as an employee under the applicable state workers' compensation law.
- D. **Employment-related accident** means an event that occurs in the course and scope of work performed by an **Insured's employee** that results in **bodily injury** to that **employee**.
- E. **Employment-related disease** means any **bodily injury** that results from a disease contracted by an **employee** as a result of an event that occurs in the course and scope of that **employee's employment** with an **Insured**.



#### IV. ADDITIONAL EXCLUSIONS

In addition to any exclusions listed in the Excess General Exclusions, this Insuring Agreement does not apply to:

- A. any **claim** arising from, or in connection with, an **Insured's** ownership, supervision or management of any organization, partnership, joint venture, or other business enterprise that is not a **scheduled excess insured employer**;
- B. any **claim** arising from, or in connection with, **bodily injury** to an **employee** while employed in violation of law with an **Insured's** your actual knowledge or the actual knowledge of any of an **Insured's** executive officers;
- C. any **claim** arising from, or in connection with, any **health care event**;
- D. any **employment practices claim**;
- E. any **product liability claim**;
- F. any **claim** seeking to impose liability under the Employee Retirement Income Security Act of 1974 (ERISA), or any amendment or regulation that applies thereto.
- G. any **excess loss** that would have been covered under a state's workers' compensation or occupational disease fund if the **Insured** had complied with all of the legal requirements, including any duty to qualify as a self-insurer, to be a subscriber in good standing in the state fund, or to maintain proper insurance coverage;
- H. any **claim** for which the **Insured** was deprived a defense or subjected to a penalty as a result of the failure to comply with the legal requirements of that state's workers' compensation or occupational disease laws;
- I. any **claim** arising from, or in connection with, any **bodily injury** that is or would be subject to the:
  - 1. Longshore and Harbor Workers' Compensation Act (33 U.S.C. §901 et. seq.);
  - 2. Non-appropriated Fund Instrumentalities Act (5 U.S.C. § 171 et seq.);
  - 3. Outer Continental Shelf Lands Act (43 U.S.C. § 1331 et seq.);
  - 4. Defense Base Act (42 U.S.C. § 1651 et seq.);
  - 5. Federal Coal Mine Health and Safety Act (30 U.S.C. §901 et seq.);
  - 6. Federal Employers Liability Act (45 U.S.C. § 51 et seq.); or,
  - 7. any other federal workers compensation or occupational disease law, including any amendments to, or replacements of, the above-cited provisions.
- J. any **claim** arising from, or in connection with, any **bodily injury** to the master or member of the crew of any vessel;
- K. liability for the acts of another assumed by an **Insured** under any contract or agreement, except as otherwise noted in this policy.
- L. punitive or exemplary damages because of **bodily injury** to an **employee** employed in violation of law;
- M. **bodily injury** intentionally caused or aggravated by an **Insured**; or,
- N. damages payable under the Migrant and Seasonal Agricultural Worker Protection Act (29 USC Sections 1801-1872) and under any other federal law awarding damages for violation of those laws or regulations issued thereunder, and any amendments to those laws.

For the purposes of this Insuring Agreement only, the following exclusion located in the Excess General Exclusions form is deleted:

Any **bodily injury** to an employee that arose out of, and in the course of, employment with an **Insured**. This exclusion includes any injury to the spouse, child, parent, relative or heir of the employee that derives therefrom. It also applies regardless of whether an **Insured** may be liable as an employer or in any other capacity. In addition, the exclusion applies to any duty to share **excess loss** with or repay a third party for **excess loss** as a result of the **bodily**

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#### EXCESS EMPLOYER'S LIABILITY

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**injury.**

## ***V. LIMITS OF LIABILITY***

### ***PER EVENT LIMIT OF LIABILITY—EMPLOYMENT-RELATED ACCIDENT***

The **Company's** duty to pay **excess loss** on behalf of a **scheduled excess insured employer** for any **bodily injury** suffered as a result of an **employment-related accident** that arose from an **event** covered under this Insuring Agreement shall not exceed the Per Event Limit of Liability Employment-Related Accident shown on the Declarations of the Schedule of Excess Insured Employers. This limit shall apply regardless of the number of:

1. **employees** or other persons who sustain injury;
2. **claimants**;
3. **claims**;
4. policies issued by the **Company**; or,
5. **Insureds** who share the Per Event limit.

### ***PER EMPLOYEE LIMIT OF LIABILITY – EMPLOYMENT-RELATED DISEASE***

The **Company's** duty to pay **excess loss** on behalf of a **scheduled excess insured employer** for each **employee** that suffered **bodily injury** as a result of an **employment-related disease** arising from an **event** covered under this Insuring Agreement shall not exceed the Per Employee Limit of Liability - Employment-Related Disease shown on the Declarations of the Schedule of Excess Insured Employers. This limit shall apply regardless of the number of:

1. **claims** brought by the **employee**;
2. **claims** for the cost of any care, loss of services, loss of consortium, or other derivative damages arising from the **employee's** illness or injuries;
3. policies issued by the **Company**; or,
4. **Insureds** who share the Per Employee limit.

### ***POLICY LIMIT OF LIABILITY – EMPLOYMENT-RELATED DISEASE***

The **Company's** duty to pay **excess loss** on behalf of all **scheduled excess insured employers** for all **employees** that suffered **bodily injury** as a result of **employment-related diseases** arising from all **events** covered under this Insuring Agreement shall not exceed the Policy Limit of Liability Employment-Related Disease shown on the Declarations of the Schedule of Excess Insured Employers. This limit shall apply regardless of the number of:

1. **events**;
2. **persons** who sustain injury;
3. **claimants**;
4. **claims**;
5. policies issued by the **Company**; or,
6. **Insureds** who share the Aggregate limit.

## ***VI. ADDITIONAL CONDITIONS***

In addition to the conditions contained in the Excess General Conditions, the following conditions apply to this Insuring Agreement:

### ***A. Settlement.***

The **Company** may settle any **claim** or other matter brought against any **Insured** as a result of an **event** covered under this Insuring Agreement, as the **Company** deems expedient unless prohibited by statute, regulation, rule or order. However, the **Company** shall first provide written notice to the **first named insured**.

### ***B. Compliance with Applicable Laws.***

No **Insured** shall have the right to any coverage that would otherwise be provided under this policy unless that **Insured** was, at all relevant times, in full compliance with all duties and requirements mandated by the applicable law regarding workers' compensation and occupational disease.

### ***C. Compliance with State Fund Requirements.***

No **Insured** shall have the right to any coverage that would otherwise be provided under this policy unless that

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EXCESS EMPLOYER'S LIABILITY

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**Insured** was, at all relevant times, in full compliance with all duties required to participate in the applicable state's workers' compensation, work-related accident or illness, or work-related medical fund. This shall include the duty to pay any contributions and/or premiums due to the fund to ensure participation. It shall also include any duties to report remuneration, "workmen hours," or other information as required by the fund for any reason, including information sufficient to calculate the premium due.



# National Fire & Marine Insurance Company

Omaha, Nebraska

## *EXCESS DEFENSE AND SUPPLEMENTAL PAYMENTS*

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These Excess Defense and Supplemental Payments apply to the following Insuring Agreements as selected under this policy: Excess Professional Liability, Excess Employee Benefits Liability and Excess Employer's Liability.

Subject to the terms and conditions of the policy, including any exclusions:

### *I. NO DUTY TO DEFEND*

In any **claim** covered under this policy, regardless of whether the **Insured** is entitled to a defense under a **scheduled coverage**, the **Company** shall have no duty to defend the **Insured** or pay any **claims expense** under any applicable Insuring Agreement. However, the **Company** shall have the right to participate in the defense and investigation of any **claim** that may, in the **Company's** sole determination, exceed the **scheduled limit**, including the right to defend the **Insured**, if the **Company** so chooses. In addition, the **Company** has no duty to:

- A. defend an **Insured** against a **claim** after the **Insured's** applicable limit of liability is exhausted by the payment of judgments or settlements; or,
- B. appeal any judgment. However, the **Company** has the right, but not the duty, to appeal any judgment that exceeds the **scheduled limit**. If the **Company** decides to appeal any judgment, all costs directly related to the appeal shall be payable by the **Company**, and shall not reduce the applicable limit of liability.

### *II. SUPPLEMENTAL PAYMENTS*

If the **Company** elects to appeal a judgment that exceeds the **scheduled limit**, the **Company** shall pay:

- A. **claims expense** directly related to the appeal; and,
- B. the premium on any bond required to proceed with such an appeal approved by the **Company** or to release attachments to the **Insured's** property. However, the **Company** has no duty to apply for or furnish any such bond. In addition, the **Company** shall have no duty to pay the premium on any bond which has a face value in excess of the remaining limit of liability under the policy.

The **Company** has no duty to pay any **claim** after the **Insured's** applicable limit of liability is exhausted.



# National Fire & Marine Insurance Company

Omaha, Nebraska

## *EXCESS GENERAL DEFINITIONS*

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These Excess General Definitions apply to the following Insuring Agreements as selected under this policy: Excess Professional Liability, Excess Employee Benefits Liability and Excess Employer's Liability.

Whenever used in this policy:

- A. **Additional Insured** means any person or entity listed on a Schedule of Excess Additional Insureds.
  - B. **Authorized insured** means any **Insured** authorized by the **first named insured** to give or receive notice of a **claim** to the **Company**.
  - C. **Bodily injury** means any damage to the human body, including sickness or disease and any mental injury, emotional distress, or death arising therefrom. In addition, it includes damages claimed for the cost of any care, loss of services, or loss of consortium arising therefrom.
  - D. **Business practices claim** means any **claim** arising from an **Insured's**:
    - 1. billing practices; or,
    - 2. advertising activities.
  - E. **Case management** means identifying patients with specific health care needs and developing a plan to ensure an efficient use of resources to achieve the best outcome.
  - F. **Claim** means an express written demand upon an **Insured** for money or services as compensation for civil damages. It also includes a medical incident or potential **claim** for which coverage was granted under a **scheduled coverage**.
  - G. **Claims expense** means all costs and expenses incurred in connection with the investigation, adjustment, and defense of any **claim**. Such costs and expenses shall only include:
    - 1. attorney fees paid to the law firm selected by the **Company** to defend an **Insured**;
    - 2. court costs;
    - 3. expert fees;
    - 4. reporter fees;
    - 5. the cost of any alternative dispute resolution ordered by a court, otherwise required by law or pre-approved by the **Company**;
    - 6. post-judgment interest on that portion of the judgment that does not exceed the limit of liability available under the applicable Insuring Agreement; and,
    - 7. such other costs and expenses that the **Company** determines to be reasonably related to the defense of a **claim**.
- However, **claims expense** does not include:
- 1. **excess loss**;
  - 2. attorney fees awarded to a claimant;
  - 3. the salary of any **employee** of an **Insured**; or,
  - 4. the forgiveness of any amounts owed for the cost of care or services rendered by an **Insured**.
- H. **Company** means the insurance company listed in the Declarations.
  - I. **Counseling** means formal therapy rendered to a patient by a licensed professional approved and credentialed by the

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## EXCESS GENERAL DEFINITIONS

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**Insured** to provide such therapy.

- J. Employee benefits** mean any group benefits administered on behalf of an **Insured's** employees. It includes any group:
1. insurance plans or programs, such as life, health, accident, dental, or legal advice;
  2. Individual Retirement Accounts (IRAs), salary reduction plans under I.R.S. Code 401(k) or any amendment thereto, savings plans, or employee stock subscription plans;
  3. travel or vacation plans; or,
  4. workers' compensation, occupational disease, unemployment, Social Security, or disability benefits insurance.
- K. Employment practices claim** means any **claim** brought by an employee, or applicant for employment, which alleges the **Insured**:
1. breached an actual or implied contract of employment;
  2. violated an anti-discrimination statute;
  3. engaged in any form of harassment;
  4. engaged in libel or slander related to an employment relation;
  5. retaliated for the exercise of a public right or duty;
  6. engaged in intentional or negligent infliction of emotional distress arising out of an employment relationship;
  7. wrongfully failed to hire, promote, or grant tenure;
  8. wrongfully demoted; or,
  9. wrongfully terminated employment.
- L. Event** means accident. All injuries arising from:
1. the same or related acts, errors or omissions; or,
  2. the continuous or repeated exposure to substantially the same harmful conditions,
- will be considered one **event**. For the purposes of this definition, all injuries to a mother and fetus (or fetuses) from conception through delivery shall constitute one **event**.
- M. Excess loss**
1. **Excess loss** means civil damages, including prejudgment interest, which an **Insured** becomes legally obligated to pay through adjudication or settlement which exceed:
    - a. all applicable **scheduled limits** of any **scheduled coverages**; and,
    - b. all applicable limits of any other valid and collectible insurance policies or other program of indemnity that applies the **Insured's** liability for the **event**.
  2. **Excess loss** does not include:
    - a. any damages which are greater than the applicable limit of liability;
    - b. any damages which are less than the **scheduled limit** or any other applicable insurance;
    - c. any injunctive or other equitable relief;
    - d. **claims expense**;
    - e. attorney fees awarded to a claimant as a fine, penalty or sanction based upon the **Insured's** misconduct. However, attorney fees awarded as part of the claimant's damages in a covered **claim** for any other purpose will be included as **excess loss**;
    - f. the salary of any employee of an **Insured**; or,
    - g. the forgiveness of any amounts owed for the cost of care or services rendered by an **Insured**.
- N. Extended reporting period** means the period of time after the cancellation or nonrenewal of claims-made coverage during which the **Insured** may report a **claim**.
- O. First named insured (or FNI)** means the entity or person listed as the First Named Insured on the Declarations.
- P. First discovered** means the date on which the **Insured** first knew, or reasonably should have known, of the **claim** or **potential claim**.

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EXCESS GENERAL DEFINITIONS

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- Q. **First reported** means the date that coverage for the **claim** was originally triggered under a **scheduled coverage** that applies to the **Insured's** liability for the **event**. All **claims** arising from the same **event** shall be considered as having been **first reported** when coverage for the first such **claim** was triggered.
- R. **Health care event** means any **event** in the rendering of, or failure to render, **professional services** that results in injury to a patient. All injuries arising from the same or related acts, errors or omissions in furnishing **professional services** shall be considered one **health care event**.
- S. **Health care plan** means medical benefits plan administered by a health maintenance organization (HMO), preferred provider organization (PPO), or other similar managed care organization or self-insured program.
- T. **Insured** means any person or entity entitled to coverage as specified under the *WHO IS INSURED* section of the applicable Insuring Agreement.
- U. **Managed care event** means any **event** in the rendering of, or failure to render, **managed care services** that results in injury. All injuries arising from the same or related acts, errors, or omissions in the furnishing of **managed care services** shall be considered one **managed care event**.
- V. **Managed care services** means services provided to manage and/or administer a **health care plan**. These services can include any of the following acts provided on behalf of the **health care plan**:
1. the creation, sale and marketing of a **health care plan**;
  2. the selection, credentialing and contracting of health care providers;
  3. the evaluation of the cost, quality and proper utilization of **treatment** options available or being provided to participants;
  1. the adjustment, investigation and processing of claims for benefits; or,
  2. **case management**.
- However, **managed care services** do not include **treatment** rendered, or which should have been rendered, to a patient.
- W. **Non-standard policy** means a policy issued by a market of last resort, where coverage is typically limited or restricted due to prior claims or other specific risk issues identified as part of a risk profile.
- X. **Peer review** means the evaluation of a health care provider's fitness and qualification to provide **treatment** by a professional review board or committee through formally adopted, written procedures for the purposes of granting, determining or revoking clinical staff privileges at a hospital, clinic or other medical facility that qualifies as an **Insured** and which results in a patient alleging damages arising from a **health care event**.
- Y. **Policy period** means the period of time listed on the Declarations as the Policy Period. However, if the policy is terminated before the later of the dates listed on the Declarations, **policy period** means the period between the first date listed on the Declarations and the date the policy was terminated.
- Z. **Product liability claim** means any **claim** arising from a defective good or product invented, designed, manufactured, or sold by an **Insured**. However, it does not include any **claim** arising from a good or product which was specifically used by the **Insured** to provide **treatment** to the **Insured's** own patient.
- AA. **Professional services** means **treatment, utilization management and peer review** not involving **managed care services**.
- BB. **Retroactive date** means the date prior to which an **Insured** has no coverage under the applicable Insuring Agreement. The **retroactive date** is listed on the applicable Excess Schedule of Insureds for each **Insured** to which a **retroactive date** applies.

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EXCESS GENERAL DEFINITIONS

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- CC. **Scheduled coverage** means any policy of underlying insurance, or other program of indemnity, as shown on the Excess Schedule of Underlying Insurance that applies to the **Insured's** liability for an event. However, it does not include any policy that is specifically designed to provide coverage in excess of this policy.
- DD. **Scheduled limit** means the amount shown as the Scheduled Limit for the applicable **scheduled coverage** on the corresponding Excess Schedule of Underlying Insurance.
- EE. **Social services** means programs provided by an **Insured** to help maintain or improve the quality of life for the patient, including family counseling and educational programs. These programs do not include therapy for the direct benefit of anyone other than the patient.
- FF. **Surgical assistant** means a person directly assisting as a non-physician first assistant in surgical procedures, including a person acting as a nurse surgical assistant or a physician surgical assistant.
- GG. **Treatment** means:
1. the rendering of medical, surgical, dental, nursing services, **counseling** or **social services** to a patient. This shall include first aid rendered at the scene of an accident without expectation of monetary compensation;
  2. the provision of medical examinations, opinions, or consultations regarding a person's medical condition within the **Insured's** practice as a licensed health care provider;
  3. the handling of dead bodies, including autopsies, organ donation or harvesting or other procedures; or,
  4. the furnishing of any of the following, but only as it relates to the rendering of medical, surgical, dental, nursing services, **counseling** or **social services** to a patient:
    - a. food and beverages; or,
    - b. medical, surgical or dental supplies, appliances or drugs.
- HH. **Utilization management** means the process of evaluating **treatment** to a patient for its appropriateness or necessity that results in a patient alleging damages arising from a **health care event**. In clarification and not in limitation of the foregoing, **utilization management** will include prospective review of proposed **treatment**, concurrent review of **treatment**, retrospective review of already rendered **treatment**, disease management, **case management**, and the use of predictive modeling to identify individuals or populations for disease management or **case management**.



# National Fire & Marine Insurance Company

Omaha, Nebraska

## *EXCESS GENERAL EXCLUSIONS*

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These Excess General Exclusions apply to the following Insuring Agreements as selected under this policy: Excess Professional Liability, Excess Employee Benefits Liability and Excess Employer's Liability.

### *I. EXCLUSIONS*

This policy does not apply to:

- A. Any **claim** arising from, or in connection with, any act listed in the subparagraphs below, and any **event** or **health care event** when intertwined with, or inseparable from, any such act:
  - 1. any malicious act or intentional tort;
  - 2. any actual or threatened sexual act, behavior or conduct, including, but not limited to, assault, exploitation, harassment or molestation, by any person of another person while in the care, custody, or control of any **Insured**, whether under the guise of **treatment** or not; or the negligent employment, investigation, supervision, reporting to the proper authorities, or failure to so report, or retention of a person for whom any **Insured** is or ever was legally responsible and whose conduct would be excluded under this exclusion;
  - 3. any personal, romantic, sexual, or other non-professional relationship with a current, former, or prospective patient, whether under the guise of **treatment** or not;
  - 4. any willful violation of any law, statute, or regulation;
  - 5. any dishonest or fraudulent act;
  - 6. any breach of contract or guaranty regarding the efficacy of **treatment**;
  - 7. **professional services** rendered or which should have been rendered if it is determined that an **Insured** was in any manner, extent or degree impaired by or under the influence of alcohol, narcotics, hallucinogenic agents, drugs or intoxicants of any nature or kind; or,
  - 8. any fabrication, alteration or destruction, in whole or in part, of any medical record pertaining to the person whose **treatment** is the subject of the **claim**, including, but not limited to, any medical or business record pertaining to the condition, **treatment** and/or consent of such person to any **professional service**, in whole or in part, by or at the direction of an **Insured**, after the happening of the activity reflected in such document or record. However, this exclusion does not apply to bona fide corrections to records made in accordance with applicable generally accepted professional standards, but this exception only applies if such corrections are identified as such, dated and signed by the person making them.
- B. Any **claim** arising from, or in connection with, any **treatment** rendered by any individual who was not authorized to provide such services due to the suspension, revocation, surrender, or restriction of, or failure to obtain, the proper professional license.
- C. Any **claim**, suit or other matter seeking:
  - 1. injunctive relief;
  - 2. any relief other than **excess loss**; or,
  - 3. the award of fines, penalties or sanctions.
- D. Any **bodily injury** to an employee that arose out of, and in the course of, employment with an **Insured**. This exclusion includes any injury to the spouse, child, parent, relative or heir of the employee that derives therefrom. It also applies regardless of whether an **Insured** may be liable as an employer or in any other capacity. In addition, the exclusion applies to any duty to share **excess loss** with or repay a third party for **excess loss** as a result of the **bodily injury**.
- E. Any **claim** arising from, or in connection with, any obligation or damages arising under any law related to:

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### EXCESS GENERAL EXCLUSIONS

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1. workers' compensation;
  2. occupational disease;
  3. unemployment compensation;
  4. disability benefits; or,
  5. other similar law that provides for scheduled benefits as a result of an injury or disease.
- F. Any **claim** arising from, or in connection with, any **excess loss** covered under an **Insured's** directors and officers policy.
- G. Any **claim** arising from, or in connection with, any **excess loss** or **claim**, which is initiated, alleged, or caused to be brought about, by any **Insured** covered by this policy against any other **Insured** covered by this policy. This exclusion does not apply if the **claim** arises out of an **Insured** providing **professional services** to another **Insured**.
- H. Any **claim**:
1. arising from, or in connection with, any rendering of, or failure to render, **professional services** for which the **Insured** has, or is eligible for, complete immunity as a volunteer or as an employee or contractor of a federal, state, or local government; or,
  2. involving an **Insured** who has, or is eligible for, insurance, indemnity, or any other protection pursuant to any federal, state, or local laws, including but not limited to the Federal Tort Claims Act.
- I. Any default judgment or other **claim** that the **Company** was unable to timely investigate or defend due to the acts or omissions of the **Insured**.
- J. Any damages:
1. for which an **Insured** has coverage under a nuclear energy liability policy issued by the:
    - a. Nuclear Energy Liability Insurance Association;
    - b. Mutual Atomic Energy Liability Underwriters;
    - c. Nuclear Insurance Association of Canada; or,
    - d. any successor or assign of the entities set forth in the subparagraphs above.This policy also does not apply if such coverage did exist but was terminated by the exhaustion of the **Insured's** limit of liability.
  2. resulting from the hazardous properties of nuclear material for which the **Insured**:
    - a. was required to maintain financial protection under the Atomic Energy Act of 1954 or any amendment or regulation that applies thereto; or,
    - b. was entitled to indemnity by the United States government or any agency thereof or would have been entitled to had this policy not been issued.
- K. Any **claim** arising from, or in connection with, an **Insured's** duty to comply with the Americans with Disabilities Act of 1990 (ADA). This also includes any amendment or regulation that applies thereto or any comparable federal, state, or local law.
- L. Any **claim** arising from, or in connection with, an **Insured's** violation of the Racketeer Influenced Corrupt Organizations Act (RICO) or any comparable federal, state or local laws or any amendment or regulation that applies thereto.
- M. Any **claim** arising from, or in connection with, an **Insured's** violation of any federal, state or local securities law or regulation.
- N. Any **claim** or **potential claim** arising from, or in connection with, a **managed care event**.

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EXCESS GENERAL EXCLUSIONS

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Edition Date: 10/2016



- O. Any **claim** arising from, or in connection with, the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate **electronic data**. As used in this exclusion, **electronic data** means information, facts, or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices, or any other media that are used with electronically controlled equipment.
- P. Any **claim** arising from, or in connection with, any **excess loss** or **claims expense** covered under any cyber or privacy insurance coverage, including but not limited to, any coverage for network security and privacy, regulatory fines and penalties, patient notification and credit monitoring, or data recovery cost.
- Q. Any **claim** otherwise covered under this policy where providing coverage would be in violation of any U.S. economic trade sanctions such as, but not limited to, those sanctions administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control. Under this exclusion, such coverage shall be null and void. Similarly, any coverage relating to or referred to in any certificates or other evidences of insurance or any **claim** that would be in violation of U.S. economic or trade sanctions as described above shall also be null and void.

## *II. OTHER EXCLUSIONS - MULTI-POLICY AND ANTI-STACKING*

If more than one Insuring Agreement or policy applies, the following multi-policy and anti-stacking exclusions apply:

- A. If more than one policy issued by the **Company** applies to the **excess loss** liability of an **Insured**, the **Company's** duty to pay **excess loss** will be confined to the policy containing the largest applicable limit.
- B. If more than one Insuring Agreement under this policy applies to the **excess loss** liability of an **Insured**, the **Company's** duty to pay **excess loss** will be confined to the Insuring Agreement containing the largest applicable limit.

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### EXCESS GENERAL EXCLUSIONS

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# National Fire & Marine Insurance Company

Omaha, Nebraska

## *EXCESS GENERAL CONDITIONS*

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Each condition contained in this form, or in any attached form, is a separate and distinct condition precedent to coverage. Please read and review each condition carefully.

These Excess General Conditions apply to all Insuring Agreements selected under this policy.

A. Representations and Change Provision.

1. By acceptance of this policy, each **Insured** agrees, represents, and warrants that the statements and particulars made in all applications, including any statements and particulars made in any and all documents, supplemental pages or other attachments ("Attachments") for the purposes of any application, are true and correct. It is further understood and agreed that any application, and any Attachments, are incorporated into, and shall form a part of, this policy. Therefore, this policy and any endorsements, and all applications and Attachments, embody all agreements between the **Insured** and the **Company**, or any of its authorized representatives, relating to this insurance.
2. In the event any application was executed or endorsed by the **Insured's** agent, the **Insured** acknowledges that the agent has acted under the **Insured's** express authority and that the **Insured** has thoroughly reviewed the information contained on any application. The representations made by the **Insured** in the applications, and Attachments, are the basis for the coverage provided, as well as the **Company's** calculation of the applicable premium. Therefore, it is understood and agreed that, to the extent permitted by law, the **Company** reserves the right to rescind this policy, or deny any coverage provided for a claim, based upon any material misrepresentation made by the **Insured**. Material misrepresentation as used herein means concealment, misrepresentation, omission or fraud which, if known by the **Company**, would have led to refusal by the **Company** to make this contract or provide coverage, or to make this contract or provide coverage on different terms or conditions.
3. No knowledge or information possessed by any **Insured** shall be imputed to any other **Insured**, except for material facts or information known to the person or persons who signed the application. In the event of any material misrepresentation in connection with any of the particulars or statements in the Application, this policy shall be void with respect to any **Insured** who knew of such material misrepresentation or to whom such knowledge is imputed.
4. The **Company** reserves all rights based upon any material misrepresentation by the **Insured**.

B. Reporting Requirements.

1. An **authorized insured** shall immediately report any **claim** arising from an event:
  - a. that the **authorized insured** reasonably believes will result in damages that exceed the **scheduled limit**;
  - b. for which the **Company** providing the **scheduled limit** has set a loss reserve which exceeds \$100,000;
  - c. for which the claimant's demand exceeds the **scheduled limit**;
  - d. that caused:
    - (1) neurological, sensory, or systemic deficits to the injured party (such as brain damage; permanent paralysis, loss of sight or hearing, etc.);
    - (2) permanent damage related to an injury during child delivery or the administration of anesthesia;
    - (3) limitations on the injured party's activities of daily living (such as a loss of a limb); or,
    - (4) death.
2. The report of any **claim** shall be in writing. The report shall include the following information:
  - a. the identity of all **Insureds** implicated;
  - b. all reasonably obtainable information with respect to the time, place and circumstances of the event;
  - c. the nature and extent of the injury;
  - d. the names and addresses of any injured persons; and,
  - e. the names and addresses of available witnesses.

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## EXCESS GENERAL CONDITIONS

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3. All such reports and documents shall be directed to the **Company** using the contact information listed on the contact sheet attached to the top of this policy.
4. An **event** reported to the **Company** as part of risk management or loss control services shall not be considered the report of a **claim**.

C. Assistance and Cooperation.

1. After any **claim** or **potential claim**, the **Insured** shall not contract any expense, voluntarily assume any liability in any situation; nor make or contract any settlement of the **claim** or **potential claim**, except at the **Insured's** own cost and responsibility, without the written authorization of the **Company**.
2. The **Company's** duty to defend and pay loss for any **claim** otherwise covered under this policy is strictly conditioned upon the **Insured's** cooperation with the **Company** in the investigation, defense, and/or settlement of any matter to which this policy applies. Such cooperation shall include, but is not limited to:
  - a. attendance at any deposition, hearing, or trial, as requested by the **Company**;
  - b. assistance in securing and giving evidence;
  - c. obtaining the attendance of witnesses; and,
  - d. doing nothing to prejudice the **Company's** ability to investigate, defend, and/or manage any matter to which this policy applies;
  - e. submitting to recorded and/or sworn statements and to examinations under oath as requested by the **Company**; and,
  - f. promptly producing, at the **Company's** request, any records, documents and other information in the **Insured's** possession, custody or control.
3. If a **claim** or **potential claim** is, or might be, covered under any other policy of insurance, the **Insured** shall promptly give notice to such other insurers. The **Insured** shall also provide the **Company** with copies of the applicable policies. The **Insured** shall further act in good faith to enforce any rights held under such policies, including the right to a defense.

D. Premiums.

1. The **Company's** obligation to perform any duty under the policy is strictly conditioned upon the payment of the premium when due. Similarly, the **Company's** obligation to perform any duty pursuant to a renewal of coverage provided under the policy shall be strictly conditioned upon the payment of the renewal premium when due. Therefore, this policy shall not be deemed to have been issued, delivered, or renewed and shall not be applicable to any matter which would otherwise be covered herein, until:
  - a. the premium has been paid in full; or,
  - b. if the **Company** has agreed to finance the policy, the first installment has been paid in full.If payment is made by check, electronic transfer or money order, it shall not be considered "paid in full" until honored by the payor's bank.
2. Any premium designated as "deposit premium" is merely a deposit on the actual amount owed. At the close of the **policy period**, the **Company** will compute the earned premium for that period. The "deposit premium" will then be credited to that amount. If the "deposit premium" exceeds the earned premium, the **Company** will refund the difference to the **first named insured**. If the earned premium exceeds the "deposit premium", the **Company** will bill the **first named insured** for the difference.
3. The **first named insured** shall maintain records of the information necessary for premium computation. The **first named insured** shall send copies of these records to the **Company** at the end of the **policy period** as directed by the **Company**. Such information shall be subject to audit and verification by the **Company**.

E. Inspection and Audit.

The **Company** shall be permitted, at its own discretion and for its own benefit, to audit an **Insured's** property, operations, and any business records. The **Company** shall also have the right to obtain a copy of any current or prior insurance records. Any findings or recommendations made by the **Company** as a result of an audit shall inure solely to the **Company's** benefit. As a result, they may not be used as evidence of the **Insured's** compliance with any safety regulations or other industry standards.



F. Other Insurance.

Unless otherwise noted in an Insuring Agreement:

1. If any other valid and collectible insurance is available to any **Insured** with respect to any liability arising from a **claim** or suit which is covered by this policy, and such other insurance is afforded under a policy or **extended reporting period** issued by a past, present or future parent, subsidiary or affiliate of the **Company**:
  - a. if the **Insured** has secured coverage from the **Company** or any of its affiliates on a **non-standard policy**, then the **Company's** duty to pay **excess loss** will be confined to the **non-standard policy**;
  - b. if subsection (a) does not apply, and an **Insured** is named as a specific named insured under any other valid and collectible insurance available to that **Insured**, then any duty to pay **excess loss** is confined to the policy where the **Insured** is specifically named;
  - c. if neither subsection (a) nor (b) above apply, any duty to pay **excess loss** will be confined to the policy containing the largest applicable limit.
2. If any other valid and collectible insurance is available to any **Insured** with respect to any liability arising from a **claim** or suit which is covered by this policy, and such other insurance is not afforded under a policy or **extended reporting period** issued by a past, present or future parent, subsidiary or affiliate of the **Company**, then this insurance will be excess over such other insurance even if such other insurance is stated to be primary, excess, contingent or otherwise. The **Company** will pay only the **Company's** share of the **excess loss**, if any, that exceeds the sum of:
  - a. the total amount that all such other insurance would pay for the **excess loss** in the absence of this insurance; and,
  - b. the total of all deductible and self-insured amounts under all such other insurance.
3. If the **Insured** has such other insurance that applies on the same basis, whether excess or primary, the **Company's** liability for **excess loss** shall not exceed:
  - a. the amount that would be payable if each insurer contributed by equal shares until the lowest limit contained in any applicable policy was exhausted or the entire **excess loss** was paid, whichever occurred first. If any **excess loss** remains, the **Company** will continue to contribute by equal shares until any of the following occurs:
    - (1) the applicable limits from this policy are exhausted,
    - (2) the limits of all applicable policies have been exhausted, or
    - (3) the entire amount is paid.This method shall only apply if all other such insurance provides for contribution by equal shares; or,
  - b. the ratio between the limit of liability available to the **Insured** under this policy and the total limit of liability under all applicable policies until the applicable limits from this policy are exhausted or the entire **excess loss** is paid. This method shall only apply if any applicable policy does not provide for contribution by equal shares.
4. The **Company** will have no duty to defend the **Insured** against any suit if any other insurer has a duty to defend the **Insured** against that suit. If no other insurer defends, the **Company** will undertake to do so, but the **Company** will be entitled to all of the **Insured's** subrogation rights against all those other insurers to the extent of any payments made, or as allowed by law.
5. This condition shall not apply if such other valid insurance is written to be specifically excess of this policy.

G. Maintenance of Scheduled Coverages.

1. The **scheduled coverages** shall be maintained by the **Insured** at all times and the **Insured** shall do nothing to restrict the terms or limits provided by the **scheduled coverages**.
2. The limits of insurance applicable to the policies listed on the Schedule of Underlying Insurance may not be reduced or exhausted for any reason other than the payment of judgments or settlements which would be covered by the provisions of this policy.
3. The limits of insurance applicable to any Self Insured Retention (SIR) listed in the Schedule of Underlying Insurance may not be reduced or exhausted for any reason other than the payment of judgments or settlement which would be covered by the provisions of this policy and **claims expense** associated with those payments, if **claims expense** depletes the SIR.
4. If the **Insured** fails to maintain or meet all terms and conditions of a **scheduled coverage** or if the company, trust or other entity providing the **scheduled coverage** shall become insolvent, the **Company's** duty to pay **excess loss** will apply as if the **scheduled coverage** had been so maintained.



H. Reduction or Exhaustion of Scheduled Limits.

If the **Insured's** applicable **scheduled limit** has been reduced or exhausted by the payment of **claims** for **events** that would otherwise be eligible for coverage under this policy, the **Company** will pay **excess loss** as if the **scheduled coverage** was not exhausted, in addition to any applicable deductible.

I. Subrogation.

The **Company** shall be subrogated to the rights of any **Insured** to the extent of any payments made, or as allowed by law. The **Insured** shall do nothing to prejudice those rights. At the **Company's** request, the **Insured** shall bring suit or transfer those rights to the **Company**. The **Insured** shall also help the **Company** enforce its rights.

J. First Named Insured.

1. The **first named insured** shall act as the agent of all **Insureds** with respect to this policy, with full authority to bind all **Insureds**. This shall include, but is not limited to:
  - a. receipt of notices of cancellation or nonrenewal;
  - b. requesting or receiving endorsements issued to form a part of this policy;
  - c. payment of premiums due;
  - d. receiving return premium; and,
  - e. receiving and/or responding to an offer for an **extended reporting period** for any **Insured**.
2. The **first named insured** shall notify in writing the **Company** and all **Insureds** of any changes that might affect the insurance provided under this policy.

K. Policy Territory.

Unless otherwise noted in an Insuring Agreement, this policy shall only apply to a **claim** filed within the United States, including its territories and possessions. However, unless otherwise noted, a **claim** may be based upon **professional services** provided anywhere in the world so long as the **Insured** had prior approval to provide such services from the appropriate governmental authorities and the **Company**.

L. Cancellation, Nonrenewal and/or Termination of Coverage.

1. This policy may be canceled by the **first named insured**. The **first named insured** shall mail written notice to the **Company** requesting cancellation. The cancellation shall be effective on the date requested by the **first named insured** or the date the notice is received by the **Company**, whichever is later.
2. Any coverage contained within this policy may be terminated by the **first named insured**. The **first named insured** shall mail written notice to the **Company** requesting the coverage termination. The termination shall be effective on the date requested by the **first named insured** or the date the notice is received by the **Company**, whichever is later.
3. This policy, or any coverage contained therein, may also be canceled, terminated or nonrenewed by the **Company**. The **Company** will send notice to the **first named insured** at the last address on record with the **Company**.
4. If the **first named insured** cancels this policy, or terminates any coverage contained therein, earned premium shall be computed in accordance with the standard short rate tables and procedure. If the **Company** cancels this policy, or terminates any coverage contained therein, earned premium shall be computed pro rata. Premium adjustments shall be made within a reasonable period of time after cancellation. However, payment or tender of unearned premium shall not be a condition of cancellation.
5. If the **Company** cancels or nonrenews an **Insured's** policy for any reason other than non-payment of premium, the **Company** shall provide written notice to the **first named insured** not less than thirty (30) days prior to the effective date of such cancellation or nonrenewal. If the **Company** cancels an **Insured's** policy for nonpayment of premium, the **Company** shall provide written notice to the **first named insured** not less than ten (10) days prior to the effective date of such cancellation or nonrenewal.
6. If the **Company** cancels or nonrenews an **Insured's** policy, the **Insured's** coverage under that policy shall terminate on the earlier of:
  - a. the date stated on the cancellation or nonrenewal notice; or,
  - b. the date the **Insured** procures replacement coverage.



M. Modifications.

Except as provided herein, this policy may not be modified except by written endorsement attached to and made a part of this policy by the **Company**. The **Company's** decision not to insist on the **Insured's** compliance with any provision of this policy shall not operate to waive, modify, or void the provision.

N. Bankruptcy, Insolvency or Non-Payment by an Insured.

The filing of bankruptcy by, or the insolvency of or non-payment by, an **Insured**, or by any other entity providing a **scheduled coverage**, shall not act to modify any duty owed by the **Insured** or the **Company** under the policy. Under no circumstances will such bankruptcy, insolvency or non-payment require the **Company** to assume, or in any way be responsible for, any **scheduled coverage**, or otherwise assume any obligation owed by any **Insured** under this policy. Unless prohibited by law, the **Company** will have no duty to pay any **excess loss** for any **claim** unless the **Insured**, or any other entity providing **scheduled coverage**, pays the limits of liability of the **scheduled coverage** in full.

O. Non-assignability.

No interest of an **Insured** under this policy shall be assignable without the prior written consent of the **Company**. However, if the **Insured** is a person and dies, the coverage afforded by this policy shall inure to the benefit of that **Insured's** estate.

P. Separation of Insureds.

Except for the applicable limits of liability and any duties specifically assigned to the **first named insured**, this policy applies:

1. separately to each **Insured** against whom a **claim** is made; and,
2. as if each **Insured** were the only **Insured** under this policy.

Q. Action Against the Company.

1. No action shall lie against the **Company** unless each **Insured** is in full compliance with all of the terms of this policy.
2. No person shall have the right to join the **Company** as a party to a **claim** to determine the **Insured's** liability under this policy. Further, an **Insured** shall not interplead the **Company** into a **claim**.
3. No action shall lie against the **Company** until the amount of **excess loss** has been finally determined by entry of judgment or written agreement between the **Insured**, the claimant and the **Company**. Once the amount of **excess loss** has been finally determined, the claimant shall be entitled to recover under the terms of this policy.

R. Arbitration.

The **Company** and the **Insured** agree that any dispute, **claim** or controversy arising out of, relating to, or in connection with this policy, whether brought by or on behalf of the **Insured**, **Company**, or any other party, that the **Company** may elect to submit any such dispute, **claim** or controversy to binding arbitration, in accordance with Title 9 USC Sec. 1 et seq (the Federal Arbitration Act) and shall be governed by the Commercial Arbitration Rules of the American Arbitration Association.

The arbitration shall be presided over by three arbitrators chosen from the Commercial Insurance Panel of the American Arbitration Association. The arbitrators shall be governed by the law of the state of the address of the **first named insured**, as set forth on the Declarations. The arbitration shall take place in the county that the capital of that state is located.

The arbitrators shall have the discretion to order pre-arbitration discovery, including an exchange of documents and deposition of potential witnesses. Each party shall bear its own arbitration costs and expenses including attorneys' fees, unless otherwise provided by law.

Any arbitration award shall be in writing and shall specify the factual and legal bases of the award. Judgment on the award rendered by the arbitrator shall be final and may be entered in any court having jurisdiction thereof. Furthermore, this arbitration provision shall be a complete defense to any suit, action or proceeding in any federal, state or local court or before any administrative tribunal with respect to any dispute, **claim** or controversy arising out of, relating to or in



connection with this policy.

S. Terms Conform to Statute or Regulation.

If any term of this policy, or any duty arising therefrom, would cause the **Company** to violate any federal, state or local law or regulation, the policy is amended to bring the **Company** into compliance with such statute or regulation.

T. Fraud Warning.

Any person who knowingly and with intent to injure, deceive, or defraud any insurance company or other person files an application for insurance containing any materially false information or fails to provide complete information or conceals, for the purpose of misleading information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and may be prosecuted under state law and may be guilty of a felony and subject to criminal and civil penalties, fines, denial of insurance or confinement in prison.



PRIMARY POLICY NUMBER: N/A  
EXCESS POLICY NUMBER: EN004806

THIS NOTICE IS ATTACHED TO AND MADE PART OF YOUR POLICY IN RESPONSE TO  
THE DISCLOSURE REQUIREMENTS OF THE TERRORISM RISK INSURANCE ACT. THIS  
NOTICE DOES NOT GRANT ANY COVERAGE OR CHANGE THE POLICY

DISCLOSURE PURSUANT TO TERRORISM RISK INSURANCE ACT

SCHEDULE\*

Terrorism Premium Quoted - Primary Policy (for Certified Acts) \$ N/A

Terrorism Premium Quoted - Excess Policy (for Certified Acts) \$ N/A

The portion of premium that is attributable to coverage for certified acts of terrorism is shown in the Schedule of this endorsement if such coverage is purchased, and does not include any charges for the portion of losses covered by the United States Government under the Act.

Additional information, if any, concerning the terrorism premium:

Coverage for acts of terrorism is included in your policy unless you sign and return this document indicating that you are declining coverage for certified acts of terrorism.

\* Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.

You are hereby notified that under the Terrorism Risk Insurance Act, as amended, you have a right to purchase insurance coverage for losses resulting from acts of terrorism. *As defined in Section 102(1) of the Act:* The term "act of terrorism" means any act or acts that are certified by the Secretary of the Treasury - in consultation with the Secretary of Homeland Security, and the Attorney General of the United States - to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

YOU SHOULD KNOW THAT WHERE COVERAGE IS PROVIDED BY THIS POLICY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM, SUCH LOSSES MAY BE PARTIALLY REIMBURSED BY THE UNITED STATES GOVERNMENT UNDER A FORMULA ESTABLISHED BY FEDERAL LAW. HOWEVER, YOUR POLICY MAY CONTAIN OTHER EXCLUSIONS WHICH MIGHT AFFECT YOUR COVERAGE, SUCH AS AN EXCLUSION FOR NUCLEAR EVENTS. UNDER THE FORMULA, THE UNITED STATES GOVERNMENT GENERALLY REIMBURSES 85% THROUGH 2015; 84% BEGINNING ON JANUARY 1, 2016; 83% BEGINNING ON JANUARY 1, 2017; 82% BEGINNING ON JANUARY 1, 2018; 81% BEGINNING ON JANUARY 1, 2019, AND 80% BEGINNING ON JANUARY 1, 2020, OF COVERED TERRORISM LOSSES EXCEEDING THE STATUTORILY ESTABLISHED DEDUCTIBLE PAID BY THE INSURANCE COMPANY PROVIDING THE COVERAGE. THE PREMIUM

TERRORISM RISK INSURANCE ACT

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Edition Date: 3/2015



CHARGED FOR THIS COVERAGE IS SET FORTH ABOVE AND DOES NOT INCLUDE ANY CHARGES FOR THE PORTION OF LOSS THAT MAY BE COVERED BY THE FEDERAL GOVERNMENT UNDER THE ACT.

YOU SHOULD ALSO KNOW THAT THE TERRORISM RISK INSURANCE ACT, AS AMENDED, CONTAINS A \$100 BILLION CAP THAT LIMITS U.S. GOVERNMENT REIMBURSEMENT AS WELL AS INSURERS' LIABILITY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM WHEN THE AMOUNT OF SUCH LOSSES IN ANY ONE CALENDAR YEAR EXCEEDS \$100 BILLION. IF THE AGGREGATE INSURED LOSSES FOR ALL INSURERS EXCEED \$100 BILLION, YOUR COVERAGE MAY BE REDUCED.

By receipt of this Disclosure, you have been notified that under the Terrorism Risk Insurance Act, as extended on December 22, 2005, and amended on December 31, 2007 and January 12, 2015, any losses resulting from certified acts of terrorism under this policy coverage may be partially reimbursed by the United States Government, may be subject to a \$100 billion cap that may reduce the coverage provided. By receipt of this Disclosure, you have been notified of the portion of the premium attributable to such coverage.

**ELECTION TO PURCHASE TERRORISM COVERAGE:**

IF YOU ELECT TO PURCHASE THE TERRORISM COVERAGE DESCRIBED IN THIS DISCLOSURE NOTICE, YOU NEED DO NOTHING FURTHER. COVERAGE FOR ACTS OF TERRORISM WILL BE AUTOMATICALLY ADDED TO YOUR POLICY FOR THE PREMIUM SET FORTH ABOVE.

**DECLINATION OF TERRORISM COVERAGE:**

IN ORDER TO DECLINE TO PURCHASE COVERAGE, I UNDERSTAND THAT I MUST SIGN BELOW AND RETURN THIS DISCLOSURE FORM TO MY AUTHORIZED REPRESENTATIVE OR INSURANCE COMPANY. I FURTHER UNDERSTAND THAT IF I FAIL TO SIGN THIS DISCLOSURE FORM AND RETURN IT, I HAVE ELECTED TO PURCHASE TERRORISM COVERAGE AND THE PREMIUM AMOUNT(S) SET FORTH ABOVE WILL BE ADDED TO MY POLICY PREMIUM, AND COVERAGE FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM WILL BE ADDED TO MY POLICY.

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**Policyholder/Applicant's Signature - Declination of Terrorism Coverage Only**

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**Print Name**

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**Date**

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**Name of Insurer**

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TERRORISM RISK INSURANCE ACT

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Edition Date: 3/2015



# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.  1	Forming Part of Policy No.  EN004806	First Named Insured  LSI HoldCo LLC
Effective Date of Endorsement  03/01/2017		

## ***FULL TIME EQUIVALENTS (FTE) ENDORSEMENT EXCESS PROFESSIONAL LIABILITY INSURING AGREEMENT***

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the Excess Professional Liability Insuring Agreement as follows:

### **MODIFIED COVERAGES**

The following is added to *WHO IS INSURED*:  
an **FTE excess professional liability insured**

The following definitions are added to *ADDITIONAL DEFINITIONS*:

**FTE excess professional liability insured** means any **Insured** listed as an FTE Excess Professional Liability Insured on the attached Schedule of Excess Professional Liability Insureds or on the attached Schedule of Insureds - Departed Excess Professional Liability Insureds.

**FTE position** means a full time equivalent position with that is filled by any number of **FTE excess professional liability insureds** during the **policy period**.

The following exclusion is added to *ADDITIONAL EXCLUSIONS*:

any **claim** arising from **professional services** rendered, or which should have been rendered, by an **FTE excess professional liability insured**, unless such **professional services** were rendered or should have been rendered in the course and scope of an **FTE excess professional liability insured's** duties while occupying an **FTE position** on behalf of a **scheduled excess professional liability insured** at the time of the **health care event**.

The following conditions are added to *ADDITIONAL CONDITIONS*:

#### **FTE Providers.**

A **scheduled excess professional liability insured** may have multiple **FTE positions** during the **policy period**. Each such **FTE position** shall be identified numerically (e.g., FTE 1; FTE 2; etc.) on the attached Schedule of Excess Professional Liability Insureds or on the attached Schedule of Insureds - Departed Excess Professional Liability Insureds.

**FTE excess professional liability insureds** share in the limits of liability provided to an **FTE position**.

All other terms and conditions of the policy remain unchanged.

### **EXCESS PROFESSIONAL LIABILITY**

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# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.  2	Forming Part of Policy No.  EN004806	First Named Insured  LSI HoldCo LLC
Effective Date of Endorsement  03/01/2017		

## ***DEPARTED EXCESS PROFESSIONAL LIABILITY INSURED ENDORSEMENT EXCESS PROFESSIONAL LIABILITY INSURING AGREEMENT***

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the Company and the **Insureds** agree to amend the Excess Professional Liability Insuring Agreement as follows:

### **MODIFIED COVERAGES**

The following provision is added to *INSURING AGREEMENT - EXCESS LOSS*:

The **Company** will pay, on behalf of a **departed excess professional liability insured**, including its **agents**, all **excess loss** arising from a **health care event** that took place on or after the **retroactive date** but prior to the **termination date** listed on the Schedule of Insureds - Departed Excess Professional Liability Insureds below. However, the **health care event** must have resulted from **professional services** rendered, or which should have been rendered, while the **departed excess professional liability insured** was employed by, or under contract with, any **scheduled excess professional liability insured**. For coverage to exist, the **excess loss** must also result from a **claim** that is **first made** against the **departed excess professional liability insured** during the **policy period**.

The following is added to *WHO IS INSURED*:

a **departed excess professional liability insured**

The following definitions are added to *ADDITIONAL DEFINITIONS*:

**Departed excess professional liability insured** means any **scheduled excess professional liability insured** who has been designated by the **Insured** as no longer providing **professional services** on behalf of the **Insured** and who is listed on the Schedule of Insureds-Departed Excess Professional Liability Insureds below.

**Termination date** means the date listed as the Termination Date for the **departed excess professional liability insured** on the Schedule of Insureds-Departed Excess Professional Liability Insureds below.

The following exclusion is added to *ADDITIONAL EXCLUSIONS*:

any **claim** arising from, or in connection with, **professional services** rendered, or which should have been rendered, by a **departed excess professional liability insured** prior to the **retroactive date** or after the **termination date** listed on the Schedule of Insureds - Departed Excess Professional Liability Insureds below.

### **EXCESS PROFESSIONAL LIABILITY**

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Edition Date: 12/2011



The following provision is added to *LIMITS OF LIABILITY*:

*PER EVENT LIMIT - DEPARTED EXCESS PROFESSIONAL LIABILITY INSURED*

The Company's duty to pay excess loss on behalf of a departed excess professional liability insured for any health care event covered by this endorsement shall not exceed the Per Event Limit of Liability shown in the Declarations section of the Schedule of Excess Professional Liability Insureds, regardless of the number of:

1. persons who sustain injury;
2. claimants;
3. claims;
4. policies issued by the Company; or,
5. Insureds who share the Per Event limit.

*AGGREGATE LIMIT - DEPARTED EXCESS PROFESSIONAL LIABILITY INSURED*

The Company's duty to pay excess loss on behalf of a departed excess professional liability insured for all health care events covered by this endorsement shall not exceed the Aggregate Limit of Liability shown in the Declarations section of the Schedule of Excess Professional Liability Insureds. This limit shall apply regardless of the number of:

1. health care events;
2. persons who sustain injury;
3. claimants;
4. claims;
5. policies issued by the Company; or,
6. Insureds who share the Aggregate limit.

It is expressly understood that nothing herein shall operate to create multiple Limits of Liability for any Insured.

All remaining terms and conditions of the policy remain unchanged.

SCHEDULE OF INSUREDS - DEPARTED EXCESS PROFESSIONAL LIABILITY INSUREDS			
DEPARTED EXCESS PROFESSIONAL LIABILITY INSURED	ID NUMBER	RETRO- ACTIVE DATE	TERMI- NATION DATE
James S St Louis, DO, PC	626965	09/09/2009	12/31/2011
Laser Spine Institute of Arizona, LLC	626966	03/14/2008	12/31/2010
Laser Spine Institute of California, LLC	626960	07/31/2008	12/31/2012
Laser Spine Institute of Colorado, LLC	626968	09/03/2009	12/31/2009
Laser Spine Institute of Oklahoma, LLC	626969	09/17/2010	12/31/2010
Laser Spine Institute of Pennsylvania, LLC	626967	04/22/2009	12/31/2010
Laser Spine Medical Clinic, LLC	626958	01/03/2005	12/31/2012
Laser Spine Physical Therapy, LLC	626959	01/03/2005	12/31/2012
LSI Aspen Back and Body, LLC	626962	09/03/2009	12/31/2011
Michael William Perry, MD, PC	626961	07/25/2008	12/31/2011
Total Spine Health Products, LLC	626964	09/03/2009	12/31/2011

EXCESS PROFESSIONAL LIABILITY

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# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.	Forming Part of Policy No.	First Named Insured
3	EN004806	LSI HoldCo LLC
Effective Date of Endorsement		
03/01/2017		

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## ***EXCLUSION OF CERTIFIED ACTS OF TERRORISM ENDORSEMENT EXCESS COMMERCIAL GENERAL LIABILITY INSURING AGREEMENT***

In consideration of the payment of the premium charged and in reliance upon the representations of all **Insureds**, the **Company** and the **Insured** agree to amend the Excess Commercial General Liability Insuring Agreement as follows:

The following exclusion is added to both *EXCLUSIONS - COVERAGE A: BODILY INJURY AND PROPERTY DAMAGE* and *EXCLUSIONS - COVERAGE: B PERSONAL AND ADVERTISING INJURY*:

**Any injury or damage arising, directly or indirectly, out of a certified act of terrorism.**

The following definitions are added to *DEFINITIONS - ALL EXCESS COMMERCIAL GENERAL LIABILITY COVERAGES*:

**Certified act of terrorism** means an act that is certified by the Secretary of the Treasury in accordance with the provisions of the TRIA Act, to be an act of terrorism pursuant to the TRIA Act. The TRIA Act sets forth the following criteria for a **certified act of terrorism**:

1. The act resulted in losses covered by insurance in excess of \$5,000,000 in the aggregate, attributable to all types of insurance subject to the TRIA Act;
2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion. The act must have resulted in damage within the United States including its territories and possessions and Puerto Rico, or outside the United States in cases of an air carrier or vessel meeting the definitions of such as provided in the TRIA Act, or the premises of a United States mission; and
3. No act of terrorism shall be certified if the act is committed as a part of the course of a war declared by Congress.

**Injury or damage** means any injury or damage covered under any Insuring Agreement to which this endorsement applies, including but not limited to **bodily injury, property damage, personal and advertising injury and products completed operations hazard injury property damage** as those terms are defined in any applicable Insuring Agreement. **Injury or damage** also includes clean-up costs or environmental damage sustained.

TERRORISM RISK INSURANCE ACT

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Edition Date: 3/2015



TRIA Act means the federal Terrorism Risk Insurance Act of 2002, as extended on December 22, 2005, and amended on December 31, 2007 and January 12, 2015.

All other terms and conditions of this policy remain unchanged.



# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.	Forming Part of Policy No.	First Named Insured
4	EN004806	LSI HoldCo LLC
Effective Date of Endorsement		
03/01/2017		

## THIS ENDORSEMENT CHANGES THE POLICY - PLEASE READ IT CAREFULLY

### EXCESS SERVICE OF SUIT CLAUSE ENDORSEMENT

Service of process in any lawsuit, or mandated alternative dispute resolution (ADR) proceeding instituted against the **Company** shall be made upon:

**General Counsel**  
**National Fire & Marine Insurance Company**  
**1314 Douglas Street**  
**Omaha, Nebraska 68102-1944**

The General Counsel is authorized and directed to accept service of process on behalf of the **Company** in any suit or ADR proceeding and, upon the request of the **Insured**, agrees to give a written acknowledgement to the **Insured** that the **Company** will retain counsel to enter an appearance upon the **Company's** behalf should a lawsuit or ADR proceeding be instituted.

Further, pursuant to any law of any state, the District of Columbia, territory, or protectorate of the United States which makes provision therefore, the **Company** hereby designates the Superintendent, Commissioner, Director of Insurance, deputy, or department employee specified as attorney or agent for receipt of lawful service of process or ADR proceeding, in the law, instituted by or on behalf of the **Insured** or any beneficiary within this contract, the General Counsel is hereby authorized as the **Company's** designee upon whom the service of process may be served.

Nothing contained herein shall limit or abridge the right to serve any process, notice or demand upon the **Company** in any other manner permitted or required by law.

This endorsement is effective on the inception date of this policy unless otherwise stated herein.

All other terms and conditions of this policy remain unchanged.

#### EXCESS SERVICE OF SUIT

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Edition Date: 11/2015



# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.	Forming Part of Policy No.	First Named Insured
5	EN004806	LSI HoldCo LLC
Effective Date of Endorsement		
03/01/2017		

## **INTENTIONAL ACTS EXCLUSION ENDORSEMENT EXCESS GENERAL EXCLUSIONS**

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the policy as follows:

### **MODIFIED COVERAGES**

Solely with respect to coverage provided under the Excess Professional Liability Insuring Agreement, the following exclusion is deleted from the Excess General Exclusions:

Any **claim** arising from, or in connection with, any act listed in the subparagraphs below, and any **event** or **health care event** when intertwined with, or inseparable from, any such act:

1. any malicious act or intentional tort;
2. any actual or threatened sexual act, behavior or conduct, including, but not limited to, assault, exploitation, harassment or molestation, by any person of another person while in the care, custody, or control of any **Insured**, whether under the guise of **treatment** or not; or the negligent employment, investigation, supervision, reporting to the proper authorities, or failure to so report, or retention of a person for whom any **Insured** is or ever was legally responsible and whose conduct would be excluded under this exclusion;
3. any personal, romantic, sexual, or other non-professional relationship with a current, former, or prospective patient, whether under the guise of **treatment** or not;
4. any willful violation of any law, statute, or regulation;
5. any dishonest or fraudulent act;
6. any breach of contract or guaranty regarding the efficacy of **treatment**;
7. **professional services** rendered or which should have been rendered if it is determined that an **Insured** was in any manner, extent or degree impaired by or under the influence of alcohol, narcotics, hallucinogenic agents, drugs or intoxicants of any nature or kind; or,
8. any fabrication, alteration or destruction, in whole or in part, of any medical record pertaining to the person whose **treatment** is the subject of the **claim**, including, but not limited to, any medical or business record pertaining to the condition, **treatment** and/or consent of such person to any **professional service**, in whole or in part, by or at the direction of an **Insured**, after the happening of the activity reflected in such document or record. However, this exclusion does not apply to bona fide corrections to records made in accordance with applicable generally accepted professional standards, but this exception only applies if such corrections are identified as such, dated and signed by the person making them.

Solely with respect to coverage provided under the Excess Professional Liability Insuring Agreement, the following exclusion is added to the Excess General Exclusions:

### EXCESS COMMON ENDORSEMENTS

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Any **claim** arising from, or in connection with, any act listed in the subparagraphs below:

1. any malicious act or intentional tort;
2. any actual or threatened sexual act, behavior or conduct, including, but not limited to, assault, exploitation, harassment or molestation, by any person of another person while in the care, custody, or control of any **Insured**, whether under the guise of **treatment** or not;
3. any personal, romantic, sexual, or other non-professional relationship with a current, former, or prospective patient, whether under the guise of **treatment** or not;
4. any willful violation of any law, statute, or regulation; or,
5. any dishonest or fraudulent act.

This exclusion does not apply to any **claim** arising from a **health care event** brought against any **Insured** who did not direct or act in concert to commit, directly participate in, or direct another, in connection with any of the actions excluded from coverage under this provision.

All other terms and conditions of the policy remain unchanged.



# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.  6	Forming Part of Policy No.  EN004806	First Named Insured  LSI HoldCo LLC
Effective Date of Endorsement  03/01/2017		

## ***EXCESS MANUSCRIPT ENDORSEMENT***

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the policy as follows:

The following exclusion is deleted from provision A. of *I. EXCLUSIONS* of the Excess General Exclusions:

7. **professional services** rendered or which should have been rendered if it is determined that an **Insured** was in any manner, extent or degree impaired by or under the influence of alcohol, narcotics, hallucinogenic agents, drugs or intoxicants of any nature or kind; or,

The following exclusion is deleted from *I. EXCLUSIONS* of the Excess General Exclusions:

- D. Any damages over and above actual compensatory damages. This includes punitive, exemplary, and multiple damages.

and replaced with the following exclusion:

- D. Any damages over and above actual compensatory damages. This includes punitive, exemplary, and multiple damages. However, to the extent that coverage for punitive, exemplary and multiple damages is allowed by law, this exclusion does not apply to the first \$5,000,000 of coverage provided under the Aggregate Limits of Liability of the policy.

The following provision is deleted from paragraph 1. of B. *Reporting Requirements* of the Excess General Conditions:

- b. for which the **Company** providing the **scheduled limit** has set a loss reserve which exceeds \$100,000;

and replaced with the following provision:

- b. for which the **Company** providing the **scheduled limit** has set a loss reserve which exceeds \$500,000;

The definition of **claims expense** in the Excess General Definitions is deleted and replaced with the following:

**Claims expense** means all costs and expenses incurred in connection with the investigation, adjustment, and defense of any **claim**. Such costs and expenses shall only include:

1. attorney fees paid to the law firm selected by the **Company** to defend an **Insured**;
2. court costs;
3. expert fees;
4. reporter fees;
5. the cost of any alternative dispute resolution ordered by a court, otherwise required by law or pre-approved by the **Company**;
6. post-judgment interest on that portion of the judgment that does not exceed the limit of liability available under the applicable Insuring Agreement; and,
7. such other costs and expenses that the **Company** determines to be reasonably related to the defense of a

## EXCESS COMMON ENDORSEMENTS

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**claim.**

However, **claims expense** does not include:

1. **excess loss;**
2. attorney fees awarded to a claimant;
3. the salary of any **employee** of an **Insured**; however, the salary of attorneys paid by the **first named insured** who are directly handling **claims** otherwise covered under this policy will be included as **claims expense**, but only to the extent that the services provided by the attorneys are directly attributable to the defense and management of covered **claims**, and only the portion of each attorney's salary that can be reasonably allocated to the handling and management of the covered **claims** will be included as **claims expense**; or,
4. the forgiveness of any amounts owed for the cost of care or services rendered by an **Insured**.

All other terms and conditions of the policy remain unchanged.



# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.  7	Forming Part of Policy No.  EN004806	First Named Insured  LSI HoldCo LLC
Effective Date of Endorsement  03/01/2017		

## ***EXCESS SCHEDULED ADDITIONAL INSUREDS ENDORSEMENT WITH NOTICE OF CANCELLATION***

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the policy as follows:

### **MODIFIED COVERAGES**

The following persons or entities scheduled below are added as **additional insureds** under the Insuring Agreement indicated below, but only with respect to any damages payable as a result of the **additional insured's** vicarious liability for the acts or omissions of an **Insured** otherwise covered under the applicable Insuring Agreement. This insurance does not apply to sums or damages arising from or in connection with liability for any acts or omissions alleged against the **additional insured**.

All **additional insureds** share the Limits of Liability applicable to any **claim** or **suit** with any **Insured** for which the **additional insured** is alleged to be vicariously liable with respect to that same **claim** or **suit**.

It is further agreed that in the event that the **Company** cancels this policy for any reasons other than either non-payment of premium before the expiration date of the **policy period**, or at the request of the **first named insured**, the **Company** shall provide prior notice of such cancellation to the **additional insured** listed on the schedule below at the same time notice is provided to the **first named insured**.

All other terms and conditions of the policy remain unchanged.

EXCESS SCHEDULE OF ADDITIONAL INSUREDS		
ADDITIONAL INSURED	ADDRESS	INSURING AGREEMENT
GE HFS, LLC	20225 Watertower Blvd Brookfield, WI 53045	* Excess Commercial General Liability Insuring Agreement

### EXCESS COMMON ENDORSEMENTS

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# National Fire & Marine Insurance Company

Omaha, Nebraska

All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.

Endorsement No.  8	Forming Part of Policy No. EN004806	First Named Insured  LSI HoldCo LLC
Effective Date of Endorsement  03/01/2017		

## **EXCESS AUTO COVERAGE EXCESS COMMERCIAL GENERAL LIABILITY INSURING AGREEMENT**

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the Excess Commercial General Liability Insuring Agreement as follows:

### **ENDORSEMENT DECLARATIONS**

Per Event Limit of Liability (Excess Auto Coverage):     \$ 20,000,000

### **MODIFIED COVERAGES**

The exclusion for Aircraft, Auto, or Watercraft in **EXCLUSIONS – COVERAGE A: BODILY INJURY AND PROPERTY DAMAGE** is amended by adding the following language to the exclusion:

This exclusion does not apply to:

**Bodily injury or property damage** arising from the use of an **auto** owned by, leased or rented to, or while being used in the furtherance of the business of, a **scheduled excess insured business**, but only if the **auto** is covered by scheduled commercial auto liability insurance listed on the Excess Schedule of Underlying Insurance.

This exception shall not apply to any duty owed by an **Insured** under a no fault, underinsured, or uninsured motorists insurance policy or law.

The following provision is added to **LIMITS OF LIABILITY – ALL EXCESS COMMERCIAL GENERAL LIABILITY COVERAGES**:

Notwithstanding the Per Event Limit of Liability set forth on the Schedule of Excess Insured Businesses, the **Company's** duty to pay excess loss on behalf of **scheduled excess insured businesses** or their agents for any **bodily injury or property damage** arising from an event involving the use of an **auto**, shall not exceed the Per Event Limit of Liability shown on the Endorsement Declarations above. This limit shall apply regardless of the number of:

1. **Insureds**;
2. **claims made or suits brought**;
3. **persons or organizations making claims or bringing suits**; or,
4. **policies issued by the Company**.

All other terms and conditions of the policy remain unchanged.

EXCESS GENERAL LIABILITY

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# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.  9	Forming Part of Policy No.  EN004806	First Named Insured  LSI HoldCo LLC
Effective Date of Endorsement  03/01/2017		

## ***DROP DOWN ENDORSEMENT –DEFENSE WITHIN SCHEDULED LIMITS EXCESS COMMERCIAL GENERAL LIABILITY INSURING AGREEMENT (DEFENSE WITHIN LIMITS)***

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the Commercial General Liability Insuring Agreement as follows:

### **MODIFIED COVERAGES**

The following provisions are added to *DEFENSE AND SUPPLEMENTAL PAYMENTS - ALL EXCESS COMMERCIAL GENERAL LIABILITY COVERAGES*:

*Defense Not Provided by Scheduled Coverage Due to Exhaustion of Scheduled Limits.*

- A. In any **claim** or **suit** covered under this Insuring Agreement for which the **Insured** has exhausted its limits of liability under a **scheduled coverage** and therefore is not entitled to a defense under that **scheduled coverage**, the **Company** shall have the right and duty to defend the **Insured**. However, the **Company** has no duty to:
  - 1. defend an **Insured** against a **claim** or **suit** after the **Insured's** applicable limit of liability under this Insuring Agreement is exhausted by the payment of judgments or settlements;
  - 2. appeal any judgment. However, the **Company** has the right to appeal any judgment that exceeds the **scheduled limit**. If the **Company** decides to appeal any judgment, all costs associated with the appeal shall be included as **claims expense**, shall be payable by the **Company**, and shall reduce the applicable limit of liability; or,
  - 3. pay any **claims expense** incurred by or for an attorney who was not retained, or approved by the **Company** in writing, to defend the **Insured**.
- B. All **claims expenses** paid by the **Company** under this endorsement shall be included as **excess loss** and shall erode the applicable limit of liability under this Insuring Agreement. The **Company** shall have no duty to pay any **claims expense**, premium, or other expense incurred after the **Insured's** applicable limit of liability under this Insuring Agreement is exhausted.
- C. All **claims expense** and supplemental payments paid by the **Company** under this endorsement shall be subject to any deductible applicable to the underlying **scheduled coverage** as if it were in effect.

As it applies to the Excess Commercial General Liability Insuring Agreement only, the *Reduction or Exhaustion of Scheduled Limits* condition is deleted from the Excess General Conditions and replaced with the following:

#### EXCESS GENERAL LIABILITY

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Reduction or Exhaustion of Scheduled Limits.

If the **Insured's** applicable **scheduled limit** has been reduced or exhausted by the payment of **claims, events** or offenses that are otherwise eligible for coverage under this Insuring Agreement, the **Company** will pay **excess loss** above the remaining limits of the **scheduled limit**, less any deductible.

All damages paid by the **Company** under this endorsement shall be subject to any deductible applicable to the **scheduled coverage** as if it were in effect.

All other terms and conditions of the policy remain unchanged.



# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.  10	Forming Part of Policy No.  EN004806	First Named Insured  LSI HoldCo LLC
Effective Date of Endorsement  03/01/2017		

## ***NON-SCHEDULED WAIVER OF SUBROGATION ENDORSEMENT EXCESS COMMERCIAL GENERAL LIABILITY INSURING AGREEMENT***

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the Excess Commercial General Liability Insuring Agreement as follows:

### **MODIFIED COVERAGES**

The following provision is added to the *ADDITIONAL CONDITIONS – ALL COMMERCIAL GENERAL LIABILITY COVERAGES*:

#### *Waiver of Subrogation.*

The **Company** shall waive any right of recovery the **Company** may have against a person or organization to the extent that the **Insured** has agreed in writing prior to the date of loss to waive the **Insured's** rights of recovery against that person or entity.

All other terms and conditions of the policy remain unchanged.

EXCESS GENERAL LIABILITY

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# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.  11	Forming Part of Policy No.  EN004806	First Named Insured  LSI HoldCo LLC
Effective Date of Endorsement  03/01/2017		

## ***NON-SCHEDULED ADDITIONAL INSURED (PRIMARY AND NON-CONTRIBUTORY) ENDORSEMENT EXCESS COMMERCIAL GENERAL LIABILITY INSURING AGREEMENT***

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the Excess Commercial General Liability Insuring Agreement as follows:

### **MODIFIED COVERAGES**

The definition of **additional insured** is deleted from the *DEFINITIONS – ALL EXCESS COMMERCIAL GENERAL LIABILITY COVERAGES* and replaced with the following:

**Additional insured** means:

1. any person or entity listed on the applicable Excess Schedule of Additional Insureds; or,
2. only with respect to any **excess loss** or damages payable as the result of the **additional insured's** vicarious liability for the acts or omissions of an **Insured** otherwise covered under this Insuring Agreement, any person or entity with which the **scheduled excess insured business** has entered into a written contract or agreement agreeing:
  - a. to add the person or entity as an **additional insured**; or
  - b. to hold harmless or indemnify such person or organization.

This definition does not apply:

- i. unless the written contract or agreement has been executed prior to the **excess loss**. The contract or agreement will be considered executed when the **Insured's** performance begins, or when the contract is signed, whichever occurs first; or
- ii. to **excess losses** arising from or in connection any of the **additional insured's** own acts or omissions.

The following provision is added to *LIMITS OF LIABILITY – ALL EXCESS COMMERCIAL GENERAL LIABILITY COVERAGES*:

All **additional insureds** meeting the definition provided herein share the Limits of Liability applicable to any **claim** or **suit** with any **Insured** for which the **additional insured** is alleged to be vicariously liable with respect to that same **claim** or **suit**.

Solely with respect to any **additional insured(s)** meeting the description provided by subsection 2 of the definition of **additional insured** set forth in this endorsement, the following Additional Condition is added to the *ADDITIONAL CONDITIONS – ALL EXCESS COMMERCIAL GENERAL LIABILITY COVERAGES*:

Only if required by written contract or agreement with the **scheduled excess insured business**, coverage for any

#### EXCESS GENERAL LIABILITY

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**additional insured(s)** provided by this endorsement shall be primary and non-contributory as respects any other insurance policy issued to such **additional insured**. Otherwise, the Other Insurance provision of the Excess General Conditions applies as written.

All other terms and conditions of the policy remain unchanged.



# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.	Forming Part of Policy No.	First Named Insured
12	EN004806	LSI HoldCo LLC
Effective Date of Endorsement		
03/01/2017		

## ***DROP DOWN ENDORSEMENT—DEFENSE WITHIN SCHEDULED LIMITS EXCESS PROFESSIONAL LIABILITY INSURING AGREEMENT (DEFENSE WITHIN LIMITS)***

In consideration of the payment of the premium charged and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the Excess Professional Liability Insuring Agreement as follows:

### **MODIFIED COVERAGES**

The ***NO DUTY TO DEFEND*** provision of the Excess Defense and Supplemental Payments is deleted and replaced with the following:

#### ***DUTY TO DEFEND***

In any **claim** covered under this Insuring Agreement for which the **Insured** has exhausted its limits of liability under a **scheduled coverage** and therefore is not entitled to a defense under that **scheduled coverage**, the **Company** shall have the right and duty to defend the **Insured**. However, the **Company** has no duty to:

- A. defend an **Insured** against a **claim** after the **Insured's** applicable limit of liability under this Insuring Agreement is exhausted by the payment of judgments or settlements;
- B. appeal any judgment. However, the **Company** has the right to appeal any judgment that exceeds the **scheduled coverage**. If the **Company** decides to appeal any judgment, all costs associated with the appeal shall be included as **claims expense**, shall be payable by the **Company**, and shall reduce the applicable limit of liability; or,
- C. pay any **claims expense** incurred by or for an attorney who was not retained, or approved by the **Company** in writing, to defend the **Insured**.

All **claims expenses** paid by the **Company** under this endorsement shall be included as **excess loss** and shall erode the applicable limit of liability under this Insuring Agreement. The **Company** shall have no duty to pay any **claims expense**, premium, or other expense incurred after the **Insured's** applicable limit of liability under this Insuring Agreement is exhausted.

All **claims expense** and supplemental payments paid by the **Company** under this endorsement shall be subject to any deductible applicable to the underlying **scheduled coverage** as if it were in effect.

#### **EXCESS PROFESSIONAL LIABILITY**

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The *Reduction or Exhaustion of Scheduled Limits* condition of the Excess General Conditions, as it applies to the Excess Professional Liability Insuring Agreement only, is deleted and replaced with the following:

*Reduction or Exhaustion of Scheduled Limits.*

If the **Insured's** applicable **scheduled limit** has been reduced or exhausted by the payment of **claims** for **events** that are otherwise eligible for coverage under this Insuring Agreement, the **Company** will pay excess loss above the remaining limits of the **scheduled limit**.

All damages paid by the **Company** under this endorsement shall be subject to any deductible applicable to the **scheduled coverage** as if it were in effect.

All other terms and conditions of the policy remain unchanged.



# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.  13	Forming Part of Policy No.  EN004806	First Named Insured  LSI HoldCo LLC
Effective Date of Endorsement  03/01/2017		

## EXCESS FLORIDA AMENDATORY ENDORSEMENT

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the policy as follows:

### EXCESS GENERAL CONDITIONS

The Cancellation, Nonrenewal and/or Termination of Coverage section in the Excess General Conditions is deleted and replaced with the following:

#### Cancellation, Nonrenewal and/or Termination of Coverage

1. This policy may be canceled by the **first named insured**. The **first named insured** shall mail written notice to the **Company** requesting cancellation. The cancellation shall be effective on the date requested by the **first named insured** or the date the notice is received by the **Company**, whichever is later.
2. Any coverage contained within this policy may be terminated by the **first named insured**. The **first named insured** shall mail written notice to the **Company** requesting the coverage termination. The termination shall be effective on the date requested by the **first named insured** or the date the notice is received by the **Company**, whichever is later.
3. This policy may also be canceled by the **Company**. The **Company** will send notice of the cancellation, including the specific reason for the cancellation, to the **first named insured** at its last known address.
  - a. If the policy has been in effect for less than 90 days, the **Company** may cancel by sending written notice that states when, not less than 20 days thereafter, such cancellation shall be effective.
  - b. If the policy has been in effect for at least 90 days, or is a renewal policy, the **Company** may cancel by sending written notice that states when, not less than 45 days thereafter, such cancellation shall be effective.
  - c. However, only 10 days notice will be required to cancel:
    - i. for nonpayment of premium;
    - ii. for policies cancelled for material misrepresentation; or,
    - iii. where there is a failure to comply with underwriting requirements.
4. If the **first named insured** cancels this policy, or terminates any coverage contained therein, earned premium shall be computed in accordance with the standard short rate tables and procedure. If the **Company** cancels this policy, or terminates any coverage contained therein, earned premium shall be computed pro rata. Premium adjustments shall be made within a reasonable period of time after cancellation. However, payment or tender of unearned premium shall not be a condition of cancellation.
5. This policy may be nonrenewed by the **Company** by mailing or delivering written notice of nonrenewal to the **first named insured** at its last known address at least 45 days prior to the end of the **policy period**. The notice will also contain the specific reason for the nonrenewal.
6. If the **Company** cancels or nonrenews an **Insured's** policy, the **Insured's** coverage under that policy shall terminate on the earlier of:

#### EXCESS FLORIDA AMENDATORY ENDORSEMENT

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Edition Date: 3/2012



- a. the date stated on the cancellation or nonrenewal notice; or,
- b. the date the Insured procures replacement coverage.

All other terms and conditions of the policy remain unchanged.



# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.  14	Forming Part of Policy No.  EN004806	First Named Insured  LSI HoldCo LLC
Effective Date of Endorsement  06/30/2017		

## CHANGE ENDORSEMENT

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the policy as follows:

It is agreed and understood that the Schedule of Insureds, Excess Professional Liability Insuring Agreement (Claims-Made), has been amended for the following **scheduled excess professional liability insured(s)**:

SCHEDULE OF INSURED(S)		
SCHEDULED EXCESS PROFESSIONAL LIABILITY INSURED	ID NUMBER	RETROACTIVE DATE
Ambulatory Anesthesia Resource Group LLC	1317741	06/30/2017
Spine DME Solutions LLC	1317738	06/30/2017
Total Spine Care LLC	1317734	10/16/2015

This endorsement reflects the addition of Scheduled Excess Professional Liability Insureds.

Premium Adjustment:      \$0      Additional Premium

All other terms and conditions of the policy remain unchanged.

EXCESS COMMON ENDORSEMENTS

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# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.  15	Forming Part of Policy No.  EN004806	First Named Insured  LSI HoldCo LLC
Effective Date of Endorsement  06/30/2017		

## CHANGE ENDORSEMENT

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the policy as follows:

It is agreed and understood that the Schedule of Insureds, Excess Commercial General Liability Insuring Agreement (Occurrence), has been amended for the following **scheduled excess insured business(es)**:

SCHEDULE OF INSURED	
SCHEDULED EXCESS INSURED BUSINESS	ID NUMBER
Ambulatory Anesthesia Resource Group LLC	1317741
Spine DME Solutions LLC	1317738
Total Spine Care LLC	1317734

This endorsement reflects the addition of Scheduled Excess Insured Businesses.

Premium Adjustment:      \$0      Additional Premium

All other terms and conditions of the policy remain unchanged.

EXCESS COMMON ENDORSEMENTS

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# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.  16	Forming Part of Policy No.  EN004806	First Named Insured  LSI HoldCo LLC
Effective Date of Endorsement  06/30/2017		

## CHANGE ENDORSEMENT

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the policy as follows:

It is agreed and understood that the Schedule of Insureds, Excess Employer's Liability Insuring Agreement (Occurrence), has been amended for the following **scheduled excess insured employer(s)**:

SCHEDULE OF INSUREDS	
SCHEDULED EXCESS INSURED EMPLOYER	ID NUMBER
Ambulatory Anesthesia Resource Group LLC	1317741
Spine DME Solutions LLC	1317738
Total Spine Care LLC	1317734

This endorsement reflects the addition of Scheduled Excess Insured Employers.

Premium Adjustment:      \$0      Additional Premium

All other terms and conditions of the policy remain unchanged.



# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.  17	Forming Part of Policy No.  EN004806	First Named Insured  LSI HoldCo LLC
Effective Date of Endorsement  03/01/2017		

## ***EXCESS CHANGE ENDORSEMENT***

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the policy as follows:

It is agreed and understood that the following wording has been removed from Excess Manuscript Endorsement, NFM-XCE-0099-01:

The following exclusion is deleted from *I. EXCLUSIONS* of the Excess General Exclusions:

- D. Any damages over and above actual compensatory damages. This includes punitive, exemplary, and multiple damages.

and replaced with the following exclusion:

- D. Any damages over and above actual compensatory damages. This includes punitive, exemplary, and multiple damages. However, to the extent that coverage for punitive, exemplary and multiple damages is allowed by law, this exclusion does not apply to the first \$5,000,000 of coverage provided under the Aggregate Limits of Liability of the policy.

Premium Adjustment: \$ 0 Additional Premium

All other terms and conditions of the policy remain unchanged.



# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.	Forming Part of Policy No.	First Named Insured
18	EN004806	LSI HoldCo LLC
Effective Date of Endorsement		
01/01/2018		

## ***EXCESS CANCELLATION ENDORSEMENT***

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the policy as follows:

The policy is hereby terminated as of the date indicated below:

Termination Date: 01/01/2018

Premium Adjustment: \$241,023 Reduced Premium

All other terms and conditions of the policy remain unchanged.



# Exhibit 3



## **Florida Surplus Lines Warning Statement**

**THIS INSURANCE IS ISSUED PURSUANT TO THE FLORIDA SURPLUS LINES LAW. PERSONS INSURED BY SURPLUS LINES CARRIERS DO NOT HAVE THE PROTECTION OF THE FLORIDA INSURANCE GUARANTY ACT TO THE EXTENT OF ANY RIGHT OF RECOVERY FOR THE OBLIGATION OF AN INSOLVENT UNLICENSED INSURER.**

**SURPLUS LINES INSURERS' POLICY RATES AND FORMS ARE NOT APPROVED BY ANY FLORIDA REGULATORY AGENCY.**

Agent Name: \_\_\_\_\_

Agent Address: \_\_\_\_\_

Agent Identification Number: \_\_\_\_\_

Surplus Lines Broker Name: \_\_\_\_\_

Surplus Lines Broker Address: \_\_\_\_\_

Surplus Lines Broker Identification Number: \_\_\_\_\_



# National Fire & Marine Insurance Company

Omaha, Nebraska

## EXCESS DECLARATIONS

**NOTICE: This policy may contain claims-made coverage. Please read this policy carefully.**

Policy Number: EN004806

ITEM 1	<b>FIRST NAMED INSURED:</b> Laser Spine Institute, LLC <b>ADDRESS:</b> 3031 N Rocky Point Dr W Ste 300 Tampa, FL 33607														
ITEM 2	<b>POLICY PERIOD:</b> From 03/01/2016 to 03/01/2017 Both days at 12:01 a.m. at the address of the First Named Insured as stated herein.														
ITEM 3	<b>COVERAGES SELECTED:</b> (Please refer to the applicable Schedule of Insureds for limits, deductibles, retentions, etc.) <table border="1" data-bbox="240 829 1526 1018"><thead><tr><th></th><th>Occurrence</th><th>Claims-Made</th></tr></thead><tbody><tr><td>EXCESS PROFESSIONAL LIABILITY</td><td></td><td>X</td></tr><tr><td>EXCESS COMMERCIAL GENERAL LIABILITY</td><td>X</td><td></td></tr><tr><td>EXCESS EMPLOYER'S LIABILITY</td><td>X</td><td></td></tr></tbody></table>				Occurrence	Claims-Made	EXCESS PROFESSIONAL LIABILITY		X	EXCESS COMMERCIAL GENERAL LIABILITY	X		EXCESS EMPLOYER'S LIABILITY	X	
	Occurrence	Claims-Made													
EXCESS PROFESSIONAL LIABILITY		X													
EXCESS COMMERCIAL GENERAL LIABILITY	X														
EXCESS EMPLOYER'S LIABILITY	X														
ITEM 4	<b>COVERAGES NOT SELECTED:</b>														
ITEM 5	<b>TOTAL PREMIUM:</b> \$ 1,988,847 (May reflect deposit premium, which is subject to audit. The premium does not include any surplus lines tax, which must be collected by the producer. Terrorism premium is not reflected in the total premium amount.)														
ITEM 6	<b>PRODUCER:</b> AB Risk Specialist Inc 931 Tullis Rd Lawrenceville, GA 30043-4732														

IN WITNESS WHEREOF, National Fire & Marine Insurance Company has caused this policy to be signed by its President (and countersigned by its duly Authorized Representative, where necessary).

  
President

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

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

## EXCESS DECLARATIONS

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# National Fire & Marine Insurance Company

Omaha, Nebraska

## *EXCESS POLICY GUIDE*

This Policy Guide has been developed to describe how your policy is formatted. This guide does not change any of the terms and conditions contained in the policy.

Your policy consists of the following items:

The Declarations: This page designates the first named insured, the policy number, the policy period, the coverages selected, the total premium, and the producer.

Schedules of Underlying Insurance: These schedules list the liability coverage(s) over which this policy will provide excess coverage.

Schedule of Insureds: These schedules define your coverage by designating who will be insured under a particular Insuring Agreement and what limits of liability will apply. If an Insuring Agreement is attached to your policy without a corresponding Schedule of Insureds, there is no coverage under that Insuring Agreement.

Insuring Agreements: These documents define the scope of the particular coverage that is being provided and any unique provisions (Additional Definitions, Additional Conditions, etc.) that will apply to it. For example, they indicate the types of claims that are covered and who is eligible to request indemnity under the policy. However, as mentioned above, these Insuring Agreements only provide coverage when attached to a corresponding Schedule of Insureds.

Defense and Supplemental Payments: If a claim or potential claim is covered under one of the Insuring Agreements, our Company may have a duty to pay supplemental damages on the Insured's behalf. This form defines the scope of our duty to pay those damages, and what duties the Company has, if any, to defend an Insured in the event of a claim.

General Definitions: This form contains the definitions that apply to every Insuring Agreement under your policy, unless otherwise noted. Additional or alternative definitions can be found within the definitions section of the relevant Insuring Agreement. Each word or phrase listed in **bold print** has been specifically defined within the policy. If a word has not been bolded, then its commonly understood meaning will apply.

General Exclusions: This form contains exclusions that apply to every Insuring Agreement under your policy, unless otherwise noted. Additional exclusions may also be found within the *ADDITIONAL EXCLUSIONS* section of the relevant Insuring Agreement.

General Conditions: This form defines the general duties our Company and the Insureds owe to each other under the terms of this policy contract, such as the requirements for reporting claims, the duty to maintain underlying insurance, the duties of the first named insured, etc.

Endorsements: Endorsements modify the terms and conditions of all or part of the policy and become a part of your policy. If an endorsement modifies one or more parts of the policy, but less than the entire policy, the endorsement will specify which parts of the policy are modified. It is important to understand that this is also the only method by which the terms and conditions of your policy can be altered.

If you have any questions regarding a particular provision or the coverage that is being provided to you, please contact your producer. We appreciate your patronage.

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### EXCESS DECLARATIONS

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Edition Date: 1/2014



# National Fire & Marine Insurance Company

Omaha, Nebraska

## EXCESS SCHEDULE OF UNDERLYING INSURANCE

Policy Number: EN004806	First Named Insured: Laser Spine Institute, LLC
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### Professional Liability:

Primary Policy Information	Limits (as defined below)	Self-Insured Retention (SIR) (as defined below)
Carrier:		Laser Spine Institute, LLC
Policy Number:		**The professional underlying SIR is a combined single limit of liability \$1,000,000/\$6,000,000 for Indemnity and Expense
Policy Period:		03/01/2016 – 03/01/2017
Retroactive Date (if any):		Refer to schedule of Excess Professional Liability Insureds
<input type="checkbox"/> Claims-made basis	Per Event Limit: \$1,000,000	<input checked="" type="checkbox"/> Claims-made basis
<input type="checkbox"/> Occurrence basis	Aggregate Limit: \$6,000,000	<input type="checkbox"/> Occurrence basis
		<input checked="" type="checkbox"/> Defense Costs inside SIR Limits
		<input type="checkbox"/> Defense costs outside SIR Limits

## EXCESS SCHEDULE OF UNDERLYING INSURANCE

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Edition Date: 11/2015



**Commercial General Liability:**

Primary Policy Information		Limits (as defined below)	Self-Insured Retention (SIR) (as defined below)
Carrier:			Laser Spine Institute, LLC
Policy Number:			***The general liability underlying SIR is a combined single limit of liability \$25,000/\$50,000 for Indemnity and Expense
Policy Period:			03/01/2016 – 03/01/2017
Retroactive Date (if any):			<input checked="" type="checkbox"/> Claims-made basis <input type="checkbox"/> Occurrence basis
<input type="checkbox"/> Claims-made basis	Per Event Limit:	\$25,000	<input checked="" type="checkbox"/> Defense costs within SIR Limits
<input type="checkbox"/> Occurrence basis	Aggregate Limit:	\$50,000	<input type="checkbox"/> Defense costs outside SIR Limits

**Employers Liability:**

Primary Policy Information		Limits (as defined below)
Carrier:	Zenith Insurance Company	
Policy Number:	M1099506	
Policy Period:	03/01/2016 – 03/01/2017	
	Per Event Limit of Liability Employment-Related Accident:	\$1,000,000
	Per Employee Limit of Liability Employment- Related Disease:	\$1,000,000
	Policy Limit of Liability Employment-Related Disease:	\$1,000,000



**Commercial Automobile Liability:**

Primary Policy Information		Limits (as defined below)
Carrier:	Berkshire Hathaway Homestate Insurance Company	
Policy Number:	02 APM 008982 - 01	
Policy Period:	03/01/2016 – 03/01/2017	
	Combined Single Limit	
	Auto	\$1,000,000
	Ambulance	N/A



# National Fire & Marine Insurance Company

Omaha, Nebraska

## *SCHEDULE OF EXCESS PROFESSIONAL LIABILITY INSUREDS* *EXCESS PROFESSIONAL LIABILITY* *(CLAIMS-MADE)*

### DECLARATIONS

Policy Number: EN004806

First Named Insured: Laser Spine Institute, LLC

### LIMITS OF LIABILITY

Per Event Limit of Liability: \$ 20,000,000

Aggregate Limit of Liability: \$ 20,000,000

### SCHEDULE OF INSUREDS

In consideration of the payment of the premium due, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree as follows, subject to the terms and conditions of this policy, including the applicable limits of liability:

SCHEDULED EXCESS PROFESSIONAL LIABILITY INSURED	ID NUMBER	RETROACTIVE DATE
Laser Spine Institute, LLC	241482	03/21/2005
Laser Spine Institute Consulting LLC	626955	06/30/2011
Laser Spine Surgery Center of Arizona, LLC	254295	05/30/2008
Laser Spine Surgery Center of Cincinnati, LLC	637293	06/30/2014
Laser Spine Surgery Center of Cleveland, LLC	637292	06/30/2014
Laser Spine Surgery Center of Oklahoma, LLC	254297	03/23/2011
Laser Spine Surgery Center of Pennsylvania, LLC	254296	04/22/2009
Laser Spine Surgery Center of St. Louis, LLC	637294	06/30/2014
Laser Spine Surgery Center of Tampa, LLC	943051	03/01/2015
Laser Spine Surgery Center of Warwick, LLC	943052	03/01/2015
Laser Spine Surgical Center, LLC	626953	01/03/2005
LSI HoldCo LLC	626956	12/05/2012
LSI Houston, PA	616898	01/03/2005
LSI Management Company, LLC	626954	09/03/2009
Medical Care Management Services, LLC	626957	06/11/2013
Physician FTE 1		03/21/2005
See Schedule of Insured Physicians on File with Company	921217	

### EXCESS PROFESSIONAL LIABILITY

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Policy Number: EN004806	First Named Insured: Laser Spine Institute, LLC
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SCHEDULED EXCESS PROFESSIONAL LIABILITY INSURED	ID NUMBER	RETROACTIVE DATE
Health Care Provider FTE 1		03/21/2005
All Physician Assistants Employed or Contracted by Laser Spine Institute, LLC	626636	
Health Care Provider FTE 2		03/21/2005
All Nurse Practitioners Employed or Contracted by Laser Spine Institute, LLC	626639	
Health Care Provider FTE 3		03/21/2005
See Schedule of Insured Chiropractors on File with Company	921218	
Health Care Provider FTE 4		03/21/2005
All Certified Registered Nurse Anesthetics Employed or Contracted by Laser Spine Institute, LLC	945592	

EXCESS PROFESSIONAL LIABILITY

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Edition Date: 1/2011



# National Fire & Marine Insurance Company

Omaha, Nebraska

## *EXCESS PROFESSIONAL LIABILITY INSURING AGREEMENT (CLAIMS-MADE)*

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### NOTICE:

**This Insuring Agreement contains claims-made and reported coverage.  
Please read this policy carefully.**

In consideration of the payment of the premium due, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree as follows, subject to the terms and conditions of this policy, including the applicable limits of liability:

#### *I. INSURING AGREEMENT - EXCESS LOSS*

- A. The **Company** will pay, on behalf of any **scheduled excess professional liability insured**, including agents, all **excess loss** arising from a **health care event**. However, the **health care event** must have resulted from professional services rendered, or which should have been rendered, while the **scheduled excess professional liability insured** was employed by, or under contract with, any **scheduled excess professional liability insured**. For coverage to exist, the **excess loss** must also arise from an event that took place on or after the **retroactive date**. In addition, the **excess loss** must arise from a **claim** that was **first reported** during the **policy period**.
- B. All **claims** arising out of the same **health care event** will be deemed to have been made at the time the first such **claim** is made against any **Insured**. Only the policy in effect when the first such **claim** is made and reported to the **Company** in writing will apply to all related **claims** no matter when those related **claims** are made or reported. If the first such **claim** is made prior to the effective date of this policy, this policy will not apply to that **claim** nor to any related **claim** made during this **policy period** or any **extended reporting period**.

#### *II. WHO IS INSURED*

For the purposes of this Insuring Agreement, an **Insured** is:

- A. a **scheduled excess professional liability insured**;
  - B. a **new excess professional liability insured**; or,
  - C. an **agent**
- as defined below.

#### *III. ADDITIONAL DEFINITIONS*

In addition to the Excess General Definitions, the following definitions are added to this Insuring Agreement:

- A. **Scheduled excess professional liability insured** means any person or entity that is listed on the Schedule of Excess Professional Liability Insureds. A **scheduled excess professional liability insured** shares in the limits provided to the **first named insured**.
- B. **New excess professional liability insured** means an entity formed or acquired by the **scheduled excess professional liability insured** during the **policy period**, over which the **scheduled excess professional liability insured** maintains at least majority ownership.
  - 1. A **new excess professional liability insured** is not covered:
    - a. after 60 days have elapsed from the date the entity was formed or acquired by the **scheduled excess professional liability insured**; or,
    - b. for an **excess loss** or **health care event** that occurred before the entity was formed or acquired by the **scheduled excess professional liability insured** or after the **policy period**.
  - 2. A **new excess professional liability insured** shares the coverage provided to the **scheduled excess professional**



**liability insured**, including its limits of liability.

**C. Agent**

1. **Agent** means a person who was acting within the scope of his or her duties as:
  - a. an **employee, administrator, committee member, or student** of the **scheduled excess professional liability insured** at the time of the **health care event**; or,
  - b. a trustee, assign, or legal representative of the **scheduled excess professional liability insured** or of a person described in C.1.a. above in the event of bankruptcy, incapacity, or death.
2. An **agent** shares the coverage provided to the **scheduled excess professional liability insured**, including its limits of liability and any applicable restrictions.
3. An **agent** is not, however, an **Insured**, when the **agent** has other valid and collectible insurance to cover the **claim**.
4. As used to define an **agent**, above:
  - a. **employee** means any person employed by, or under contract with, the **scheduled excess professional liability insured** at the time of the **health care event**. It includes any authorized volunteer worker, **administrator, committee member or student**. **Employee** does not include:
    - (1) physician or dentist, including residents; or,
    - (2) certified registered nurse anesthetist, nurse midwife, nurse practitioner, physician's assistant, podiatrist, or surgical assistant.
  - b. **administrator** means an owner, partner, stockholder, director, trustee, executive officer, medical director, department head, or faculty member of the **scheduled excess professional liability insured**.
  - c. **committee member** means a person serving as a member of a committee or board formed or controlled by the **scheduled excess professional liability insured**. It also includes any person executing the directives of such a committee or board.
  - d. **student** means an unlicensed person, other than a resident, enrolled in a licensed or accredited training program operated by the **scheduled excess professional liability insured** relative to the delivery of professional services.

**IV. ADDITIONAL EXCLUSIONS**

In addition to any exclusions listed in the Excess General Exclusions, this Insuring Agreement does not apply to:

- A. any **claim** that was **first reported** by, or on behalf of, any **Insured** prior to the **policy period**;
- B. any **claim** arising from, or in connection with, any **professional services** rendered, or which should have been rendered, outside of the **scheduled excess professional liability insured's** employment, or contract for services with any **Insured** listed on the Schedule of Excess Professional Liability Insured's as a **scheduled excess professional liability insured**. This exclusion shall not apply to **professional services** rendered, or which should have been rendered, by a **scheduled excess professional liability insured** at the scene of an accident without expectation of monetary compensation;
- C. any **claim** arising from, or in connection with, an **Insured's** ownership, supervision or management of any organization, partnership, joint venture, or other business enterprise that is not a **scheduled excess professional liability insured**;
- D. any **claim** arising from, or in connection with, **treatment** rendered, or which should have been rendered, by an **administrator or committee member** unless it was provided in an emergency without an expectation of compensation;
- E. any **business practices claim**;
- F. any **employment practices claim**;



- G. any **product liability claim**;
- H. liability for the acts of another assumed by an **Insured** under any contract or agreement, except as otherwise noted in this policy;
- I. any **claim** seeking to impose liability under the Employee Retirement Income Security Act of 1974 (ERISA), or any amendment or regulation that applies thereto; or,
- J. any liability for the acts of another assumed by the **Insured** under any contract or agreement, whether written or oral, which shall include any hold harmless or indemnification agreement entered into by the **Insured**, provided that this exclusion shall not serve to exclude coverage to any third party for any liability imposed upon such third party solely as the result of the **Insured's** rendering of, or failure to render, **professional services**.

#### V. LIMITS OF LIABILITY

##### *PER EVENT LIMIT*

The **Company's** duty to pay excess loss on behalf of a **scheduled excess professional liability insured** for any **health care event** covered under this Insuring Agreement shall not exceed the Per Event Limit of Liability shown for Excess Professional Liability on the Schedule of Excess Professional Liability Insureds. This limit shall apply regardless of the number of:

1. persons who sustain injury;
2. claimants;
3. **claims**;
4. policies issued by the **Company**; or,
5. **Insureds** who share the Per Event limit.

##### *AGGREGATE LIMIT*

The **Company's** duty to pay excess loss on behalf of all **scheduled excess professional liability insureds** for all **health care events** covered under this Insuring Agreement shall not exceed the Aggregate Limit of Liability shown for Excess Professional Liability on the Schedule of Excess Professional Liability Insureds. This limit shall apply regardless of the number of:

1. **health care events**;
2. persons who sustain injury;
3. claimants;
4. **claims**;
5. policies issued by the **Company**; or,
6. **Insureds** who share the Aggregate limit.

#### VI. ADDITIONAL CONDITIONS

In addition to the conditions contained in the Excess General Conditions, the following conditions apply to this Insuring Agreement:

##### A. Settlement.

The **Company** may pay any excess loss as it deems expedient, unless prohibited by statute, regulation, rule or order, after first providing written notice to the **first named insured**.

##### B. Extended Reporting Period Option.

Purchase of an **extended reporting period**:

1. If the entire policy is canceled or nonrenewed, the **Company** shall, upon written request by or on behalf of the **first named insured**, make an offer for an **extended reporting period**.
  - a. Any such written request by or on behalf of the **first named insured** must be received by the **Company** within 30 days of the expiration of the policy.
  - b. The **Company** shall be required to offer an **extended reporting period**, if requested, only to the **first named**



**insured** for all risks covered under the policy.

- c. The **Company** shall be required to offer an **extended reporting period** only if the **first named insured** has purchased an **extended reporting period** for all **scheduled coverages** that provide coverage on a claims-made basis.
2. If the **first named insured** accepts the offer of the **extended reporting period**, all **scheduled excess professional liability insureds** that were afforded coverage by this policy shall be included in the **extended reporting period**. However, the **Company** has no duty to offer a separate **extended reporting period** to any **scheduled excess professional liability insured** or any other **Insured**. In addition, the **Company** has no duty to inform any **scheduled excess professional liability insured** or any other **Insured** whether the **first named insured** has accepted its offer.
3. The **first named insured** may accept the **Company's** offer of an **extended reporting period** by paying the premium due within 30 days from either the date on which the policy expires or the date on which the **Company** receives the request for an **extended reporting period**, whichever is later. Failure to pay the full premium within this 30-day period will be deemed a rejection of the offer.
4. If purchased, the **extended reporting period** will begin at the end of the **policy period** and shall not reinstate the limits of liability of this Insuring Agreement. Thereafter, any **claim** against a **scheduled excess professional liability insured**, which is otherwise covered by the policy, may be reported for an unlimited duration. However, the **extended reporting period** shall not:
  - a. extend the **policy period**;
  - b. apply to any **claim** arising from a **health care event** that took place after the **policy period**; or,
  - c. otherwise expand the coverage provided under this policy.



# National Fire & Marine Insurance Company

Omaha, Nebraska

## *SCHEDULE OF EXCESS INSURED BUSINESSES EXCESS COMMERCIAL GENERAL LIABILITY (OCCURRENCE)*

### DECLARATIONS

Policy Number: EN004806

First Named Insured: Laser Spine Institute, LLC

### LIMITS OF LIABILITY

Per Event Limit of Liability: \$ 20,000,000

General Aggregate Limit of Liability: \$ 20,000,000

### SCHEDULE OF INSURED

In consideration of the payment of the premium due, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree the following entities are designated as **scheduled excess insured businesses**.

All **scheduled excess insured businesses** listed below share in the limits of liability identified above.

SCHEDULED EXCESS INSURED BUSINESS	ID NUMBER
Laser Spine Institute, LLC	241482
Laser Spine Institute Consulting LLC	626955
Laser Spine Surgery Center of Arizona, LLC	254295
Laser Spine Surgery Center of Cincinnati, LLC	637293
Laser Spine Surgery Center of Cleveland, LLC	637292
Laser Spine Surgery Center of Oklahoma, LLC	254297
Laser Spine Surgery Center of Pennsylvania, LLC	254296
Laser Spine Surgery Center of St. Louis, LLC	637294
Laser Spine Surgery Center of Tampa, LLC	943051
Laser Spine Surgery Center of Warwick, LLC	943052
Laser Spine Surgical Center, LLC	626953
LSI HoldCo LLC	626956
LSI Houston, PA	616898
LSI Management Company, LLC	626954
Medical Care Management Services, LLC	626957

### EXCESS GENERAL LIABILITY

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Edition Date: 1/2011



# National Fire & Marine Insurance Company

Omaha, Nebraska

## *EXCESS COMMERCIAL GENERAL LIABILITY INSURING AGREEMENT (OCCURRENCE)*

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In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree as follows, subject to the terms and conditions of this policy, including the applicable limits of liability.

*I. INSURING AGREEMENT—COVERAGE A: BODILY INJURY AND PROPERTY DAMAGE*

- A. The **Company** will pay those sums that the **scheduled excess insured business** including its **agents** becomes legally obligated to pay as **excess loss** because of **bodily injury** or **property damage** to which this insurance applies. The **Company** will have no duty to defend the **Insured** against any **suit** seeking those damages. However, the **Company** may, at its discretion, investigate any **event** and settle any **claim** or **suit**. The amount the **Company** will pay for damages is limited as described in the *LIMITS OF LIABILITY – ALL EXCESS COMMERCIAL LIABILITY COVERAGES* section. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under *DEFENSE AND SUPPLEMENTAL PAYMENTS – ALL EXCESS COMMERCIAL GENERAL LIABILITY COVERAGES*.
- B. This insurance applies to **bodily injury** and **property damage** only if:
1. the **bodily injury** or **property damage** is caused by an **event** that takes place in the **coverage territory**;
  2. the **bodily injury** or **property damage** is caused by an **event** that occurs during the **policy period**; and
  3. prior to the **policy period**, no **scheduled excess insured business** or **agent** authorized by the **scheduled excess insured business** to give or receive notice of an **event** knew that the **bodily injury** or **property damage** had occurred, in whole or in part. If such a **scheduled excess insured business**, or **agent** authorized by the **scheduled excess insured business** to give or receive notice of an **event**, knew prior to the **policy period** that the **bodily injury** or **property damage** occurred, then any continuation, change, or resumption of such **bodily injury** or **property damage** during or after the **policy period** will be deemed to have been known prior to the **policy period**.
- C. **Bodily injury** or **property damage**, which occurs during the **policy period** and was not, prior to the **policy period**, known to have occurred by a **scheduled excess insured business** or **agent** authorized by the **scheduled excess insured business** to give or receive notice of an **event**. This includes any continuation, change, or resumption of that **bodily injury** or **property damage** after the **policy period**.
- D. **Bodily injury** or **property damage** will be deemed to have been known to have occurred at the earliest time when any **scheduled excess insured business** or **agent** authorized by the **scheduled excess insured business** to give or receive notice of an **event**:
1. reports all, or any part, of the **bodily injury** or **property damage** to the **Company** or any other insurer;
  2. receives a written or verbal demand or **claim** for damages because of the **bodily injury** or **property damage**;
  - or,
  3. becomes aware by any other means that **bodily injury** or **property damage** has occurred or has begun to occur.
- E. Damages because of **bodily injury** include damages claimed by any person or organization for care, loss of services, or death resulting at any time from the **bodily injury**.

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EXCESS GENERAL LIABILITY

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Edition Date: 8/2014



## II. *EXCLUSIONS — COVERAGE A: BODILY INJURY AND PROPERTY DAMAGE*

This insuring agreement does not apply to:

### A. Professional Services.

**Bodily injury or property damage** arising out of the rendering or failure to render any **professional services** or other professional service. Other professional service includes, but is not limited to:

1. legal, accounting or advertising services;
2. preparing, approving or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications by any architect, engineer or surveyor performing services on a project on which the **Insured** serves as construction manager;
3. inspection, supervision, quality control, architectural or engineering activities done by or for you on a project on which the **Insured** serves as project manager;
4. engineering services, including related supervisory or inspection services;
5. medical, surgical, dental, x-ray or nursing services treatment, advice or instruction;
6. any health or therapeutic service treatment, advice or instruction;
7. any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement, or personal grooming or therapy;
8. any service, treatment, advice or instruction relating to physical fitness, including service, treatment, advice or instruction in connection with diet, cardiovascular fitness, body building or physical training programs;
9. optometry or optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;
10. body piercing services;
11. services in the practice of pharmacy; but this exclusion does not apply if the **Insured** is a retail druggist or the **Insured's** operations are those of a retail drugstore;
12. law enforcement or firefighting services; and,
13. handling, embalming, disposal, burial, cremation or disinterment of dead bodies.

### B. Ownership of Non-insured Entities.

Any **claim** arising from, or in connection with, an **Insured's** ownership, supervision or management of any organization, partnership, joint venture, or other business enterprise that is not a **scheduled excess insured business**.

### C. Expected or Intended Injury.

**Bodily injury or property damage** arising from, or in connection with, any act expected or intended by an **Insured** to cause **bodily injury or property damage**. This exclusion applies even if an **Insured's** act causes **bodily injury or property damage**:

1. of a different type or degree than expected or intended; or,
2. to a different person or entity than expected or intended.

However, this exclusion does not apply to **bodily injury** arising from, or in connection with, an **Insured's** use of reasonable force to protect persons or property.

### D. Contractual Liability.

**Bodily injury or property damage** arising from, or in connection with, an **Insured's** obligation to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

1. that the **Insured** would have in the absence of the contract or agreement; or,
2. 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. Solely for the purposes of liability assumed in an **insured contract**, reasonable attorney fees and necessary litigation expenses incurred by or for, a party other than an **Insured**, are deemed to be damages because of **bodily injury or property damage**, provided:
  - a. liability to or for that party's defense has also been assumed in the same **insured contract**; and,



- b. attorney fees and litigation expenses are for the defense against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

E. Liquor Liability.

**Bodily injury or property damage** arising from, or in connection with, any **Insured's** liability by reason of:

- 1. causing or contributing to the intoxication of any person;
- 2. the furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or,
- 3. any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if the **Insured** is in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

F. Employment-Related Practices Liability.

**Bodily injury** to:

- 1. a person arising from, or in connection with, any:
  - a. refusal to employ that person;
  - b. termination of that person's employment; or
  - c. employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or
- 2. the spouse, child, parent, brother, or sister of that person as a consequence of **bodily injury** to that person at whom any of the employment-related practices described in Paragraphs (a), (b) or (c) above is directed.

This exclusion applies:

- 1. whether the injury-causing event described in Paragraphs (a), (b) or (c) above occurs before, during, or after employment of that person;
- 2. whether the **Insured** may be liable as an employer or in any other capacity; and,
- 3. to any obligation to share damages with or repay someone else who must pay damages because of injury.

G. Employer's Liability.

**Bodily injury** to:

- 1. an **employee** of the **Insured** arising out of and in the course of:
  - a. employment by the **Insured**; or,
  - b. performing duties related to the conduct of an **scheduled excess insured business**.
- 2. the spouse, child, parent, brother, or sister of that **employee** as a consequence of Paragraph 1 above.

This exclusion shall apply:

- 1. whether the **scheduled excess insured business** may be held liable as an employer, or in any other capacity; and,
- 2. to any obligation to share damages with, or repay someone else who must pay damages, because of the injury.

This exclusion does not apply to liability assumed by the **Insured** under an **insured contract**.

H. Workers' Compensation and Other Similar Laws.

Any **claim** arising from, or in connection with, any obligation of an **Insured**, or damages awardable against an **Insured**, under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

I. Pollution.

**Bodily injury or property damage** arising from a **pollution event**. This policy also does not apply to **clean-up costs**.

J. Aircraft, Auto or Watercraft.

**Bodily injury or property damage** arising out of the ownership, maintenance, use, or entrustment to others of any



aircraft, **auto**, or watercraft owned or operated by or rented or loaned to any **Insured**. Use includes operation and loading or unloading.

1. This exclusion applies even if the **claims** against any **Insured** allege negligence or other wrongdoing in the supervision, hiring, employment, training, or monitoring of others by that **Insured** if the event which caused the **bodily injury** or **property damage** involved the ownership, maintenance, use, or entrustment to others of any aircraft, **auto**, or watercraft that is owned or operated by or rented or loaned to any **Insured**.
2. This exclusion does not apply to:
  - a. the **loading or unloading** of a patient;
  - b. a watercraft while on shore and on premises owned or rented by the **scheduled excess insured business**;
  - c. a watercraft that is:
    - (1) not owned by an **Insured**,
    - (2) less than 26 feet long, and
    - (3) was not being used to carry persons or property for a charge.
  - d. parking an **auto** on or next to a site owned or occupied by an **scheduled excess insured business**, but only if the **auto** is not owned, rented, or being used by an **Insured**;
  - e. liability assumed under an **insured contract** for the ownership, maintenance, or use of an aircraft or watercraft; or,
  - f. **bodily injury or property damage** arising from, or in connection with:
    - (1) the operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of **mobile equipment** if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or,
    - (2) the operation of any of the machinery or equipment listed in Paragraph 2.a or 2.b of the definition of **mobile equipment**.

K. Mobile Equipment.

**Bodily injury or property damage** arising from, or in connection with:

1. the transportation of **mobile equipment** by an **auto** owned or operated by or rented or loaned to an **Insured**; or,
2. the use of **mobile equipment** in, while in practice for, or while being prepared for any prearranged racing, speed, demolition, or stunting activity.

L. War.

**Bodily injury or property damage**, however caused, arising out of, or in connection with:

1. war, including undeclared or civil war;
2. warlike action by a military force, including action in hindering or defending against an actual or expected attack by any governmental, sovereign, or other authority using military personnel or other agents; or,
3. insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

M. Damage to Property.

**Property damage** to:

1. property the **scheduled excess insured business** owns, rents, or occupies, including any costs or expenses incurred by the **scheduled excess insured business**, or any other person, organization, or entity, for repair, replacement, enhancement, restoration, or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
2. premises the **scheduled excess insured business** sells, gives away, or abandons if the **property damage** arises out of, or in connection with, any part of those premises;
3. property loaned to a **scheduled excess insured business**;
4. personal property in the care, custody, or control of an **Insured**;
5. that particular part of real property on which the **scheduled excess insured business** or any contractors or



- subcontractors, working directly or indirectly on behalf of the **scheduled excess insured business**, are performing operations if the **property damage** arises out of those operations; or,
6. that particular part of any property that must be restored, repaired, or replaced because the **insured's work** was incorrectly performed on it.

Paragraphs 1, 3, and 4 of this exclusion do not apply to **property damage** (other than damage by fire) to a premises, including the contents of such premises, rented to a **scheduled excess insured business** for a period of seven or fewer consecutive days.

Paragraph 2 of this exclusion does not apply if the premises are the **insured's work** and were never occupied, rented, or held for rental by the **scheduled excess insured business**.

Paragraph 6 of this exclusion does not apply to **property damage** included in the **products completed operations hazard**.

N. *Damage to the Insured's Product.*

**Property damage** to an **insured's product** arising from, or in connection with, it or any part of it.

O. *Damage to the Insured's Work.*

**Property damage** to an **insured's work** arising from, or in connection with, the **insured's work**, or any part of it, and included in the **products completed operations hazard**. This exclusion does not apply if the damaged work, or the work out of which the damage arises, was performed by a subcontractor on behalf of the **Insured**.

P. *Damage to Impaired Property or Property Not Physically Injured.*

**Property damage to impaired property** or property that has not been physically injured arising from, or in connection with:

1. a defect, deficiency, inadequacy, or dangerous condition in the **insured's product** or **insured's work**; or,
2. a delay or failure by an **Insured** to perform under the terms of a contract or agreement.

This exclusion does not apply to the loss of use of other property arising from, or in connection with, sudden and accidental physical injury to the **insured's product** or the **insured's work** after it has been put to its intended use.

Q. *Recall of Products, Work, or Impaired Property.*

**Claims** arising from, or in connection with, any loss, cost, or expense incurred by a **scheduled excess insured business** or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal, or disposal of:

1. the **insured's product**;
2. the **insured's work**; or,
3. **impaired property**,

if such product, work, or property is withdrawn or recalled from the market or from use due to a known or suspected defect, deficiency, inadequacy, or dangerous condition to it.

Exclusions E through Q do not apply to damage by fire to premises while rented to a **scheduled excess insured business** or temporarily occupied by a **scheduled excess insured business** with the permission of its owner.

R. *Personal and Advertising Injury.*

**Bodily injury** arising from, or in connection with, **personal and advertising injury**.

S. *Electronic Data.*

Any **property damage** or other intangible damages arising from, or in connection with, the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate, **electronic data**. As used in this exclusion, **electronic data** means information, facts, or programs stored as or on, created or used on, or transmitted to or from



computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices, or any other media that are used with electronically controlled equipment.

T. Recording and Distribution of Material or Information in Violation of Law.

**Bodily injury or property damage** arising from, or in connection with, any action or omission that violates or is alleged to violate:

1. the Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
2. the CAN-SPAM Act of 2003, including any amendment of or addition to such law;
3. the Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or,
4. any federal, state or local statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

U. Sexual Acts.

**Bodily injury or property damage:**

1. arising from, or in connection with, any actual or threatened sexual act, behavior or conduct, including, but not limited to, assault, exploitation, harassment or molestation, by any person of another person while in the care, custody, or control of any **Insured**; or,
2. the negligent:
  - a. employment;
  - b. investigation;
  - c. supervision;
  - d. reporting to the proper authorities, or failure to so report; or,
  - e. retention;

of a person for whom any **Insured** is or ever was legally responsible and whose conduct would be excluded by Paragraph 1. above.

V. Fines, Penalties, and Sanctions.

Any **claim** seeking injunctive relief, the award of fines, penalties or sanctions, or for any relief other than for damages which an **Insured** becomes legally obligated to pay through adjudication or settlement for **bodily injury or property damage**.

W. Punitive Damages.

Any damages over and above actual compensatory damages. This includes punitive, exemplary, and multiple damages.

X. Directors and Officers Liability.

Any **claim** that is covered under an **Insured's** directors and officers liability insurance policy; or any **claim** subject to a directors and officers liability insurance policy, including, but not limited to, (1) employment practices claims, (2) internal corporate or business disputes, and (3) claims by organizations against their directors and officers for business practices.

Y. Default Judgment.

Damages that an **Insured** becomes legally obligated to pay for **bodily injury or property damage** resulting from a default judgment or other **claim** that the **Company** was unable to timely investigate or defend due to the acts or omissions of the **Insured**.

Z. Nuclear Energy Liability.

**Bodily injury or property damage:**

1. for which an **Insured** has coverage under a nuclear energy policy issued by the:
  - a. Nuclear Energy Liability Insurance Association;



- b. Mutual Atomic Energy Liability Underwriters;
- c. Nuclear Insurance Association of Canada; or,
- d. any successor of the proceeding entities.

This policy also does not apply if such coverage did exist but was terminated by the exhaustion of the **Insured's** limit of liability.

- 2. resulting from the hazardous properties of nuclear material for which the **Insured**:
  - a. was required to maintain financial protection under the Atomic Energy Act of 1954, or any amendment or regulation that applies thereto; or,
  - b. was entitled to indemnity by the United States government, or any agency thereof, or would have been entitled to had this policy not been issued.

AA. ADA.

Any **claim** arising from, or in connection with, an **Insured's** failure to comply with the Americans with Disabilities Act of 1990 (ADA), or any similar federal, state, or local law, including any amendment of or addition to such law

BB. RICO.

Any **claim** arising from, or in connection with, an **Insured's** violation of the Racketeer Influenced Corrupt Organizations Act (RICO), or any similar federal, state, or local law, including any amendment of or addition to such law.

CC. Financial Services / Violation of Securities Laws.

**Bodily injury or property damage** arising from, or in connection with, the rendering of or the failure to render financial services by any **Insured** to others. For purposes of this exclusion, financial services include, but are not limited to:

- 1. planning, administering or advising on:
  - a. any:
    - (1) investment;
    - (2) pension;
    - (3) annuity;
    - (4) savings;
    - (5) checking; or,
    - (6) individual retirement account, plan, fund or account;
  - b. the issuance or withdrawal of any bond, debenture, stock or other securities;
  - c. the trading of securities, commodities, or currencies; or,
  - d. any acquisitions or mergers;
- 2. acting as a dividend disbursing agent, exchange agent, redemption or subscription agent, warrant or scrip agent, fiscal or paying agent, tax withholding agent, escrow agent, clearing agent, or electronic funds transfer agent;
- 3. lending, or arranging for the lending of, money, including credit card, debit card, leasing or mortgage operations or activities or interbank transfers;
- 4. repossessing of real or personal property from a borrower or acting as an assignee for the benefit of creditors;
- 5. checking or reporting of credit;
- 6. maintaining of financial accounts or records;
- 7. tax planning, tax advising or the preparation of tax returns; or,
- 8. selling or issuing travelers checks, letters of credit, certified checks, bank checks or money orders.

This exclusion includes damages arising from an **Insured's** violation of any federal, state, or local securities law or regulation, including any amendment of or addition to such law.

DD. Fungi and Bacteria.

- 1. **Bodily injury or property damage** arising from, or in connection with, the actual, alleged or threatened inhalation of, injection of, contact with, exposure to, existence of, or presence of any fungi or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or

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EXCESS GENERAL LIABILITY

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Edition Date: 8/2014



product contributed concurrently or in any sequence to such injury or damage.

2. Any loss, cost or expense arising from, or in connection with, the abating, testing, monitoring, cleaning, removing, containing, treating, detoxifying, neutralizing, remediating, or disposing of, or in any way responding to, or assessing the effects of, fungi or bacteria, by any **Insured** or by any other person or entity. This exclusion shall not apply to any fungi or bacteria contained in a good or product intended for bodily consumption. For the purposes of this exclusion, the term fungi includes any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents, or byproducts produced or released by fungi.

EE. Insured Versus Insured.

Any **claim** which is initiated, alleged, or caused to be brought about, by any **Insured** covered by this policy against any other **Insured** covered by this policy.

FF. Multiple Policies Issued by Company.

If more than one policy issued by the **Company** applies to a **claim** brought against an **Insured**, the **Company's** duty to pay for any damages will be confined to the policy containing the largest applicable limit.

GG. Anti-Stacking.

If more than one Insuring Agreement under this policy applies to a **claim** brought against an **Insured**, the **Company's** duty to pay any damages will be confined to the Insuring Agreement containing the largest applicable limit.

HH. Governmental Immunity and Other Protections.

Any **claim**:

1. for which the **Insured** has, or is eligible for, complete immunity as a volunteer or as an employee or contractor of a federal, state, or local government; or,
2. involving an **Insured** who has, or is eligible for, insurance, indemnity, or any other protection pursuant to any federal, state or local laws, including but not limited to the Federal Tort Claims Act.

II. Employees.

Any **claim** arising from, or in connection with, the acts or omissions of an **employee**, involving:

1. **bodily injury**:
  - a. to another **agent**;
  - b. to the spouse, relative or dependant as a consequence of Paragraph 1.a, above; or,
  - c. for which there is any duty to share damages or loss with, or repay, another party liable for the loss as a consequence of Paragraphs 1.a and 1.b, above.
2. **property damage to property**:
  - a. owned, occupied, or used by an **Insured**;
  - b. rented to an **Insured**; or,
  - c. in the care, custody, or control of an **Insured**.

JJ. Cyber and Privacy Insurance.

Any **claim** arising from, or in connection with, any loss or damages covered under any cyber or privacy insurance coverage, including but not limited to, any coverage for network security and privacy, regulatory fines and penalties, patient notification and credit monitoring, or data recovery cost.

III. *INSURING AGREEMENT— COVERAGE B: PERSONAL AND ADVERTISING INJURY*

- A. The **Company** will pay those sums that the **scheduled excess insured business** including its **agents** become legally obligated to pay as **excess loss** because of **personal and advertising injury** to which this insurance applies. The **Company** will have no duty to defend the **Insured** against any **suit** seeking those damages. However, the **Company** may, at its discretion, investigate any offense and settle any **claim** or **suit**. The amount the **Company** will pay for damages is limited as described in the *LIMITS OF LIABILITY – ALL EXCESS COMMERCIAL*



*LIABILITY COVERAGES* section. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under *DEFENSE AND SUPPLEMENTAL PAYMENTS – ALL EXCESS COMMERCIAL GENERAL LIABILITY COVERAGES*.

- B. This insurance applies to **personal and advertising injury** caused by an offense arising out of the **scheduled excess insured business**, but only if the offense was committed in the **coverage territory** during the **policy period**.

IV. *EXCLUSIONS — COVERAGE B: PERSONAL AND ADVERTISING INJURY*

This insurance does not apply to:

A. *Professional Services.*

**Personal and advertising injury** arising out of the rendering or failure to render any **professional services** or other professional service. Other professional service includes, but is not limited to:

1. legal, accounting or advertising services;
2. preparing, approving or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications by any architect, engineer or surveyor performing services on a project on which the **Insured** serves as construction manager;
3. inspection, supervision, quality control, architectural or engineering activities done by or for you on a project on which the **Insured** serves as project manager;
4. engineering services, including related supervisory or inspection services;
5. medical, surgical, dental, x-ray or nursing services treatment, advice or instruction;
6. any health or therapeutic service treatment, advice or instruction;
7. any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement, or personal grooming or therapy;
8. any service, treatment, advice or instruction relating to physical fitness, including service, treatment, advice or instruction in connection with diet, cardiovascular fitness, body building or physical training programs;
9. optometry or optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;
10. body piercing services;
11. services in the practice of pharmacy; but this exclusion does not apply if the **Insured** is a retail druggist or the **Insured's** operations are those of a retail drugstore;
12. law enforcement or firefighting services; and,
13. handling, embalming, disposal, burial, cremation or disinterment of dead bodies.

B. *Ownership of Non-insured Entities.*

**Personal and advertising injury** arising from, or in connection with, an **Insured's** ownership, supervision or management of any organization, partnership, joint venture, or other business enterprise that is not an **insured business**.

C. *Knowing Violation of Rights of Others.*

**Personal and advertising injury** caused by, or at the direction of, an **Insured** with the knowledge that the act would violate the rights of another and would inflict **personal and advertising injury**.

D. *Material Published With Knowledge of Falsity.*

**Personal and advertising injury** arising from, or in connection with, oral or written publication of material if done by, or at the direction of, an **Insured** with knowledge of its falsity.

E. *Material Published Prior to Policy.*

**Personal and advertising injury** arising from, or in connection with, oral or written publication of material whose first publication took place before the **retroactive date**, if any, shown on the Schedule of Excess Insured Businesses.



F. Employment-Related Practices Liability.

**Personal and advertising injury to:**

1. a person arising from, or in connection with, any:
  - a. refusal to employ that person;
  - b. termination of that person's employment; or
  - c. employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or
2. the spouse, child, parent, brother, or sister of that person as a consequence of **personal and advertising injury** to that person at whom any of the employment-related practices described in Paragraphs (a), (b) or (c) above is directed.

This exclusion applies:

1. whether the injury-causing event described in Paragraphs (a), (b) or (c) above occurs before, during, or after employment of that person;
2. whether the **Insured** may be liable as an employer or in any other capacity; and,
3. to any obligation to share damages with or repay someone else who must pay damages because of injury.

G. Employer's Liability.

**Bodily injury to:**

1. an **employee** of the **Insured** arising out of and in the course of:
  - a. employment by the **Insured**; or,
  - b. performing duties related to the conduct of an **insured business**.
2. the spouse, child, parent, brother, or sister of that **employee** as a consequence of Paragraph 1 above.

This exclusion shall apply:

1. whether the **insured business** may be held liable as an employer, or in any other capacity; and,
2. to any obligation to share damages with, or repay someone else who must pay damages, because of the injury.

This exclusion does not apply to liability assumed by the **Insured** under an **insured contract**.

H. Criminal Acts.

**Personal and advertising injury** arising from, or in connection with, any criminal act committed by, or at the direction of, an **Insured**.

I. Contractual Liability.

**Personal and advertising injury** arising from or in connection with, an **Insured's** obligation to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the **Insured** would have in the absence of the contract or agreement.

J. Breach of Contract.

**Personal and advertising injury** arising from, or in connection with, a breach of contract, except an implied contract to use another's advertising idea in the **Insured's advertisement**.

K. Quality or Performance of Goods – Failure to Conform to Statements.

**Personal and advertising injury** arising from, or in connection with, the failure of goods, products, or services to conform to any statement of quality or performance in the **Insured's advertisement**.

L. Wrong Description of Prices.

**Personal and advertising injury** arising from, or in connection with, the wrong description of the price of the goods, products, or services in the **Insured's advertisement**.

M. Infringement of Copyright, Patent, Trademark, or Trade Secret.

**Personal and advertising injury** arising from, or in connection with, the infringement of copyright, patent,



trademark, trade secret, or other intellectual property rights. However, this exclusion shall not apply to the infringement of copyright, trade, dress, or slogan in the **Insured's advertisement**.

N. Insureds in Media and Internet Type Businesses.

**Personal and advertising injury** committed by an **Insured** whose business is:

1. advertising, broadcasting, publishing, or telecasting;
2. designing or determining content for the websites of others; or,
3. an internet search, access, content, or service provider.

However, this exclusion does not apply to **claims** arising from, or in connection with, false arrest, detention or imprisonment, malicious prosecution, or the wrongful eviction from, or wrongful entry into, or invasion of the private occupancy of a room dwelling or premises occupied by, or on behalf of, its owner, landlord, or lessor.

For the purposes of this exclusion, the placing of frames, borders, or links, or advertising for an **Insured** or others is not considered, by itself, to be the business of advertising, broadcasting, publishing, or telecasting.

O. Electronic Chatrooms or Bulletin Boards.

**Personal and advertising injury** arising from, or in connection with, an electronic chatroom or bulletin board an **Insured** hosts, owns, or over which the **Insured** exercises control.

P. Unauthorized Use of Another's Name or Product.

**Personal and advertising injury** arising from, or in connection with, the unauthorized use of another's name or product in an **Insured's** email address, domain name, or metatag, or other similar tactics to mislead another's potential customers.

Q. Pollution.

**Personal and advertising injury** arising from, or in connection with, the actual or threatened discharge, dispersal, seepage, migration, release, or escape of **pollutants** at any time.

R. Pollution Related.

Any **claim** arising from, or in connection with, any loss, cost, or expense arising out of, any:

1. request, demand, order, or statutory or regulatory requirement that any **Insured** or others test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize, or in any way respond to or assess the effects of, **pollutants**; or,
2. **claim** or **suit** by or on behalf of a governmental authority for damages because of testing, monitoring, cleaning up, removing, containing, treating, detoxifying, or neutralizing, or in any way responding to or assessing the effects of, **pollutants**.

S. War.

**Personal and advertising injury**, however caused and arising from, or in connection with:

1. war, including undeclared or civil war;
2. warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any governmental, sovereign, or other authority using military personnel or other agents; or,
3. insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

T. Sexual Acts.

**Personal and advertising injury**:

1. any actual or threatened sexual act, behavior or conduct, including, but not limited to, assault, exploitation, harassment or molestation, by any person of another person while in the care, custody, or control of any **Insured**; or,
2. the negligent:
  - a. employment;



- b. investigation;
- c. supervision;
- d. reporting to proper authorities, or failure to so report; or,
- e. retention;

of a person for whom any **Insured** is or ever was legally responsible and whose conduct would be excluded by Paragraph 1 above.

U. Fines, Penalties, or Sanctions.

Any **claim** seeking injunctive relief, the award of fines, penalties, or sanctions, or for any relief other than for damages which an **Insured** becomes legally obligated to pay through adjudication or settlement for **personal or advertising injury**.

V. Punitive Damages.

Any damages over and above actual compensatory damages. This includes punitive, exemplary, and multiple damages.

W. Directors and Officers Liability.

Any **claim** for **personal and advertising injury** that is covered under an **Insured's** directors and officers liability insurance policy; or any **claim** subject to a directors and officers liability insurance policy, including, but not limited to, (1) employment practices claims, (2) internal corporate or business disputes, and (3) claims by organizations against their directors and officers for business practices..

X. Default Judgment.

Damages that an **Insured** becomes legally obligated to pay for **person and advertising injury** resulting from a default judgment or other **claim** that the **Company** was unable to timely investigate or defend due to the acts of omissions of the **Insured**.

Y. Financial Services / Violation of Securities Laws.

**Personal and advertising injury** arising from, or in connection with, the rendering of or the failure to render financial services by any **Insured** to others. For purposes of this exclusion, financial services include, but are not limited to:

1. planning, administering or advising on:
  - a. any:
    - (1) investment;
    - (2) pension;
    - (3) annuity;
    - (4) savings;
    - (5) checking; or
    - (6) individual retirement account, plan, fund or account;
  - b. the issuance or withdrawal of any bond, debenture, stock or other securities;
  - c. the trading of securities, commodities, or currencies; or
  - d. any acquisitions or mergers;
2. acting as a dividend disbursing agent, exchange agent, redemption or subscription agent, warrant or scrip agent, fiscal or paying agent, tax withholding agent, escrow agent, clearing agent, or electronic funds transfer agent;
3. lending, or arranging for the lending of, money, including credit card, debit card, leasing or mortgage operations or activities or interbank transfers;
4. repossessing of real or personal property from a borrower or acting as an assignee for the benefit of creditors;
5. checking or reporting of credit;
6. maintaining of financial accounts or records;
7. tax planning, tax advising or the preparation of tax returns; or
8. selling or issuing travelers checks, letters of credit, certified checks, bank checks or money orders.

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EXCESS GENERAL LIABILITY

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This exclusion includes **personal and advertising injury** arising from, or in connection with, an **Insured's** violation of any federal, state, or local securities law or regulation.

Z. Nuclear Energy Liability.

**Personal and advertising injury:**

1. for which an **Insured** has coverage under a nuclear energy policy issued by the:

- a. Nuclear Energy Liability Insurance Association;
- b. Mutual Atomic Energy Liability Underwriters;
- c. Nuclear Insurance Association of Canada; or,
- d. any successor of the proceeding entities.

This policy also does not apply if such coverage did exist but was terminated by the exhaustion of the **Insured's** limit of liability.

2. resulting from the hazardous properties of nuclear material for which the **Insured**:

- a. was required to maintain financial protection under the Atomic Energy Act of 1954, or any amendment or regulation that applies thereto; or,
- b. was entitled to indemnity by the United States government, or any agency thereof, or would have been entitled to had this policy not been issued.

AA. ADA.

Any **claim** arising from, or in connection with, an **Insured's** failure to comply with the Americans with Disabilities Act of 1990 (ADA), or any similar federal, state or local law, including any amendment of or addition to such law.

BB. RICO.

Any **claim** arising from, or in connection with, an **Insured's** violation of the Racketeer Influenced Corrupt Organizations Act (RICO), or any similar federal, state or local law, including any amendment of or addition to such law.

CC. Insured Versus Insured.

Any **claim** which is initiated, alleged, or caused to be brought about, by any **Insured** covered by this policy against any other **Insured** covered by this policy.

DD. Multiple Policies Issued by Company.

If more than one policy issued by the **Company** applies to a **claim** brought against an **Insured**, the **Company's** duty to pay for any damages will be confined to the policy containing the largest applicable limit.

EE. Anti-Stacking.

If more than one Insuring Agreement under this policy applies a **claim** brought against an **Insured**, the **Company's** duty to pay any damages will be confined to the Insuring Agreement containing the largest applicable limit.

FF. Governmental Immunity and Other Protections.

Any **claim**:

1. for which the **Insured** has, or is eligible for, complete immunity as a volunteer or as an employee or contractor of a federal, state, or local government; or,
2. involving an **Insured** who has, or is eligible for, insurance, indemnity, or any other protection pursuant to any federal, state or local laws, including but not limited to the Federal Tort Claims Act.

GG. Employees.

Any **claim** arising from, or in connection with, the acts or omissions of an **employee**, involving:

1. **personal and advertising injury**:
  - a. to another agent;



- b. to the spouse, relative or dependant as a consequence of Paragraph 1.a, above; or,
  - c. for which there is any duty to share damages or loss with, or repay, another party liable for the loss as a consequence of Paragraphs 1.a and 1.b, above.
2. **property damage** to property:
- a. owned, occupied, or used by an **Insured**;
  - b. rented to an **Insured**; or,
  - c. in the care, custody, or control of an **Insured**.

HH. Electronic Data.

Any **personal and advertising injury** arising from, or in connection with, the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate, **electronic data**. As used in this exclusion, **electronic data** means information, facts, or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices, or any other media that are used with electronically controlled equipment.

II. Recording and Distribution of Material or Information in Violation of Law.

**Personal and advertising injury** arising from, or in connection with, any action or omission that violates or is alleged to violate:

- 1. the Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- 2. the CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- 3. the Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or,
- 4. any federal, state or local statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

JJ. Cyber and Privacy Insurance.

Any **claim** arising from, or in connection with, any loss or damages covered under any cyber or privacy insurance coverage, including but not limited to, any coverage for network security and privacy, regulatory fines and penalties, patient notification and credit monitoring, or data recovery cost.

V. *DEFENSE AND SUPPLEMENTAL PAYMENTS – ALL EXCESS COMMERCIAL GENERAL LIABILITY COVERAGES*

A. No Duty to Defend.

In any **claim** or **suit** covered under this policy, regardless of whether the **Insured** is entitled to a defense under a **scheduled coverage**, the **Company** shall have no duty to defend the **Insured** or pay any **claims expense** under this Insuring Agreement. However, the **Company** shall have the right to participate in the defense and investigation of any **claim** or **suit** that may, in the **Company's** sole determination, exceed the **scheduled limit**, including the right to defend the **Insured**, if the **Company** so chooses. In addition, the **Company** has no duty to:

- 1. defend an **Insured** against a **claim** or **suit** after the **Insured's** applicable limit of liability is exhausted by the payment of judgments or settlements; or,
- 2. appeal any judgment. However, the **Company** has the right, but not the duty, to appeal any judgment that exceeds the **scheduled limit**. If the **Company** decides to appeal any judgment, all costs directly related with the appeal shall be payable by the **Company**, and shall not reduce the applicable limit of liability.

B. Supplemental Payments.

If the **Company** elects to appeal a judgment that exceeds the **scheduled limit**, the **Company** shall pay:

- 1. **claims expense** directly related to the appeal; and,
- 2. the premium on any bond required to proceed with such an appeal approved by the **Company** or to release attachments to the **Insured's** property. However, the **Company** has no duty to apply for or furnish any such bond. In addition, the **Company** shall have no duty to pay the premium on any bond which has a face value in



excess of the remaining limit of liability under the policy.

The **Company** has no duty to pay any **claim** or **claims expense** after the **Insured's** applicable limit of liability is exhausted.

*VI. WHO IS INSURED – ALL EXCESS COMMERCIAL GENERAL LIABILITY COVERAGES*

- A. If a company is designated on the Schedule of Excess Insured Businesses as a **scheduled excess insured business**, it is an **Insured**, but only if the **scheduled excess insured business** is covered under a **scheduled coverage**.
- B. Each of the following is also an **Insured**:
  - 1. a **new business**; or,
  - 2. an **agent** of a **scheduled excess insured business**,  
but only if the **new business** or **agent** is also covered under a **scheduled coverage**.

*VII. LIMITS OF LIABILITY – ALL EXCESS COMMERCIAL GENERAL LIABILITY COVERAGES*

- A. The Per Event Limits of Liability for the **scheduled excess insured business** shown on the Schedule of Excess Insured Businesses shall be the most the **Company** will pay, regardless of the number of:
  - 1. **Insureds**;
  - 2. **claims** made or **suits** brought;
  - 3. **persons** or **organizations** making **claims** or bringing **suits**; or,
  - 4. **policies** issued by the **Company**.
- B. The General Aggregate Limit is the most the **Company** will pay for the sum of:
  - 1. damages under COVERAGE A, including damages because of **bodily injury** and **property damage** included in the **products completed operations hazard**; and,
  - 2. damages under COVERAGE B.
- C. The Limits of Liability of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the **policy period** shown in the Schedule of Excess Insured Businesses, unless the **policy period** is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

*VIII. DEFINITIONS– ALL EXCESS COMMERCIAL GENERAL LIABILITY COVERAGES*

Whenever used in this insuring agreement:

- A. **Additional Insured** means any person or entity listed on the applicable Excess Schedule of Additional Insureds.
- B. **Administrator** means an owner, partner, stockholder, director, trustee, or **executive officer** of a **scheduled excess insured business**.
- C. **Advertisement** means a notice that is broadcast or published to the general public or specific market segments about the **scheduled excess insured business' goods, products, or services** for the purpose of attracting customers or supporters. For the purposes of this definition:
  - 1. notices that are published include material placed on the Internet or on similar electronic means of communication; and,
  - 2. regarding websites, only that part of a website that is about the **Insured's goods, products, or services** for the purposes of attracting customers or supporters is considered an advertisement.
- D. **Agent** means a person who was acting within the scope of his or her duties as:
  - 1. an **employee, administrator, committee member, or real estate manager** of a **scheduled excess business**, at the time of the event or offense; or,



2. a trustee, assign, or legal representative of the **scheduled excess insured business**.

An **agent** shares the coverage provided to the **scheduled excess insured business**, including its limits of liability.

E. **Authorized insured** means any **Insured** authorized by the **first named insured** to give or receive notice of a **claim** to the **Company**.

F. **Auto** means:

1. a land motor vehicle, trailer, or semi-trailer, including any attached machinery and equipment, designed for travel on public roads; or,
2. any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.

However, **auto** does not include **mobile equipment**.

G. **Bodily injury** means any damage to the human body, including sickness or disease and any mental injury, shock, emotional distress, or death arising therefrom. In addition, it includes damages claimed for the cost of any care, loss of services, or loss of consortium arising therefrom.

H. **Case management** means identifying patients with specific health care needs and developing a plan to ensure an efficient use of resources to achieve the best medical outcome.

I. **Claim** means an express written demand upon an **Insured** for money or services as compensation for civil damages. It also includes an event or offense for which coverage was provided under a **scheduled coverage**.

J. **Claims expense** means all costs and expenses incurred in connection with the investigation, adjustment, and defense of any **claim**. Such costs and expenses shall include:

1. attorney fees paid to the law firm selected by the **Company** to defend an **Insured**;
2. court costs;
3. expert fees;
4. reporter fees;
5. the cost of any alternative dispute resolution ordered by a court, otherwise required by law or pre-approved by the **Company**;
6. post judgment interest on that portion of the judgment that does not exceed the applicable limit of liability available under the policy; and,
7. such other costs and expenses that the **Company** determines to be reasonably related to the defense of a **claim**.

However, **claims expenses** does not include:

1. **excess loss**;
2. attorney fees awarded to a claimant;
3. the salary of any employee of an **Insured**; or,
4. the forgiveness of any amounts owed for the cost of care or services rendered by an **Insured**.

K. **Clean-up costs** means any cost, expense, or duty:

1. claimed to be owed by the **Insured** under the statutory authority of a governmental agency; or,
2. incurred by the **Insured** or others to test for, monitor, clean-up, remove, contain, treat, detoxify, or neutralize, or in any way respond to or assess the effects of, any **pollutant**.

L. **Committee member** means a person serving as a member of a committee or board formed or controlled by a **scheduled excess insured business**. It also includes any person executing the directives of such a committee or board.

M. **Company** means the insurance company listed on the Declarations.



- N. **Counseling** means formal therapy rendered to a patient by a licensed professional approved and credentialed by the **Insured** to provide such therapy.
- O. **Coverage Territory** means:
1. the United States of America (including its territories and possessions);
  2. international waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in subsection 1 above; or,
  3. all other parts of the world if the injury or damage arises out of:
    - a. goods or products made or sold by the **scheduled excess insured business** in the territory described above,
    - b. the activities of a person whose home is in the territory described above, but is away for a short time on the **Insured's** business; or,
    - c. **personal and advertising injury** offenses that take place through the internet or similar electronic means of communication,provided the **Insured's** responsibility to pay damages is determined in a **suit** on the merits in the territory described in subsection 1 above or in a settlement to which the **Company** agrees.
- P. **Employee** means any person employed by, or acting under the direction and control of, a **scheduled insured** at the time of the event or offense.
- Q. **Environmental damage** means the injurious presence in, or upon, land, the air, or any watercourse or body of water of any **pollutants**.
- R. **Event** means accident. All injuries arising from:
1. the same or related acts, errors, or omissions; or,
  2. the continuous or repeated exposure to substantially the same harmful conditions will be considered one **event**.
- S. **Excess Loss**
1. **Excess loss** means civil damages, including prejudgment interest, which an **Insured** becomes legally obligated to pay through adjudication or settlement which exceed:
    - a. all applicable **scheduled limits** of any **scheduled coverages**; and,
    - b. all applicable limits of any other valid and collectible insurance policies or other program of indemnity that applies to the **Insured's** liability for the event or offense.
  2. **Excess loss** does not include:
    - a. any damages which are greater than the applicable limit of liability;
    - b. any damages which are not greater than the **scheduled limit** or any other applicable insurance;
    - c. any injunctive or other equitable relief;
    - d. **claims expense**;
    - e. attorneys fees awarded to a claimant as a fine, penalty or sanction based upon the **Insured's** misconduct; however, attorney fees awarded as part of the claimant's damages in a covered **claim** for any other purpose will be included as **excess loss**;
    - f. the salary of any **employee** of an **Insured**; or,
    - g. the forgiveness of any amounts owed for the cost of care or services rendered by an **Insured**.
- T. **Executive Officer** means a person holding any of the officer positions created by an **Insured's** charter, constitution, bylaws, or any other similar governing document.
- U. **Extended reporting period** means the period of time after the cancellation or nonrenewal of claims-made coverage during which the **Insured** may report a **claim**.
- V. **First made** refers to the date on which the **Insured** first received a **claim**. All **claims** arising from, or in connection with, damages or loss suffered by the same claimant(s) shall be considered as having been **first made**



when the first such **claim** is received by the **Insured**.

- W. **First named insured** (or FNI) means the entity or person listed as the First Named Insured on the Declarations.
- X. **Health care event** means any event in the rendering of, or failure to render, **professional services** that results in injury to a patient. All injuries arising from the same or related acts, errors, and omissions in the furnishing of **professional services** shall be considered one **health care event**.
- Y. **Health care plan** means a medical benefits plan administered by a health care maintenance organization (HMO), preferred provider organization (PPO), or other similar managed care organization or self-insured managed care organization.
- Z. **Hostile fire** means a fire that becomes uncontrollable or breaks out from where it was intended to be.
- AA. **Impaired property** means tangible property, other than the **insured's product** or the **insured's work**, which cannot be used or becomes less useful because:
1. it incorporates the **insured's product** or **insured's work** that is known or thought to be defective, deficient, inadequate, or dangerous; or,
  2. the **Insured** has failed to fulfill the terms of a contract or agreement if such property can be restored to use by:
    - a. the repair, replacement, adjustment, or removal of the **insured's product** or **insured's work**, or
    - b. the **Insured's** fulfillment of the terms of the contract.
- BB. **Insured** means any person or entity entitled to coverage as specified under the *WHO IS INSURED – ALL EXCESS COMMERCIAL GENERAL LIABILITY COVERAGES* section above.
- CC. **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 an **Insured** or temporarily occupied by an **Insured** with permission of the owner is not an **insured contract**;
  2. any easement or license agreement, except in connection with construction or demolition operations on, or within 50 feet of, a railroad;
  3. an obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality; or,
  4. an elevator maintenance agreement.
- DD. **Insured's product**
1. means:
    - a. any goods or products, other than real property, manufactured, sold, handled, distributed, or disposed of by:
      - (1) a **scheduled excess insured business**;
      - (2) others trading under its name; or,
      - (3) a person or organization whose business or assets the **scheduled excess insured business** has acquired.
    - b. containers (other than vehicles), materials, parts, or equipment furnished in connection with such goods or products.
  2. includes:
    - a. warranties or representations made at any time with regard to the fitness, quality, durability, performance, or use of the goods or the **insured's products**; and,
    - b. the providing of, or the failure to provide, warnings or instructions.
  3. does not include:
    - a. vending machines; or,
    - b. other property rented to or located for the use of others, but not sold to others by an **Insured**.



**EE. Insured's work**

1. means:
  - a. work or operations performed by, or on behalf of, an **scheduled excess insured business**; and,
  - b. materials, parts, or equipment furnished in connection with such work or operations.
2. includes:
  - a. warranties or representations made at any time with regard to the fitness, quality, durability, performance, or use of the work or operations; and,
  - b. the providing of, or the failure to provide, warnings or instructions.

**FF. 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.

It does not include the movement of property by means of a mechanical device, other than a hand truck, which is not attached to the aircraft, watercraft, or **auto**.

**GG. Managed care event** means any event in rendering of, or failure to render, **managed care services** that result in injury. All injuries arising from the same or related acts, errors, or omissions in the furnishing of **managed care services** shall be considered one **managed care event**.

**HH. Managed care services** means services provided to manage and/or administer a **health care plan**. These services can include any of the following acts provided on behalf of the **health care plan**:

1. the creation, sale, and marketing of a **health care plan**;
2. the selection, credentialing, and contracting of health care providers;
3. the evaluation of the cost, quality, and proper utilization of treatment options available or being provided to participants;
4. the adjustment, investigation, and processing of claims for benefits; or,
5. **case management**.

However, **managed care services** do not include **treatment** rendered to a patient.

**II. Mobile equipment:**

1. means any of the following types of land vehicles, including any attached machinery or equipment:
  - a. bulldozers, farm machinery, forklifts, and other vehicles designed for use principally off public roads;
  - b. vehicles maintained for use solely on, or next to, premises owned or rented by a **scheduled excess insured business**;
  - c. vehicles that travel on crawler treads;
  - d. vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
    - (1) power cranes, shovels, loaders, diggers, or drills; or,
    - (2) road construction or resurfacing equipment, such as graders, scrapers, or rollers;
  - e. vehicles not described in Paragraphs a, b, c, or d above, that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
    - (1) air compressors, pumps, and generators, including spraying welding, building cleaning, geophysical exploration, lighting, and well-servicing equipment; or,
    - (2) cherry pickers and similar devices used to raise or lower workers;
  - f. vehicles not described in Paragraphs a, b, c, or d above, maintained primarily for purposes other than the transportation of persons or cargo.
2. does not include self-propelled vehicles with the following types of permanently attached equipment, but will be considered **autos**:
  - a. equipment designed primarily for:
    - (1) snow removal;
    - (2) road maintenance (but not construction or resurfacing); or



- (3) street cleaning;
    - b. cherry pickers and similar devices mounted on car 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.
  - 3. does not include land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered **autos**.
- JJ. **New business** means an entity formed or acquired by a **scheduled excess insured business** during the **policy period**. However, a **new business** is not covered:
- 1. after 60 days have elapsed from the date the **new business** was formed or acquired by the **scheduled excess insured business**, unless it has been Schedule of Excess Insured Businesses or as an **additional excess insured** on a Schedule of Additional Excess Insureds;
  - 2. for **bodily injury** or **property damage** that occurred before the entity was formed or acquired by the **scheduled excess insured business**; or,
  - 3. for **personal and advertising injury** that arose out of an offense committed before the entity was formed or acquired by the **scheduled excess insured business**.
- A **new business** shares the coverage provided to the **scheduled excess insured business**, including its limits of liability.
- KK. **Peer review** means the evaluation of a health care provider's fitness and qualification to provide **treatment** by a professional review board or committee through formally adopted, written procedures for the purposes of granting, determining or revoking clinical staff privileges at a hospital, clinic or other medical facility that qualifies as an **Insured** and which results in a patient alleging damages arising from a **health care event**.
- LL. **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, in any manner, 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, in any manner, of material that violates a person's right of privacy; or,
  - 6. the use of another's advertising idea in the **Insured's advertisement**.
- MM. **Policy period** means the period of time listed on the Declarations as the Policy Period. If, however, the policy is terminated before the later of the dates listed on the Declarations, **policy period** means the period between the first date indicated on the Declarations and the date the policy is terminated.
- NN. **Pollutants** means any solid, liquid, gaseous, fuel, lubricant, thermal, acoustic, electrical, or magnetic irritant or contaminant, including but not limited to smoke, vapor, soot, fumes, fibers, radiation, acid, alkalis, petroleums, chemicals or "waste." "Waste" includes medical waste, biological infectants, and all other materials to be disposed of, recycled, stored, reconditioned or reclaimed.
- OO. **Pollution event** means an actual, alleged, or threatened emission, discharge, release, or escape of any **pollutants** which caused **bodily injury**, **property damage**, or **environmental damage**. The entirety of all such emission, discharge, release, or escape of any **pollutants** shall be deemed to be one **pollution event**.
- PP. **Products completed operations hazard**
- 1. **Products completed operations hazard** means all **bodily injury** and **property damage** occurring away



from premises an **Insured** owns or rents, and arising out of the **insured's product** or **insured's work** except:

- a. products that are still in the physical possession of an **Insured**;
- b. work that has not yet been completed or has been abandoned. However, the **insured's work** will be deemed completed at the earliest of the following times:
  - (1) when all of the work called for in the **Insured's** contract has been completed;
  - (2) when all of the work to be done at the job site has been completed if the contract calls for work at more than one job site; or,
  - (3) when that part of the work 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.Work that may need service, maintenance, correction, repair, or replacement, but which is otherwise complete, will be deemed completed.

2. **Products completed operations hazard** does not include **bodily injury** or **property damage** arising out of:
  - a. the transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by an **Insured** and that condition was created by the **loading or unloading** of the vehicle by an **Insured**;
  - b. the existence of tools, uninstalled equipment, or abandoned or unused materials; or,
  - c. products or operations for which the classification, listed in the Schedule of Excess Insured Businesses or in a policy schedule, states that Product/Completed Work Liability are subject to the General Aggregate Limit.

QQ. **Professional services** means **treatment, utilization management and peer review** not involving **managed care services**.

RR. **Property damage** means:

1. physical injury to tangible property, including any 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. All such loss of use shall be deemed to occur at the time of the event that caused it.

SS. **Real estate manager** means a person, who manages any property owned or used by an **scheduled excess insured business**. It does not include an **employee**.

TT. **Retroactive date** means the date prior to which an **Insured** has no coverage under this Insuring Agreement. The **retroactive date** is listed for the particular **Insured** on the applicable Schedule of Excess Insured Businesses.

UU. **Scheduled coverage** means any policy of underlying insurance, or other program of indemnity, as shown on the Excess Schedule of Underlying Insurance that applies to the **Insured's** liability for an **event** or offense. However, it does not include any policy that is specifically designed to provide coverage in excess of this policy.

VV. **Scheduled limit** means the amount shown as the Scheduled Limit for the applicable **scheduled coverage** on the corresponding Excess Liability Schedule of Underlying Insurance.

WW. **Scheduled excess insured business** means any business scheduled as a **scheduled excess insured business** in the Schedule of Excess Insured Businesses.

XX. **Scheduled insured** means any company listed on a Excess Schedule of Insured Businesses.

YY. **Social services** means programs provided by an **Insured** to help maintain or improve the quality of life for the patient, including family counseling and educational programs. These programs do not include therapy for the direct benefit of anyone other than the patient.

ZZ. **Suit** means a civil proceeding in which damages because of **bodily injury, property damage, or personal and**

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EXCESS GENERAL LIABILITY

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**advertising injury**, to which this insurance applies, are alleged. **Suit** includes:

1. an arbitration proceeding in which such damages are claimed and to which the **Insured** must submit or does submit with the **Company's** consent; or,
2. any other alternative dispute resolution proceeding in which such damages are claimed and to which the **Insured** submits with the **Company's** consent.

AAA. **Treatment** means:

1. the rendering of medical, surgical, dental, nursing services, **counseling** or **social services** to a patient. This shall include first aid rendered at the scene of an accident without expectation of monetary compensation;
2. the provision of medical examinations, opinions, or consultations regarding a person's medical condition within the **Insured's** practice as a licensed health care provider;
3. the handling of dead bodies, including autopsies, organ donation or harvesting or other procedures; and
4. the furnishing of any of the following, but only as it relates to the rendering of medical, surgical, dental, nursing services, **counseling** or **social services** to a patient:
  - a. food and beverages; and,
  - b. medical, surgical, or dental supplies, appliances, or drugs.

BBB. **Utilization management** means the process of evaluating **treatment** to a patient for its appropriateness or necessity that results in a patient alleging damages arising from a **health care event**. In clarification and not in limitation of the foregoing, **utilization management** will include prospective review of proposed **treatment**, concurrent review of **treatment**, retrospective review of already rendered **treatment**, disease management, **case management**, and the use of predictive modeling to identify individuals or populations for disease management or **case management**.



# National Fire & Marine Insurance Company

Omaha, Nebraska

## *SCHEDULE OF EXCESS INSURED EMPLOYERS EXCESS EMPLOYER'S LIABILITY (OCCURRENCE)*

### DECLARATIONS

Policy Number: EN004806

First Named Insured: Laser Spine Institute, LLC

### LIMITS OF LIABILITY

#### Employment-Related Accidents

Per Event Limit of Liability Employment-Related Accident: \$ 20,000,000

#### Employment-Related Diseases

Per Employee Limit of Liability Employment-Related Disease: \$ 20,000,000

Policy Limit of Liability Employment-Related Disease: \$ 20,000,000

### SCHEDULE OF INSURED

In consideration of the payment of the premium due, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree the following entities are designated as **scheduled excess insured employers**:

SCHEDULED EXCESS INSURED EMPLOYER	ID NUMBER
Laser Spine Institute, LLC	241482
Laser Spine Institute Consulting LLC	626955
Laser Spine Surgery Center of Arizona, LLC	254295
Laser Spine Surgery Center of Cincinnati, LLC	637293
Laser Spine Surgery Center of Cleveland, LLC	637292
Laser Spine Surgery Center of Oklahoma, LLC	254297
Laser Spine Surgery Center of Pennsylvania, LLC	254296
Laser Spine Surgery Center of St. Louis, LLC	637294
Laser Spine Surgery Center of Tampa, LLC	943051
Laser Spine Surgery Center of Warwick, LLC	943052
Laser Spine Surgical Center, LLC	626953
LSI HoldCo LLC	626956
LSI Houston, PA	616898
LSI Management Company, LLC	626954
Medical Care Management Services, LLC	626957

### EXCESS EMPLOYERS LIABILITY

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# National Fire & Marine Insurance Company

Omaha, Nebraska

## *EXCESS EMPLOYER'S LIABILITY INSURING AGREEMENT (OCCURRENCE)*

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In consideration of the payment of the premium due, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree as follows, subject to the terms and conditions of this policy, including the applicable limits of liability:

### *I. INSURING AGREEMENTS – EXCESS LOSS*

The **Company** will pay, on behalf of any **scheduled excess insured employer**, all excess loss arising from an event that took place during the **policy period** and resulted in **bodily injury**:

- A. to an **employee**; however, the **bodily injury** must have been caused by an **employment-related accident** or **employment-related disease**;
- B. for which a **scheduled excess insured employer** is liable to a third party by reason of a **claim** or suit against an **scheduled excess insured employer** by that third party to recover the damages claimed against such third party as a result of injury to an **employee**;
- C. for consequential **bodily injury** to a spouse, child, parent, brother or sister of the injured **employee**;
- D. because of **bodily injury** to an **employee** that arises out of and in the course of employment, claimed against an **Insured** in a capacity other than as employer.

In addition, a **claim** regarding an **employment-related disease** must be reported to the **Company** within three years after the expiration of the **policy period** to be covered under this policy.

### *II. WHO IS INSURED*

For the purposes of this Insuring Agreement, an **Insured** is:

- A. a **scheduled excess insured employer**; or,
  - B. a **new employer**
- as defined below.

### *III. ADDITIONAL DEFINITIONS*

In addition to the Excess General Definitions, the following definitions are added to this Insuring Agreement:

- A. **Scheduled excess insured employer** means any entity listed as a **scheduled excess insured employer** on the Schedule of Excess Insured Employers.
- B. **New employer** means an entity formed or acquired by a **scheduled excess insured employer** during the **policy period**. However, a **new employer** is not covered:
  - 1. after 60 days have elapsed from the date the **new employer** was formed or acquired; or,
  - 2. for an event that took place before the **new employer** was formed or acquired, or after the **policy period**.A **new employer** shares the coverage provided to a **scheduled excess insured employer**, including its limits of liability
- C. **Employee** means any person who, at the time of the **employment-related accident** or **employment-related disease**, qualifies as an employee under the applicable state workers' compensation law.
- D. **Employment-related accident** means an event that occurs in the course and scope of work performed by an **Insured's employee** that results in **bodily injury** to that **employee**.
- E. **Employment-related disease** means any **bodily injury** that results from a disease contracted by an **employee** as a result of an event that occurs in the course and scope of that **employee's** employment with an **Insured**.



#### IV. ADDITIONAL EXCLUSIONS

In addition to any exclusions listed in the Excess General Exclusions, this Insuring Agreement does not apply to:

- A. any **claim** arising from, or in connection with, an **Insured's** ownership, supervision or management of any organization, partnership, joint venture, or other business enterprise that is not a **scheduled excess insured employer**;
- B. any **claim** arising from, or in connection with, **bodily injury** to an **employee** while employed in violation of law with an **Insured's** your actual knowledge or the actual knowledge of any of an **Insured's** executive officers;
- C. any **claim** arising from, or in connection with, any **health care event**;
- D. any **employment practices claim**;
- E. any **product liability claim**;
- F. any **claim** seeking to impose liability under the Employee Retirement Income Security Act of 1974 (ERISA), or any amendment or regulation that applies thereto.
- G. any **excess loss** that would have been covered under a state's workers' compensation or occupational disease fund if the **Insured** had complied with all of the legal requirements, including any duty to qualify as a self-insurer, to be a subscriber in good standing in the state fund, or to maintain proper insurance coverage;
- H. any **claim** for which the **Insured** was deprived a defense or subjected to a penalty as a result of the failure to comply with the legal requirements of that state's workers' compensation or occupational disease laws;
- I. any **claim** arising from, or in connection with, any **bodily injury** that is or would be subject to the:
  - 1. Longshore and Harbor Workers' Compensation Act (33 U.S.C. §901 et. seq.);
  - 2. Non-appropriated Fund Instrumentalities Act (5 U.S.C. § 171 et seq.);
  - 3. Outer Continental Shelf Lands Act (43 U.S.C. § 1331 et seq.);
  - 4. Defense Base Act (42 U.S.C. § 1651 et seq.);
  - 5. Federal Coal Mine Health and Safety Act (30 U.S.C. §901 et seq.);
  - 6. Federal Employers Liability Act (45 U.S.C. § 51 et seq.); or,
  - 7. any other federal workers compensation or occupational disease law, including any amendments to, or replacements of, the above-cited provisions.
- J. any **claim** arising from, or in connection with, any **bodily injury** to the master or member of the crew of any vessel;
- K. liability for the acts of another assumed by an **Insured** under any contract or agreement, except as otherwise noted in this policy.
- L. punitive or exemplary damages because of **bodily injury** to an **employee** employed in violation of law;
- M. **bodily injury** intentionally caused or aggravated by an **Insured**; or,
- N. damages payable under the Migrant and Seasonal Agricultural Worker Protection Act (29 USC Sections 1801-1872) and under any other federal law awarding damages for violation of those laws or regulations issued thereunder, and any amendments to those laws.

For the purposes of this Insuring Agreement only, the following exclusion located in the Excess General Exclusions form is deleted:

Any **bodily injury** to an employee that arose out of, and in the course of, employment with an **Insured**. This exclusion includes any injury to the spouse, child, parent, relative or heir of the employee that derives therefrom. It also applies regardless of whether an **Insured** may be liable as an employer or in any other capacity. In addition, the exclusion applies to any duty to share **excess loss** with or repay a third party for **excess loss** as a result of the **bodily**

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#### EXCESS EMPLOYER'S LIABILITY

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**injury.**

## ***V. LIMITS OF LIABILITY***

### ***PER EVENT LIMIT OF LIABILITY—EMPLOYMENT-RELATED ACCIDENT***

The **Company's** duty to pay **excess loss** on behalf of a **scheduled excess insured employer** for any **bodily injury** suffered as a result of an **employment-related accident** that arose from an event covered under this Insuring Agreement shall not exceed the Per Event Limit of Liability Employment-Related Accident shown on the Declarations of the Schedule of Excess Insured Employers. This limit shall apply regardless of the number of:

1. **employees** or other persons who sustain injury;
2. **claimants**;
3. **claims**;
4. policies issued by the **Company**; or,
5. **Insureds** who share the Per Event limit.

### ***PER EMPLOYEE LIMIT OF LIABILITY – EMPLOYMENT-RELATED DISEASE***

The **Company's** duty to pay **excess loss** on behalf of a **scheduled excess insured employer** for each **employee** that suffered **bodily injury** as a result of an **employment-related disease** arising from an event covered under this Insuring Agreement shall not exceed the Per Employee Limit of Liability - Employment-Related Disease shown on the Declarations of the Schedule of Excess Insured Employers. This limit shall apply regardless of the number of:

1. **claims** brought by the **employee**;
2. **claims** for the cost of any care, loss of services, loss of consortium, or other derivative damages arising from the **employee's** illness or injuries;
3. policies issued by the **Company**; or,
4. **Insureds** who share the Per Employee limit.

### ***POLICY LIMIT OF LIABILITY – EMPLOYMENT-RELATED DISEASE***

The **Company's** duty to pay **excess loss** on behalf of all **scheduled excess insured employers** for all **employees** that suffered **bodily injury** as a result of **employment-related diseases** arising from all events covered under this Insuring Agreement shall not exceed the Policy Limit of Liability Employment-Related Disease shown on the Declarations of the Schedule of Excess Insured Employers. This limit shall apply regardless of the number of:

1. **events**;
2. **persons** who sustain injury;
3. **claimants**;
4. **claims**;
5. policies issued by the **Company**; or,
6. **Insureds** who share the Aggregate limit.

## ***VI. ADDITIONAL CONDITIONS***

In addition to the conditions contained in the Excess General Conditions, the following conditions apply to this Insuring Agreement:

### ***A. Settlement.***

The **Company** may settle any **claim** or other matter brought against any **Insured** as a result of an event covered under this Insuring Agreement, as the **Company** deems expedient unless prohibited by statute, regulation, rule or order. However, the **Company** shall first provide written notice to the **first named insured**.

### ***B. Compliance with Applicable Laws.***

No **Insured** shall have the right to any coverage that would otherwise be provided under this policy unless that **Insured** was, at all relevant times, in full compliance with all duties and requirements mandated by the applicable law regarding workers' compensation and occupational disease.

### ***C. Compliance with State Fund Requirements.***

No **Insured** shall have the right to any coverage that would otherwise be provided under this policy unless that

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EXCESS EMPLOYER'S LIABILITY

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**Insured** was, at all relevant times, in full compliance with all duties required to participate in the applicable state's workers' compensation, work-related accident or illness, or work-related medical fund. This shall include the duty to pay any contributions and/or premiums due to the fund to ensure participation. It shall also include any duties to report remuneration, "workmen hours," or other information as required by the fund for any reason, including information sufficient to calculate the premium due.



# National Fire & Marine Insurance Company

Omaha, Nebraska

## *EXCESS DEFENSE AND SUPPLEMENTAL PAYMENTS*

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These Excess Defense and Supplemental Payments apply to the following Insuring Agreements as selected under this policy: Excess Professional Liability and Excess Employer's Liability.

Subject to the terms and conditions of the policy, including any exclusions:

### *I. NO DUTY TO DEFEND*

In any **claim** covered under this policy, regardless of whether the **Insured** is entitled to a defense under a **scheduled coverage**, the **Company** shall have no duty to defend the **Insured** or pay any **claims expense** under any applicable Insuring Agreement. However, the **Company** shall have the right to participate in the defense and investigation of any **claim** that may, in the **Company's** sole determination, exceed the **scheduled limit**, including the right to defend the **Insured**, if the **Company** so chooses. In addition, the **Company** has no duty to:

- A. defend an **Insured** against a **claim** after the **Insured's** applicable limit of liability is exhausted by the payment of judgments or settlements; or,
- B. appeal any judgment. However, the **Company** has the right, but not the duty, to appeal any judgment that exceeds the **scheduled limit**. If the **Company** decides to appeal any judgment, all costs directly related to the appeal shall be payable by the **Company**, and shall not reduce the applicable limit of liability.

### *II. SUPPLEMENTAL PAYMENTS*

If the **Company** elects to appeal a judgment that exceeds the **scheduled limit**, the **Company** shall pay:

- A. **claims expense** directly related to the appeal; and,
- B. the premium on any bond required to proceed with such an appeal approved by the **Company** or to release attachments to the **Insured's** property. However, the **Company** has no duty to apply for or furnish any such bond. In addition, the **Company** shall have no duty to pay the premium on any bond which has a face value in excess of the remaining limit of liability under the policy.

The **Company** has no duty to pay any **claim** after the **Insured's** applicable limit of liability is exhausted.



# National Fire & Marine Insurance Company

Omaha, Nebraska

## *EXCESS GENERAL DEFINITIONS*

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These Excess General Definitions apply to the following Insuring Agreements as selected under this policy: Excess Professional Liability, Excess Employee Benefits Liability and Excess Employer's Liability.

Whenever used in this policy:

- A. **Additional Insured** means any person or entity listed on a Schedule of Excess Additional Insureds.
  - B. **Authorized insured** means any **Insured** authorized by the **first named insured** to give or receive notice of a **claim** to the **Company**.
  - C. **Bodily injury** means any damage to the human body, including sickness or disease and any mental injury, emotional distress, or death arising therefrom. In addition, it includes damages claimed for the cost of any care, loss of services, or loss of consortium arising therefrom.
  - D. **Business practices claim** means any **claim** arising from an **Insured's**:
    - 1. billing practices; or,
    - 2. advertising activities.
  - E. **Case management** means identifying patients with specific health care needs and developing a plan to ensure an efficient use of resources to achieve the best outcome.
  - F. **Claim** means an express written demand upon an **Insured** for money or services as compensation for civil damages. It also includes a medical incident or potential **claim** for which coverage was granted under a **scheduled coverage**.
  - G. **Claims expense** means all costs and expenses incurred in connection with the investigation, adjustment, and defense of any **claim**. Such costs and expenses shall only include:
    - 1. attorney fees paid to the law firm selected by the **Company** to defend an **Insured**;
    - 2. court costs;
    - 3. expert fees;
    - 4. reporter fees;
    - 5. the cost of any alternative dispute resolution ordered by a court, otherwise required by law or pre-approved by the **Company**;
    - 6. post-judgment interest on that portion of the judgment that does not exceed the limit of liability available under the applicable Insuring Agreement; and,
    - 7. such other costs and expenses that the **Company** determines to be reasonably related to the defense of a **claim**.
- However, **claims expense** does not include:
- 1. **excess loss**;
  - 2. attorney fees awarded to a claimant;
  - 3. the salary of any **employee** of an **Insured**; or,
  - 4. the forgiveness of any amounts owed for the cost of care or services rendered by an **Insured**.
- H. **Company** means the insurance company listed in the Declarations.
  - I. **Counseling** means formal therapy rendered to a patient by a licensed professional approved and credentialed by the

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## EXCESS GENERAL DEFINITIONS

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**Insured** to provide such therapy.

- J. Employee benefits** mean any group benefits administered on behalf of an **Insured's** employees. It includes any group:
1. insurance plans or programs, such as life, health, accident, dental, or legal advice;
  2. Individual Retirement Accounts (IRAs), salary reduction plans under I.R.S. Code 401(k) or any amendment thereto, savings plans, or employee stock subscription plans;
  3. travel or vacation plans; or,
  4. workers' compensation, occupational disease, unemployment, Social Security, or disability benefits insurance.
- K. Employment practices claim** means any **claim** brought by an employee, or applicant for employment, which alleges the **Insured**:
1. breached an actual or implied contract of employment;
  2. violated an anti-discrimination statute;
  3. engaged in any form of harassment;
  4. engaged in libel or slander related to an employment relation;
  5. retaliated for the exercise of a public right or duty;
  6. engaged in intentional or negligent infliction of emotional distress arising out of an employment relationship;
  7. wrongfully failed to hire, promote, or grant tenure;
  8. wrongfully demoted; or,
  9. wrongfully terminated employment.
- L. Event** means accident. All injuries arising from:
1. the same or related acts, errors or omissions; or,
  2. the continuous or repeated exposure to substantially the same harmful conditions,
- will be considered one **event**. For the purposes of this definition, all injuries to a mother and fetus (or fetuses) from conception through delivery shall constitute one **event**.
- M. Excess loss**
1. **Excess loss** means civil damages, including prejudgment interest, which an **Insured** becomes legally obligated to pay through adjudication or settlement which exceed:
    - a. all applicable **scheduled limits** of any **scheduled coverages**; and,
    - b. all applicable limits of any other valid and collectible insurance policies or other program of indemnity that applies the **Insured's** liability for the **event**.
  2. **Excess loss** does not include:
    - a. any damages which are greater than the applicable limit of liability;
    - b. any damages which are less than the **scheduled limit** or any other applicable insurance;
    - c. any injunctive or other equitable relief;
    - d. **claims expense**;
    - e. attorney fees awarded to a claimant as a fine, penalty or sanction based upon the **Insured's** misconduct. However, attorney fees awarded as part of the claimant's damages in a covered **claim** for any other purpose will be included as **excess loss**;
    - f. the salary of any employee of an **Insured**; or,
    - g. the forgiveness of any amounts owed for the cost of care or services rendered by an **Insured**.
- N. Extended reporting period** means the period of time after the cancellation or nonrenewal of claims-made coverage during which the **Insured** may report a **claim**.
- O. First named insured (or FNI)** means the entity or person listed as the First Named Insured on the Declarations.
- P. First discovered** means the date on which the **Insured** first knew, or reasonably should have known, of the **claim** or **potential claim**.

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EXCESS GENERAL DEFINITIONS

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- Q. **First reported** means the date that coverage for the **claim** was originally triggered under a **scheduled coverage** that applies to the **Insured's** liability for the **event**. All **claims** arising from the same **event** shall be considered as having been **first reported** when coverage for the first such **claim** was triggered.
- R. **Health care event** means any **event** in the rendering of, or failure to render, **professional services** that results in injury to a patient. All injuries arising from the same or related acts, errors or omissions in furnishing **professional services** shall be considered one **health care event**.
- S. **Health care plan** means medical benefits plan administered by a health maintenance organization (HMO), preferred provider organization (PPO), or other similar managed care organization or self-insured program.
- T. **Insured** means any person or entity entitled to coverage as specified under the *WHO IS INSURED* section of the applicable Insuring Agreement.
- U. **Managed care event** means any **event** in the rendering of, or failure to render, **managed care services** that results in injury. All injuries arising from the same or related acts, errors, or omissions in the furnishing of **managed care services** shall be considered one **managed care event**.
- V. **Managed care services** means services provided to manage and/or administer a **health care plan**. These services can include any of the following acts provided on behalf of the **health care plan**:
1. the creation, sale and marketing of a **health care plan**;
  2. the selection, credentialing and contracting of health care providers;
  3. the evaluation of the cost, quality and proper utilization of **treatment** options available or being provided to participants;
  1. the adjustment, investigation and processing of claims for benefits; or,
  2. **case management**.
- However, **managed care services** do not include **treatment** rendered, or which should have been rendered, to a patient.
- W. **Non-standard policy** means a policy issued by a market of last resort, where coverage is typically limited or restricted due to prior claims or other specific risk issues identified as part of a risk profile.
- X. **Peer review** means the evaluation of a health care provider's fitness and qualification to provide **treatment** by a professional review board or committee through formally adopted, written procedures for the purposes of granting, determining or revoking clinical staff privileges at a hospital, clinic or other medical facility that qualifies as an **Insured** and which results in a patient alleging damages arising from a **health care event**.
- Y. **Policy period** means the period of time listed on the Declarations as the Policy Period. However, if the policy is terminated before the later of the dates listed on the Declarations, **policy period** means the period between the first date listed on the Declarations and the date the policy was terminated.
- Z. **Product liability claim** means any **claim** arising from a defective good or product invented, designed, manufactured, or sold by an **Insured**. However, it does not include any **claim** arising from a good or product which was specifically used by the **Insured** to provide **treatment** to the **Insured's** own patient.
- AA. **Professional services** means **treatment, utilization management** and **peer review** not involving **managed care services**.
- BB. **Retroactive date** means the date prior to which an **Insured** has no coverage under the applicable Insuring Agreement. The **retroactive date** is listed on the applicable Excess Schedule of Insureds for each **Insured** to which a **retroactive date** applies.

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EXCESS GENERAL DEFINITIONS

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- CC. **Scheduled coverage** means any policy of underlying insurance, or other program of indemnity, as shown on the Excess Schedule of Underlying Insurance that applies to the **Insured's** liability for an event. However, it does not include any policy that is specifically designed to provide coverage in excess of this policy.
- DD. **Scheduled limit** means the amount shown as the Scheduled Limit for the applicable **scheduled coverage** on the corresponding Excess Schedule of Underlying Insurance.
- EE. **Social services** means programs provided by an **Insured** to help maintain or improve the quality of life for the patient, including family counseling and educational programs. These programs do not include therapy for the direct benefit of anyone other than the patient.
- FF. **Surgical assistant** means a person directly assisting as a non-physician first assistant in surgical procedures, including a person acting as a nurse surgical assistant or a physician surgical assistant.
- GG. **Treatment** means:
1. the rendering of medical, surgical, dental, nursing services, **counseling** or **social services** to a patient. This shall include first aid rendered at the scene of an accident without expectation of monetary compensation;
  2. the provision of medical examinations, opinions, or consultations regarding a person's medical condition within the **Insured's** practice as a licensed health care provider;
  3. the handling of dead bodies, including autopsies, organ donation or harvesting or other procedures; or,
  4. the furnishing of any of the following, but only as it relates to the rendering of medical, surgical, dental, nursing services, **counseling** or **social services** to a patient:
    - a. food and beverages; or,
    - b. medical, surgical or dental supplies, appliances or drugs.
- HH. **Utilization management** means the process of evaluating **treatment** to a patient for its appropriateness or necessity that results in a patient alleging damages arising from a **health care event**. In clarification and not in limitation of the foregoing, **utilization management** will include prospective review of proposed **treatment**, concurrent review of **treatment**, retrospective review of already rendered **treatment**, disease management, **case management**, and the use of predictive modeling to identify individuals or populations for disease management or **case management**.



# National Fire & Marine Insurance Company

Omaha, Nebraska

## EXCESS GENERAL EXCLUSIONS

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These Excess General Exclusions apply to the following Insuring Agreements as selected under this policy: Excess Professional Liability, Excess Employee Benefits Liability and Excess Employer's Liability.

### I. EXCLUSIONS

This policy does not apply to:

- A. Any **claim** arising from, or in connection with, any act listed in the subparagraphs below, and any **event** or **health care event** when intertwined with, or inseparable from, any such act:
  - 1. any malicious act or intentional tort;
  - 2. any actual or threatened sexual act, behavior or conduct, including, but not limited to, assault, exploitation, harassment or molestation, by any person of another person while in the care, custody, or control of any **Insured**, whether under the guise of **treatment** or not; or the negligent employment, investigation, supervision, reporting to the proper authorities, or failure to so report, or retention of a person for whom any **Insured** is or ever was legally responsible and whose conduct would be excluded under this exclusion;
  - 3. any personal, romantic, sexual, or other non-professional relationship with a current, former, or prospective patient, whether under the guise of **treatment** or not;
  - 4. any willful violation of any law, statute, or regulation;
  - 5. any dishonest or fraudulent act;
  - 6. any breach of contract or guaranty regarding the efficacy of **treatment**;
  - 7. **professional services** rendered or which should have been rendered if it is determined that an **Insured** was in any manner, extent or degree impaired by or under the influence of alcohol, narcotics, hallucinogenic agents, drugs or intoxicants of any nature or kind; or,
  - 8. any fabrication, alteration or destruction, in whole or in part, of any medical record pertaining to the person whose **treatment** is the subject of the **claim**, including, but not limited to, any medical or business record pertaining to the condition, **treatment** and/or consent of such person to any **professional service**, in whole or in part, by or at the direction of an **Insured**, after the happening of the activity reflected in such document or record. However, this exclusion does not apply to bona fide corrections to records made in accordance with applicable generally accepted professional standards, but this exception only applies if such corrections are identified as such, dated and signed by the person making them.
- B. Any **claim** arising from, or in connection with, any **treatment** rendered by any individual who was not authorized to provide such services due to the suspension, revocation, surrender, or restriction of, or failure to obtain, the proper professional license.
- C. Any **claim**, suit or other matter seeking:
  - 1. injunctive relief;
  - 2. any relief other than excess loss; or,
  - 3. the award of fines, penalties or sanctions.
- D. Any damages over and above actual compensatory damages. This includes punitive, exemplary, and multiple damages.
- E. Any **bodily injury** to an employee that arose out of, and in the course of, employment with an **Insured**. This exclusion includes any injury to the spouse, child, parent, relative or heir of the employee that derives therefrom. It also applies regardless of whether an **Insured** may be liable as an employer or in any other capacity. In addition, the exclusion

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### EXCESS GENERAL EXCLUSIONS

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applies to any duty to share **excess loss** with or repay a third party for **excess loss** as a result of the **bodily injury**.

- F. Any **claim** arising from, or in connection with, any obligation or damages arising under any law related to:
  - 1. workers' compensation;
  - 2. occupational disease;
  - 3. unemployment compensation;
  - 4. disability benefits; or,
  - 5. other similar law that provides for scheduled benefits as a result of an injury or disease.
- G. Any **claim** arising from, or in connection with, any **excess loss** covered under an **Insured's** directors' and officers' policy.
- H. Any **claim** arising from, or in connection with, any **excess loss** or **claim**, which is initiated, alleged, or caused to be brought about, by any **Insured** covered by this policy against any other **Insured** covered by this policy. This exclusion does not apply if the **claim** arises out of an **Insured** providing **professional services** to another **Insured**.
- I. Any **claim**:
  - 1. arising from, or in connection with, any rendering of, or failure to render, **professional services** for which the **Insured** has, or is eligible for, complete immunity as a volunteer or as an employee or contractor of a federal, state, or local government; or,
  - 2. involving an **Insured** who has, or is eligible for, insurance, indemnity, or any other protection pursuant to any federal, state, or local laws, including but not limited to the Federal Tort Claims Act.
- J. Any default judgment or other **claim** that the **Company** was unable to timely investigate or defend due to the acts or omissions of the **Insured**.
- K. Any damages:
  - 1. for which an **Insured** has coverage under a nuclear energy liability policy issued by the:
    - a. Nuclear Energy Liability Insurance Association;
    - b. Mutual Atomic Energy Liability Underwriters;
    - c. Nuclear Insurance Association of Canada; or,
    - d. any successor or assign of the entities set forth in the subparagraphs above.This policy also does not apply if such coverage did exist, but was terminated by the exhaustion of the **Insured's** limit of liability.
  - 2. resulting from the hazardous properties of nuclear material for which the **Insured**:
    - a. was required to maintain financial protection under the Atomic Energy Act of 1954 or any amendment or regulation that applies thereto; or,
    - b. was entitled to indemnity by the United States government or any agency thereof or would have been entitled to had this policy not been issued.
- L. Any **claim** arising from, or in connection with, an **Insured's** duty to comply with the Americans with Disabilities Act of 1990 (ADA). This also includes any amendment or regulation that applies thereto or any comparable federal, state, or local law.
- M. Any **claim** arising from, or in connection with, an **Insured's** violation of the Racketeer Influenced Corrupt Organizations Act (RICO) or any comparable federal, state or local laws or any amendment or regulation that applies thereto.
- N. Any **claim** arising from, or in connection with, an **Insured's** violation of any federal, state or local securities law or

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EXCESS GENERAL EXCLUSIONS

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regulation.

- O. Any **claim** or **potential claim** arising from, or in connection with, a **managed care event**.
- P. Any **claim** arising from, or in connection with, the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate **electronic data**. As used in this exclusion, **electronic data** means information, facts, or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices, or any other media that are used with electronically controlled equipment.
- Q. Any **claim** arising from, or in connection with, any **excess loss** or **claims expense** covered under any cyber or privacy insurance coverage, including but not limited to, any coverage for network security and privacy, regulatory fines and penalties, patient notification and credit monitoring, or data recovery cost.

## *II. OTHER EXCLUSIONS - MULTI-POLICY AND ANTI-STACKING*

If more than one Insuring Agreement or policy applies, the following multi-policy and anti-stacking exclusions apply:

- A. If more than one policy issued by the **Company** applies to the **excess loss** liability of an **Insured**, the **Company's** duty to pay **excess loss** will be confined to the policy containing the largest applicable limit.
- B. If more than one Insuring Agreement under this policy applies to the **excess loss** liability of an **Insured**, the **Company's** duty to pay **excess loss** will be confined to the Insuring Agreement containing the largest applicable limit.



# National Fire & Marine Insurance Company

Omaha, Nebraska

## *EXCESS GENERAL CONDITIONS*

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Each condition contained in this form, or in any attached form, is a separate and distinct condition precedent to coverage. Please read and review each condition carefully.

These Excess General Conditions apply to all Insuring Agreements selected under this policy.

**A. Representations and Change Provision.**

1. By acceptance of this policy, each **Insured** agrees, represents, and warrants that the statements and particulars made in all applications, including any statements and particulars made in any and all documents, supplemental pages or other attachments ("Attachments") for the purposes of any application, are true and correct. It is further understood and agreed that any application, and any Attachments, are incorporated into, and shall form a part of, this policy. Therefore, this policy and any endorsements, and all applications and Attachments, embody all agreements between the **Insured** and the **Company**, or any of its authorized representatives, relating to this insurance.
2. In the event any application was executed or endorsed by the **Insured's** agent, the **Insured** acknowledges that the agent has acted under the **Insured's** express authority and that the **Insured** has thoroughly reviewed the information contained on any application. The representations made by the **Insured** in the applications, and Attachments, are the basis for the coverage provided, as well as the **Company's** calculation of the applicable premium. Therefore, it is understood and agreed that, to the extent permitted by law, the **Company** reserves the right to rescind this policy, or deny any coverage provided for a claim, based upon any material misrepresentation made by the **Insured**. Material misrepresentation as used herein means concealment, misrepresentation, omission or fraud which, if known by the **Company**, would have led to refusal by the **Company** to make this contract or provide coverage, or to make this contract or provide coverage on different terms or conditions.
3. No knowledge or information possessed by any **Insured** shall be imputed to any other **Insured**, except for material facts or information known to the person or persons who signed the application. In the event of any material misrepresentation in connection with any of the particulars or statements in the Application, this policy shall be void with respect to any **Insured** who knew of such material misrepresentation or to whom such knowledge is imputed.
4. The **Company** reserves all rights based upon any material misrepresentation by the **Insured**.

**B. Reporting Requirements.**

1. An **authorized insured** shall immediately report any **claim** arising from an event:
  - a. that the **authorized insured** reasonably believes will result in damages that exceed the **scheduled limit**;
  - b. for which the **Company** providing the **scheduled limit** has set a loss reserve which exceeds \$100,000;
  - c. for which the claimant's demand exceeds the **scheduled limit**;
  - d. that caused:
    - (1) neurological, sensory, or systemic deficits to the injured party (such as brain damage; permanent paralysis, loss of sight or hearing, etc.);
    - (2) permanent damage related to an injury during child delivery or the administration of anesthesia;
    - (3) limitations on the injured party's activities of daily living (such as a loss of a limb); or,
    - (4) death.
2. The report of any **claim** shall be in writing. The report shall include the following information:
  - a. the identity of all **Insureds** implicated;
  - b. all reasonably obtainable information with respect to the time, place and circumstances of the event;
  - c. the nature and extent of the injury;
  - d. the names and addresses of any injured persons; and,
  - e. the names and addresses of available witnesses.

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EXCESS GENERAL CONDITIONS

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3. All such reports and documents shall be directed to the **Company** using the contact information listed on the contact sheet attached to the top of this policy.
4. An **event** reported to the **Company** as part of risk management or loss control services shall not be considered the report of a **claim**.

C. Assistance and Cooperation.

1. After any **claim** or **potential claim**, the **Insured** shall not contract any expense, voluntarily assume any liability in any situation; nor make or contract any settlement of the **claim** or **potential claim**, except at the **Insured's** own cost and responsibility, without the written authorization of the **Company**.
2. The **Company's** duty to defend and pay loss for any **claim** otherwise covered under this policy is strictly conditioned upon the **Insured's** cooperation with the **Company** in the investigation, defense, and/or settlement of any matter to which this policy applies. Such cooperation shall include, but is not limited to:
  - a. attendance at any deposition, hearing, or trial, as requested by the **Company**;
  - b. assistance in securing and giving evidence;
  - c. obtaining the attendance of witnesses; and,
  - d. doing nothing to prejudice the **Company's** ability to investigate, defend, and/or manage any matter to which this policy applies;
  - e. submitting to recorded and/or sworn statements and to examinations under oath as requested by the **Company**; and,
  - f. promptly producing, at the **Company's** request, any records, documents and other information in the **Insured's** possession, custody or control.
3. If a **claim** or **potential claim** is, or might be, covered under any other policy of insurance, the **Insured** shall promptly give notice to such other insurers. The **Insured** shall also provide the **Company** with copies of the applicable policies. The **Insured** shall further act in good faith to enforce any rights held under such policies, including the right to a defense.

D. Premiums.

1. The **Company's** obligation to perform any duty under the policy is strictly conditioned upon the payment of the premium when due. Similarly, the **Company's** obligation to perform any duty pursuant to a renewal of coverage provided under the policy shall be strictly conditioned upon the payment of the renewal premium when due. Therefore, this policy shall not be deemed to have been issued, delivered, or renewed and shall not be applicable to any matter which would otherwise be covered herein, until:
  - a. the premium has been paid in full; or,
  - b. if the **Company** has agreed to finance the policy, the first installment has been paid in full.If payment is made by check, electronic transfer or money order, it shall not be considered "paid in full" until honored by the payor's bank.
2. Any premium designated as "deposit premium" is merely a deposit on the actual amount owed. At the close of the **policy period**, the **Company** will compute the earned premium for that period. The "deposit premium" will then be credited to that amount. If the "deposit premium" exceeds the earned premium, the **Company** will refund the difference to the **first named insured**. If the earned premium exceeds the "deposit premium", the **Company** will bill the **first named insured** for the difference.
3. The **first named insured** shall maintain records of the information necessary for premium computation. The **first named insured** shall send copies of these records to the **Company** at the end of the **policy period** as directed by the **Company**. Such information shall be subject to audit and verification by the **Company**.

E. Inspection and Audit.

The **Company** shall be permitted, at its own discretion and for its own benefit, to audit an **Insured's** property, operations, and any business records. The **Company** shall also have the right to obtain a copy of any current or prior insurance records. Any findings or recommendations made by the **Company** as a result of an audit shall inure solely to the **Company's** benefit. As a result, they may not be used as evidence of the **Insured's** compliance with any safety regulations or other industry standards.



F. Other Insurance.

Unless otherwise noted in an Insuring Agreement:

1. If any other valid and collectible insurance is available to any **Insured** with respect to any liability arising from a **claim** or suit which is covered by this policy, and such other insurance is afforded under a policy or **extended reporting period** issued by a past, present or future parent, subsidiary or affiliate of the **Company**:
  - a. if the **Insured** has secured coverage from the **Company** or any of its affiliates on a **non-standard policy**, then the **Company's** duty to pay **excess loss** will be confined to the **non-standard policy**;
  - b. if subsection (a) does not apply, and an **Insured** is named as a specific named insured under any other valid and collectible insurance available to that **Insured**, then any duty to pay **excess loss** is confined to the policy where the **Insured** is specifically named;
  - c. if neither subsection (a) nor (b) above apply, any duty to pay **excess loss** will be confined to the policy containing the largest applicable limit.
2. If any other valid and collectible insurance is available to any **Insured** with respect to any liability arising from a **claim** or suit which is covered by this policy, and such other insurance is not afforded under a policy or **extended reporting period** issued by a past, present or future parent, subsidiary or affiliate of the **Company**, then this insurance will be excess over such other insurance even if such other insurance is stated to be primary, excess, contingent or otherwise. The **Company** will pay only the **Company's** share of the **excess loss**, if any, that exceeds the sum of:
  - a. the total amount that all such other insurance would pay for the **excess loss** in the absence of this insurance; and,
  - b. the total of all deductible and self-insured amounts under all such other insurance.
3. If the **Insured** has such other insurance that applies on the same basis, whether excess or primary, the **Company's** liability for **excess loss** shall not exceed:
  - a. the amount that would be payable if each insurer contributed by equal shares until the lowest limit contained in any applicable policy was exhausted or the entire **excess loss** was paid, whichever occurred first. If any **excess loss** remains, the **Company** will continue to contribute by equal shares until any of the following occurs:
    - (1) the applicable limits from this policy are exhausted,
    - (2) the limits of all applicable policies have been exhausted, or
    - (3) the entire amount is paid.This method shall only apply if all other such insurance provides for contribution by equal shares; or,
  - b. the ratio between the limit of liability available to the **Insured** under this policy and the total limit of liability under all applicable policies until the applicable limits from this policy are exhausted or the entire **excess loss** is paid. This method shall only apply if any applicable policy does not provide for contribution by equal shares.
4. The **Company** will have no duty to defend the **Insured** against any suit if any other insurer has a duty to defend the **Insured** against that suit. If no other insurer defends, the **Company** will undertake to do so, but the **Company** will be entitled to all of the **Insured's** subrogation rights against all those other insurers to the extent of any payments made, or as allowed by law.
5. This condition shall not apply if such other valid insurance is written to be specifically excess of this policy.

G. Maintenance of Scheduled Coverages.

1. The **scheduled coverages** shall be maintained by the **Insured** at all times and the **Insured** shall do nothing to restrict the terms or limits provided by the **scheduled coverages**.
2. The limits of insurance applicable to the policies listed on the Schedule of Underlying Insurance may not be reduced or exhausted for any reason other than the payment of judgments or settlements which would be covered by the provisions of this policy.
3. The limits of insurance applicable to any Self Insured Retention (SIR) listed in the Schedule of Underlying Insurance may not be reduced or exhausted for any reason other than the payment of judgments or settlement which would be covered by the provisions of this policy and **claims expense** associated with those payments, if **claims expense** depletes the SIR.
4. If the **Insured** fails to maintain or meet all terms and conditions of a **scheduled coverage** or if the company, trust or other entity providing the **scheduled coverage** shall become insolvent, the **Company's** duty to pay **excess loss** will apply as if the **scheduled coverage** had been so maintained.



H. Reduction or Exhaustion of Scheduled Limits.

If the **Insured's** applicable **scheduled limit** has been reduced or exhausted by the payment of **claims** for **events** that would otherwise be eligible for coverage under this policy, the **Company** will pay **excess loss** as if the **scheduled coverage** was not exhausted, in addition to any applicable deductible.

I. Subrogation.

The **Company** shall be subrogated to the rights of any **Insured** to the extent of any payments made, or as allowed by law. The **Insured** shall do nothing to prejudice those rights. At the **Company's** request, the **Insured** shall bring suit or transfer those rights to the **Company**. The **Insured** shall also help the **Company** enforce its rights.

J. First Named Insured.

1. The **first named insured** shall act as the agent of all **Insureds** with respect to this policy, with full authority to bind all **Insureds**. This shall include, but is not limited to:
  - a. receipt of notices of cancellation or nonrenewal;
  - b. requesting or receiving endorsements issued to form a part of this policy;
  - c. payment of premiums due;
  - d. receiving return premium; and,
  - e. receiving and/or responding to an offer for an **extended reporting period** for any **Insured**.
2. The **first named insured** shall notify in writing the **Company** and all **Insureds** of any changes that might affect the insurance provided under this policy.

K. Policy Territory.

Unless otherwise noted in an Insuring Agreement, this policy shall only apply to a **claim** filed within the United States, including its territories and possessions. However, unless otherwise noted, a **claim** may be based upon **professional services** provided anywhere in the world so long as the **Insured** had prior approval to provide such services from the appropriate governmental authorities and the **Company**.

L. Cancellation, Nonrenewal and/or Termination of Coverage.

1. This policy may be canceled by the **first named insured**. The **first named insured** shall mail written notice to the **Company** requesting cancellation. The cancellation shall be effective on the date requested by the **first named insured** or the date the notice is received by the **Company**, whichever is later.
2. Any coverage contained within this policy may be terminated by the **first named insured**. The **first named insured** shall mail written notice to the **Company** requesting the coverage termination. The termination shall be effective on the date requested by the **first named insured** or the date the notice is received by the **Company**, whichever is later.
3. This policy, or any coverage contained therein, may also be canceled, terminated or nonrenewed by the **Company**. The **Company** will send notice to the **first named insured** at the last address on record with the **Company**.
4. If the **first named insured** cancels this policy, or terminates any coverage contained therein, earned premium shall be computed in accordance with the standard short rate tables and procedure. If the **Company** cancels this policy, or terminates any coverage contained therein, earned premium shall be computed pro rata. Premium adjustments shall be made within a reasonable period of time after cancellation. However, payment or tender of unearned premium shall not be a condition of cancellation.
5. If the **Company** cancels or nonrenews an **Insured's** policy for any reason other than non-payment of premium, the **Company** shall provide written notice to the **first named insured** not less than thirty (30) days prior to the effective date of such cancellation or nonrenewal. If the **Company** cancels an **Insured's** policy for nonpayment of premium, the **Company** shall provide written notice to the **first named insured** not less than ten (10) days prior to the effective date of such cancellation or nonrenewal.
6. If the **Company** cancels or nonrenews an **Insured's** policy, the **Insured's** coverage under that policy shall terminate on the earlier of:
  - a. the date stated on the cancellation or nonrenewal notice; or,
  - b. the date the **Insured** procures replacement coverage.



M. Modifications.

Except as provided herein, this policy may not be modified except by written endorsement attached to and made a part of this policy by the **Company**. The **Company's** decision not to insist on the **Insured's** compliance with any provision of this policy shall not operate to waive, modify, or void the provision.

N. Bankruptcy, Insolvency or Non-Payment by an Insured.

The filing of bankruptcy by, or the insolvency of or non-payment by, an **Insured**, or by any other entity providing a **scheduled coverage**, shall not act to modify any duty owed by the **Insured** or the **Company** under the policy. Under no circumstances will such bankruptcy, insolvency or non-payment require the **Company** to assume, or in any way be responsible for, any **scheduled coverage**, or otherwise assume any obligation owed by any **Insured** under this policy. Unless prohibited by law, the **Company** will have no duty to pay any **excess loss** for any **claim** unless the **Insured**, or any other entity providing **scheduled coverage**, pays the limits of liability of the **scheduled coverage** in full.

O. Non-assignability.

No interest of an **Insured** under this policy shall be assignable without the prior written consent of the **Company**. However, if the **Insured** is a person and dies, the coverage afforded by this policy shall inure to the benefit of that **Insured's** estate.

P. Separation of Insureds.

Except for the applicable limits of liability and any duties specifically assigned to the **first named insured**, this policy applies:

1. separately to each **Insured** against whom a **claim** is made; and,
2. as if each **Insured** were the only **Insured** under this policy.

Q. Action Against the Company.

1. No action shall lie against the **Company** unless each **Insured** is in full compliance with all of the terms of this policy.
2. No person shall have the right to join the **Company** as a party to a **claim** to determine the **Insured's** liability under this policy. Further, an **Insured** shall not interplead the **Company** into a **claim**.
3. No action shall lie against the **Company** until the amount of **excess loss** has been finally determined by entry of judgment or written agreement between the **Insured**, the claimant and the **Company**. Once the amount of **excess loss** has been finally determined, the claimant shall be entitled to recover under the terms of this policy.

R. Arbitration.

The **Company** and the **Insured** agree that any dispute, **claim** or controversy arising out of, relating to, or in connection with this policy, whether brought by or on behalf of the **Insured**, **Company**, or any other party, that the **Company** may elect to submit any such dispute, **claim** or controversy to binding arbitration, in accordance with Title 9 USC Sec. 1 et seq (the Federal Arbitration Act) and shall be governed by the Commercial Arbitration Rules of the American Arbitration Association.

The arbitration shall be presided over by three arbitrators chosen from the Commercial Insurance Panel of the American Arbitration Association. The arbitrators shall be governed by the law of the state of the address of the **first named insured**, as set forth on the Declarations. The arbitration shall take place in the county that the capital of that state is located.

The arbitrators shall have the discretion to order pre-arbitration discovery, including an exchange of documents and deposition of potential witnesses. Each party shall bear its own arbitration costs and expenses including attorneys' fees, unless otherwise provided by law.

Any arbitration award shall be in writing and shall specify the factual and legal bases of the award. Judgment on the award rendered by the arbitrator shall be final and may be entered in any court having jurisdiction thereof. Furthermore, this arbitration provision shall be a complete defense to any suit, action or proceeding in any federal, state or local court or before any administrative tribunal with respect to any dispute, **claim** or controversy arising out of, relating to or in



connection with this policy.

S. Terms Conform to Statute or Regulation.

If any term of this policy, or any duty arising therefrom, would cause the **Company** to violate any federal, state or local law or regulation, the policy is amended to bring the **Company** into compliance with such statute or regulation.

T. Fraud Warning.

Any person who knowingly and with intent to injure, deceive, or defraud any insurance company or other person files an application for insurance containing any materially false information or fails to provide complete information or conceals, for the purpose of misleading information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and may be prosecuted under state law and may be guilty of a felony and subject to criminal and civil penalties, fines, denial of insurance or confinement in prison.



PRIMARY POLICY NUMBER: N/A  
EXCESS POLICY NUMBER: EN004806

THIS NOTICE IS ATTACHED TO AND MADE PART OF YOUR POLICY IN RESPONSE TO  
THE DISCLOSURE REQUIREMENTS OF THE TERRORISM RISK INSURANCE ACT. THIS  
NOTICE DOES NOT GRANT ANY COVERAGE OR CHANGE THE POLICY

DISCLOSURE PURSUANT TO TERRORISM RISK INSURANCE ACT

SCHEDULE\*

Terrorism Premium Quoted - Primary Policy (for Certified Acts) \$ N/A

Terrorism Premium Quoted - Excess Policy (for Certified Acts) \$ N/A

The portion of premium that is attributable to coverage for certified acts of terrorism is shown in the Schedule of this endorsement if such coverage is purchased, and does not include any charges for the portion of losses covered by the United States Government under the Act.

Additional information, if any, concerning the terrorism premium:

Coverage for acts of terrorism is included in your policy unless you sign and return this document indicating that you are declining coverage for certified acts of terrorism.

\* Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.

You are hereby notified that under the Terrorism Risk Insurance Act, as amended, you have a right to purchase insurance coverage for losses resulting from acts of terrorism. *As defined in Section 102(1) of the Act:* The term "act of terrorism" means any act or acts that are certified by the Secretary of the Treasury - in consultation with the Secretary of Homeland Security, and the Attorney General of the United States - to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

YOU SHOULD KNOW THAT WHERE COVERAGE IS PROVIDED BY THIS POLICY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM, SUCH LOSSES MAY BE PARTIALLY REIMBURSED BY THE UNITED STATES GOVERNMENT UNDER A FORMULA ESTABLISHED BY FEDERAL LAW. HOWEVER, YOUR POLICY MAY CONTAIN OTHER EXCLUSIONS WHICH MIGHT AFFECT YOUR COVERAGE, SUCH AS AN EXCLUSION FOR NUCLEAR EVENTS. UNDER THE FORMULA, THE UNITED STATES GOVERNMENT GENERALLY REIMBURSES 85% THROUGH 2015; 84% BEGINNING ON JANUARY 1, 2016; 83% BEGINNING ON JANUARY 1, 2017; 82% BEGINNING ON JANUARY 1, 2018; 81% BEGINNING ON JANUARY 1, 2019, AND 80% BEGINNING ON JANUARY 1, 2020, OF COVERED TERRORISM LOSSES EXCEEDING THE STATUTORILY ESTABLISHED DEDUCTIBLE PAID BY THE INSURANCE COMPANY PROVIDING THE COVERAGE. THE PREMIUM

TERRORISM RISK INSURANCE ACT

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Edition Date: 3/2015



CHARGED FOR THIS COVERAGE IS SET FORTH ABOVE AND DOES NOT INCLUDE ANY CHARGES FOR THE PORTION OF LOSS THAT MAY BE COVERED BY THE FEDERAL GOVERNMENT UNDER THE ACT.

YOU SHOULD ALSO KNOW THAT THE TERRORISM RISK INSURANCE ACT, AS AMENDED, CONTAINS A \$100 BILLION CAP THAT LIMITS U.S. GOVERNMENT REIMBURSEMENT AS WELL AS INSURERS' LIABILITY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM WHEN THE AMOUNT OF SUCH LOSSES IN ANY ONE CALENDAR YEAR EXCEEDS \$100 BILLION. IF THE AGGREGATE INSURED LOSSES FOR ALL INSURERS EXCEED \$100 BILLION, YOUR COVERAGE MAY BE REDUCED.

By receipt of this Disclosure, you have been notified that under the Terrorism Risk Insurance Act, as extended on December 22, 2005, and amended on December 31, 2007 and January 12, 2015, any losses resulting from certified acts of terrorism under this policy coverage may be partially reimbursed by the United States Government, may be subject to a \$100 billion cap that may reduce the coverage provided. By receipt of this Disclosure, you have been notified of the portion of the premium attributable to such coverage.

**ELECTION TO PURCHASE TERRORISM COVERAGE:**

IF YOU ELECT TO PURCHASE THE TERRORISM COVERAGE DESCRIBED IN THIS DISCLOSURE NOTICE, YOU NEED DO NOTHING FURTHER. COVERAGE FOR ACTS OF TERRORISM WILL BE AUTOMATICALLY ADDED TO YOUR POLICY FOR THE PREMIUM SET FORTH ABOVE.

**DECLINATION OF TERRORISM COVERAGE:**

IN ORDER TO DECLINE TO PURCHASE COVERAGE, I UNDERSTAND THAT I MUST SIGN BELOW AND RETURN THIS DISCLOSURE FORM TO MY AUTHORIZED REPRESENTATIVE OR INSURANCE COMPANY. I FURTHER UNDERSTAND THAT IF I FAIL TO SIGN THIS DISCLOSURE FORM AND RETURN IT, I HAVE ELECTED TO PURCHASE TERRORISM COVERAGE AND THE PREMIUM AMOUNT(S) SET FORTH ABOVE WILL BE ADDED TO MY POLICY PREMIUM, AND COVERAGE FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM WILL BE ADDED TO MY POLICY.

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**Policyholder/Applicant's Signature - Declination of Terrorism Coverage Only**

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**Print Name**

---

**Date**

---

**Name of Insurer**



# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.  1	Forming Part of Policy No.  EN004806	First Named Insured  Laser Spine Institute, LLC
Effective Date of Endorsement  03/01/2016		

## ***FULL TIME EQUIVALENTS (FTE) ENDORSEMENT EXCESS PROFESSIONAL LIABILITY INSURING AGREEMENT***

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the Company and the Insureds agree to amend the Excess Professional Liability Insuring Agreement as follows:

### **MODIFIED COVERAGES**

The following is added to *WHO IS INSURED*:  
an **FTE excess professional liability insured**

The following definitions are added to *ADDITIONAL DEFINITIONS*:

**FTE excess professional liability insured** means any **Insured** listed as an FTE Excess Professional Liability Insured on the attached Schedule of Excess Professional Liability Insureds or on the attached Schedule of Insureds - Departed Excess Professional Liability Insureds.

**FTE position** means a full time equivalent position with that is filled by any number of **FTE excess professional liability insureds** during the **policy period**.

The following exclusion is added to *ADDITIONAL EXCLUSIONS*:

any **claim** arising from **professional services** rendered, or which should have been rendered, by an **FTE excess professional liability insured**, unless such **professional services** were rendered or should have been rendered in the course and scope of an **FTE excess professional liability insured's** duties while occupying an **FTE position** on behalf of a **scheduled excess professional liability insured** at the time of the **health care event**.

The following conditions are added to *ADDITIONAL CONDITIONS*:

#### **FTE Providers.**

A **scheduled excess professional liability insured** may have multiple **FTE positions** during the **policy period**. Each such **FTE position** shall be identified numerically (e.g., FTE 1; FTE 2; etc.) on the attached Schedule of Excess Professional Liability Insureds or on the attached Schedule of Insureds - Departed Excess Professional Liability Insureds.

**FTE excess professional liability insureds** share in the limits of liability provided to an **FTE position**.

All other terms and conditions of the policy remain unchanged.

### EXCESS PROFESSIONAL LIABILITY

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Edition Date: 1/2011



# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.	Forming Part of Policy No.	First Named Insured
2	EN004806	Laser Spine Institute, LLC
Effective Date of Endorsement		
03/01/2016		

## ***DEPARTED EXCESS PROFESSIONAL LIABILITY INSURED ENDORSEMENT EXCESS PROFESSIONAL LIABILITY INSURING AGREEMENT***

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the Company and the **Insureds** agree to amend the Excess Professional Liability Insuring Agreement as follows:

### **MODIFIED COVERAGES**

The following provision is added to *INSURING AGREEMENT - EXCESS LOSS*:

The **Company** will pay, on behalf of a **departed excess professional liability insured**, including its **agents**, all **excess loss** arising from a **health care event** that took place on or after the **retroactive date** but prior to the **termination date** listed on the Schedule of Insureds - Departed Excess Professional Liability Insureds below. However, the **health care event** must have resulted from **professional services** rendered, or which should have been rendered, while the **departed excess professional liability insured** was employed by, or under contract with, any **scheduled excess professional liability insured**. For coverage to exist, the **excess loss** must also result from a **claim** that is **first made** against the **departed excess professional liability insured** during the **policy period**.

The following is added to *WHO IS INSURED*:

a **departed excess professional liability insured**

The following definitions are added to *ADDITIONAL DEFINITIONS*:

**Departed excess professional liability insured** means any **scheduled excess professional liability insured** who has been designated by the **Insured** as no longer providing **professional services** on behalf of the **Insured** and who is listed on the Schedule of Insureds-Departed Excess Professional Liability Insureds below.

**Termination date** means the date listed as the Termination Date for the **departed excess professional liability insured** on the Schedule of Insureds-Departed Excess Professional Liability Insureds below.

The following exclusion is added to *ADDITIONAL EXCLUSIONS*:

any **claim** arising from, or in connection with, **professional services** rendered, or which should have been rendered, by a **departed excess professional liability insured** prior to the **retroactive date** or after the **termination date** listed on the Schedule of Insureds - Departed Excess Professional Liability Insureds below.

### EXCESS PROFESSIONAL LIABILITY

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The following provision is added to *LIMITS OF LIABILITY*:

*PER EVENT LIMIT - DEPARTED EXCESS PROFESSIONAL LIABILITY INSURED*

The Company's duty to pay excess loss on behalf of a departed excess professional liability insured for any health care event covered by this endorsement shall not exceed the Per Event Limit of Liability shown in the Declarations section of the Schedule of Excess Professional Liability Insureds, regardless of the number of:

1. persons who sustain injury;
2. claimants;
3. claims;
4. policies issued by the Company; or,
5. Insureds who share the Per Event limit.

*AGGREGATE LIMIT - DEPARTED EXCESS PROFESSIONAL LIABILITY INSURED*

The Company's duty to pay excess loss on behalf of a departed excess professional liability insured for all health care events covered by this endorsement shall not exceed the Aggregate Limit of Liability shown in the Declarations section of the Schedule of Excess Professional Liability Insureds. This limit shall apply regardless of the number of:

1. health care events;
2. persons who sustain injury;
3. claimants;
4. claims;
5. policies issued by the Company; or,
6. Insureds who share the Aggregate limit.

It is expressly understood that nothing herein shall operate to create multiple Limits of Liability for any Insured.

All remaining terms and conditions of the policy remain unchanged.

SCHEDULE OF INSUREDS - DEPARTED EXCESS PROFESSIONAL LIABILITY INSUREDS			
DEPARTED EXCESS PROFESSIONAL LIABILITY INSURED	ID NUMBER	RETRO- ACTIVE DATE	TERMI- NATION DATE
James S St Louis, DO, PC	626965	09/09/2009	12/31/2011
Laser Spine Institute of Arizona, LLC	626966	03/14/2008	12/31/2010
Laser Spine Institute of California, LLC	626960	07/31/2008	12/31/2012
Laser Spine Institute of Colorado, LLC	626968	09/03/2009	12/31/2009
Laser Spine Institute of Oklahoma, LLC	626969	09/17/2010	12/31/2010
Laser Spine Institute of Pennsylvania, LLC	626967	04/22/2009	12/31/2010
Laser Spine Medical Clinic, LLC	626958	01/03/2005	12/31/2012
Laser Spine Physical Therapy, LLC	626959	01/03/2005	12/31/2012
LSI Aspen Back and Body, LLC	626962	09/03/2009	12/31/2011
Michael William Perry, MD, PC	626961	07/25/2008	12/31/2011
Total Spine Health Products, LLC	626964	09/03/2009	12/31/2011

EXCESS PROFESSIONAL LIABILITY

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Edition Date: 12/2011



# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.	Forming Part of Policy No.	First Named Insured
3	EN004806	Laser Spine Institute, LLC
Effective Date of Endorsement		
03/01/2016		

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## ***EXCLUSION OF CERTIFIED ACTS OF TERRORISM ENDORSEMENT EXCESS COMMERCIAL GENERAL LIABILITY INSURING AGREEMENT***

In consideration of the payment of the premium charged and in reliance upon the representations of all **Insureds**, the **Company** and the **Insured** agree to amend the Excess Commercial General Liability Insuring Agreement as follows:

The following exclusion is added to both *EXCLUSIONS - COVERAGE A: BODILY INJURY AND PROPERTY DAMAGE* and *EXCLUSIONS - COVERAGE: B PERSONAL AND ADVERTISING INJURY*:

**Any injury or damage arising, directly or indirectly, out of a certified act of terrorism.**

The following definitions are added to *DEFINITIONS - ALL EXCESS COMMERCIAL GENERAL LIABILITY COVERAGES*:

**Certified act of terrorism** means an act that is certified by the Secretary of the Treasury in accordance with the provisions of the TRIA Act, to be an act of terrorism pursuant to the TRIA Act. The TRIA Act sets forth the following criteria for a **certified act of terrorism**:

1. The act resulted in losses covered by insurance in excess of \$5,000,000 in the aggregate, attributable to all types of insurance subject to the TRIA Act;
2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion. The act must have resulted in damage within the United States including its territories and possessions and Puerto Rico, or outside the United States in cases of an air carrier or vessel meeting the definitions of such as provided in the TRIA Act, or the premises of a United States mission; and
3. No act of terrorism shall be certified if the act is committed as a part of the course of a war declared by Congress.

**Injury or damage** means any injury or damage covered under any Insuring Agreement to which this endorsement applies, including but not limited to **bodily injury, property damage, personal and advertising injury and products completed operations hazard injury property damage** as those terms are defined in any applicable Insuring Agreement. **Injury or damage** also includes clean-up costs or environmental damage sustained.

TERRORISM RISK INSURANCE ACT

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Edition Date: 3/2015



TRIA Act means the federal Terrorism Risk Insurance Act of 2002, as extended on December 22, 2005, and amended on December 31, 2007 and January 12, 2015.

All other terms and conditions of this policy remain unchanged.



# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.  4	Forming Part of Policy No.  EN004806	First Named Insured  Laser Spine Institute, LLC
Effective Date of Endorsement  03/01/2016		

**THIS ENDORSEMENT CHANGES THE POLICY - PLEASE READ IT CAREFULLY**

## **EXCESS SERVICE OF SUIT CLAUSE ENDORSEMENT**

Service of process in any lawsuit, or mandated alternative dispute resolution (ADR) proceeding instituted against the **Company** shall be made upon:

**General Counsel  
National Fire & Marine Insurance Company  
3024 Harney Street  
Omaha, Nebraska 68131-3095**

The General Counsel is authorized and directed to accept service of process on behalf of the **Company** in any suit or ADR proceeding and, upon the request of the **Insured**, agrees to give a written acknowledgement to the **Insured** that the **Company** will retain counsel to enter an appearance upon the **Company's** behalf should a lawsuit or ADR proceeding be instituted.

Further, pursuant to any law of any state, the District of Columbia, territory, or protectorate of the United States which makes provision therefore, the **Company** hereby designates the Superintendent, Commissioner, Director of Insurance, deputy, or department employee specified as attorney or agent for receipt of lawful service of process or ADR proceeding, in the law, instituted by or on behalf of the **Insured** or any beneficiary within this contract, the General Counsel is hereby authorized as the **Company's** designee upon whom the service of process may be served.

Nothing contained herein shall limit or abridge the right to serve any process, notice or demand upon the **Company** in any other manner permitted or required by law.

This endorsement is effective on the inception date of this policy unless otherwise stated herein.

All other terms and conditions of this policy remain unchanged.

EXCESS SERVICE OF SUIT®

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# National Fire & Marine Insurance Company

Omaha, Nebraska

All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.

Endorsement No.  5	Forming Part of Policy No.  EN004806	First Named Insured  Laser Spine Institute, LLC
Effective Date of Endorsement  03/01/2016		

## EXCESS INTENTIONAL ACTS EXCLUSION AND SUBLIMITS OF LIABILITY FOR INTENTIONAL ACTS ENDORSEMENT

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the policy as follows:

### MODIFIED COVERAGES

Subject to the exclusion set forth below, the following provision is added to the *LIMITS OF LIABILITY* of the Excess Professional Liability Insuring Agreement:

The **Company's** total Limit of Liability in connection with the intentional acts covered under this policy shall not exceed the: (1) Intentional Acts Total Aggregate Limit of Liability set forth below, and (2) the amounts set forth as the Per Event and Per Aggregate Sublimits of Liability listed below:

Intentional Acts Total Aggregate Limit of Liability:     \$ 1,000,000

Intentional Acts Sublimits of Liability:

Per Event Sublimit of Liability:     \$ 1,000,000

Aggregate Sublimit of Liability:     \$ 1,000,000

The Intentional Acts Total Aggregate Limit of Liability is the most the **Company** will pay for all **excess loss and/or claims expense** for all **claims** for all **Insureds** covered under this policy, including any amounts paid under the Intentional Acts Per Event and Aggregate Sublimits of Liability. Additionally, the Intentional Acts Sublimits of Liability specified above are within and shall erode the Per Event and Aggregate Limits of Liability available to any **Insured** under the Excess Professional Liability Insuring Agreement.

It is expressly understood that nothing herein shall operate to create multiple Limits of Liability for any **Insured**.

Solely with respect to coverage provided under the Excess Professional Liability Insuring Agreement, the following exclusion is deleted from the Excess General Exclusions:

Any **claim** arising from, or in connection with, any act listed in the subparagraphs below, and any **event** or **health care event** when intertwined with, or inseparable from, any such act:

1. any malicious act or intentional tort;
2. any actual or threatened sexual act, behavior or conduct, including, but not limited to, assault, exploitation, harassment or molestation, by any person of another person while in the care, custody, or control of any **Insured**,

### EXCESS COMMON ENDORSEMENTS

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whether under the guise of **treatment** or not; or the negligent employment, investigation, supervision, reporting to the proper authorities, or failure to so report, or retention of a person for whom any **Insured** is or ever was legally responsible and whose conduct would be excluded under this exclusion;

3. any personal, romantic, sexual, or other non-professional relationship with a current, former, or prospective patient, whether under the guise of **treatment** or not;
4. any willful violation of any law, statute, or regulation;
5. any dishonest or fraudulent act;
6. any breach of contract or guaranty regarding the efficacy of **treatment**;
7. **professional services** rendered or which should have been rendered if it is determined that an **Insured** was in any manner, extent or degree impaired by or under the influence of alcohol, narcotics, hallucinogenic agents, drugs or intoxicants of any nature or kind; or,
8. any fabrication, alteration or destruction, in whole or in part, of any medical record pertaining to the person whose **treatment** is the subject of the **claim**, including, but not limited to, any medical or business record pertaining to the condition, **treatment** and/or consent of such person to any **professional service**, in whole or in part, by or at the direction of an **Insured**, after the happening of the activity reflected in such document or record. However, this exclusion does not apply to bona fide corrections to records made in accordance with applicable generally accepted professional standards, but this exception only applies if such corrections are identified as such, dated and signed by the person making them.

Solely with respect to coverage provided under the Excess Professional Liability Insuring Agreement, the following exclusion is added to the Excess General Exclusions:

Any **claim** arising from, or in connection with, any act listed in the subparagraphs below:

1. any malicious act or intentional tort;
2. any actual or threatened sexual act, behavior or conduct, including, but not limited to, assault, exploitation, harassment or molestation, by any person of another person while in the care, custody, or control of any **Insured**, whether under the guise of **treatment** or not; or the negligent employment, investigation, supervision, reporting to the proper authorities, or failure to so report, or retention of a person for whom any **Insured** is or ever was legally responsible and whose conduct would be excluded under this exclusion;
3. any personal, romantic, sexual, or other non-professional relationship with a current, former, or prospective patient, whether under the guise of **treatment** or not;
4. any willful violation of any law, statute, or regulation;
5. any dishonest or fraudulent act;
6. any breach of contract or guaranty regarding the efficacy of **treatment**;
7. **professional services** rendered or which should have been rendered if it is determined that an **Insured** was in any manner, extent or degree impaired by or under the influence of alcohol, narcotics, hallucinogenic agents, drugs or intoxicants of any nature or kind; or,
8. any fabrication, alteration or destruction, in whole or in part, of any medical record pertaining to the person whose **treatment** is the subject of the **claim**, including, but not limited to, any medical or business record pertaining to the condition, **treatment** and/or consent of such person to any **professional service**, in whole or in part, by or at the direction of an **Insured**, after the happening of the activity reflected in such document or record. However, this exclusion does not apply to bona fide corrections to records made in accordance with applicable generally accepted professional standards, but this exception only applies if such corrections are identified as such, dated and signed by the person making them.

This exclusion does not apply to any **claims** arising from a **health care event** brought against any **Insured** who did not direct or act in concert to commit, directly participate in, or direct another, in connection with any of the actions excluded from coverage under this provision.

Once the Intentional Acts Total Aggregate Limits of Liability and/or the Per Event and Aggregate Sublimits of Liability are exhausted by the **Company's** payment of excess loss and/or claims expense, the **Company** has no further duty to indemnify any **Insured**.



All other terms and conditions of the policy remain unchanged.



# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.  6	Forming Part of Policy No. EN004806	First Named Insured  Laser Spine Institute, LLC
Effective Date of Endorsement  03/01/2016		

## ***EXCESS AUTO COVERAGE EXCESS COMMERCIAL GENERAL LIABILITY INSURING AGREEMENT***

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the Excess Commercial General Liability Insuring Agreement as follows:

### **ENDORSEMENT DECLARATIONS**

Per Event Limit of Liability (Excess Auto Coverage):     \$ 20,000,000

### **MODIFIED COVERAGES**

The exclusion for Aircraft, Auto, or Watercraft in **EXCLUSIONS – COVERAGE A: BODILY INJURY AND PROPERTY DAMAGE** is amended by adding the following language to the exclusion:

This exclusion does not apply to:

**Bodily injury or property damage** arising from the use of an **auto** owned by, leased or rented to, or while being used in the furtherance of the business of, a **scheduled excess insured business**, but only if the **auto** is covered by scheduled commercial auto liability insurance listed on the Excess Schedule of Underlying Insurance.

This exception shall not apply to any duty owed by an **Insured** under a no fault, underinsured, or uninsured motorists insurance policy or law.

The following provision is added to **LIMITS OF LIABILITY – ALL EXCESS COMMERCIAL GENERAL LIABILITY COVERAGES**:

Notwithstanding the Per Event Limit of Liability set forth on the Schedule of Excess Insured Businesses, the **Company's** duty to pay excess loss on behalf of **scheduled excess insured businesses** or their agents for any **bodily injury or property damage** arising from an event involving the use of an **auto**, shall not exceed the Per Event Limit of Liability shown on the Endorsement Declarations above. This limit shall apply regardless of the number of:

1. **Insureds**;
2. **claims made or suits brought**;
3. **persons or organizations making claims or bringing suits**; or,
4. **policies issued by the Company**.

All other terms and conditions of the policy remain unchanged.

EXCESS GENERAL LIABILITY

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# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.  7	Forming Part of Policy No.  EN004806	First Named Insured  Laser Spine Institute, LLC
Effective Date of Endorsement  03/01/2016		

## ***DROP DOWN ENDORSEMENT –DEFENSE WITHIN SCHEDULED LIMITS EXCESS COMMERCIAL GENERAL LIABILITY INSURING AGREEMENT (DEFENSE WITHIN LIMITS)***

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the Commercial General Liability Insuring Agreement as follows:

### **MODIFIED COVERAGES**

The following provisions are added to *DEFENSE AND SUPPLEMENTAL PAYMENTS - ALL EXCESS COMMERCIAL GENERAL LIABILITY COVERAGES*:

*Defense Not Provided by Scheduled Coverage Due to Exhaustion of Scheduled Limits.*

- A. In any **claim** or **suit** covered under this Insuring Agreement for which the **Insured** has exhausted its limits of liability under a **scheduled coverage** and therefore is not entitled to a defense under that **scheduled coverage**, the **Company** shall have the right and duty to defend the **Insured**. However, the **Company** has no duty to:
1. defend an **Insured** against a **claim** or **suit** after the **Insured's** applicable limit of liability under this Insuring Agreement is exhausted by the payment of judgments or settlements;
  2. appeal any judgment. However, the **Company** has the right to appeal any judgment that exceeds the **scheduled limit**. If the **Company** decides to appeal any judgment, all costs associated with the appeal shall be included as **claims expense**, shall be payable by the **Company**, and shall reduce the applicable limit of liability; or,
  3. pay any **claims expense** incurred by or for an attorney who was not retained, or approved by the **Company** in writing, to defend the **Insured**.
- B. All **claims expenses** paid by the **Company** under this endorsement shall be included as **excess loss** and shall erode the applicable limit of liability under this Insuring Agreement. The **Company** shall have no duty to pay any **claims expense**, premium, or other expense incurred after the **Insured's** applicable limit of liability under this Insuring Agreement is exhausted.
- C. All **claims expense** and supplemental payments paid by the **Company** under this endorsement shall be subject to any deductible applicable to the underlying **scheduled coverage** as if it were in effect.

As it applies to the Excess Commercial General Liability Insuring Agreement only, the *Reduction or Exhaustion of Scheduled Limits* condition is deleted from the Excess General Conditions and replaced with the following:

#### EXCESS GENERAL LIABILITY

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Reduction or Exhaustion of Scheduled Limits.

If the **Insured's** applicable **scheduled limit** has been reduced or exhausted by the payment of **claims, events** or offenses that are otherwise eligible for coverage under this Insuring Agreement, the **Company** will pay **excess loss** above the remaining limits of the **scheduled limit**, less any deductible.

All damages paid by the **Company** under this endorsement shall be subject to any deductible applicable to the **scheduled coverage** as if it were in effect.

All other terms and conditions of the policy remain unchanged.



# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.  8	Forming Part of Policy No.  EN004806	First Named Insured  Laser Spine Institute, LLC
Effective Date of Endorsement  03/01/2016		

## ***NON-SCHEDULED WAIVER OF SUBROGATION ENDORSEMENT EXCESS COMMERCIAL GENERAL LIABILITY INSURING AGREEMENT***

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the Excess Commercial General Liability Insuring Agreement as follows:

### **MODIFIED COVERAGES**

The following provision is added to the *ADDITIONAL CONDITIONS – ALL COMMERCIAL GENERAL LIABILITY COVERAGES*:

#### *Waiver of Subrogation.*

The **Company** shall waive any right of recovery the **Company** may have against a person or organization to the extent that the **Insured** has agreed in writing prior to the date of loss to waive the **Insured's** rights of recovery against that person or entity.

All other terms and conditions of the policy remain unchanged.

EXCESS GENERAL LIABILITY

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# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.  9	Forming Part of Policy No.  EN004806	First Named Insured  Laser Spine Institute, LLC
Effective Date of Endorsement  03/01/2016		

## ***NON-SCHEDULED ADDITIONAL INSURED (PRIMARY AND NON-CONTRIBUTORY) ENDORSEMENT EXCESS COMMERCIAL GENERAL LIABILITY INSURING AGREEMENT***

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the Excess Commercial General Liability Insuring Agreement as follows:

### **MODIFIED COVERAGES**

The definition of **additional insured** is deleted from the *DEFINITIONS – ALL EXCESS COMMERCIAL GENERAL LIABILITY COVERAGES* and replaced with the following:

**Additional insured** means:

1. any person or entity listed on the applicable Excess Schedule of Additional Insureds; or,
2. only with respect to any **excess loss** or damages payable as the result of the **additional insured's** vicarious liability for the acts or omissions of an **Insured** otherwise covered under this Insuring Agreement, any person or entity with which the **scheduled excess insured business** has entered into a written contract or agreement agreeing:
  - a. to add the person or entity as an **additional insured**; or
  - b. to hold harmless or indemnify such person or organization.

This definition does not apply:

- i. unless the written contract or agreement has been executed prior to the **excess loss**. The contract or agreement will be considered executed when the **Insured's** performance begins, or when the contract is signed, whichever occurs first; or
- ii. to **excess losses** arising from or in connection any of the **additional insured's** own acts or omissions.

The following provision is added to *LIMITS OF LIABILITY – ALL EXCESS COMMERCIAL GENERAL LIABILITY COVERAGES*:

All **additional insureds** meeting the definition provided herein share the Limits of Liability applicable to any **claim** or **suit** with any **Insured** for which the **additional insured** is alleged to be vicariously liable with respect to that same **claim** or **suit**.

Solely with respect to any **additional insured(s)** meeting the description provided by subsection 2 of the definition of **additional insured** set forth in this endorsement, the following Additional Condition is added to the *ADDITIONAL CONDITIONS – ALL EXCESS COMMERCIAL GENERAL LIABILITY COVERAGES*:

Only if required by written contract or agreement with the **scheduled excess insured business**, coverage for any

#### EXCESS GENERAL LIABILITY

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**additional insured(s)** provided by this endorsement shall be primary and non-contributory as respects any other insurance policy issued to such **additional insured**. Otherwise, the Other Insurance provision of the Excess General Conditions applies as written.

All other terms and conditions of the policy remain unchanged.



# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.	Forming Part of Policy No.	First Named Insured
10	EN004806	Laser Spine Institute, LLC
Effective Date of Endorsement		
03/01/2016		

## ***DROP DOWN ENDORSEMENT—DEFENSE WITHIN SCHEDULED LIMITS EXCESS PROFESSIONAL LIABILITY INSURING AGREEMENT (DEFENSE WITHIN LIMITS)***

In consideration of the payment of the premium charged and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the Excess Professional Liability Insuring Agreement as follows:

### **MODIFIED COVERAGES**

The ***NO DUTY TO DEFEND*** provision of the Excess Defense and Supplemental Payments is deleted and replaced with the following:

#### ***DUTY TO DEFEND***

In any **claim** covered under this Insuring Agreement for which the **Insured** has exhausted its limits of liability under a **scheduled coverage** and therefore is not entitled to a defense under that **scheduled coverage**, the **Company** shall have the right and duty to defend the **Insured**. However, the **Company** has no duty to:

- A. defend an **Insured** against a **claim** after the **Insured's** applicable limit of liability under this Insuring Agreement is exhausted by the payment of judgments or settlements;
- B. appeal any judgment. However, the **Company** has the right to appeal any judgment that exceeds the **scheduled coverage**. If the **Company** decides to appeal any judgment, all costs associated with the appeal shall be included as **claims expense**, shall be payable by the **Company**, and shall reduce the applicable limit of liability; or,
- C. pay any **claims expense** incurred by or for an attorney who was not retained, or approved by the **Company** in writing, to defend the **Insured**.

All **claims expenses** paid by the **Company** under this endorsement shall be included as **excess loss** and shall erode the applicable limit of liability under this Insuring Agreement. The **Company** shall have no duty to pay any **claims expense**, premium, or other expense incurred after the **Insured's** applicable limit of liability under this Insuring Agreement is exhausted.

All **claims expense** and supplemental payments paid by the **Company** under this endorsement shall be subject to any deductible applicable to the underlying **scheduled coverage** as if it were in effect.

#### **EXCESS PROFESSIONAL LIABILITY**

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The *Reduction or Exhaustion of Scheduled Limits* condition of the Excess General Conditions, as it applies to the Excess Professional Liability Insuring Agreement only, is deleted and replaced with the following:

*Reduction or Exhaustion of Scheduled Limits.*

If the **Insured's** applicable **scheduled limit** has been reduced or exhausted by the payment of **claims** for **events** that are otherwise eligible for coverage under this Insuring Agreement, the **Company** will pay excess loss above the remaining limits of the **scheduled limit**.

All damages paid by the **Company** under this endorsement shall be subject to any deductible applicable to the **scheduled coverage** as if it were in effect.

All other terms and conditions of the policy remain unchanged.



# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.  11	Forming Part of Policy No.  EN004806	First Named Insured  Laser Spine Institute, LLC
Effective Date of Endorsement  03/01/2016		

## EXCESS FLORIDA AMENDATORY ENDORSEMENT

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the policy as follows:

### EXCESS GENERAL CONDITIONS

The Cancellation, Nonrenewal and/or Termination of Coverage section in the Excess General Conditions is deleted and replaced with the following:

#### Cancellation, Nonrenewal and/or Termination of Coverage

1. This policy may be canceled by the **first named insured**. The **first named insured** shall mail written notice to the **Company** requesting cancellation. The cancellation shall be effective on the date requested by the **first named insured** or the date the notice is received by the **Company**, whichever is later.
2. Any coverage contained within this policy may be terminated by the **first named insured**. The **first named insured** shall mail written notice to the **Company** requesting the coverage termination. The termination shall be effective on the date requested by the **first named insured** or the date the notice is received by the **Company**, whichever is later.
3. This policy may also be canceled by the **Company**. The **Company** will send notice of the cancellation, including the specific reason for the cancellation, to the **first named insured** at its last known address.
  - a. If the policy has been in effect for less than 90 days, the **Company** may cancel by sending written notice that states when, not less than 20 days thereafter, such cancellation shall be effective.
  - b. If the policy has been in effect for at least 90 days, or is a renewal policy, the **Company** may cancel by sending written notice that states when, not less than 45 days thereafter, such cancellation shall be effective.
  - c. However, only 10 days notice will be required to cancel:
    - i. for nonpayment of premium;
    - ii. for policies cancelled for material misrepresentation; or,
    - iii. where there is a failure to comply with underwriting requirements.
4. If the **first named insured** cancels this policy, or terminates any coverage contained therein, earned premium shall be computed in accordance with the standard short rate tables and procedure. If the **Company** cancels this policy, or terminates any coverage contained therein, earned premium shall be computed pro rata. Premium adjustments shall be made within a reasonable period of time after cancellation. However, payment or tender of unearned premium shall not be a condition of cancellation.
5. This policy may be nonrenewed by the **Company** by mailing or delivering written notice of nonrenewal to the **first named insured** at its last known address at least 45 days prior to the end of the **policy period**. The notice will also contain the specific reason for the nonrenewal.
6. If the **Company** cancels or nonrenews an **Insured's** policy, the **Insured's** coverage under that policy shall terminate on the earlier of:

#### EXCESS FLORIDA AMENDATORY ENDORSEMENT

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Edition Date: 3/2012



- a. the date stated on the cancellation or nonrenewal notice; or,
- b. the date the Insured procures replacement coverage.

All other terms and conditions of the policy remain unchanged.



# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.	Forming Part of Policy No.	First Named Insured
12	EN004806	Laser Spine Institute, LLC
Effective Date of Endorsement		
03/01/2016		

## EXCESS MANUSCRIPT ENDORSEMENT

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the policy as follows:

The following exclusion is deleted from provision A. of *I. EXCLUSIONS* of the Excess General Exclusions:

7. **professional services** rendered or which should have been rendered if it is determined that an **Insured** was in any manner, extent or degree impaired by or under the influence of alcohol, narcotics, hallucinogenic agents, drugs or intoxicants of any nature or kind; or,

The following exclusion is deleted from *I. EXCLUSIONS* of the Excess General Exclusions:

- D. Any damages over and above actual compensatory damages. This includes punitive, exemplary, and multiple damages.

and replaced with the following exclusion:

- D. Any damages over and above actual compensatory damages. This includes punitive, exemplary, and multiple damages. However, to the extent that coverage for punitive, exemplary and multiple damages is allowed by law, this exclusion does not apply to the first \$5,000,000 of coverage provided under the Aggregate Limits of Liability of the policy.

The following provision is deleted from paragraph 1. of B. *Reporting Requirements* of the Excess General Conditions:

- b. for which the Company providing the **scheduled limit** has set a loss reserve which exceeds \$100,000;

and replaced with the following provision:

- b. for which the Company providing the **scheduled limit** has set a loss reserve which exceeds \$500,000;

The definition of **claims expense** in the Excess General Definitions is deleted and replaced with the following:

**Claims expense** means all costs and expenses incurred in connection with the investigation, adjustment, and defense of any **claim**. Such costs and expenses shall only include:

1. attorney fees paid to the law firm selected by the **Company** to defend an **Insured**;
2. court costs;
3. expert fees;
4. reporter fees;
5. the cost of any alternative dispute resolution ordered by a court, otherwise required by law or pre-approved by the **Company**;
6. post-judgment interest on that portion of the judgment that does not exceed the limit of liability available under the applicable Insuring Agreement; and,
7. such other costs and expenses that the **Company** determines to be reasonably related to the defense of a



**claim.**

However, **claims expense** does not include:

1. **excess loss;**
2. attorney fees awarded to a claimant;
3. the salary of any **employee** of an **Insured**; however, the salary of attorneys paid by the **first named insured** who are directly handling **claims** otherwise covered under this policy will be included as **claims expense**, but only to the extent that the services provided by the attorneys are directly attributable to the defense and management of covered **claims**, and only the portion of each attorney's salary that can be reasonably allocated to the handling and management of the covered **claims** will be included as **claims expense**; or,
4. the forgiveness of any amounts owed for the cost of care or services rendered by an **Insured**.

All other terms and conditions of the policy remain unchanged.



# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.  13	Forming Part of Policy No.  EN004806	First Named Insured  Laser Spine Institute, LLC
Effective Date of Endorsement  05/18/2016		

## CHANGE ENDORSEMENT

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the policy as follows:

It is agreed and understood that the **first named insured's** name and/or address in the Declarations has been amended to reflect the following:

ITEM 1	<b>FIRST NAMED INSURED:</b> LSI HoldCo LLC <b>ADDRESS:</b> 5332 Avion Park Dr Tampa, FL 33607
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The change applies to any reference to **first named insured** on any endorsements, schedules and forms associated with this policy.

All other terms and conditions of the policy remain unchanged.



# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.  14	Forming Part of Policy No.  EN004806	First Named Insured  LSI HoldCo LLC
Effective Date of Endorsement  06/27/2016		

## **EXCESS SCHEDULED ADDITIONAL INSUREDS ENDORSEMENT WITH NOTICE OF CANCELLATION**

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the policy as follows:

### **MODIFIED COVERAGES**

The following persons or entities scheduled below are added as **additional insureds** under the Insuring Agreement indicated below, but only with respect to any damages payable as a result of the **additional insured's** vicarious liability for the acts or omissions of an **Insured** otherwise covered under the applicable Insuring Agreement. This insurance does not apply to sums or damages arising from or in connection with liability for any acts or omissions alleged against the **additional insured**.

All **additional insureds** share the Limits of Liability applicable to any **claim** or **suit** with any **Insured** for which the **additional insured** is alleged to be vicariously liable with respect to that same **claim** or **suit**.

It is further agreed that in the event that the **Company** cancels this policy for any reasons other than either non-payment of premium before the expiration date of the **policy period**, or at the request of the **first named insured**, the **Company** shall provide prior notice of such cancellation to the **additional insured** listed on the schedule below at the same time notice is provided to the **first named insured**.

All other terms and conditions of the policy remain unchanged.

<b>EXCESS SCHEDULE OF ADDITIONAL INSUREDS</b>		
ADDITIONAL INSURED	ADDRESS	INSURING AGREEMENT
GE HFS, LLC	20225 Watertower Blvd Brookfield, WI 53045	* Excess Commercial General Liability Insuring Agreement

### **EXCESS COMMON ENDORSEMENTS**

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Edition Date: 08/2014



# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.  15	Forming Part of Policy No.  EN004806	First Named Insured  Laser Spine Institute, LLC
Effective Date of Endorsement  03/01/2016		

## CHANGE ENDORSEMENT

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the policy as follows:

It is agreed and understood that the Excess Schedule of Underlying Insurance has been amended for the following Coverage(s):

### Commercial General Liability:

Primary Policy Information	Limits (as defined below)	Self-Insured Retention (SIR) (as defined below)
Carrier:		Laser Spine Institute, LLC
Policy Number:		<b>**The general liability underlying SIR is a combined single limit of liability \$25,000/\$50,000 for Indemnity and Expense</b>
Policy Period:		03/01/2016 – 03/01/2017
Retroactive Date (if any):		<input type="checkbox"/> Claims-made basis <input checked="" type="checkbox"/> Occurrence basis
<input type="checkbox"/> Claims-made basis	Per Event Limit:	\$25,000
<input type="checkbox"/> Occurrence basis	Aggregate Limit:	\$50,000
		<input checked="" type="checkbox"/> Defense costs within SIR Limits <input type="checkbox"/> Defense costs outside SIR Limits

This endorsement reflects a change in Self-Insured Retention as listed above.

Premium Adjustment:      \$0      Additional Premium

All other terms and conditions of the policy remain unchanged.

### EXCESS COMMON ENDORSEMENTS

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# Exhibit 4



## **IMPORTANT NOTICE**

This policy contains claims-made coverage.  
Please read your policy carefully and be sure you understand  
your responsibilities.

You have an obligation to make a written request for an offer of an extended reporting period:

1. while this policy is active, if coverage is terminated for any insured on a separate limit basis under any of the insuring agreements included in this policy; or,
2. after the entire policy expires or is cancelled.

An extended reporting period allows reporting of claims after expiration of the policy so long as the claim is based on events that took place after the applicable retroactive date, but prior to the termination of coverage.

Under the terms of this claims-made policy, a written request seeking an offer for an extended reporting period from the first named insured must be received by The Medical Protective Company within thirty (30) days of the termination of policy coverage. If no such request is received within thirty (30) days of the termination of coverage, the right to purchase the extended reporting period endorsement will no longer exist, and The Medical Protective Company and/or National Fire & Marine Insurance Company will have no further duty to provide you with this coverage option.



## Florida Surplus Lines Warning Statement

**THIS INSURANCE IS ISSUED PURSUANT TO THE FLORIDA SURPLUS LINES LAW. PERSONS INSURED BY SURPLUS LINES CARRIERS DO NOT HAVE THE PROTECTION OF THE FLORIDA INSURANCE GUARANTY ACT TO THE EXTENT OF ANY RIGHT OF RECOVERY FOR THE OBLIGATION OF AN INSOLVENT UNLICENSED INSURER.**

**SURPLUS LINES INSURERS' POLICY RATES AND FORMS ARE NOT APPROVED BY ANY FLORIDA REGULATORY AGENCY.**

Agent Name \_\_\_\_\_

Agent Address \_\_\_\_\_

Agent Identification Number \_\_\_\_\_

Producing Agent Name \_\_\_\_\_

Producing Agent Address \_\_\_\_\_

Producing Agent Identification Number \_\_\_\_\_



# National Fire & Marine Insurance Company

Omaha, Nebraska

## EXCESS DECLARATIONS

**NOTICE: This policy may contain claims-made coverage. Please read this policy carefully.**

Policy Number: EN004806

ITEM 1	<b>FIRST NAMED INSURED:</b> Laser Spine Institute, LLC <b>ADDRESS:</b> 3031 N Rocky Point Dr W Ste 300 Tampa, FL 33607		
ITEM 2	<b>POLICY PERIOD:</b> From 03/01/2015 to 03/01/2016 Both days at 12:01 a.m. at the address of the First Named Insured as stated herein.		
ITEM 3	<b>COVERAGES SELECTED:</b> (Please refer to the applicable Schedule of Insureds for limits, deductibles, retentions, etc.)		
		Occurrence	Claims-Made
	EXCESS PROFESSIONAL LIABILITY		X
	EXCESS COMMERCIAL GENERAL LIABILITY	X	
	EXCESS EMPLOYER'S LIABILITY	X	
ITEM 4	<b>COVERAGES NOT SELECTED:</b>		
ITEM 5	<b>TOTAL PREMIUM:</b> \$ 1,875,585 (May reflect deposit premium, which is subject to audit. The premium does not include any surplus lines tax, which must be collected by the producer.)		
ITEM 6	<b>PRODUCER:</b> AB Risk Specialist Inc 931 Tullis Rd Lawrenceville, GA 30043-4732		

IN WITNESS WHEREOF, National Fire & Marine Insurance Company has caused this policy to be signed by its President (and countersigned by its duly Authorized Representative, where necessary).

  
President

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

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

## EXCESS DECLARATIONS

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# National Fire & Marine Insurance Company

Omaha, Nebraska

## *EXCESS POLICY GUIDE*

This Policy Guide has been developed to describe how your policy is formatted. This guide does not change any of the terms and conditions contained in the policy.

Your policy consists of the following items:

The Declarations: This page designates the first named insured, the policy number, the policy period, the coverages selected, the total premium, and the producer.

Schedules of Underlying Insurance: These schedules list the liability coverage(s) over which this policy will provide excess coverage.

Schedule of Insureds: These schedules define your coverage by designating who will be insured under a particular Insuring Agreement and what limits of liability will apply. If an Insuring Agreement is attached to your policy without a corresponding Schedule of Insureds, there is no coverage under that Insuring Agreement.

Insuring Agreements: These documents define the scope of the particular coverage that is being provided and any unique provisions (Additional Definitions, Additional Conditions, etc.) that will apply to it. For example, they indicate the types of claims that are covered and who is eligible to request indemnity under the policy. However, as mentioned above, these Insuring Agreements only provide coverage when attached to a corresponding Schedule of Insureds.

Defense and Supplemental Payments: If a claim or potential claim is covered under one of the Insuring Agreements, our Company may have a duty to pay supplemental damages on the Insured's behalf. This form defines the scope of our duty to pay those damages, and what duties the Company has, if any, to defend an Insured in the event of a claim.

General Definitions: This form contains the definitions that apply to every Insuring Agreement under your policy, unless otherwise noted. Additional or alternative definitions can be found within the definitions section of the relevant Insuring Agreement. Each word or phrase listed in **bold print** has been specifically defined within the policy. If a word has not been bolded, then its commonly understood meaning will apply.

General Exclusions: This form contains exclusions that apply to every Insuring Agreement under your policy, unless otherwise noted. Additional exclusions may also be found within the *ADDITIONAL EXCLUSIONS* section of the relevant Insuring Agreement.

General Conditions: This form defines the general duties our Company and the Insureds owe to each other under the terms of this policy contract, such as the requirements for reporting claims, the duty to maintain underlying insurance, the duties of the first named insured, etc.

Endorsements: Endorsements modify the terms and conditions of all or part of the policy and become a part of your policy. If an endorsement modifies one or more parts of the policy, but less than the entire policy, the endorsement will specify which parts of the policy are modified. It is important to understand that this is also the only method by which the terms and conditions of your policy can be altered.

If you have any questions regarding a particular provision or the coverage that is being provided to you, please contact your producer. We appreciate your patronage.

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### EXCESS DECLARATIONS

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# National Fire & Marine Insurance Company

Omaha, Nebraska

## EXCESS SCHEDULE OF UNDERLYING INSURANCE

Policy Number: EN004806	First Named Insured: Laser Spine Institute, LLC
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### Professional Liability:

Primary Policy Information	Limits (as defined below)	Self-Insured Retention (SIR) (as defined below)
Carrier:		Laser Spine Institute, LLC
Policy Number:		**The professional underlying SIR is a combined single limit of liability: \$1mm/6mm limit for Indemnity and Expense
Policy Period:		03/01/2015 – 03/01/2016
Retroactive Date (if any):		Refer to Schedule of Excess Professional Liability Insureds
<input type="checkbox"/> Claims-made basis <input type="checkbox"/> Occurrence basis	Per Event Limit: \$1,000,000 Aggregate Limit: \$6,000,000	<input checked="" type="checkbox"/> Claims-made basis <input type="checkbox"/> Occurrence basis  <input checked="" type="checkbox"/> Defense Costs inside SIR Limits <input type="checkbox"/> Defense costs outside SIR Limits

### EXCESS SCHEDULE OF UNDERLYING INSURANCE

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**Commercial General Liability:**

Primary Policy Information	Limits (as defined below)	Self-Insured Retention (SIR) (as defined below)
Carrier:		Laser Spine Institute, LLC
Policy Number:		***The general liability underlying SIR is a combined single limit of liability: \$25k/50k limit for Indemnity and Expense
Policy Period:		03/01/2015 – 03/01/2016
Retroactive Date (if any):		<input type="checkbox"/> Claims-made basis <input checked="" type="checkbox"/> Occurrence basis
<input type="checkbox"/> Claims-made basis	Per Event Limit: \$25,000	<input checked="" type="checkbox"/> Defense costs within SIR Limits
<input type="checkbox"/> Occurrence basis	Aggregate Limit: \$50,000	<input type="checkbox"/> Defense costs outside SIR Limits

**Employers Liability:**

Primary Policy Information	Limits (as defined below)	Self-Insured Retention (SIR) (as defined below)
Carrier:	Zenith Insurance Company	
Policy Number:	M1099502	
Policy Period:	01/01/2015 – 01/01/2016	
	Per Event Limit of Liability Employment-Related Accident: \$1,000,000	
	Per Employee Limit of Liability Employment-Related Disease: \$1,000,000	
	Policy Limit of Liability Employment-Related Disease: \$1,000,000	

**EXCESS SCHEDULE OF UNDERLYING INSURANCE**

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**Commercial Automobile Liability:**

Commercial Automobile Liability:			
Primary Policy Information		Limits (as defined below)	Self-Insured Retention (SIR) (as defined below)
Carrier:	Everest National Insurance Company		
Policy Number:	CF4CA00138131		
Policy Period:	03/01/2015 – 03/01/2016		
	Combined Single Limit: \$1,000,000		



# National Fire & Marine Insurance Company

Omaha, Nebraska

## *SCHEDULE OF EXCESS PROFESSIONAL LIABILITY INSUREDS* *EXCESS PROFESSIONAL LIABILITY* *(CLAIMS-MADE)*

### DECLARATIONS

Policy Number: EN004806

First Named Insured: Laser Spine Institute, LLC

### LIMITS OF LIABILITY

Per Event Limit of Liability: \$ 20,000,000

Aggregate Limit of Liability: \$ 20,000,000

### SCHEDULE OF INSUREDS

In consideration of the payment of the premium due, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree as follows, subject to the terms and conditions of this policy, including the applicable limits of liability:

SCHEDULED EXCESS PROFESSIONAL LIABILITY INSURED	ID NUMBER	RETROACTIVE DATE
Laser Spine Institute, LLC	241482	03/21/2005
Laser Spine Institute Consulting, LLC	626955	06/30/2011
Laser Spine Surgery Center of Arizona, LLC	254295	05/30/2008
Laser Spine Surgery Center of Cincinnati, LLC	637293	06/30/2014
Laser Spine Surgery Center of Cleveland, LLC	637292	06/30/2014
Laser Spine Surgery Center of Oklahoma, LLC	254297	03/23/2011
Laser Spine Surgery Center of Pennsylvania, LLC	254296	04/22/2009
Laser Spine Surgery Center of St Louis, LLC	637294	06/30/2014
Laser Spine Surgical Center, LLC	626953	01/03/2005
LSI HoldCo, LLC	626956	12/05/2012
LSI Houston, PA	616898	01/03/2005
LSI Management Company, LLC	626954	09/03/2009
Medical Care Management Services, LLC	626957	06/11/2013
Physician FTE 1		03/21/2005
See Schedule of Insured Physicians on File with Company	921217	
Health Care Provider FTE 1		03/21/2005
All Physician Assistants Employed or Contracted by Laser Spine Institute, LLC	626636	

### EXCESS PROFESSIONAL LIABILITY

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Policy Number: EN004806	First Named Insured: Laser Spine Institute, LLC
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SCHEDULED EXCESS PROFESSIONAL LIABILITY INSURED	ID NUMBER	RETROACTIVE DATE
Health Care Provider FTE 2		03/21/2005
All Nurse Practitioners Employed or Contracted by Laser Spine Institute, LLC	626639	
Health Care Provider FTE 3		03/21/2005
See Schedule of Insured Chiropractors on File with Company	921218	

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EXCESS PROFESSIONAL LIABILITY

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# National Fire & Marine Insurance Company

Omaha, Nebraska

## *EXCESS PROFESSIONAL LIABILITY INSURING AGREEMENT (CLAIMS-MADE)*

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### NOTICE:

**This Insuring Agreement contains claims-made coverage.  
Please read this policy carefully.**

In consideration of the payment of the premium due, and in reliance upon the representations of all Insureds, the Company and the Insureds agree as follows, subject to the terms and conditions of this policy, including the applicable limits of liability:

#### *I. INSURING AGREEMENT - EXCESS LOSS*

- A. The Company will pay, on behalf of any **scheduled excess professional liability insured**, including agents, all **excess loss** arising from a **health care event**. However, the **health care event** must have resulted from **professional services** rendered, or which should have been rendered, while the **scheduled excess professional liability insured** was employed by, or under contract with, any **scheduled excess professional liability insured**. For coverage to exist, the **excess loss** must also arise from an event that took place on or after the **retroactive date**. In addition, the **excess loss** must arise from a **claim** that was **first reported** during the **policy period**.
- B. All **claims** arising out of the same **health care event** will be deemed to have been made at the time the first such **claim** is made against any **Insured**. Only the policy in effect when the first such **claim** is made and reported to the **Company** in writing will apply to all related **claims** no matter when those related **claims** are made or reported. If the first such **claim** is made prior to the effective date of this policy, this policy will not apply to that **claim** nor to any related **claim** made during this **policy period** or any **extended reporting period**.

#### *II. WHO IS INSURED*

For the purposes of this Insuring Agreement, an **Insured** is:

- A. a **scheduled excess professional liability insured**;
- B. a **new excess professional liability insured**; or,
- C. an **agent**  
as defined below.

#### *III. ADDITIONAL DEFINITIONS*

In addition to the Excess General Definitions, the following definitions are added to this Insuring Agreement:

- A. **Scheduled excess professional liability insured** means any person or entity that is listed on the Schedule of Excess Professional Liability Insureds. A **scheduled excess professional liability insured** shares in the limits provided to the **first named insured**.
- B. **New excess professional liability insured** means an entity formed or acquired by the **scheduled excess professional liability insured** during the **policy period**, over which the **scheduled excess professional liability insured** maintains at least majority ownership.
  - 1. A **new excess professional liability insured** is not covered:
    - a. after 60 days have elapsed from the date the entity was formed or acquired by the **scheduled excess professional liability insured**; or,
    - b. for an **excess loss** or **health care event** that occurred before the entity was formed or acquired by the **scheduled excess professional liability insured** or after the **policy period**.
  - 2. A **new excess professional liability insured** shares the coverage provided to the **scheduled excess**



**professional liability insured**, including its limits of liability.

**C. Agent**

1. **Agent** means a person who was acting within the scope of his or her duties as:
  - a. an **employee, administrator, committee member, or student** of the **scheduled excess professional liability insured** at the time of the **health care event**; or,
  - b. a trustee, assign, or legal representative of the **scheduled excess professional liability insured** or of a person described in C.1.a. above in the event of bankruptcy, incapacity, or death.
2. An **agent** shares the coverage provided to the **scheduled excess professional liability insured**, including its limits of liability and any applicable restrictions.
3. An **agent** is not, however, an **Insured**, when the **agent** has other valid and collectible insurance to cover the claim.
4. As used to define an **agent**, above:
  - a. **employee** means any person employed by, or under contract with, the **scheduled excess professional liability insured** at the time of the **health care event**. It includes any authorized volunteer worker, **administrator, committee member or student**. **Employee** does not include:
    - (1) physician or dentist, including residents; or,
    - (2) certified registered nurse anesthetist, nurse midwife, nurse practitioner, physician's assistant, podiatrist, or surgical assistant.
  - b. **administrator** means an owner, partner, stockholder, director, trustee, executive officer, medical director, department head, or faculty member of the **scheduled excess professional liability insured**.
  - c. **committee member** means a person serving as a member of a committee or board formed or controlled by the **scheduled excess professional liability insured**. It also includes any person executing the directives of such a committee or board.
  - d. **student** means an unlicensed person, other than a resident, enrolled in a licensed or accredited training program operated by the **scheduled excess professional liability insured** relative to the delivery of professional services.

**IV. ADDITIONAL EXCLUSIONS**

In addition to any exclusions listed in the Excess General Exclusions, this Insuring Agreement does not apply to:

- A. any claim that was **first reported** by, or on behalf of, any **Insured** prior to the **policy period**;
- B. any claim arising from, or in connection with, any **professional services** rendered, or which should have been rendered, outside of the **scheduled excess professional liability insured's** employment, or contract for services with any **Insured** listed on the Schedule of Excess Professional Liability Insured's as a **scheduled excess professional liability insured**. This exclusion shall not apply to **professional services** rendered, or which should have been rendered, by a **scheduled excess professional liability insured** at the scene of an accident without expectation of monetary compensation;
- C. any claim arising from, or in connection with, an **Insured's** ownership, supervision or management of any organization, partnership, joint venture, or other business enterprise that is not a **scheduled excess professional liability insured**;
- D. any claim arising from, or in connection with, **treatment** rendered, or which should have been rendered, by an **administrator or committee member** unless it was provided in an emergency without an expectation of compensation;
- E. any **business practices claim**;
- F. any **employment practices claim**;



- G. any **product liability claim**;
- H. any **claim** arising from, or in connection with, the rendering, or failure to render, **managed care services**;
- I. liability for the acts of another assumed by an **Insured** under any contract or agreement, except as otherwise noted in this policy; or,
- J. any liability for the acts of another assumed by the **Insured** under any contract or agreement, whether written or oral, which shall include any hold harmless or indemnification agreement entered into by the **Insured**, provided that this exclusion shall not serve to exclude coverage to any third party for any liability imposed upon such third party solely as the result of the **Insured's** rendering of, or failure to render, **professional services**.

#### V. *LIMITS OF LIABILITY*

##### *PER EVENT LIMIT*

The **Company's** duty to pay excess loss on behalf of a **scheduled excess professional liability insured** for any **health care event** covered under this Insuring Agreement shall not exceed the Per Event Limit of Liability shown for Excess Professional Liability on the Schedule of Excess Professional Liability Insureds. This limit shall apply regardless of the number of:

1. persons who sustain injury;
2. claimants;
3. **claims**;
4. policies issued by the **Company**; or,
5. **Insureds** who share the Per Event limit.

##### *AGGREGATE LIMIT*

The **Company's** duty to pay excess loss on behalf of all **scheduled excess professional liability insureds** for all **health care events** covered under this Insuring Agreement shall not exceed the Aggregate Limit of Liability shown for Excess Professional Liability on the Schedule of Excess Professional Liability Insureds. This limit shall apply regardless of the number of:

1. **health care events**;
2. persons who sustain injury;
3. claimants;
4. **claims**;
5. policies issued by the **Company**; or,
6. **Insureds** who share the Aggregate limit.

#### VI. *ADDITIONAL CONDITIONS*

In addition to the conditions contained in the Excess General Conditions, the following conditions apply to this Insuring Agreement:

##### A. Settlement.

The **Company** may pay any excess loss as it deems expedient, unless prohibited by statute, regulation, rule or order, after first providing written notice to the **first named insured**.

##### B. Extended Reporting Period Option.

Purchase of an **extended reporting period**:

1. If the entire policy is canceled or nonrenewed, the **Company** shall, upon written request of the **first named insured**, mail an offer for an **extended reporting period** to the **first named insured** at the last address on record with the **Company**.
  - a. Any such written request by the **first named insured** must be received by the **Company** within 30 days of the expiration of the policy.
  - b. The **Company** shall only be required to offer an **extended reporting period**, if requested, to the **first**



**named insured** for all risks covered under the policy.

- c. The **Company** shall only be required to offer an **extended reporting period** if the **first named insured** has purchased an **extended reporting period** for all **scheduled coverages** that provide coverage on a **claims-made** basis.
2. If the **first named insured** accepts the offer of the **extended reporting period**, all **scheduled excess professional liability insureds** that were afforded coverage by this policy shall be included in the **extended reporting period**. However, the **Company** has no duty to offer a separate **extended reporting period** to any **scheduled excess professional liability insured** or any other **Insured**. In addition, the **Company** has no duty to inform any **scheduled excess professional liability insured** or any other **Insured** whether the **first named insured** has accepted its offer.
3. The **first named insured** may accept the **Company's** offer of an **extended reporting period** by paying the premium due within 30 days from either the date on which the policy expires or the date on which the **Company** receives the request for an **extended reporting period**, whichever is later. Failure to pay the full premium within this 30-day period will be deemed a rejection of the offer.
4. If purchased, the **extended reporting period** will begin at the end of the **policy period** and shall not reinstate the limits of liability of this Insuring Agreement. Thereafter, any **claim** against a **scheduled excess professional liability insured**, which is otherwise covered by the policy, may be reported for an unlimited duration. However, the **extended reporting period** shall not:
  - a. extend the **policy period**;
  - b. apply to any **claim** arising from a **health care event** that took place after the **policy period**; or,
  - c. otherwise expand the coverage provided under this policy.



# National Fire & Marine Insurance Company

Omaha, Nebraska

***SCHEDULE OF EXCESS INSURED BUSINESSES  
EXCESS COMMERCIAL GENERAL LIABILITY  
(OCCURRENCE)***

## DECLARATIONS

Policy Number: EN004806

First Named Insured: Laser Spine Institute, LLC

## LIMITS OF LIABILITY

Per Event Limit of Liability: \$ 20,000,000

General Aggregate Limit of Liability: \$ 20,000,000

## SCHEDULE OF INSURED

In consideration of the payment of the premium due, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree the following entities are designated as **scheduled excess insured businesses**.

All **scheduled excess insured businesses** listed below share in the limits of liability identified above.

SCHEDULED EXCESS INSURED BUSINESS	ID NUMBER
Laser Spine Institute, LLC	241482
Laser Spine Institute Consulting, LLC	626955
Laser Spine Surgery Center of Arizona, LLC	254295
Laser Spine Surgery Center of Cincinnati, LLC	637293
Laser Spine Surgery Center of Cleveland, LLC	637292
Laser Spine Surgery Center of Oklahoma, LLC	254297
Laser Spine Surgery Center of Pennsylvania, LLC	254296
Laser Spine Surgery Center of St Louis, LLC	637294
Laser Spine Surgical Center, LLC	626953
LSI HoldCo, LLC	626956
LSI Houston, PA	616898
LSI Management Company, LLC	626954
Medical Care Management Services, LLC	626957

## EXCESS GENERAL LIABILITY

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Edition Date: 1/2011



# National Fire & Marine Insurance Company

Omaha, Nebraska

## *EXCESS COMMERCIAL GENERAL LIABILITY INSURING AGREEMENT (OCCURRENCE)*

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In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree as follows, subject to the terms and conditions of this policy, including the applicable limits of liability.

*I. INSURING AGREEMENT—COVERAGE A: BODILY INJURY AND PROPERTY DAMAGE*

- A. The **Company** will pay those sums that the **scheduled excess insured business** including its **agents** becomes legally obligated to pay as **excess loss** because of **bodily injury** or **property damage** to which this insurance applies. The **Company** will have no duty to defend the **Insured** against any **suit** seeking those damages. However, the **Company** may, at its discretion, investigate any **event** and settle any **claim** or **suit**. The amount the **Company** will pay for damages is limited as described in the *LIMITS OF LIABILITY – ALL EXCESS COMMERCIAL LIABILITY COVERAGES* section. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under *DEFENSE AND SUPPLEMENTAL PAYMENTS – ALL EXCESS COMMERCIAL GENERAL LIABILITY COVERAGES*.
- B. This insurance applies to **bodily injury** and **property damage** only if:
1. the **bodily injury** or **property damage** is caused by an **event** that takes place in the **coverage territory**;
  2. the **bodily injury** or **property damage** is caused by an **event** that occurs during the **policy period**; and
  3. prior to the **policy period**, no **scheduled excess insured business** or **agent** authorized by the **scheduled excess insured business** to give or receive notice of an **event** knew that the **bodily injury** or **property damage** had occurred, in whole or in part. If such a **scheduled excess insured business**, or **agent** authorized by the **scheduled excess insured business** to give or receive notice of an **event**, knew prior to the **policy period** that the **bodily injury** or **property damage** occurred, then any continuation, change, or resumption of such **bodily injury** or **property damage** during or after the **policy period** will be deemed to have been known prior to the **policy period**.
- C. **Bodily injury** or **property damage**, which occurs during the **policy period** and was not, prior to the **policy period**, known to have occurred by a **scheduled excess insured business** or **agent** authorized by the **scheduled excess insured business** to give or receive notice of an **event**. This includes any continuation, change, or resumption of that **bodily injury** or **property damage** after the **policy period**.
- D. **Bodily injury** or **property damage** will be deemed to have been known to have occurred at the earliest time when any **scheduled excess insured business** or **agent** authorized by the **scheduled excess insured business** to give or receive notice of an **event**:
1. reports all, or any part, of the **bodily injury** or **property damage** to the **Company** or any other insurer;
  2. receives a written or verbal demand or **claim** for damages because of the **bodily injury** or **property damage**;
  - or,
  3. becomes aware by any other means that **bodily injury** or **property damage** has occurred or has begun to occur.
- E. Damages because of **bodily injury** include damages claimed by any person or organization for care, loss of services, or death resulting at any time from the **bodily injury**.

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EXCESS GENERAL LIABILITY

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Edition Date: 1/2011



## II. *EXCLUSIONS —COVERAGE A: BODILY INJURY AND PROPERTY DAMAGE*

This insuring agreement does not apply to:

### A. *Professional Services.*

**Bodily injury or property damage** arising out of the rendering or failure to render any **professional services** or other professional service. Other professional service includes, but is not limited to:

1. legal, accounting or advertising services;
2. preparing, approving or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications by any architect, engineer or surveyor performing services on a project on which the **Insured** serves as construction manager;
3. inspection, supervision, quality control, architectural or engineering activities done by or for you on a project on which the **Insured** serves as project manager;
4. engineering services, including related supervisory or inspection services;
5. medical, surgical, dental, x-ray or nursing services treatment, advice or instruction;
6. any health or therapeutic service treatment, advice or instruction;
7. any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement, or personal grooming or therapy;
8. any service, treatment, advice or instruction relating to physical fitness, including service, treatment, advice or instruction in connection with diet, cardiovascular fitness, body building or physical training programs;
9. optometry or optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;
10. body piercing services;
11. services in the practice of pharmacy; but this exclusion does not apply if the **Insured** is a retail druggist or the **Insured's** operations are those of a retail drugstore;
12. law enforcement or firefighting services; and,
13. handling, embalming, disposal, burial, cremation or disinterment of dead bodies.

### B. *Ownership of Non-insured Entities.*

Any **claim** arising from, or in connection with, an **Insured's** ownership, supervision or management of any organization, partnership, joint venture, or other business enterprise that is not a **scheduled excess insured business**.

### C. *Expected or Intended Injury.*

**Bodily injury or property damage** arising from, or in connection with, any act expected or intended by an **Insured** to cause **bodily injury or property damage**. This exclusion applies even if an **Insured's** act causes **bodily injury or property damage**:

1. of a different type or degree than expected or intended; or,
2. to a different person or entity than expected or intended.

However, this exclusion does not apply to **bodily injury** arising from, or in connection with, an **Insured's** use of reasonable force to protect persons or property.

### D. *Contractual Liability.*

**Bodily injury or property damage** arising from, or in connection with, an **Insured's** obligation to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

1. that the **Insured** would have in the absence of the contract or agreement; or,
2. 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. Solely for the purposes of liability assumed in an **insured contract**, reasonable attorney fees and necessary litigation expenses incurred by or for, a party other than an **Insured**, are deemed to be damages because of **bodily injury or property damage**, provided:
  - a. liability to or for that party's defense has also been assumed in the same **insured contract**; and,



- b. attorney fees and litigation expenses are for the defense against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

E. Liquor Liability.

**Bodily injury or property damage** arising from, or in connection with, any **Insured's** liability by reason of:

- 1. causing or contributing to the intoxication of any person;
- 2. the furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or,
- 3. any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if the **Insured** is in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

F. Employment-Related Practices Liability.

**Bodily injury** to:

- 1. a person arising from, or in connection with, any:
  - a. refusal to employ that person;
  - b. termination of that person's employment; or
  - c. employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or
- 2. the spouse, child, parent, brother, or sister of that person as a consequence of **bodily injury** to that person at whom any of the employment-related practices described in Paragraphs (a), (b) or (c) above is directed.

This exclusion applies:

- 1. whether the injury-causing event described in Paragraphs (a), (b) or (c) above occurs before, during, or after employment of that person;
- 2. whether the **Insured** may be liable as an employer or in any other capacity; and,
- 3. to any obligation to share damages with or repay someone else who must pay damages because of injury.

G. Employer's Liability.

**Bodily injury** to:

- 1. an employee of the **Insured** arising out of and in the course of:
  - a. employment by the **Insured**; or,
  - b. performing duties related to the conduct of an **scheduled excess insured business**.
- 2. the spouse, child, parent, brother, or sister of that employee as a consequence of Paragraph 1 above.

This exclusion shall apply:

- 1. whether the **scheduled excess insured business** may be held liable as an employer, or in any other capacity; and,
- 2. to any obligation to share damages with, or repay someone else who must pay damages, because of the injury.

This exclusion does not apply to liability assumed by the **Insured** under an **insured contract**.

H. Workers' Compensation and Other Similar Laws.

Any claim arising from, or in connection with, any obligation of an **Insured**, or damages awardable against an **Insured**, under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

I. Pollution.

**Bodily injury or property damage** arising from a **pollution event**. This policy also does not apply to clean-up costs.

J. Aircraft, Auto or Watercraft.

**Bodily injury or property damage** arising out of the ownership, maintenance, use, or entrustment to others of any



aircraft, **auto**, or watercraft owned or operated by or rented or loaned to any **Insured**. Use includes operation and loading or unloading.

1. This exclusion applies even if the **claims** against any **Insured** allege negligence or other wrongdoing in the supervision, hiring, employment, training, or monitoring of others by that **Insured** if the event which caused the **bodily injury** or **property damage** involved the ownership, maintenance, use, or entrustment to others of any aircraft, **auto**, or watercraft that is owned or operated by or rented or loaned to any **Insured**.
2. This exclusion does not apply to:
  - a. the loading or unloading of a patient;
  - b. a watercraft while on shore and on premises owned or rented by the **scheduled excess insured business**;
  - c. a watercraft that is:
    - (1) not owned by an **Insured**,
    - (2) less than 26 feet long, and
    - (3) was not being used to carry persons or property for a charge.
  - d. parking an **auto** on or next to a site owned or occupied by an **scheduled excess insured business**, but only if the **auto** is not owned, rented, or being used by an **Insured**;
  - e. liability assumed under an **insured contract** for the ownership, maintenance, or use of an aircraft or watercraft; or,
  - f. **bodily injury** or **property damage** arising from, or in connection with:
    - (1) the operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of **mobile equipment** if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or,
    - (2) the operation of any of the machinery or equipment listed in Paragraph 2.a or 2.b of the definition of **mobile equipment**.

K. Mobile Equipment.

**Bodily injury** or **property damage** arising from, or in connection with:

1. the transportation of **mobile equipment** by an **auto** owned or operated by or rented or loaned to an **Insured**; or,
2. the use of **mobile equipment** in, while in practice for, or while being prepared for any prearranged racing, speed, demolition, or stunting activity.

L. War.

**Bodily injury** or **property damage**, however caused, arising out of, or in connection with:

1. war, including undeclared or civil war;
2. warlike action by a military force, including action in hindering or defending against an actual or expected attack by any governmental, sovereign, or other authority using military personnel or other agents; or,
3. insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

M. Damage to Property.

**Property damage** to:

1. property the **scheduled excess insured business** owns, rents, or occupies, including any costs or expenses incurred by the **scheduled excess insured business**, or any other person, organization, or entity, for repair, replacement, enhancement, restoration, or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
2. premises the **scheduled excess insured business** sells, gives away, or abandons if the **property damage** arises out of, or in connection with, any part of those premises;
3. property loaned to a **scheduled excess insured business**;
4. personal property in the care, custody, or control of an **Insured**;
5. that particular part of real property on which the **scheduled excess insured business** or any contractors or



- subcontractors, working directly or indirectly on behalf of the **scheduled excess insured business**, are performing operations if the **property damage** arises out of those operations; or,
6. that particular part of any property that must be restored, repaired, or replaced because the **insured's work** was incorrectly performed on it.

Paragraphs 1, 3, and 4 of this exclusion do not apply to **property damage** (other than damage by fire) to a premises, including the contents of such premises rented to a **scheduled excess insured business** for a period of seven or fewer consecutive days.

Paragraph 2 of this exclusion does not apply if the premises are the **insured's work** and were never occupied, rented, or held for rental by the **scheduled excess insured business**.

Paragraph 6 of this exclusion does not apply to **property damage** included in the **products completed operations hazard**.

N. *Damage to the Insured's Product.*

**Property damage** to an **insured's product** arising from, or in connection with, it or any part of it.

O. *Damage to the Insured's Work.*

**Property damage** to an **insured's work** arising from, or in connection with, the **insured's work**, or any part of it, and included in the **products completed operations hazard**. This exclusion does not apply if the damaged work, or the work out of which the damage arises, was performed by a subcontractor on behalf of the **Insured**.

P. *Damage to Impaired Property or Property Not Physically Injured.*

**Property damage** to **impaired property** or property that has not been physically injured arising from, or in connection with:

1. a defect, deficiency, inadequacy, or dangerous condition in the **insured's product** or **insured's work**; or,
2. a delay or failure by an **Insured** to perform under the terms of a contract or agreement.

This exclusion does not apply to the loss of use of other property arising from, or in connection with, sudden and accidental physical injury to the **insured's product** or the **insured's work** after it has been put to its intended use.

Q. *Recall of Products, Work, or Impaired Property.*

**Claims** arising from, or in connection with, any loss, cost, or expense incurred by a **scheduled excess insured business** or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal, or disposal of:

1. the **insured's product**;
2. the **insured's work**; or,
3. **impaired property**,

if such product, work, or property is withdrawn or recalled from the market or from use due to a known or suspected defect, deficiency, inadequacy, or dangerous condition to it.

Exclusions E through Q do not apply to damage by fire to premises while rented to a **scheduled excess insured business** or temporarily occupied by a **scheduled excess insured business** with the permission of its owner.

R. *Personal and Advertising Injury.*

**Bodily injury** arising from, or in connection with, **personal and advertising injury**.

S. *Electronic Data.*

Any **property damage** or other intangible damages arising from, or in connection with, the loss of, loss of use



of, damage to, corruption of, inability to access, or inability to manipulate, **electronic data**. As used in this exclusion, **electronic data** means information, facts, or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices, or any other media that are used with electronically controlled equipment.

T. Recording and Distribution of Material or Information in Violation of Law.

**Bodily injury or property damage** arising from, or in connection with, any action or omission that violates or is alleged to violate:

1. the Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
2. the CAN-SPAM Act of 2003, including any amendment of or addition to such law;
3. the Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or,
4. any federal, state or local statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

U. Sexual Acts.

**Bodily injury or property damage:**

1. arising from, or in connection with, any actual or threatened sexual act, behavior or conduct, including, but not limited to, assault, exploitation, harassment or molestation, by any person of another person while in the care, custody, or control of any **Insured**; or,
2. the negligent:
  - a. employment;
  - b. investigation;
  - c. supervision;
  - d. reporting to the proper authorities, or failure to so report; or,
  - e. retention;

of a person for whom any **Insured** is or ever was legally responsible and whose conduct would be excluded by Paragraph 1. above.

V. Fines, Penalties, and Sanctions.

Any **claim** seeking injunctive relief, the award of fines, penalties or sanctions, or for any relief other than for damages which an **Insured** becomes legally obligated to pay through adjudication or settlement for **bodily injury or property damage**.

W. Punitive Damages.

Any damages over and above actual compensatory damages. This includes punitive, exemplary, and multiple damages.

X. Directors and Officers Liability.

Any **claim** that is covered under an **Insured's** directors and officers liability insurance policy; or any **claim** subject to a directors and officers liability insurance policy, including, but not limited to, (1) employment practices claims, (2) internal corporate or business disputes, and (3) claims by organizations against their directors and officers for business practices.

Y. Default Judgment.

Damages that an **Insured** becomes legally obligated to pay for **bodily injury or property damage** resulting from a default judgment or other **claim** that the **Company** was unable to timely investigate or defend due to the acts or omissions of the **Insured**.



Z. Nuclear Energy Liability.

**Bodily injury or property damage:**

1. for which an **Insured** has coverage under a nuclear energy policy issued by the:
  - a. Nuclear Energy Liability Insurance Association;
  - b. Mutual Atomic Energy Liability Underwriters;
  - c. Nuclear Insurance Association of Canada; or,
  - d. any successor of the proceeding entities.This policy also does not apply if such coverage did exist but was terminated by the exhaustion of the **Insured's** limit of liability.
2. resulting from the hazardous properties of nuclear material for which the **Insured**:
  - a. was required to maintain financial protection under the Atomic Energy Act of 1954, or any amendment or regulation that applies thereto; or,
  - b. was entitled to indemnity by the United States government, or any agency thereof, or would have been entitled to had this policy not been issued.

AA. ADA.

Any **claim** arising from, or in connection with, an **Insured's** failure to comply with the Americans with Disabilities Act of 1990 (ADA), or any similar federal, state, or local law, including any amendment of or addition to such law

BB. RICO.

Any **claim** arising from, or in connection with, an **Insured's** violation of the Racketeer Influenced Corrupt Organizations Act (RICO), or any similar federal, state, or local law, including any amendment of or addition to such law.

CC. Financial Services / Violation of Securities Laws.

**Bodily injury or property damage** arising from, or in connection with, the rendering of or the failure to render financial services by any **Insured** to others. For purposes of this exclusion, financial services include, but are not limited to:

1. planning, administering or advising on:
  - a. any:
    - (1) investment;
    - (2) pension;
    - (3) annuity;
    - (4) savings;
    - (5) checking; or,
    - (6) individual retirement account, plan, fund or account;
  - b. the issuance or withdrawal of any bond, debenture, stock or other securities;
  - c. the trading of securities, commodities, or currencies; or,
  - d. any acquisitions or mergers;
2. acting as a dividend disbursing agent, exchange agent, redemption or subscription agent, warrant or scrip agent, fiscal or paying agent, tax withholding agent, escrow agent, clearing agent, or electronic funds transfer agent;
3. lending, or arranging for the lending of, money, including credit card, debit card, leasing or mortgage operations or activities or interbank transfers;
4. repossessing of real or personal property from a borrower or acting as an assignee for the benefit of creditors;
5. checking or reporting of credit;
6. maintaining of financial accounts or records;
7. tax planning, tax advising or the preparation of tax returns; or,
8. selling or issuing travelers checks, letters of credit, certified checks, bank checks or money orders.

This exclusion includes damages arising from an **Insured's** violation of any federal, state, or local securities law or regulation, including any amendment of or addition to such law.



DD. Fungi and Bacteria.

1. **Bodily injury or property damage** arising from, or in connection with, the actual, alleged or threatened inhalation of, injection of, contact with, exposure to, existence of, or presence of any fungi or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.
  2. Any loss, cost or expense arising from, or in connection with, the abating, testing, monitoring, cleaning, removing, containing, treating, detoxifying, neutralizing, remediating, or disposing of, or in any way responding to, or assessing the effects of, fungi or bacteria, by any **Insured** or by any other person or entity.
- This exclusion shall not apply to any fungi or bacteria contained in a good or product intended for bodily consumption. For the purposes of this exclusion, the term fungi includes any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents, or byproducts produced or released by fungi.

EE. Communicable Disease.

**Bodily injury or property damage** arising from, or in connection with, the actual or alleged transmission of a communicable disease. This exclusion applies even if the **claims** against any **Insured** allege negligence or other wrongdoing by:

1. supervising, hiring, employing, training or monitoring of others that may be infected with and spread a communicable disease;
2. testing for a communicable disease;
3. failing to prevent the spread of the disease; or,
4. failure to report the disease to authorities.

FF. Insured Versus Insured.

Any **claim** which is initiated, alleged, or caused to be brought about, by any **Insured** covered by this policy against any other **Insured** covered by this policy.

GG. Multiple Policies Issued by Company.

If more than one policy issued by the **Company** applies to a **claim** brought against an **Insured**, the **Company's** duty to pay for any damages will be confined to the policy containing the largest applicable limit.

HH. Anti-Stacking.

If more than one Insuring Agreement under this policy applies to a **claim** brought against an **Insured**, the **Company's** duty to pay any damages will be confined to the Insuring Agreement containing the largest applicable limit.

II. Governmental Immunity and Other Protections.

Any **claim**:

1. arising from, or in connection with, any rendering of, or failure to render, **professional services** for which the **Insured** has, or is eligible for, complete immunity as a volunteer or as an employee or contractor of a federal, state, or local government; or,
2. involving an **Insured** who has, or is eligible for, insurance, indemnity, or any other protection pursuant to any federal, state or local laws, including but not limited to the Federal Tort Claims Act.

JJ. Employees.

Any **claim** arising from, or in connection with, the acts or omissions of an **employee**, involving:

1. **bodily injury or personal and advertising injury**:
  - a. to another **agent**;
  - b. to the spouse, relative or dependant as a consequence of Paragraph 1.a, above;
  - c. for which there is any duty to share damages or loss with, or repay, another party liable for the loss as a consequence of Paragraphs 1.a and 1.b, above; or,
  - d. arising from, or in connection with, the rendering or failure to render **professional services** or **managed**



- care services.
- 2. **property damage** to property:
  - a. owned, occupied, or used by an **Insured**;
  - b. rented to an **Insured**; or,
  - c. in the care, custody, or control of an **Insured**.

KK. Cyber and Privacy Insurance.

Any **claim** arising from, or in connection with, any loss or damages covered under any cyber or privacy insurance coverage, including but not limited to, any coverage for network security and privacy, regulatory fines and penalties, patient notification and credit monitoring, or data recovery cost.

III. *INSURING AGREEMENT— COVERAGE B: PERSONAL AND ADVERTISING INJURY*

- A. The **Company** will pay those sums that the **scheduled excess insured business** including its **agents** become legally obligated to pay as **excess loss** because of **personal and advertising injury** to which this insurance applies. The **Company** will have no duty to defend the **Insured** against any **suit** seeking those damages. However, the **Company** may, at its discretion, investigate any offense and settle any **claim** or **suit**. The amount the **Company** will pay for damages is limited as described in the *LIMITS OF LIABILITY – ALL EXCESS COMMERCIAL LIABILITY COVERAGES* section. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under *DEFENSE AND SUPPLEMENTAL PAYMENTS – ALL EXCESS COMMERCIAL GENERAL LIABILITY COVERAGES*.
- B. This insurance applies to **personal and advertising injury** caused by an offense arising out of the **scheduled excess insured business**, but only if the offense was committed in the **coverage territory** during the **policy period**.

IV. *EXCLUSIONS— COVERAGE B: PERSONAL AND ADVERTISING INJURY*

This insurance does not apply to:

A. Professional Services.

**Personal and advertising injury** arising out of the rendering or failure to render any **professional services** or other professional service. Other professional service includes, but is not limited to:

- 1. legal, accounting or advertising services;
- 2. preparing, approving or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications by any architect, engineer or surveyor performing services on a project on which the **Insured** serves as construction manager;
- 3. inspection, supervision, quality control, architectural or engineering activities done by or for you on a project on which the **Insured** serves as project manager;
- 4. engineering services, including related supervisory or inspection services;
- 5. medical, surgical, dental, x-ray or nursing services treatment, advice or instruction;
- 6. any health or therapeutic service treatment, advice or instruction;
- 7. any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement, or personal grooming or therapy;
- 8. any service, treatment, advice or instruction relating to physical fitness, including service, treatment, advice or instruction in connection with diet, cardiovascular fitness, body building or physical training programs;
- 9. optometry or optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;
- 10. body piercing services;
- 11. services in the practice of pharmacy; but this exclusion does not apply if the **Insured** is a retail druggist or the **Insured's** operations are those of a retail drugstore;
- 12. law enforcement or firefighting services; and,
- 13. handling, embalming, disposal, burial, cremation or disinterment of dead bodies.



B. Ownership of Non-insured Entities.

**Personal and advertising injury** arising from, or in connection with, an **Insured's** ownership, supervision or management of any organization, partnership, joint venture, or other business enterprise that is not an **insured business**.

C. Knowing Violation of Rights of Others.

**Personal and advertising injury** caused by, or at the direction of, an **Insured** with the knowledge that the act would violate the rights of another and would inflict **personal and advertising injury**.

D. Material Published With Knowledge of Falsity.

**Personal and advertising injury** arising from, or in connection with, oral or written publication of material if done by, or at the direction of, an **Insured** with knowledge of its falsity.

E. Material Published Prior to Policy.

**Personal and advertising injury** arising from, or in connection with, oral or written publication of material whose first publication took place before the **retroactive date**, if any, shown on the Schedule of Excess Insured Businesses.

F. Employment-Related Practices Liability.

**Personal and advertising injury** to:

1. a person arising from, or in connection with, any:
  - a. refusal to employ that person;
  - b. termination of that person's employment; or
  - c. employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or
2. the spouse, child, parent, brother, or sister of that person as a consequence of **personal and advertising injury** to that person at whom any of the employment-related practices described in Paragraphs (a), (b) or (c) above is directed.

This exclusion applies:

1. whether the injury-causing event described in Paragraphs (a), (b) or (c) above occurs before, during, or after employment of that person;
2. whether the **Insured** may be liable as an employer or in any other capacity; and,
3. to any obligation to share damages with or repay someone else who must pay damages because of injury.

G. Employer's Liability.

**Bodily injury** to:

1. an **employee** of the **Insured** arising out of and in the course of:
  - a. employment by the **Insured**; or,
  - b. performing duties related to the conduct of an **insured business**.
2. the spouse, child, parent, brother, or sister of that **employee** as a consequence of Paragraph 1 above.

This exclusion shall apply:

1. whether the **insured business** may be held liable as an employer, or in any other capacity; and,
2. to any obligation to share damages with, or repay someone else who must pay damages, because of the injury.

This exclusion does not apply to liability assumed by the **Insured** under an **insured contract**.

H. Criminal Acts.

**Personal and advertising injury** arising from, or in connection with, any criminal act committed by, or at the direction of, an **Insured**.



I. Contractual Liability.

**Personal and advertising injury** arising from or in connection with, an **Insured's** obligation to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the **Insured** would have in the absence of the contract or agreement.

J. Breach of Contract.

**Personal and advertising injury** arising from, or in connection with, a breach of contract, except an implied contract to use another's advertising idea in the **Insured's** advertisement.

K. Quality or Performance of Goods – Failure to Conform to Statements.

**Personal and advertising injury** arising from, or in connection with, the failure of goods, products, or services to conform to any statement of quality or performance in the **Insured's** advertisement.

L. Wrong Description of Prices.

**Personal and advertising injury** arising from, or in connection with, the wrong description of the price of the goods, products, or services in the **Insured's** advertisement.

M. Infringement of Copyright, Patent, Trademark, or Trade Secret.

**Personal and advertising injury** arising from, or in connection with, the infringement of copyright, patent, trademark, trade secret, or other intellectual property rights. However, this exclusion shall not apply to the infringement of copyright, trade, dress, or slogan in the **Insured's** advertisement.

N. Insureds in Media and Internet Type Businesses.

**Personal and advertising injury** committed by an **Insured** whose business is:

1. advertising, broadcasting, publishing, or telecasting;
2. designing or determining content for the websites of others; or,
3. an internet search, access, content, or service provider.

However, this exclusion does not apply to **claims** arising from, or in connection with, false arrest, detention or imprisonment, malicious prosecution, or the wrongful eviction from, or wrongful entry into, or invasion of the private occupancy of a room dwelling or premises occupied by, or on behalf of, its owner, landlord, or lessor.

For the purposes of this exclusion, the placing of frames, borders, or links, or advertising for an **Insured** or others is not considered, by itself, to be the business of advertising, broadcasting, publishing, or telecasting.

O. Electronic Chatrooms or Bulletin Boards.

**Personal and advertising injury** arising from, or in connection with, an electronic chatroom or bulletin board an **Insured** hosts, owns, or over which the **Insured** exercises control.

P. Unauthorized Use of Another's Name or Product.

**Personal and advertising injury** arising from, or in connection with, the unauthorized use of another's name or product in an **Insured's** email address, domain name, or metatag, or other similar tactics to mislead another's potential customers.

Q. Pollution.

**Personal and advertising injury** arising from, or in connection with, the actual or threatened discharge, dispersal, seepage, migration, release, or escape of **pollutants** at any time.

R. Pollution Related.

Any **claim** arising from, or in connection with, any loss, cost, or expense arising out of, any:

1. request, demand, order, or statutory or regulatory requirement that any **Insured** or others test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize, or in any way respond to or assess the effects of, **pollutants**; or,



2. **claim or suit** by or on behalf of a governmental authority for damages because of testing, monitoring, cleaning up, removing, containing, treating, detoxifying, or neutralizing, or in any way responding to or assessing the effects of, **pollutants**.

S. War.

**Personal and advertising injury**, however caused and arising from, or in connection with:

1. war, including undeclared or civil war;
2. warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any governmental, sovereign, or other authority using military personnel or other agents; or,
3. insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

T. Sexual Acts.

**Personal and advertising injury**:

1. any actual or threatened sexual act, behavior or conduct, including, but not limited to, assault, exploitation, harassment or molestation, by any person of another person while in the care, custody, or control of any **Insured**; or,
2. the negligent:
  - a. employment;
  - b. investigation;
  - c. supervision;
  - d. reporting to proper authorities, or failure to so report; or,
  - e. retention;of a person for whom any **Insured** is or ever was legally responsible and whose conduct would be excluded by Paragraph 1 above.

U. Fines, Penalties, or Sanctions.

Any **claim** seeking injunctive relief, the award of fines, penalties, or sanctions, or for any relief other than for damages which an **Insured** becomes legally obligated to pay through adjudication or settlement for **personal or advertising injury**.

V. Punitive Damages.

Any damages over and above actual compensatory damages. This includes punitive, exemplary, and multiple damages.

W. Directors and Officers Liability.

Any **claim** for **personal and advertising injury** that is covered under an **Insured's** directors and officers liability insurance policy; or any **claim** subject to a directors and officers liability insurance policy, including, but not limited to, (1) employment practices claims, (2) internal corporate or business disputes, and (3) claims by organizations against their directors and officers for business practices..

X. Default Judgment.

Damages that an **Insured** becomes legally obligated to pay for **person and advertising injury** resulting from a default judgment or other **claim** that the **Company** was unable to timely investigate or defend due to the acts of omissions of the **Insured**.

Y. Financial Services / Violation of Securities Laws.

**Personal and advertising injury** arising from, or in connection with, the rendering of or the failure to render financial services by any **Insured** to others. For purposes of this exclusion, financial services include, but are not limited to:

1. planning, administering or advising on:
  - a. any:



- (1) investment;
- (2) pension;
- (3) annuity;
- (4) savings;
- (5) checking; or
- (6) individual retirement account, plan, fund or account;
- b. the issuance or withdrawal of any bond, debenture, stock or other securities;
- c. the trading of securities, commodities, or currencies; or
- d. any acquisitions or mergers;
- 2. acting as a dividend disbursing agent, exchange agent, redemption or subscription agent, warrant or scrip agent, fiscal or paying agent, tax withholding agent, escrow agent, clearing agent, or electronic funds transfer agent;
- 3. lending, or arranging for the lending of, money, including credit card, debit card, leasing or mortgage operations or activities or interbank transfers;
- 4. repossessing of real or personal property from a borrower or acting as an assignee for the benefit of creditors;
- 5. checking or reporting of credit;
- 6. maintaining of financial accounts or records;
- 7. tax planning, tax advising or the preparation of tax returns; or
- 8. selling or issuing travelers checks, letters of credit, certified checks, bank checks or money orders.

This exclusion includes **personal and advertising injury** arising from, or in connection with, an **Insured's** violation of any federal, state, or local securities law or regulation.

**Z. Nuclear Energy Liability.**

**Personal and advertising injury:**

- 1. for which an **Insured** has coverage under a nuclear energy policy issued by the:
  - a. Nuclear Energy Liability Insurance Association;
  - b. Mutual Atomic Energy Liability Underwriters;
  - c. Nuclear Insurance Association of Canada; or,
  - d. any successor of the proceeding entities.

This policy also does not apply if such coverage did exist but was terminated by the exhaustion of the **Insured's** limit of liability.

- 2. resulting from the hazardous properties of nuclear material for which the **Insured**:
  - a. was required to maintain financial protection under the Atomic Energy Act of 1954, or any amendment or regulation that applies thereto; or,
  - b. was entitled to indemnity by the United States government, or any agency thereof, or would have been entitled to had this policy not been issued.

**AA. ADA.**

Any **claim** arising from, or in connection with, an **Insured's** failure to comply with the Americans with Disabilities Act of 1990 (ADA), or any similar federal, state or local law, including any amendment of or addition to such law.

**BB. RICO.**

Any **claim** arising from, or in connection with, an **Insured's** violation of the Racketeer Influenced Corrupt Organizations Act (RICO), or any similar federal, state or local law, including any amendment of or addition to such law.

**CC. Insured Versus Insured.**

Any **claim** which is initiated, alleged, or caused to be brought about, by any **Insured** covered by this policy against any other **Insured** covered by this policy.

**DD. Multiple Policies Issued by Company.**

If more than one policy issued by the **Company** applies to a **claim** brought against an **Insured**, the **Company's**

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EXCESS GENERAL LIABILITY

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duty to pay for any damages will be confined to the policy containing the largest applicable limit.

EE. Anti-Stacking.

If more than one Insuring Agreement under this policy applies a **claim** brought against an **Insured**, the **Company's** duty to pay any damages will be confined to the Insuring Agreement containing the largest applicable limit.

FF. Governmental Immunity and Other Protections.

Any **claim**:

1. arising from, or in connection with, any rendering of, or failure to render, **professional services** for which the **Insured** has, or is eligible for, complete immunity as a volunteer or as an employee or contractor of a federal, state, or local government; or,
2. involving an **Insured** who has, or is eligible for, insurance, indemnity, or any other protection pursuant to any federal, state or local laws, including but not limited to the Federal Tort Claims Act.

GG. Employees.

Any **claim** arising from, or in connection with, the acts or omissions of an **employee**, involving:

1. **bodily injury or personal and advertising injury**:
  - a. to another **agent**;
  - b. to the spouse, relative or dependant as a consequence of Paragraph 1.a, above;
  - c. for which there is any duty to share damages or loss with, or repay, another party liable for the loss as a consequence of Paragraphs 1.a and 1.b, above; or,
  - d. arising from, or in connection with, the rendering or failure to render **professional services or managed care services**.
2. **property damage** to property:
  - a. owned, occupied, or used by an **Insured**;
  - b. rented to an **Insured**; or,
  - c. in the care, custody, or control of an **Insured**.

HH. Electronic Data.

Any **personal and advertising injury** arising from, or in connection with, the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate, **electronic data**. As used in this exclusion, **electronic data** means information, facts, or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices, or any other media that are used with electronically controlled equipment.

II. Recording and Distribution of Material or Information in Violation of Law.

**Personal and advertising injury** arising from, or in connection with, any action or omission that violates or is alleged to violate:

1. the Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
2. the CAN-SPAM Act of 2003, including any amendment of or addition to such law;
3. the Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or,
4. any federal, state or local statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

JJ. Cyber and Privacy Insurance.

Any **claim** arising from, or in connection with, any loss or damages covered under any cyber or privacy insurance coverage, including but not limited to, any coverage for network security and privacy, regulatory fines and penalties, patient notification and credit monitoring, or data recovery cost.



V. *DEFENSE AND SUPPLEMENTAL PAYMENTS – ALL EXCESS COMMERCIAL GENERAL LIABILITY COVERAGES*

A. *No Duty to Defend.*

In any **claim** or **suit** covered under this policy, regardless of whether the **Insured** is entitled to a defense under a **scheduled coverage**, the **Company** shall have no duty to defend the **Insured** or pay any **claims expense** under this Insuring Agreement. However, the **Company** shall have the right to participate in the defense and investigation of any **claim** or **suit** that may, in the **Company's** sole determination, exceed the **scheduled limit**, including the right to defend the **Insured**, if the **Company** so chooses. In addition, the **Company** has no duty to:

1. defend an **Insured** against a **claim** or **suit** after the **Insured's** applicable limit of liability is exhausted by the payment of judgments or settlements; or,
2. appeal any judgment. However, the **Company** has the right, but not the duty, to appeal any judgment that exceeds the **scheduled limit**. If the **Company** decides to appeal any judgment, all costs directly related with the appeal shall be payable by the **Company**, and shall not reduce the applicable limit of liability.

B. *Supplemental Payments.*

If the **Company** elects to appeal a judgment that exceeds the **scheduled limit**, the **Company** shall pay:

1. **claims expense** directly related to the appeal; and,
2. the premium on any bond required to proceed with such an appeal approved by the **Company** or to release attachments to the **Insured's** property. However, the **Company** has no duty to apply for or furnish any such bond. In addition, the **Company** shall have no duty to pay the premium on any bond which has a face value in excess of the remaining limit of liability under the policy.

The **Company** has no duty to pay any **claim** or **claims expense** after the **Insured's** applicable limit of liability is exhausted.

VI. *WHO IS INSURED – ALL EXCESS COMMERCIAL GENERAL LIABILITY COVERAGES*

- A. If a company is designated on the Schedule of Excess Insured Businesses as a **scheduled excess insured business**, it is an **Insured**, but only if the **scheduled excess insured business** is covered under a **scheduled coverage**.
- B. Each of the following is also an **Insured**:
1. a **new business**; or,
  2. an **agent** of a **scheduled excess insured business**,  
but only if the **new business** or **agent** is also covered under a **scheduled coverage**.

VII. *LIMITS OF LIABILITY – ALL EXCESS COMMERCIAL GENERAL LIABILITY COVERAGES*

- A. The Per Event Limits of Liability for the **scheduled excess insured business** shown on the Schedule of Excess Insured Businesses shall be the most the **Company** will pay, regardless of the number of:
1. **Insureds**;
  2. **claims made** or **suits brought**;
  3. **persons** or **organizations** making **claims** or bringing **suits**; or,
  4. **policies** issued by the **Company**.
- B. The General Aggregate Limit is the most the **Company** will pay for the sum of:
1. **damages** under COVERAGE A, including **damages** because of **bodily injury** and **property damage** included in the **products completed operations hazard**; and,
  2. **damages** under COVERAGE B.
- C. The Limits of Liability of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the **policy period** shown in the Schedule of Excess Insured Businesses, unless the **policy period** is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.



*VIII. DEFINITIONS— ALL EXCESS COMMERCIAL GENERAL LIABILITY COVERAGES*

Whenever used in this insuring agreement:

- A. **Additional Insured** means any person or entity listed on the applicable Excess Schedule of Additional Insureds.
- B. **Administrator** means an owner, partner, stockholder, director, trustee, or executive officer of a **scheduled excess insured business**.
- C. **Advertisement** means a notice that is broadcast or published to the general public or specific market segments about the **scheduled excess insured business'** goods, products, or services for the purpose of attracting customers or supporters. For the purposes of this definition:
  - 1. notices that are published include material placed on the Internet or on similar electronic means of communication; and,
  - 2. regarding websites, only that part of a website that is about the **Insured's** goods, products, or services for the purposes of attracting customers or supporters is considered an advertisement.
- D. **Agent** means a person who was acting within the scope of his or her duties as:
  - 1. an **employee, administrator, committee member, or real estate manager** of a **scheduled excess business**, at the time of the event or offense; or,
  - 2. a trustee, assign, or legal representative of the **scheduled excess insured business**.An **agent** shares the coverage provided to the **scheduled excess insured business**, including its limits of liability.
- E. **Auto** means:
  - 1. a land motor vehicle, trailer, or semi-trailer, including any attached machinery and equipment, designed for travel on public roads; or,
  - 2. any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.However, **auto** does not include **mobile equipment**.
- F. **Bodily injury** means any damage to the human body, including sickness or disease and any mental injury, shock, emotional distress, or death arising therefrom. In addition, it includes damages claimed for the cost of any care, loss of services, or loss of consortium arising therefrom.
- G. **Case management** means identifying patients with specific health care needs and developing a plan to ensure an efficient use of resources to achieve the best medical outcome.
- H. **Claim** means an express written demand upon an **Insured** for money or services as compensation for civil damages. It also includes an **event** or offense for which coverage was provided under a **scheduled coverage**.
- I. **Claims expense** means all costs and expenses incurred in connection with the investigation, adjustment, and defense of any **claim**. Such costs and expenses shall include:
  - 1. attorney fees paid to the law firm selected by the **Company** to defend an **Insured**;
  - 2. court costs;
  - 3. expert fees;
  - 4. reporter fees;
  - 5. the cost of any alternative dispute resolution ordered by a court, otherwise required by law or pre-approved by the **Company**;
  - 6. post judgment interest on that portion of the judgment that does not exceed the applicable limit of liability available under the policy; and,
  - 7. such other costs and expenses that the **Company** determines to be reasonably related to the defense of a **claim**.However, **claims expenses** does not include:
  - 1. **excess loss**;



2. attorney fees awarded to a claimant;
  3. the salary of any employee of an **Insured**; or,
  4. the forgiveness of any amounts owed for the cost of care or services rendered by an **Insured**.
- J. **Clean-up costs** means any cost, expense, or duty:
1. claimed to be owed by the **Insured** under the statutory authority of a governmental agency; or,
  2. incurred by the **Insured** or others to test for, monitor, clean-up, remove, contain, treat, detoxify, or neutralize, or in any way respond to or assess the effects of, any **pollutant**.
- K. **Committee member** means a person serving as a member of a committee or board formed or controlled by a **scheduled excess insured business**. It also includes any person executing the directives of such a committee or board.
- L. **Company** means the insurance company listed on the Declarations.
- M. **Counseling** means formal therapy rendered to a patient by a licensed professional approved and credentialed by the **Insured** to provide such therapy.
- N. **Coverage Territory** means:
1. the United States of America (including its territories and possessions);
  2. international waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in subsection 1 above; or,
  3. all other parts of the world if the injury or damage arises out of:
    - a. goods or products made or sold by the **scheduled excess insured business** in the territory described above,
    - b. the activities of a person whose home is in the territory described above, but is away for a short time on the **Insured's** business; or,
    - c. **personal and advertising injury** offenses that take place through the internet or similar electronic means of communication,provided the **Insured's** responsibility to pay damages is determined in a **suit** on the merits in the territory described in subsection 1 above or in a settlement to which the **Company** agrees.
- O. **Employee** means any person employed by, or acting under the direction and control of, a **scheduled insured** at the time of the event or offense.
- P. **Environmental damage** means the injurious presence in, or upon, land, the air, or any watercourse or body of water of any **pollutants**.
- Q. **Event** means accident. All injuries arising from:
1. the same or related acts, errors, or omissions; or,
  2. the continuous or repeated exposure to substantially the same harmful conditions will be considered one event.
- R. **Excess Loss**
1. **Excess loss** means civil damages, including prejudgment interest, which an **Insured** becomes legally obligated to pay through adjudication or settlement which exceed:
    - a. all applicable **scheduled limits** of any **scheduled coverages**; and,
    - b. all applicable limits of any other valid and collectible insurance policies or other program of indemnity that applies to the **Insured's** liability for the event or offense.
  2. **Excess loss** does not include:
    - a. any damages which are greater than the applicable limit of liability;
    - b. any damages which are not greater than the **scheduled limit** or any other applicable insurance;
    - c. any injunctive or other equitable relief;



- d. **claims expense**;
  - e. attorneys fees awarded to a claimant as a fine, penalty or sanction based upon the **Insured's** misconduct; however, attorney fees awarded as part of the claimant's damages in a covered **claim** for any other purpose will be included as **excess loss**;
  - f. the salary of any **employee** of an **Insured**; or,
  - g. the forgiveness of any amounts owed for the cost of care or services rendered by an **Insured**.
- S. **Executive Officer** means a person holding any of the officer positions created by an **Insured's** charter, constitution, bylaws, or any other similar governing document.
- T. **Extended reporting period** means the period of time after the cancellation or nonrenewal of claims-made coverage during which the **Insured** may report a **claim**.
- U. **First made** refers to the date on which the **Insured** first received a **claim**. All **claims** arising from, or in connection with, damages or loss suffered by the same claimant(s) shall be considered as having been **first made** when the first such **claim** is received by the **Insured**.
- V. **First named insured** (or FNI) means the entity or person listed as the First Named Insured on the Declarations.
- W. **Health care event** means any event in the rendering of, or failure to render, **professional services** that results in injury. All injuries arising from the same or related acts, errors, and omissions in the furnishing of **professional services** shall be considered one **health care event**.
- X. **Health care plan** means a medical benefits plan administered by a health care maintenance organization (HMO), preferred provider organization (PPO), or other similar managed care organization or self-insured managed care organization.
- Y. **Hostile fire** means a fire that becomes uncontrollable or breaks out from where it was intended to be.
- Z. **Impaired property** means tangible property, other than the **insured's product** or the **insured's work**, which cannot be used or becomes less useful because:
- 1. it incorporates the **insured's product** or **insured's work** that is known or thought to be defective, deficient, inadequate, or dangerous; or,
  - 2. the **Insured** has failed to fulfill the terms of a contract or agreement if such property can be restored to use by:
    - a. the repair, replacement, adjustment, or removal of the **insured's product** or **insured's work**, or
    - b. the **Insured's** fulfillment of the terms of the contract.
- AA. **Insured** means any person or entity entitled to coverage as specified under the *WHO IS INSURED – ALL EXCESS COMMERCIAL GENERAL LIABILITY COVERAGES* section above.
- BB. **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 an **Insured** or temporarily occupied by an **Insured** with permission of the owner is not an **insured contract**;
  - 2. any easement or license agreement, except in connection with construction or demolition operations on, or within 50 feet of, a railroad;
  - 3. an obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality; or,
  - 4. an elevator maintenance agreement.
- CC. **Insured's product**
- 1. means:



- a. any goods or products, other than real property, manufactured, sold, handled, distributed, or disposed of by:
  - (1) a **scheduled excess insured business**;
  - (2) others trading under its name; or,
  - (3) a person or organization whose business or assets the **scheduled excess insured business** has acquired.
- b. containers (other than vehicles), materials, parts, or equipment furnished in connection with such goods or products.
- 2. includes:
  - a. warranties or representations made at any time with regard to the fitness, quality, durability, performance, or use of the goods or the **insured's products**; and,
  - b. the providing of, or the failure to provide, warnings or instructions.
- 3. does not include:
  - a. vending machines; or,
  - b. other property rented to or located for the use of others, but not sold to others by an **Insured**.

**DD. Insured's work**

- 1. means:
  - a. work or operations performed by, or on behalf of, an **scheduled excess insured business**; and,
  - b. materials, parts, or equipment furnished in connection with such work or operations.
- 2. includes:
  - a. warranties or representations made at any time with regard to the fitness, quality, durability, performance, or use of the work or operations; and,
  - b. the providing of, or the failure to provide, warnings or instructions.

**EE. 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.
- It does not include the movement of property by means of a mechanical device, other than a hand truck, which is not attached to the aircraft, watercraft, or **auto**.

**FF. Managed care event** means any event in rendering of, or failure to render, **managed care services** that result in injury. All injuries arising from the same or related acts, errors, or omissions in the furnishing of **managed care services** shall be considered one **managed care event**.

**GG. Managed care services** means services provided to manage and/or administer a **health care plan**. These services can include any of the following acts provided on behalf of the **health care plan**:

- 1. the creation, sale, and marketing of a **health care plan**;
- 2. the selection, credentialing, and contracting of health care providers;
- 3. the evaluation of the cost, quality, and proper utilization of treatment options available or being provided to participants;
- 4. the adjustment, investigation, and processing of claims for benefits; or,
- 5. **case management**.

However, **managed care services** do not include **treatment** rendered to a patient.

**HH. Mobile equipment:**

- 1. means any of the following types of land vehicles, including any attached machinery or equipment:
  - a. bulldozers, farm machinery, forklifts, and other vehicles designed for use principally off public roads;
  - b. vehicles maintained for use solely on, or next to, premises owned or rented by a **scheduled excess insured business**;



- c. vehicles that travel on crawler treads;
  - d. vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
    - (1) power cranes, shovels, loaders, diggers, or drills; or,
    - (2) road construction or resurfacing equipment, such as graders, scrapers, or rollers;
  - e. vehicles not described in Paragraphs a, b, c, or d above, that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
    - (1) air compressors, pumps, and generators, including spraying welding, building cleaning, geophysical exploration, lighting, and well-servicing equipment; or,
    - (2) cherry pickers and similar devices used to raise or lower workers;
  - f. vehicles not described in Paragraphs a, b, c, or d above, maintained primarily for purposes other than the transportation of persons or cargo.
2. does not include self-propelled vehicles with the following types of permanently attached equipment, but will be considered **autos**:
    - a. equipment designed primarily for:
      - (1) snow removal;
      - (2) road maintenance (but not construction or resurfacing); or
      - (3) street cleaning;
    - b. cherry pickers and similar devices mounted on car 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.
  3. does not include land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered **autos**.

- II. **New business** means an entity formed or acquired by a **scheduled excess insured business** during the **policy period**. However, a **new business** is not covered:
1. after 60 days have elapsed from the date the **new business** was formed or acquired by the **scheduled excess insured business**, unless it has been Schedule of Excess Insured Businesses or as an **additional excess insured** on a Schedule of Additional Excess Insureds;
  2. for **bodily injury** or **property damage** that occurred before the entity was formed or acquired by the **scheduled excess insured business**; or,
  3. for **personal and advertising injury** that arose out of an offense committed before the entity was formed or acquired by the **scheduled excess insured business**.

A **new business** shares the coverage provided to the **scheduled excess insured business**, including its limits of liability.

- JJ. **Peer review** means the evaluation of a health care provider's fitness and qualification to provide **treatment** by a professional review board or committee through formally adopted, written procedures.

- KK. **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, in any manner, 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, in any manner, of material that violates a person's right of privacy; or,
  6. the use of another's advertising idea in the **Insured's advertisement**.

- LL. **Policy period** means the period of time listed on the Declarations as the Policy Period. If, however, the policy is



terminated before the later of the dates listed on the Declarations, **policy period** means the period between the first date indicated on the Declarations and the date the policy is terminated.

- MM. **Pollutants** means any solid, liquid, gaseous, fuel, lubricant, thermal, acoustic, electrical, or magnetic irritant or contaminant, including but not limited to smoke, vapor, soot, fumes, fibers, radiation, acid, alkalis, petroleum, chemicals or "waste." "Waste" includes medical waste, biological infectants, and all other materials to be disposed of, recycled, stored, reconditioned or reclaimed.
- NN. **Pollution event** means an actual, alleged, or threatened emission, discharge, release, or escape of any **pollutants** which caused **bodily injury**, **property damage**, or **environmental damage**. The entirety of all such emission, discharge, release, or escape of any **pollutants** shall be deemed to be one **pollution event**.
- OO. **Products completed operations hazard**
1. **Products completed operations hazard** means all **bodily injury** and **property damage** occurring away from premises an **Insured** owns or rents, and arising out of the **insured's product** or **insured's work** except:
    - a. products that are still in the physical possession of an **Insured**;
    - b. work that has not yet been completed or has been abandoned. However, the **insured's work** will be deemed completed at the earliest of the following times:
      - (1) when all of the work called for in the **Insured's** contract has been completed;
      - (2) when all of the work to be done at the job site has been completed if the contract calls for work at more than one job site; or,
      - (3) when that part of the work 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.Work that may need service, maintenance, correction, repair, or replacement, but which is otherwise complete, will be deemed completed.
  2. **Products completed operations hazard** does not include **bodily injury** or **property damage** arising out of:
    - a. the transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by an **Insured** and that condition was created by the **loading or unloading** of the vehicle by an **Insured**;
    - b. the existence of tools, uninstalled equipment, or abandoned or unused materials; or,
    - c. products or operations for which the classification, listed in the Schedule of Excess Insured Businesses or in a policy schedule, states that Product/Completed Work Liability are subject to the General Aggregate Limit.
- PP. **Professional services** means treatment and peer review.
- QQ. **Property damage** means:
1. physical injury to tangible property, including any 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. All such loss of use shall be deemed to occur at the time of the event that caused it.
- RR. **Real estate manager** means a person, who manages any property owned or used by an **scheduled excess insured business**. It does not include an employee.
- SS. **Retroactive date** means the date prior to which an **Insured** has no coverage under this Insuring Agreement. The **retroactive date** is listed for the particular **Insured** on the applicable Schedule of Excess Insured Businesses.
- TT. **Scheduled coverage** means any policy of underlying insurance, or other program of indemnity, as shown on the Excess Schedule of Underlying Insurance that applies to the **Insured's** liability for an **event** or offense. However, it does not include any policy that is specifically designed to provide coverage in excess of this policy.



- UU. **Scheduled limit** means the amount shown as the Scheduled Limit for the applicable **scheduled coverage** on the corresponding Excess Liability Schedule of Underlying Insurance.
- VV. **Scheduled excess insured business** means any business scheduled as a **scheduled excess insured business** in the Schedule of Excess Insured Businesses.
- WW. **Scheduled insured** means any company listed on a Excess Schedule of Insured Businesses.
- XX. **Social services** means programs provided by an **Insured** to help maintain or improve the quality of life for the patient, including family counseling and educational programs. These programs do not include therapy for the direct benefit of anyone other than the patient.
- YY. **Suit** means a civil proceeding in which damages because of **bodily injury, property damage, or personal and advertising injury**, to which this insurance applies, are alleged. **Suit** includes:
1. an arbitration proceeding in which such damages are claimed and to which the **Insured** must submit or does submit with the **Company's** consent; or,
  2. any other alternative dispute resolution proceeding in which such damages are claimed and to which the **Insured** submits with the **Company's** consent.
- ZZ. **Treatment** means:
1. the rendering of medical, surgical, dental, nursing services, **counseling or social services** to a patient. This shall include first aid rendered at the scene of an accident without expectation of monetary compensation;
  2. the provision of medical examinations, opinions, or consultations regarding a person's medical condition within the **Insured's** practice as a licensed health care provider; and
  3. the furnishing of any of the following, but only as it relates to the rendering of medical, surgical, dental, nursing services, **counseling or social services** to a patient:
    - a. food and beverages; and,
    - b. medical, surgical, or dental supplies, appliances, or drugs.



# National Fire & Marine Insurance Company

Omaha, Nebraska

***SCHEDULE OF EXCESS INSURED EMPLOYERS  
EXCESS EMPLOYEE BENEFITS LIABILITY  
(CLAIMS-MADE)***

DECLARATIONS	
Policy Number: EN004806	First Named Insured: Laser Spine Institute, LLC

## **LIMITS OF LIABILITY**

Per Event Limit of Liability: \$ 20,000,000

Aggregate Limit of Liability: \$ 20,000,000

SCHEDULE OF INSUREDS
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In consideration of the payment of the premium due, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree the following entities are designated as **scheduled excess insured employers**.

SCHEDULED EXCESS INSURED EMPLOYER	ID NUMBER	RETROACTIVE DATE
Laser Spine Institute, LLC	241482	03/01/2005

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EXCESS EMPLOYEE BENEFITS LIABILITY

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Edition Date: 2/2014



# National Fire & Marine Insurance Company

Omaha, Nebraska

## *EXCESS EMPLOYEE BENEFITS LIABILITY INSURING AGREEMENT (CLAIMS-MADE)*

### NOTICE:

**This Insuring Agreement contains claims-made coverage.  
Please read this policy carefully.**

In consideration of the payment of the premium due, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree as follows, subject to the terms and conditions of this policy, including the applicable limits of liability:

### *I. INSURING AGREEMENTS – EXCESS LOSS*

- A. The **Company** will pay, on behalf of **scheduled excess insured employers** and their **agents**, all **excess loss** arising from an event related to the **administration of employee benefits** which took place on or after the **retroactive date** in excess of the **scheduled limit**. However, the **excess loss** must also result from a **claim** that was **first made** against an **scheduled excess insured employer**, or its **agent**, during the **policy period**. In addition, the **claim** must be reported to the **Company**, in writing, during the **policy period**, or 30 days thereafter, to be covered under this policy.
- B. All **claims** arising out of the same event will be deemed to have been made at the time the first of those **claims** was made against any **Insured**. Only the policy in effect when the first such related **claim** is made and reported to the **Company** in writing will apply to all such related **claims**, no matter when those related **claims** are made or reported. If the first such **claim** is made prior to the effective date of this policy, this policy will not apply to that **claim**, nor to any related **claim** made during this **policy period** or any **extended reporting period**.

### *II. WHO IS INSURED*

For the purposes of this Insuring Agreement, an **Insured** is:

- A. a **scheduled excess insured employer**;
  - B. a **new employer**; or,
  - C. an **agent**
- as defined below.

### *III. ADDITIONAL DEFINITIONS*

In addition to the Excess General Definitions, the following definitions are added to this Insuring Agreement:

- A. **Scheduled excess insured employer** means any entity listed as a **scheduled excess insured employer** on the Schedule of Excess Insured Employers, as well as any **new employer**. Except as otherwise noted, a **scheduled excess insured employer** shares the coverage provided to the **first named insured**, including its limits of liability.
- B. **New employer** means an entity formed or acquired by a **scheduled excess insured employer** during the **policy period**. However a **new employer** is not covered:
  - 1. after 60 days have elapsed from the date the entity was formed or acquired; or,
  - 2. for an event that took place before the entity was formed or acquired.A **new employer** shares the coverage provided to a **scheduled excess insured employer**, including its limits of liability.
- C. **Agent**
  - 1. **Agent** means a person who was acting within the scope of his or her duties as:



- a. an **employee, administrator, or committee member** of the **scheduled excess insured employer** at the time of the event; or,
- b. a trustee, assign, or legal representative of the **scheduled excess insured employer**; or of a person described in C.1.a, above, in the event of bankruptcy, incapacity, or death.
2. An **agent** shares the coverage provided to a **scheduled excess insured employer**, including its limits of liability and any applicable restrictions.
3. As used to define an **agent**, above:
  - a. **employee** means any person employed by, or under contract with, the **scheduled excess insured employer** at the time of the event.
  - b. **administrator** means an owner, partner, stockholder, director, trustee, or executive officer of the **scheduled excess insured employer**.
4. **Committee member** means a person serving as a member of a committee or board formed or controlled by the **scheduled excess insured employer**. It also includes any person executing the directives of such a committee or board.

**D. Administration means:**

1. providing information to **employees**, including their dependents and beneficiaries, with respect to eligibility for or scope of an **employee benefits** program;
  2. handling records in connection with an **employee benefits** program; or,
  3. effecting, continuing, or terminating any **employee's** participation in any **employee benefits** program.
- Administration** does not include handling payroll deductions.

**E. Advertisement means** a notice that is broadcast or published to the general public or specific market segments about the **scheduled excess insured employer's** goods, products, or services for the purpose of attracting customers or supporters. For the purposes of this definition:

1. notices that are published include material placed on the internet or on similar electronic means of communication; and,
2. regarding websites, only that part of a website that is about the **Insured's** goods, products, or services for the purposes of attracting customers or supporters is considered an **advertisement**.

**F. 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, in any manner, 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, in any manner, of material that violates a person's right of privacy; or, the use of another's advertising idea in the **Insured's advertisement**.

#### *IV. ADDITIONAL EXCLUSIONS*

In addition to any exclusions listed in the Excess General Exclusions, this Insuring Agreement does not apply to:

- A. any **claim** that was **first reported** by, or on behalf of, any **Insured** prior to the **policy period**;
- B. any **claim** arising from, or in connection with, an **Insured's** ownership, supervision or management of any organization, partnership, joint venture, or other business enterprise that is not a **scheduled excess insured employer**;
- C. any **claim** arising from, or in connection with, any **health care event**;
- D. any **claim** arising from, or in connection with, any **managed care event**;



# National Fire & Marine Insurance Company

Omaha, Nebraska

## *SCHEDULE OF EXCESS INSURED EMPLOYERS EXCESS EMPLOYER'S LIABILITY (OCCURRENCE)*

### DECLARATIONS

Policy Number: EN004806

First Named Insured: Laser Spine Institute, LLC

### LIMITS OF LIABILITY

#### Employment-Related Accidents

Per Event Limit of Liability Employment-Related Accident: \$ 20,000,000

#### Employment-Related Diseases

Per Employee Limit of Liability Employment-Related Disease: \$ 20,000,000

Policy Limit of Liability Employment-Related Disease: \$ 20,000,000

### SCHEDULE OF INSURED

In consideration of the payment of the premium due, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree the following entities are designated as **scheduled excess insured employers**:

SCHEDULED EXCESS INSURED EMPLOYER	ID NUMBER
Laser Spine Institute, LLC	241482
Laser Spine Institute Consulting, LLC	626955
Laser Spine Surgery Center of Arizona, LLC	254295
Laser Spine Surgery Center of Cincinnati, LLC	637293
Laser Spine Surgery Center of Cleveland, LLC	637292
Laser Spine Surgery Center of Oklahoma, LLC	254297
Laser Spine Surgery Center of Pennsylvania, LLC	254296
Laser Spine Surgery Center of St Louis, LLC	637294
Laser Spine Surgical Center, LLC	626953
LSI HoldCo, LLC	626956
LSI Houston, PA	616898
LSI Management Company, LLC	626954
Medical Care Management Services, LLC	626957

### EXCESS EMPLOYERS LIABILITY

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Edition Date: 1/2011



# National Fire & Marine Insurance Company

Omaha, Nebraska

## *EXCESS EMPLOYER'S LIABILITY INSURING AGREEMENT (OCCURRENCE)*

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In consideration of the payment of the premium due, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree as follows, subject to the terms and conditions of this policy, including the applicable limits of liability:

### *I. INSURING AGREEMENTS – EXCESS LOSS*

The **Company** will pay, on behalf of any **scheduled excess insured employer**, all **excess loss** arising from an event that took place during the **policy period** and resulted in **bodily injury**:

- A. to an **employee**; however, the **bodily injury** must have been caused by an **employment-related accident** or **employment-related disease**;
- B. for which a **scheduled excess insured employer** is liable to a third party by reason of a **claim** or suit against an **scheduled excess insured employer** by that third party to recover the damages claimed against such third party as a result of injury to an **employee**;
- C. for consequential **bodily injury** to a spouse, child, parent, brother or sister of the injured **employee**;
- D. because of **bodily injury** to an **employee** that arises out of and in the course of employment, claimed against an **Insured** in a capacity other than as employer.

In addition, a **claim** regarding an **employment-related disease** must be reported to the **Company** within three years after the expiration of the **policy period** to be covered under this policy.

### *II. WHO IS INSURED*

For the purposes of this Insuring Agreement, an **Insured** is:

- A. a **scheduled excess insured employer**; or,
- B. a **new employer**  
as defined below.

### *III. ADDITIONAL DEFINITIONS*

In addition to the Excess General Definitions, the following definitions are added to this Insuring Agreement:

- A. **Scheduled excess insured employer** means any entity listed as a **scheduled excess insured employer** on the Schedule of Excess Insured Employers.
- B. **New employer** means an entity formed or acquired by a **scheduled excess insured employer** during the **policy period**. However, a **new employer** is not covered:
  - 1. after 60 days have elapsed from the date the **new employer** was formed or acquired; or,
  - 2. for an **event** that took place before the **new employer** was formed or acquired, or after the **policy period**.A **new employer** shares the coverage provided to a **scheduled excess insured employer**, including its limits of liability
- C. **Employee** means any person who, at the time of the **employment-related accident** or **employment-related disease**, qualifies as an employee under the applicable state workers' compensation law.
- D. **Employment-related accident** means an **event** that occurs in the course and scope of work performed by an **Insured's employee** that results in **bodily injury** to that **employee**.
- E. **Employment-related disease** means any **bodily injury** that results from a disease contracted by an **employee** as a result of an **event** that occurs in the course and scope of that **employee's employment** with an **Insured**.



#### IV. ADDITIONAL EXCLUSIONS

In addition to any exclusions listed in the Excess General Exclusions, this Insuring Agreement does not apply to:

- A. any **claim** arising from, or in connection with, an **Insured's** ownership, supervision or management of any organization, partnership, joint venture, or other business enterprise that is not a **scheduled excess insured employer**;
- B. any **claim** arising from, or in connection with, **bodily injury** to an **employee** while employed in violation of law with an **Insured's** your actual knowledge or the actual knowledge of any of an **Insured's** executive officers;
- C. any **claim** arising from, or in connection with, any **health care event**;
- D. any **claim** arising from, or in connection with, any **managed care event**;
- E. any **employment practices claim**;
- F. any **product liability claim**;
- G. any **excess loss** that would have been covered under a state's workers' compensation or occupational disease fund if the **Insured** had complied with all of the legal requirements, including any duty to qualify as a self-insurer, to be a subscriber in good standing in the state fund, or to maintain proper insurance coverage;
- H. any **claim** for which the **Insured** was deprived a defense or subjected to a penalty as a result of the failure to comply with the legal requirements of that state's workers' compensation or occupational disease laws;
- I. any **claim** arising from, or in connection with, any **bodily injury** that is or would be subject to the:
  - 1. Longshore and Harbor Workers' Compensation Act (33 U.S.C. §901 et. seq.);
  - 2. Non-appropriated Fund Instrumentalities Act (5 U.S.C. § 171 et seq.);
  - 3. Outer Continental Shelf Lands Act (43 U.S.C. § 1331 et seq.);
  - 4. Defense Base Act (42 U.S.C. § 1651 et seq.);
  - 5. Federal Coal Mine Health and Safety Act (30 U.S.C. §901 et seq.);
  - 6. Federal Employers Liability Act (45 U.S.C. § 51 et seq.); or,
  - 7. any other federal workers compensation or occupational disease law, including any amendments to, or replacements of, the above-cited provisions.
- J. any **claim** arising from, or in connection with, any **bodily injury** to the master or member of the crew of any vessel;
- K. liability for the acts of another assumed by an **Insured** under any contract or agreement, except as otherwise noted in this policy.
- L. punitive or exemplary damages because of **bodily injury** to an **employee** employed in violation of law;
- M. **bodily injury** intentionally caused or aggravated by an **Insured**; or,
- N. damages payable under the Migrant and Seasonal Agricultural Worker Protection Act (29 USC Sections 1801-1872) and under any other federal law awarding damages for violation of those laws or regulations issued thereunder, and any amendments to those laws.

For the purposes of this Insuring Agreement only, the following exclusion located in the Excess General Exclusions form is deleted:

Any **bodily injury** to an employee that arose out of, and in the course of, employment with an **Insured**. This exclusion includes any injury to the spouse, child, parent, relative or heir of the employee that derives therefrom. It also applies regardless of whether an **Insured** may be liable as an employer or in any other capacity. In addition, the exclusion applies to any duty to share **excess loss** with or repay a third party for **excess loss** as a result of the **bodily injury**.

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#### EXCESS EMPLOYER'S LIABILITY

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## V. LIMITS OF LIABILITY

### *PER EVENT LIMIT OF LIABILITY—EMPLOYMENT-RELATED ACCIDENT*

The **Company's** duty to pay excess loss on behalf of a **scheduled excess insured employer** for any **bodily injury** suffered as a result of an **employment-related accident** that arose from an **event** covered under this Insuring Agreement shall not exceed the Per Event Limit of Liability Employment-Related Accident shown on the Declarations of the Schedule of Excess Insured Employers. This limit shall apply regardless of the number of:

1. **employees** or other persons who sustain injury;
2. **claimants**;
3. **claims**;
4. policies issued by the **Company**; or,
5. **Insureds** who share the Per Event limit.

### *PER EMPLOYEE LIMIT OF LIABILITY – EMPLOYMENT-RELATED DISEASE*

The **Company's** duty to pay excess loss on behalf of a **scheduled excess insured employer** for each **employee** that suffered **bodily injury** as a result of an **employment-related disease** arising from an **event** covered under this Insuring Agreement shall not exceed the Per Employee Limit of Liability - Employment-Related Disease shown on the Declarations of the Schedule of Excess Insured Employers. This limit shall apply regardless of the number of:

1. **claims** brought by the **employee**;
2. **claims** for the cost of any care, loss of services, loss of consortium, or other derivative damages arising from the **employee's** illness or injuries;
3. policies issued by the **Company**; or,
4. **Insureds** who share the Per Employee limit.

### *POLICY LIMIT OF LIABILITY – EMPLOYMENT-RELATED DISEASE*

The **Company's** duty to pay excess loss on behalf of all **scheduled excess insured employers** for all **employees** that suffered **bodily injury** as a result of **employment-related diseases** arising from all **events** covered under this Insuring Agreement shall not exceed the Policy Limit of Liability Employment-Related Disease shown on the Declarations of the Schedule of Excess Insured Employers. This limit shall apply regardless of the number of:

1. **events**;
2. persons who sustain injury;
3. **claimants**;
4. **claims**;
5. policies issued by the **Company**; or,
6. **Insureds** who share the Aggregate limit.

## VI. ADDITIONAL CONDITIONS

In addition to the conditions contained in the Excess General Conditions, the following conditions apply to this Insuring Agreement:

### A. Settlement.

The **Company** may settle any **claim** or other matter brought against any **Insured** as a result of an **event** covered under this Insuring Agreement, as the **Company** deems expedient unless prohibited by statute, regulation, rule or order. However, the **Company** shall first provide written notice to the **first named insured**.

### B. Compliance with Applicable Laws.

No **Insured** shall have the right to any coverage that would otherwise be provided under this policy unless that **Insured** was, at all relevant times, in full compliance with all duties and requirements mandated by the applicable law regarding workers' compensation and occupational disease.

### C. Compliance with State Fund Requirements.

No **Insured** shall have the right to any coverage that would otherwise be provided under this policy unless that **Insured** was, at all relevant times, in full compliance with all duties required to participate in the applicable state's workers' compensation, work-related accident or illness, or work-related medical fund. This shall include the duty to pay any contributions and/or premiums due to the fund to ensure participation. It shall also include any duties to

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EXCESS EMPLOYER'S LIABILITY

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report remuneration, “workmen hours,” or other information as required by the fund for any reason, including information sufficient to calculate the premium due.



# National Fire & Marine Insurance Company

Omaha, Nebraska

## *EXCESS DEFENSE AND SUPPLEMENTAL PAYMENTS*

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These Excess Defense and Supplemental Payments apply to the following Insuring Agreements as selected under this policy: Excess Professional Liability and Excess Employer's Liability.

Subject to the terms and conditions of the policy, including any exclusions:

### *I. NO DUTY TO DEFEND*

In any **claim** covered under this policy, regardless of whether the **Insured** is entitled to a defense under a **scheduled coverage**, the **Company** shall have no duty to defend the **Insured** or pay any **claims expense** under any applicable Insuring Agreement. However, the **Company** shall have the right to participate in the defense and investigation of any **claim** that may, in the **Company's** sole determination, exceed the **scheduled limit**, including the right to defend the **Insured**, if the **Company** so chooses. In addition, the **Company** has no duty to:

- A. defend an **Insured** against a **claim** after the **Insured's** applicable limit of liability is exhausted by the payment of judgments or settlements; or,
- B. appeal any judgment. However, the **Company** has the right, but not the duty, to appeal any judgment that exceeds the **scheduled limit**. If the **Company** decides to appeal any judgment, all costs directly related to the appeal shall be payable by the **Company**, and shall not reduce the applicable limit of liability.

### *II. SUPPLEMENTAL PAYMENTS*

If the **Company** elects to appeal a judgment that exceeds the **scheduled limit**, the **Company** shall pay:

- A. **claims expense** directly related to the appeal; and,
- B. the premium on any bond required to proceed with such an appeal approved by the **Company** or to release attachments to the **Insured's** property. However, the **Company** has no duty to apply for or furnish any such bond. In addition, the **Company** shall have no duty to pay the premium on any bond which has a face value in excess of the remaining limit of liability under the policy.

The **Company** has no duty to pay any **claim** after the **Insured's** applicable limit of liability is exhausted.



# National Fire & Marine Insurance Company

Omaha, Nebraska

## *EXCESS GENERAL DEFINITIONS*

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These Excess General Definitions apply to the following Insuring Agreements as selected under this policy: Excess Professional Liability and Excess Employer's Liability.

Whenever used in this policy:

- A. **Additional Insured** means any person or entity listed on a Schedule of Excess Additional Insureds.
  - B. **Bodily injury** means any damage to the human body, including sickness or disease and any mental injury, emotional distress, or death arising therefrom. In addition, it includes damages claimed for the cost of any care, loss of services, or loss of consortium arising therefrom.
  - C. **Business practices claim** means any **claim** arising from an **Insured's**:
    - 1. billing practices; or,
    - 2. advertising activities.
  - D. **Case management** means identifying patients with specific health care needs and developing a plan to ensure an efficient use of resources to achieve the best outcome.
  - E. **Claim** means an express written demand upon an **Insured** for money or services as compensation for civil damages. It also includes a medical incident or potential **claim** for which coverage was granted under a **scheduled coverage**.
  - F. **Claims expense** means all costs and expenses incurred in connection with the investigation, adjustment, and defense of any **claim**. Such costs and expenses shall only include:
    - 1. attorney fees paid to the law firm selected by the **Company** to defend an **Insured**;
    - 2. court costs;
    - 3. expert fees;
    - 4. reporter fees;
    - 5. the cost of any alternative dispute resolution ordered by a court, otherwise required by law or pre-approved by the **Company**;
    - 6. post-judgment interest on that portion of the judgment that does not exceed the applicable limit of liability available under the policy; and,
    - 7. such other costs and expenses that the **Company** determines to be reasonably related to the defense of a **claim**.
- However, **claims expense** does not include:
- 1. **excess loss**;
  - 2. attorney fees awarded to a claimant;
  - 3. the salary of any **employee** of an **Insured**; or,
  - 4. the forgiveness of any amounts owed for the cost of care or services rendered by an **Insured**.
- G. **Company** means the insurance company listed in the Declarations.
  - H. **Counseling** means formal therapy rendered to a patient by a licensed professional approved and credentialed by the **Insured** to provide such therapy.
  - I. **Employee benefits** mean any group benefits administered on behalf of an **Insured's** employees. It includes any group:

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## EXCESS GENERAL DEFINITIONS

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1. insurance plans or programs, such as life, health, accident, dental, or legal advice;
2. Individual Retirement Accounts (IRAs), salary reduction plans under I.R.S. Code 401(k) or any amendment thereto, savings plans, or employee stock subscription plans;
3. travel or vacation plans; or,
4. workers' compensation, occupational disease, unemployment, Social Security, or disability benefits insurance.

**J. Employment practices claim** means any **claim** brought by an employee, or applicant for employment, which alleges the **Insured**:

1. breached an actual or implied contract of employment;
2. violated an anti-discrimination statute;
3. engaged in any form of harassment;
4. engaged in libel or slander related to an employment relation;
5. retaliated for the exercise of a public right or duty;
6. engaged in intentional or negligent infliction of emotional distress arising out of an employment relationship;
7. wrongfully failed to hire, promote, or grant tenure;
8. wrongfully demoted; or,
9. wrongfully terminated employment.

**K. Event** means accident. All injuries arising from:

1. the same or related acts, errors or omissions; or,
  2. the continuous or repeated exposure to substantially the same harmful conditions,
- will be considered one **event**. For the purposes of this definition, all injuries to a mother and fetus (or fetuses) from conception through delivery shall constitute one **event**.

**L. Excess loss**

1. **Excess loss** means civil damages, including prejudgment interest, which an **Insured** becomes legally obligated to pay through adjudication or settlement which exceed:
  - a. all applicable **scheduled limits** of any **scheduled coverages**; and,
  - b. all applicable limits of any other valid and collectible insurance policies or other program of indemnity that applies the **Insured's** liability for the **event**.
2. **Excess loss** does not include:
  - a. any damages which are greater than the applicable limit of liability;
  - b. any damages which are less than the **scheduled limit** or any other applicable insurance;
  - c. any injunctive or other equitable relief;
  - d. **claims expense**;
  - e. attorney fees awarded to a claimant as a fine, penalty or sanction based upon the **Insured's** misconduct. However, attorney fees awarded as part of the claimant's damages in a covered **claim** for any other purpose will be included as **excess loss**;
  - f. the salary of any employee of an **Insured**; or,
  - g. the forgiveness of any amounts owed for the cost of care or services rendered by an **Insured**.

**M. Extended reporting period** means the period of time after the cancellation or nonrenewal of claims-made coverage during which the **Insured** may report a **claim**.

**N. First named insured (or FNI)** means the entity or person listed as the First Named Insured on the Declarations.

**O. First discovered** means the date on which the **Insured** first knew, or reasonably should have known, of the **claim** or **potential claim**.

**P. First reported** means the date that coverage for the **claim** was originally triggered under a **scheduled coverage** that applies to the **Insured's** liability for the **event**. All **claims** arising from the same **event** shall be considered as having been **first**

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EXCESS GENERAL DEFINITIONS

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reported when coverage for the first such **claim** was triggered.

- Q. **Health care event** means any event in the rendering of, or failure to render, **professional services** that results in injury. All injuries arising from the same or related acts, errors or omissions in furnishing **professional services** shall be considered one **health care event**.
- R. **Health care plan** means medical benefits plan administered by a health maintenance organization (HMO), preferred provider organization (PPO), or other similar managed care organization or self-insured program.
- S. **Insured** means any person or entity entitled to coverage as specified under the *WHO IS INSURED* section of the applicable Insuring Agreement.
- T. **Managed care event** means any event in the rendering of, or failure to render, **managed care services** that results in injury. All injuries arising from the same or related acts, errors, or omissions in the furnishing of **managed care services** shall be considered one **managed care event**.
- U. **Managed care services** means services provided to manage and/or administer a **health care plan**. These services can include any of the following acts provided on behalf of the **health care plan**:
1. the creation, sale and marketing of a **health care plan**;
  2. the selection, credentialing and contracting of health care providers;
  3. the evaluation of the cost, quality and proper utilization of **treatment** options available or being provided to participants;
  4. the adjustment, investigation and processing of claims for benefits; or,
  5. **case management**.
- However, **managed care services** do not include **treatment** rendered, or which should have been rendered, to a patient.
- V. **Non-standard policy** means a policy issued by a market of last resort, where coverage is typically limited or restricted due to prior claims or other specific risk issues identified as part of a risk profile.
- W. **Peer review** means the evaluation of a health care provider's fitness and qualification to provide **treatment** by a professional review board or committee through formally adopted, written procedures.
- X. **Policy period** means the period of time listed on the Declarations as the Policy Period. However, if the policy is terminated before the later of the dates listed on the Declarations, **policy period** means the period between the first date listed on the Declarations and the date the policy was terminated.
- Y. **Product liability claim** means any **claim** arising from a defective good or product invented, designed, manufactured, or sold by an **Insured**. However, it does not include any **claim** arising from a good or product which was specifically used by the **Insured** to provide **treatment** to the **Insured's** own patient.
- Z. **Professional services** means **treatment** and **peer review**.
- AA. **Retroactive date** means the date prior to which an **Insured** has no coverage under the applicable Insuring Agreement. The **retroactive date** is listed on the applicable Excess Schedule of Insureds for each **Insured** to which a **retroactive date** applies.
- BB. **Scheduled coverage** means any policy of underlying insurance, or other program of indemnity, as shown on the Excess Schedule of Underlying Insurance that applies to the **Insured's** liability for an **event**. However, it does not include any policy that is specifically designed to provide coverage in excess of this policy.

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EXCESS GENERAL DEFINITIONS

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- CC. **Scheduled limit** means the amount shown as the Scheduled Limit for the applicable **scheduled coverage** on the corresponding Excess Schedule of Underlying Insurance.
- DD. **Social services** means programs provided by an **Insured** to help maintain or improve the quality of life for the patient, including family counseling and educational programs. These programs do not include therapy for the direct benefit of anyone other than the patient.
- EE. **Surgical assistant** means a person directly assisting as a non-physician first assistant in surgical procedures, including a person acting as a nurse surgical assistant or a physician surgical assistant.
- FF. **Treatment** means:
1. the rendering of medical, surgical, dental, nursing services, **counseling** or **social services** to a patient. This shall include first aid rendered at the scene of an accident without expectation of monetary compensation;
  2. the provision of medical examinations, opinions, or consultations regarding a person's medical condition within the **Insured's** practice as a licensed health care provider; or,
  3. the furnishing of any of the following, but only as it relates to the rendering of medical, surgical, dental, nursing services, **counseling** or **social services** to a patient:
    - a. food and beverages; or,
    - b. medical, surgical or dental supplies, appliances or drugs.



# National Fire & Marine Insurance Company

Omaha, Nebraska

## EXCESS GENERAL EXCLUSIONS

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These Excess General Exclusions apply to the following Insuring Agreements as selected under this policy: Excess Professional Liability and Excess Employer's Liability.

### I. EXCLUSIONS

This policy does not apply to:

- A. Any **excess loss** arising from, or in connection with, any act listed in the subparagraphs below, and any event, **health care event**, or **managed care event** when intertwined with, or inseparable from, any such act:
  - 1. any malicious act or intentional tort;
  - 2. any actual or threatened sexual act, behavior or conduct, including, but not limited to, assault, exploitation, harassment or molestation, by any person of another person while in the care, custody, or control of any **Insured**, whether under the guise of **treatment** or not; or the negligent employment, investigation, supervision, reporting to the proper authorities, or failure to so report, or retention of a person for whom any **Insured** is or ever was legally responsible and whose conduct would be excluded under this exclusion;
  - 3. any personal, romantic, sexual, or other non-professional relationship with a current, former, or prospective patient, whether under the guise of **treatment** or not;
  - 4. any willful violation of any law, statute, or regulation;
  - 5. any dishonest or fraudulent act;
  - 6. any breach of contract or guaranty regarding the efficacy of **treatment**;
  - 7. **professional services** rendered or which should have been rendered if it is determined that an **Insured** was in any manner, extent or degree impaired by or under the influence of alcohol, narcotics, hallucinogenic agents, drugs or intoxicants of any nature or kind; or,
  - 8. any fabrication, alteration or destruction, in whole or in part, of any medical record pertaining to the person whose **treatment** is the subject of the **claim**, including, but not limited to, any medical or business record pertaining to the condition, **treatment** and/or consent of such person to any **professional service**, in whole or in part, by or at the direction of an **Insured**, after the happening of the activity reflected in such document or record. However, this exclusion does not apply to bona fide corrections to records made in accordance with applicable generally accepted professional standards, but this exception only applies if such corrections are identified as such, dated and signed by the person making them.
- B. Any **claim** arising from, or in connection with, any **treatment** rendered by any individual who was not authorized to provide such services due to the suspension, revocation, surrender, or restriction of, or failure to obtain, the proper professional license.
- C. Any **claim**, suit or other matter seeking:
  - 1. injunctive relief;
  - 2. any relief other than **excess loss**; or,
  - 3. the award of fines, penalties or sanctions.
- D. Any damages over and above actual compensatory damages. This includes punitive, exemplary, and multiple damages.
- E. Any **bodily injury** to an employee that arose out of, and in the course of, employment with an **Insured**. This exclusion includes any injury to the spouse, child, parent, relative or heir of the employee that derives therefrom. It also applies regardless of whether an **Insured** may be liable as an employer or in any other capacity. In addition, the exclusion applies to any duty to share **excess loss** with or repay a third party for **excess loss** as a result of the **bodily injury**.

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### EXCESS GENERAL EXCLUSIONS

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- F. Any **claim** arising from, or in connection with, any obligation or damages arising under any law related to:
1. workers' compensation;
  2. occupational disease;
  3. unemployment compensation;
  4. disability benefits; or,
  5. other similar law that provides for scheduled benefits as a result of an injury or disease.
- G. Any **claim** arising from, or in connection with, any **excess loss** covered under an **Insured's** directors' and officers' policy.
- H. Any **claim** arising from, or in connection with, any **excess loss** or **claim**, which is initiated, alleged, or caused to be brought about, by any **Insured** covered by this policy against any other **Insured** covered by this policy. This exclusion does not apply if the **claim** arises out of an **Insured** providing **professional services** to another **Insured**.
- I. Any **claim**:
1. arising from, or in connection with, any rendering of, or failure to render, **professional services** for which the **Insured** has, or is eligible for, complete immunity as a volunteer or as an employee or contractor of a federal, state, or local government; or,
  2. involving an **Insured** who has, or is eligible for, insurance, indemnity, or any other protection pursuant to any federal, state, or local laws, including but not limited to the Federal Tort Claims Act.
- J. Any default judgment or other **claim** that the **Company** was unable to timely investigate or defend due to the acts or omissions of the **Insured**.
- K. Any damages:
1. for which an **Insured** has coverage under a nuclear energy liability policy issued by the:
    1. Nuclear Energy Liability Insurance Association;
    2. Mutual Atomic Energy Liability Underwriters;
    3. Nuclear Insurance Association of Canada; or,
    4. any successor or assign of the entities set forth in the subparagraphs above.This policy also does not apply if such coverage did exist, but was terminated by the exhaustion of the **Insured's** limit of liability.
  2. resulting from the hazardous properties of nuclear material for which the **Insured**:
    1. was required to maintain financial protection under the Atomic Energy Act of 1954 or any amendment or regulation that applies thereto; or,
    2. was entitled to indemnity by the United States government or any agency thereof or would have been entitled to had this policy not been issued.
- L. Any **claim** arising from, or in connection with, an **Insured's** duty to comply with the Americans with Disabilities Act of 1990 (ADA). This also includes any amendment or regulation that applies thereto or any comparable federal, state, or local law.
- M. Any **claim** arising from, or in connection with, an **Insured's** duty as a sponsor of an employee benefit plan under the Employee Retirement Income Security Act of 1974 (ERISA), or any amendment or regulation that applies thereto. However, this exclusion is limited to:
1. an **Insured's** failure or inability to fund the plan in accordance with the plan document or any applicable law or regulation; and,
  2. liability for the payment of benefits owed to a participant or beneficiary of the plan that have been paid or may lawfully be paid from the plan's funds or those of other employee programs.

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EXCESS GENERAL EXCLUSIONS

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- N. Any **claim** arising from, or in connection with, an **Insured's** violation of the Racketeer Influenced Corrupt Organizations Act (RICO) or any comparable federal, state or local laws or any amendment or regulation that applies thereto.
- O. Any **claim** arising from, or in connection with, an **Insured's** violation of any federal, state or local securities law or regulation.
- P. Any **claim** arising from, or in connection with, the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate **electronic data**. As used in this exclusion, **electronic data** means information, facts, or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices, or any other media that are used with electronically controlled equipment.
- Q. Any **claim** arising from, or in connection with, any **excess loss** or **claims expense** covered under any cyber or privacy insurance coverage, including but not limited to, any coverage for network security and privacy, regulatory fines and penalties, patient notification and credit monitoring, or data recovery cost.

## *II. OTHER EXCLUSIONS - MULTI-POLICY AND ANTI-STACKING*

If more than one Insuring Agreement or policy applies, the following multi-policy and anti-stacking exclusions apply:

- A. If more than one policy issued by the **Company** applies to the **excess loss** liability of an **Insured**, the **Company's** duty to pay **excess loss** will be confined to the policy containing the largest applicable limit.
- B. If more than one Insuring Agreement under this policy applies to the **excess loss** liability of an **Insured**, the **Company's** duty to pay **excess loss** will be confined to the Insuring Agreement containing the largest applicable limit.

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### EXCESS GENERAL EXCLUSIONS

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# National Fire & Marine Insurance Company

Omaha, Nebraska

## EXCESS GENERAL CONDITIONS

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Each condition contained in this form, or in any attached form, is a separate and distinct condition precedent to coverage. Please read and review each condition carefully.

These Excess General Conditions apply to all Insuring Agreements selected under this policy.

### A. Representations and Change Provision.

1. By acceptance of this policy, each **Insured** agrees, represents, and warrants that the statements and particulars made in all applications, including any statements and particulars made in any and all documents, supplemental pages or other attachments ("Attachments") for the purposes of any application, are true and correct. It is further understood and agreed that any application, and any Attachments, are incorporated into, and shall form a part of, this policy. Therefore, this policy and any endorsements, and all applications and Attachments, embody all agreements between the **Insured** and the **Company**, or any of its authorized representatives, relating to this insurance.
2. In the event any application was executed or endorsed by the **Insured's** agent, the **Insured** acknowledges that the agent has acted under the **Insured's** express authority and that the **Insured** has thoroughly reviewed the information contained on any application. Therefore, it is understood and agreed that, to the extent permitted by law, the **Company** reserves the right to rescind this policy, or deny any coverage provided for a **claim**, based upon any material misrepresentation made by the **Insured**.
3. The representations made by the **Insured** in the applications, and Attachments, are the basis for the coverage provided, as well as the **Company's** calculation of the applicable premium. As a result, the **Insured** agrees to inform the **Company** of any material change in practice. Such material changes shall include, but are not limited to:
  - a. a new procedure being performed or expansion into a new area of patient care;
  - b. the purchase of, merger with, or construction of a new practice location, facility or real property;
  - c. any addition, deletion, or change in status (including the number of working hours, if applicable) involving a person or entity listed on any Schedule of Insureds;
  - d. the revocation, suspension, or restriction of the medical license, hospital privileges, or DEA license of any **Insured** or employed health care provider;
  - e. a criminal indictment, charge or conviction of any **Insured** or employed health care provider;
  - f. a settlement or verdict in a lawsuit that was not defended by the **Company**; or,
  - g. any physical or mental condition that impairs any **Insured's** or employed health care provider's ability to render professional services;not included on the **Insured's** most recent application.
4. In the event the **Company** is made aware of a material change in the **Insured's** practice, it reserves the right to recalculate the applicable premium, exclude the new practice characteristics from coverage, and/or deny any coverage provided for a **claim** arising from, or in connection with, the material change.

### B. Reporting Requirements.

1. An **Insured** shall immediately report any **claim** arising from an event:
  - a. that the **Insured** reasonably believes will result in damages that exceed the **scheduled limit**;
  - b. for which the **Company** providing the **scheduled limit** has set a loss reserve which exceeds \$100,000;
  - c. for which the claimant's demand exceeds the **scheduled limit**;
  - d. that caused:
    - (1) neurological, sensory, or systemic deficits to the injured party (such as brain damage; permanent paralysis, loss of sight or hearing, etc.);
    - (2) permanent damage related to an injury during child delivery or the administration of anesthesia;

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## EXCESS GENERAL CONDITIONS

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- (3) limitations on the injured party's activities of daily living (such as a loss of a limb); or,
- (4) death.
- 2. The report of any **claim** shall be in writing. The report shall include the following information:
  - a. the identity of all **Insureds** implicated;
  - b. all reasonably obtainable information with respect to the time, place and circumstances of the event;
  - c. the nature and extent of the injury;
  - d. the names and addresses of any injured persons; and,
  - e. the names and addresses of available witnesses.
- 3. All such reports and documents shall be directed to the **Company** using the contact information listed on the contact sheet attached to the top of this policy.
- 4. An event reported to the **Company** as part of risk management or loss control services shall not be considered the report of a **claim**.

C. Assistance and Cooperation.

- 1. After any **claim** or **potential claim**, the **Insured** shall not contract any expense, voluntarily assume any liability in any situation; nor make or contract any settlement of the **claim** or **potential claim**, except at the **Insured's** own cost and responsibility, without the written authorization of the **Company**.
- 2. The **Company's** duty to defend and pay loss for any **claim** otherwise covered under this policy is strictly conditioned upon the **Insured's** cooperation with the **Company** in the investigation, defense, and/or settlement of any matter to which this policy applies. Such cooperation shall include, but is not limited to:
  - a. attendance at any deposition, hearing, or trial, as requested by the **Company**;
  - b. assistance in securing and giving evidence;
  - c. obtaining the attendance of witnesses; and,
  - d. doing nothing to prejudice the **Company's** ability to investigate, defend, and/or manage any matter to which this policy applies;
  - e. submitting to recorded and/or sworn statements and to examinations under oath as requested by the **Company**; and,
  - f. promptly producing, at the **Company's** request, any records, documents and other information in the **Insured's** possession, custody or control.
- 3. If a **claim** or **potential claim** is, or might be, covered under any other policy of insurance, the **Insured** shall promptly give notice to such other insurers. The **Insured** shall also provide the **Company** with copies of the applicable policies. The **Insured** shall further act in good faith to enforce any rights held under such policies, including the right to a defense.

D. Premiums.

- 1. The **Company's** obligation to perform any duty under the policy is strictly conditioned upon the payment of the premium when due. Similarly, the **Company's** obligation to perform any duty pursuant to a renewal of coverage provided under the policy shall be strictly conditioned upon the payment of the renewal premium when due. Therefore, this policy shall not be deemed to have been issued, delivered, or renewed and shall not be applicable to any matter which would otherwise be covered herein, until:
  - a. the premium has been paid in full; or,
  - b. if the **Company** has agreed to finance the policy, the first installment has been paid in full.If payment is made by check, electronic transfer or money order, it shall not be considered "paid in full" until honored by the payor's bank.
- 2. Any premium designated as "deposit premium" is merely a deposit on the actual amount owed. At the close of the **policy period**, the **Company** will compute the earned premium for that period. The "deposit premium" will then be credited to that amount. If the "deposit premium" exceeds the earned premium, the **Company** will refund the difference to the **first named insured**. If the earned premium exceeds the "deposit premium", the **Company** will bill the **first named insured** for the difference.
- 3. The **first named insured** shall maintain records of the information necessary for premium computation. The **first named insured** shall send copies of these records to the **Company** at the end of the **policy period** as directed by the **Company**. Such information shall be subject to audit and verification by the **Company**.



E. Inspection and Audit.

The **Company** shall be permitted, at its own discretion and for its own benefit, to audit an **Insured's** property, operations, and any business records. The **Company** shall also have the right to obtain a copy of any current or prior insurance records. Any findings or recommendations made by the **Company** as a result of an audit shall inure solely to the **Company's** benefit. As a result, they may not be used as evidence of the **Insured's** compliance with any safety regulations or other industry standards.

F. Other Insurance.

Unless otherwise noted in an Insuring Agreement:

1. If any other valid and collectible insurance is available to any **Insured** with respect to any liability arising from a **claim** or suit which is covered by this policy, and such other insurance is afforded under a policy or **extended reporting period** issued by a past, present or future parent, subsidiary or affiliate of the **Company**:
  - a. if the **Insured** has secured coverage from the **Company** or any of its affiliates on a **non-standard policy**, then the **Company's** duty to pay **excess loss** will be confined to the **non-standard policy**;
  - b. if subsection (a) does not apply, and an **Insured** is named as a specific named insured under any other valid and collectible insurance available to that **Insured**, then any duty to pay **excess loss** is confined to the policy where the **Insured** is specifically named;
  - c. if neither subsection (a) nor (b) above apply, any duty to pay **excess loss** will be confined to the policy containing the largest applicable limit.
2. If any other valid and collectible insurance is available to any **Insured** with respect to any liability arising from a **claim** or suit which is covered by this policy, and such other insurance is not afforded under a policy or **extended reporting period** issued by a past, present or future parent, subsidiary or affiliate of the **Company**, then this insurance will be excess over such other insurance even if such other insurance is stated to be primary, excess, contingent or otherwise. The **Company** will pay only the **Company's** share of the **excess loss**, if any, that exceeds the sum of:
  - a. the total amount that all such other insurance would pay for the **excess loss** in the absence of this insurance; and,
  - b. the total of all deductible and self-insured amounts under all such other insurance.
3. If the **Insured** has such other insurance that applies on the same basis, whether excess or primary, the **Company's** liability for **excess loss** shall not exceed:
  - a. the amount that would be payable if each insurer contributed by equal shares until the lowest limit contained in any applicable policy was exhausted or the entire **excess loss** was paid, whichever occurred first. If any **excess loss** remains, the **Company** will continue to contribute by equal shares until any of the following occurs:
    - (1) the applicable limits from this policy are exhausted,
    - (2) the limits of all applicable policies have been exhausted, or
    - (3) the entire amount is paid.This method shall only apply if all other such insurance provides for contribution by equal shares; or,
  - b. the ratio between the limit of liability available to the **Insured** under this policy and the total limit of liability under all applicable policies until the applicable limits from this policy are exhausted or the entire **excess loss** is paid. This method shall only apply if any applicable policy does not provide for contribution by equal shares.
4. The **Company** will have no duty to defend the **Insured** against any suit if any other insurer has a duty to defend the **Insured** against that suit. If no other insurer defends, the **Company** will undertake to do so, but the **Company** will be entitled to all of the **Insured's** subrogation rights against all those other insurers to the extent of any payments made, or as allowed by law.
5. This condition shall not apply if such other valid insurance is written to be specifically excess of this policy.

G. Maintenance of Scheduled Coverages.

1. The **scheduled coverages** shall be maintained by the **Insured** at all times and the **Insured** shall do nothing to restrict the terms or limits provided by the **scheduled coverages**.
2. The limits of insurance applicable to the policies listed on the Schedule of Underlying Insurance may not be reduced or exhausted for any reason other than the payment of judgments or settlements which would be covered by the provisions of this policy.



3. The limits of insurance applicable to any Self Insured Retention (SIR) listed in the Schedule of Underlying Insurance may not be reduced or exhausted for any reason other than the payment of judgments or settlement which would be covered by the provisions of this policy and **claims expense** associated with those payments, if **claims expense** depletes the SIR.
4. If the **Insured** fails to maintain or meet all terms and conditions of a **scheduled coverage** or if the company, trust or other entity providing the **scheduled coverage** shall become insolvent, the **Company's** duty to pay excess loss will apply as if the **scheduled coverage** had been so maintained.

H. Reduction or Exhaustion of Scheduled Limits.

If the **Insured's** applicable **scheduled limit** has been reduced or exhausted by the payment of **claims** for events that would otherwise be eligible for coverage under this policy, the **Company** will pay excess loss as if the **scheduled coverage** was not exhausted, in addition to any applicable deductible.

I. Subrogation.

The **Company** shall be subrogated to the rights of any **Insured** to the extent of any payments made, or as allowed by law. The **Insured** shall do nothing to prejudice those rights. At the **Company's** request, the **Insured** shall bring suit or transfer those rights to the **Company**. The **Insured** shall also help the **Company** enforce its rights.

J. First Named Insured.

1. The **first named insured** shall act as the agent of all **Insureds** with respect to this policy, with full authority to bind all **Insureds**. This shall include, but is not limited to:
  - a. receipt of notices of cancellation or nonrenewal;
  - b. requesting or receiving endorsements issued to form a part of this policy;
  - c. payment of premiums due;
  - d. receiving return premium; and,
  - e. receiving and/or responding to an offer for an **extended reporting period** for any **Insured**.
2. The **first named insured** shall notify in writing the **Company** and all **Insureds** of any changes that might affect the insurance provided under this policy.

K. Policy Territory.

Unless otherwise noted in an Insuring Agreement, this policy shall only apply to a **claim** filed within the United States, including its territories and possessions. However, unless otherwise noted, a **claim** may be based upon **professional services** provided anywhere in the world so long as the **Insured** had prior approval to provide such services from the appropriate governmental authorities and the **Company**.

L. Cancellation, Nonrenewal and/or Termination of Coverage.

1. This policy may be canceled by the **first named insured**. The **first named insured** shall mail written notice to the **Company** requesting cancellation. The cancellation shall be effective on the date requested by the **first named insured** or the date the notice is received by the **Company**, whichever is later.
2. Any coverage contained within this policy may be terminated by the **first named insured**. The **first named insured** shall mail written notice to the **Company** requesting the coverage termination. The termination shall be effective on the date requested by the **first named insured** or the date the notice is received by the **Company**, whichever is later.
3. This policy, or any coverage contained therein, may also be canceled, terminated or nonrenewed by the **Company**. The **Company** will send notice to the **first named insured** at the last address on record with the **Company**.
4. If the **first named insured** cancels this policy, or terminates any coverage contained therein, earned premium shall be computed in accordance with the standard short rate tables and procedure. If the **Company** cancels this policy, or terminates any coverage contained therein, earned premium shall be computed pro rata. Premium adjustments shall be made within a reasonable period of time after cancellation. However, payment or tender of unearned premium shall not be a condition of cancellation.
5. If the **Company** cancels or nonrenews an **Insured's** policy for any reason other than non-payment of premium, the **Company** shall provide written notice to the **first named insured** not less than thirty (30) days prior to the effective date of such cancellation or nonrenewal. If the **Company** cancels an **Insured's** policy for nonpayment of premium, the



**Company** shall provide written notice to the **first named insured** not less than ten (10) days prior to the effective date of such cancellation or nonrenewal.

6. If the **Company** cancels or nonrenews an **Insured's** policy, the **Insured's** coverage under that policy shall terminate on the earlier of:
- the date stated on the cancellation or nonrenewal notice; or,
  - the date the **Insured** procures replacement coverage.

M. Modifications.

Except as provided herein, this policy may not be modified except by written endorsement attached to and made a part of this policy by the **Company**. The **Company's** decision not to insist on the **Insured's** compliance with any provision of this policy shall not operate to waive, modify, or void the provision.

N. Bankruptcy, Insolvency or Non-Payment by an Insured.

The filing of bankruptcy by, or the insolvency of or non-payment by, an **Insured**, or by any other entity providing a **scheduled coverage**, shall not act to modify any duty owed by the **Insured** or the **Company** under the policy. Under no circumstances will such bankruptcy, insolvency or non-payment require the **Company** to assume, or in any way be responsible for, any **scheduled coverage**, or otherwise assume any obligation owed by any **Insured** under this policy. Unless prohibited by law, the **Company** will have no duty to pay any **excess loss** for any **claim** unless the **Insured**, or any other entity providing **scheduled coverage**, pays the limits of liability of the **scheduled coverage** in full.

O. Non-assignability.

No interest of an **Insured** under this policy shall be assignable without the prior written consent of the **Company**. However, if the **Insured** is a person and dies, the coverage afforded by this policy shall inure to the benefit of that **Insured's** estate.

P. Separation of Insureds.

Except for the applicable limits of liability and any duties specifically assigned to the **first named insured**, this policy applies:

- separately to each **Insured** against whom a **claim** is made; and,
- as if each **Insured** were the only **Insured** under this policy.

Q. Action Against the Company.

- No action shall lie against the **Company** unless each **Insured** is in full compliance with all of the terms of this policy.
- No person shall have the right to join the **Company** as a party to a **claim** to determine the **Insured's** liability under this policy. Further, an **Insured** shall not interplead the **Company** into a **claim**.
- No action shall lie against the **Company** until the amount of **excess loss** has been finally determined by entry of judgment or written agreement between the **Insured**, the claimant and the **Company**. Once the amount of **excess loss** has been finally determined, the claimant shall be entitled to recover under the terms of this policy.

R. Arbitration.

The **Company** and the **Insured** agree that any dispute, **claim** or controversy arising out of, relating to, or in connection with this policy, whether brought by or on behalf of the **Insured**, **Company**, or any other party, that the **Company** may elect to submit any such dispute, **claim** or controversy to binding arbitration, in accordance with Title 9 USC Sec. 1 et seq (the Federal Arbitration Act) and shall be governed by the Commercial Arbitration Rules of the American Arbitration Association.

The arbitration shall be presided over by three arbitrators chosen from the Commercial Insurance Panel of the American Arbitration Association. The arbitrators shall be governed by the law of the state of the address of the **first named insured**, as set forth on the Declarations. The arbitration shall take place in the county that the capital of that state is located.

The arbitrators shall have the discretion to order pre-arbitration discovery, including an exchange of documents and



deposition of potential witnesses. Each party shall bear its own arbitration costs and expenses including attorneys' fees, unless otherwise provided by law.

Any arbitration award shall be in writing and shall specify the factual and legal bases of the award. Judgment on the award rendered by the arbitrator shall be final and may be entered in any court having jurisdiction thereof. Furthermore, this arbitration provision shall be a complete defense to any suit, action or proceeding in any federal, state or local court or before any administrative tribunal with respect to any dispute, **claim** or controversy arising out of, relating to or in connection with this policy.

S. Terms Conform to Statute or Regulation.

If any term of this policy, or any duty arising therefrom, would cause the **Company** to violate any federal, state or local law or regulation, the policy is amended to bring the **Company** into compliance with such statute or regulation.

T. Fraud Warning.

Any person who knowingly and with intent to injure, deceive, or defraud any insurance company or other person files an application for insurance containing any materially false information or fails to provide complete information or conceals, for the purpose of misleading information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and may be prosecuted under state law and may be guilty of a felony and subject to criminal and civil penalties, fines, denial of insurance or confinement in prison.



**NOTICE OF AVAILABLE COVERAGE UNDER THE TERRORISM RISK INSURANCE  
PROGRAM REAUTHORIZATION ACT OF 2007**

**– IMPORTANT –  
THIS NOTICE DISCUSSES A DECISION  
YOU MUST MAKE ON COVERAGE FOR ACTS OF TERRORISM**

DATE OF ACT:           **December 31, 2007**

NAMED INSURED:      **Laser Spine Institute, LLC**

LINES OF COVERAGE: **Excess General Liability**

PREMIUM FOR COVERAGE FOR AN “ACT OF TERRORISM”:   **\$ 150.00**

The tragic events of September 11, 2001 have impacted our country in many ways. The insurance industry responded immediately to these events, and has provided billions of dollars of payments. However, the possibility of future attacks has created what Congress describes as an “unprecedented financial risk” with a significant impact on the economy. As a result, Congress passed the Terrorism Risk Insurance Act of 2002 (The Act). The Act was extended in December of 2005 for an additional two years. Congress recently amended the Act and extended the program for an additional seven years to December 31, 2014, under the Terrorism Risk Insurance Program Reauthorization Act of 2007. This Notice informs you of your rights and obligations under the Act.

You are hereby notified that under the Act, as amended, that you have the right to purchase insurance for losses resulting from acts of terrorism, as defined in Section 102(1) of the Act.

**WHAT IS AN “ACT OF TERRORISM”?**

- An “act of terrorism” is defined as:

Any act that is certified by the Secretary of the Treasury in concurrence with the Secretary of State and the Attorney General of the United States pursuant to the Act:

- (1) To be an act of terrorism;
- (2) To be a violent act or an act that is dangerous to (a) human life; (b) property; or (c) infrastructure;
- (3) To have resulted in damage within the United States, or outside the United states in the case of certain aircraft or vessels, or on the premises of a US mission; and
- (4) To have been committed by an individual or individuals as part of an effort to coerce the civilian populations of the US or to influence the policy or affect the conduct of the US Government by coercion.

- No act will be certified as described above by the Secretary of Treasury as an “act of terrorism” if:

- (1) It does not meet the above criteria;



(2) The act is committed as part of the course of war declared by Congress (other than with respect to Workers' Compensation); or,

(3) Property and casualty losses resulting from the act, in the aggregate, do not exceed \$5,000,000.

As used in this Notice, the phrases "act of terrorism" or "acts of terrorism," when set out in quotation marks, are to be construed as defined above.

#### WHAT IS AN "INSURED LOSS"?

An "insured loss" is any loss (other than amounts attributable to punitive damages) that is caused by an "act of terrorism" (including an act of war, in the case of workers' compensation) that is covered by primary or excess property and casualty insurance issued by an insurer if such loss:

(1) occurs within the United States,

(2) occurs to an air carrier (as defined in 49 U.S.C. § 40102), to a U.S. flag vessel (or a vessel based principally in the U.S., on which U.S. income tax is paid and whose insurance coverage is subject to regulation in the U.S.), or

(3) occurs at the premises of any U.S. mission.

As used in this Notice, the phrases "insured loss" or "insured losses," when set out in quotation marks, are to be construed as defined above.

#### THE FEDERAL GOVERNMENT'S SHARE OF PAYMENTS FOR "INSURED LOSS"

You should know that where coverage is provided by this policy for losses resulting from certified acts of terrorism, such losses may be reimbursed by the United States Government under a formula established by federal law. However, your policy may contain other exclusions which might affect your coverage, such as an exclusion for nuclear events. Under the formula, the United States Government generally reimburses 85% of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage. The deductible will be 20% of our direct earned premium for "insured loss". The premium charged for this coverage is provided below and does not include any charges for the portion of loss that may be covered by the federal government under the Act.

You should also know that the Act, as amended, contains a **\$100 billion cap** that limits the United States Government reimbursement as well as insurers' liability for losses resulting from certified acts of terrorism when the amount of such losses in any one calendar year exceeds the **\$100 billion cap**. If the aggregate insured losses for all insurers exceed the **\$100 billion cap**, and we have met our insurer deductible under the Terrorism Risk Insurance Act, your coverage may be reduced. We may not be liable under our policies for our portion of such losses that exceed such amount. The amounts we pay to you under your policy may be reduced as a result. In addition, we may reserve our rights when we make payments to you, and we may require an undertaking from you to return any overpayment to us.

For purposes of determining such deductibles, "direct earned premium" means only the premiums earned on the commercial lines of property and casualty insurance covered by the Act for risks inside the U.S. or vessels, aircraft and foreign missions outside the U.S. covered by the Act.



## WHAT MUST YOU DO?

As required by the Act, you are hereby notified that under the Act, as amended, that you have a right to purchase insurance coverage for losses resulting from acts of terrorism as defined in Section 102(1). This Notice constitutes an offer of coverage for losses arising out of an “act of terrorism” and presents our premium charge for that coverage.

This coverage is automatically included in your policy. In order to decline to purchase this coverage, you must notify the company in writing that you have chosen NOT to purchase this coverage. If you decide to decline the terrorism coverage you must notify us of your decision at the time of binding the remainder of coverage.

The amount of premium you must pay for adding this coverage is shown above. The premium charged for this coverage does not include any charges for the portion of loss covered by the federal government under the act.



POLICY NUMBER: EN004806

**THIS NOTICE IS ATTACHED TO AND MADE PART OF YOUR POLICY IN RESPONSE TO THE DISCLOSURE REQUIREMENTS OF THE TERRORISM RISK INSURANCE ACT OF 2002. THIS NOTICE DOES NOT GRANT ANY COVERAGE OR CHANGE THE POLICY TERMS AND CONDITIONS OF ANY COVERAGE UNDER THE POLICY.**

**DISCLOSURE PURSUANT TO TERRORISM RISK  
INSURANCE ACT OF 2002**

**SCHEDULE\***

<b>Terrorism Premium (Certified Acts)</b>	<b><u>\$ 150.00</u></b>
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**Additional information, if any, concerning the terrorism premium:**

**Coverage for acts of terrorism is included in your policy.**

<p><b>*</b> Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.</p>
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**A. Disclosure of Premium**

In accordance with the federal Terrorism Risk Insurance Act of 2002, as extended on December 22, 2005, and amended December 31, 2007, we are required to provide you with a notice disclosing the portion of your premium, attributable to coverage for terrorist acts certified under that Act.

**Coverage for acts of terrorism is included in your policy.**

**The portion of your premium attributable to such coverage for acts of terrorism is shown in the Schedule of this endorsement, and does not include any charges for the portion of losses covered by the United States government under the Act.**

**B. Disclosure of Federal Participation in Payment of Terrorism Losses**

You are hereby notified that under the Act, as amended on December 31, 2007, the definition of act of terrorism has changed. As defined in Section 102(1) of the Act, an "act of terrorism" is defined as any act that is certified by the Secretary of the Treasury- in concurrence with the Secretary of State and the Attorney General of the United States pursuant to the Act- to be an act of terrorism; to be a violent act or an act that is dangerous to (a) human life; (b) property; or (c) infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain aircraft or vessels, or on the premises of a US mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian populations of the US or to influence the policy or affect the conduct of the US Government by coercion.

Under your coverage, any losses resulting from certified acts of terrorism may be partially reimbursed by the United States Government under a formula established by the Act, as amended. However, your policy

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TERRORISM RISK INSURANCE ACT

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may contain other exclusions which might affect your coverage, such as an exclusion for nuclear events. Under the formula, the United States Government generally reimburses 85% of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage. The Act, as amended, contains a **\$100 billion cap** that limits the United States Government reimbursement as well as insurers' liability for losses resulting from certified acts of terrorism when the amount of such losses in any one calendar year exceeds the **\$100 billion cap**. If the aggregate insured losses for all insurers exceed the **\$100 billion cap**, and we have met our insurer deductible under the Terrorism Risk Insurance Act, your coverage may be reduced.

**This constitutes notice, as required, under the Terrorism Risk Insurance Act, as extended on December 22, 2005, and amended on December 31, 2007. Any losses resulting from certified acts of terrorism under this policy coverage may be partially reimbursed by the United States government, may be subject to a \$100 billion cap that may reduce your coverage. You have been hereby notified of the portion of your premium attributable to such coverage.**



# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.  1	Forming Part of Policy No.  EN004806	First Named Insured  Laser Spine Institute, LLC
Effective Date of Endorsement  03/01/2015		

## ***SCHEDULE OF ADDITIONAL EXCESS INSUREDS ENDORSEMENT***

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree the following persons or entities are added as **additional excess insureds** on the policy for the Insuring Agreement indicated. This endorsement applies only with respect to damages payable for the acts or omissions of an **Insured** otherwise covered under the applicable Insuring Agreement.

<b>SCHEDULE OF ADDITIONAL EXCESS INSUREDS</b>		
ADDITIONAL EXCESS INSURED	DESCRIPTION OF OPERATIONS	INSURING AGREEMENT
Landerhaven, I, LLC and Ohio Ltd Liability Co	Landlord	*Excess Commercial General Liability Insuring Agreement

EXCESS COMMON ENDORSEMENTS

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# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.  2	Forming Part of Policy No.  EN004806	First Named Insured  Laser Spine Institute, LLC
Effective Date of Endorsement  03/01/2015		

## ***FULL TIME EQUIVALENTS (FTE) ENDORSEMENT EXCESS PROFESSIONAL LIABILITY INSURING AGREEMENT***

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the Company and the Insureds agree to amend the Excess Professional Liability Insuring Agreement as follows:

### **MODIFIED COVERAGES**

The following is added to *WHO IS INSURED*:  
an **FTE excess professional liability insured**

The following definitions are added to *ADDITIONAL DEFINITIONS*:

**FTE excess professional liability insured** means any **Insured** listed as an FTE Excess Professional Liability Insured on the attached Schedule of Excess Professional Liability Insureds or on the attached Schedule of Insureds - Departed Excess Professional Liability Insureds.

**FTE position** means a full time equivalent position with that is filled by any number of **FTE excess professional liability insureds** during the **policy period**.

The following exclusion is added to *ADDITIONAL EXCLUSIONS*:

any **claim** arising from **professional services** rendered, or which should have been rendered, by an **FTE excess professional liability insured**, unless such **professional services** were rendered or should have been rendered in the course and scope of an **FTE excess professional liability insured's** duties while occupying an **FTE position** on behalf of a **scheduled excess professional liability insured** at the time of the **health care event**.

The following conditions are added to *ADDITIONAL CONDITIONS*:

#### **FTE Providers.**

A **scheduled excess professional liability insured** may have multiple **FTE positions** during the **policy period**. Each such **FTE position** shall be identified numerically (e.g., FTE 1; FTE 2; etc.) on the attached Schedule of Excess Professional Liability Insureds or on the attached Schedule of Insureds - Departed Excess Professional Liability Insureds.

**FTE excess professional liability insureds** share in the limits of liability provided to an **FTE position**.

All other terms and conditions of the policy remain unchanged.

### **EXCESS PROFESSIONAL LIABILITY**

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# National Fire & Marine Insurance Company

Omaha, Nebraska

All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.

Endorsement No.	Forming Part of Policy No.	First Named Insured
3	EN004806	Laser Spine Institute, LLC
Effective Date of Endorsement		
03/01/2015		

## ***DEPARTED EXCESS PROFESSIONAL LIABILITY INSURED ENDORSEMENT EXCESS PROFESSIONAL LIABILITY INSURING AGREEMENT***

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the Company and the **Insureds** agree to amend the Excess Professional Liability Insuring Agreement as follows:

### **MODIFIED COVERAGES**

The following provision is added to *INSURING AGREEMENT - EXCESS LOSS*:

The **Company** will pay, on behalf of a **departed excess professional liability insured**, including its **agents**, all **excess loss** arising from a **health care event** that took place on or after the **retroactive date** but prior to the **termination date** listed on the Schedule of Insureds - Departed Excess Professional Liability Insureds below. However, the **health care event** must have resulted from **professional services** rendered, or which should have been rendered, while the **departed excess professional liability insured** was employed by, or under contract with, any **scheduled excess professional liability insured**. For coverage to exist, the **excess loss** must also result from a **claim** that is **first made** against the **departed excess professional liability insured** during the **policy period**.

The following is added to *WHO IS INSURED*:

a **departed excess professional liability insured**

The following definitions are added to *ADDITIONAL DEFINITIONS*:

**Departed excess professional liability insured** means any **scheduled excess professional liability insured** who has been designated by the **Insured** as no longer providing **professional services** on behalf of the **Insured** and who is listed on the Schedule of Insureds-Departed Excess Professional Liability Insureds below.

**Termination date** means the date listed as the Termination Date for the **departed excess professional liability insured** on the Schedule of Insureds-Departed Excess Professional Liability Insureds below.

The following exclusion is added to *ADDITIONAL EXCLUSIONS*:

any **claim** arising from, or in connection with, **professional services** rendered, or which should have been rendered, by a **departed excess professional liability insured** prior to the **retroactive date** or after the **termination date** listed on the Schedule of Insureds - Departed Excess Professional Liability Insureds below.

### **EXCESS PROFESSIONAL LIABILITY**

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The following provision is added to *LIMITS OF LIABILITY*:

*PER EVENT LIMIT - DEPARTED EXCESS PROFESSIONAL LIABILITY INSURED*

The Company's duty to pay excess loss on behalf of a departed excess professional liability insured for any health care event covered by this endorsement shall not exceed the Per Event Limit of Liability shown in the Declarations section of the Schedule of Excess Professional Liability Insureds, regardless of the number of:

1. persons who sustain injury;
2. claimants;
3. claims;
4. policies issued by the Company; or,
5. Insureds who share the Per Event limit.

*AGGREGATE LIMIT - DEPARTED EXCESS PROFESSIONAL LIABILITY INSURED*

The Company's duty to pay excess loss on behalf of a departed excess professional liability insured for all health care events covered by this endorsement shall not exceed the Aggregate Limit of Liability shown in the Declarations section of the Schedule of Excess Professional Liability Insureds. This limit shall apply regardless of the number of:

1. health care events;
2. persons who sustain injury;
3. claimants;
4. claims;
5. policies issued by the Company; or,
6. Insureds who share the Aggregate limit.

It is expressly understood that nothing herein shall operate to create multiple Limits of Liability for any Insured.

All remaining terms and conditions of the policy remain unchanged.

SCHEDULE OF INSUREDS - DEPARTED EXCESS PROFESSIONAL LIABILITY INSUREDS			
DEPARTED EXCESS PROFESSIONAL LIABILITY INSURED	ID NUMBER	RETRO- ACTIVE DATE	TERMI- NATION DATE
James S St Louis, DO, PC	626965	09/09/2009	12/31/2011
Laser Spine Institute of Arizona, LLC	626966	03/14/2008	12/31/2010
Laser Spine Institute of California, LLC	626960	07/31/2008	12/31/2012
Laser Spine Institute of Colorado, LLC	626968	09/03/2009	12/31/2009
Laser Spine Institute of Oklahoma, LLC	626969	09/17/2010	12/31/2010
Laser Spine Institute of Pennsylvania, LLC	626967	04/22/2009	12/31/2010
Laser Spine Medical Clinic, LLC	626958	01/03/2005	12/31/2012
Laser Spine Physical Therapy, LLC	626959	01/03/2005	12/31/2012
LSI Aspen Back and Body, LLC	626962	09/03/2009	12/31/2011
Michael William Perry, MD, PC	626961	07/25/2008	12/31/2011
Total Spine Health Products, LLC	626964	09/03/2009	12/31/2011

EXCESS PROFESSIONAL LIABILITY

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# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.  4	Forming Part of Policy No.  EN004806	First Named Insured  Laser Spine Institute, LLC
Effective Date of Endorsement  03/01/2015		

**THIS ENDORSEMENT CHANGES THE POLICY - PLEASE READ IT CAREFULLY**

## **EXCESS SERVICE OF SUIT CLAUSE ENDORSEMENT**

Service of process in any lawsuit, or mandated alternative dispute resolution (ADR) proceeding instituted against the **Company** shall be made upon:

**General Counsel  
National Fire & Marine Insurance Company  
3024 Harney Street  
Omaha, Nebraska 68131-3095**

The General Counsel is authorized and directed to accept service of process on behalf of the **Company** in any suit or ADR proceeding and, upon the request of the **Insured**, agrees to give a written acknowledgement to the **Insured** that the **Company** will retain counsel to enter an appearance upon the **Company's** behalf should a lawsuit or ADR proceeding be instituted.

Further, pursuant to any law of any state, the District of Columbia, territory, or protectorate of the United States which makes provision therefore, the **Company** hereby designates the Superintendent, Commissioner, Director of Insurance, deputy, or department employee specified as attorney or agent for receipt of lawful service of process or ADR proceeding, in the law, instituted by or on behalf of the **Insured** or any beneficiary within this contract, the General Counsel is hereby authorized as the **Company's** designee upon whom the service of process may be served.

Nothing contained herein shall limit or abridge the right to serve any process, notice or demand upon the **Company** in any other manner permitted or required by law.

This endorsement is effective on the inception date of this policy unless otherwise stated herein.

All other terms and conditions of this policy remain unchanged.

EXCESS SERVICE OF SUIT®

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Edition Date: 1/2011



# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.	Forming Part of Policy No.	First Named Insured
5	EN004806	Laser Spine Institute, LLC
Effective Date of Endorsement		
03/01/2015		

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

***LIMITED TERRORISM EXCLUSION (OTHER THAN CERTIFIED ACTS OF TERRORISM);  
CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM ENDORSEMENT  
(NO DROPDOWN)  
EXCESS COMMERCIAL GENERAL LIABILITY INSURING AGREEMENT***

In consideration of the payment of the premium charged and in reliance upon the representation of all **Insureds**, the **Company** and the **Insured** agree to amend the Excess Commercial General Liability Insuring Agreement as follows:

The following exclusion is added to both *EXCLUSIONS - COVERAGE A: BODILY INJURY AND PROPERTY DAMAGE LIABILITY* and *EXCLUSIONS - COVERAGE: B PERSONAL AND ADVERTISING INJURY*:

Any **claim, bodily injury or property damage** arising, directly or indirectly, out of any **other act of terrorism**. However, with respect to any **other act of terrorism**, this exclusion applies only when one or more of the following are attributed to such act:

1. The total of **insured damage** to all types of property exceeds \$27,500,000,000 for related incidents that occur within a 72-hour period. In determining whether the \$27,500,000,000 threshold is exceeded, the **Company** will include all **insured damage** sustained by property of all persons and entities affected by the terrorism and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, **insured damage** means industry-wide insured losses or damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions; or
2. Fifty or more persons sustain death or **serious physical injury** for related incidents that occur within a 72-hour period. For the purposes of this provision, **serious physical injury** means:
  - a. physical injury that involves a substantial risk of death; or
  - b. protracted and obvious physical disfigurement; or
  - c. protracted loss of or impairment of the function of a bodily member or organ; or
3. The terrorism involves the use, release or escape of nuclear materials, or directly or indirectly results in nuclear reaction or radiation or radioactive contamination; or
4. The terrorism is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
5. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

TERRORISM RISK INSURANCE ACT

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For the purposes of this exclusion, any **bodily injury or property damage** means any **bodily injury or property damage** covered under any Insuring Agreement to which this endorsement is applicable, and includes but is not limited to **bodily injury, property damage, personal injury and advertising injury, products completed operations hazard**, clean-up costs or environmental damage as may be defined in any applicable Insuring Agreement.

In the event of any incident of an **other act of terrorism** that is not subject to this exclusion, coverage does not apply to any loss or damage that is otherwise excluded under this Insuring Agreement.

With respect to any one or more **certified acts of terrorism**, the Company will not pay any amounts for which the Company is not responsible under the terms of the federal Terrorism Risk Insurance Act of 2002 (including subsequent acts of Congress pursuant to the Act) due to the application of any clause which results in a cap on the **Company's** liability for payments for terrorism losses.

In the event any **scheduled policy** or underlying insurance coverage for **certified acts of terrorism or other acts of terrorism** is not in full force and effect for any reason, the **Insured** fails to satisfy all conditions thereunder relative to any **occurrence event** or suit, or if such insurance becomes uncollectible due to insolvency or bankruptcy, the insurance afforded by this policy shall apply in the same manner as though such coverage was available, collectible and the conditions thereof satisfied.

Multiple incidents of any **other act of terrorism** which occur within a seventy-two hour period and appear to be carried out in concert or to have a related purpose or common leadership shall be considered to be one incident.

The following definitions are added to *DEFINITIONS — ALL COMMERCIAL GENERAL LIABILITY COVERAGES*:

**Certified act of terrorism** means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act of 2002 under Section 102(1), as extended on December 22, 2005, and amended on December 31, 2007. The federal Terrorism Risk Insurance Act of 2002, as extended on December 22, 2005, and amended on December 31, 2007, sets forth the following criteria for a **certified act of terrorism**:

1. The act resulted in aggregate losses in excess of \$5 million; and
2. the act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion. The act must have resulted in damage within the United States, or outside the United States in cases of an air carrier or vessel, as provided in the Act, or the premises of a United States mission.
3. No act of terrorism shall be certified if the act is committed as a part of the course of a war declared by Congress.

**Other act of terrorism** means a violent act or an act that is dangerous to human life, property or infrastructure that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion, and the act is not certified as a terrorist act pursuant to the federal Terrorism Risk Insurance Act of 2002, as extended on December 22, 2005, and amended on December 31, 2007.

All other terms and conditions of this policy remain unchanged.



# National Fire & Marine Insurance Company

Omaha, Nebraska

All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.

Endorsement No.	Forming Part of Policy No.	First Named Insured
6	EN004806	Laser Spine Institute, LLC
Effective Date of Endorsement		
03/01/2015		

## EXCESS INTENTIONAL ACTS EXCLUSION AND SUBLIMITS OF LIABILITY FOR INTENTIONAL ACTS ENDORSEMENT

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the Excess Professional Liability Insuring Agreement selected under this policy as follows:

### MODIFIED COVERAGES

The total limit of the **Company's** liability for intentional acts shall not exceed the amounts set forth as the Per Event and Per Aggregate Sublimits listed below:

#### Intentional Acts Sublimits of Liability:

Per Event Sublimit of Liability:	\$ 1,000,000
Aggregate Sublimit of Liability:	\$ 1,000,000

The Intentional Acts Sublimits specified above are within and shall erode the Per Event and Aggregate Limits of Liability available to any **Insured** under the applicable Insuring Agreement.

### EXCESS GENERAL EXCLUSIONS

The following exclusion in Excess General Exclusions is deleted:

Any **excess loss** arising from, or in connection with, any act listed in the subparagraphs below, and any **health care event** when intertwined with, or inseparable from, any such act:

1. any malicious act or intentional tort;
2. any actual or threatened sexual act, behavior or conduct, including, but not limited to, assault, exploitation, harassment or molestation, by any person of another person while in the care, custody, or control of any **Insured**, whether under the guise of **treatment** or not; or the negligent employment, investigation, supervision, reporting to the proper authorities, or failure to so report, or retention of a person for whom any **Insured** is or ever was legally responsible and whose conduct would be excluded under this exclusion;
3. any personal, romantic, sexual, or other non-professional relationship with a current, former, or prospective patient, whether under the guise of **treatment** or not;
4. any willful violation of any law, statute, or regulation;
5. any dishonest or fraudulent act;
6. any breach of contract or guaranty regarding the efficacy of **treatment**;
7. **professional services** rendered or which should have been rendered if it is determined that an **Insured** was in any manner, extent or degree impaired by or under the influence of alcohol, narcotics, hallucinogenic agents, drugs or intoxicants of any nature or kind; or,

### EXCESS COMMON ENDORSEMENTS

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Edition Date: 1/2011



8. any fabrication, alteration or destruction, in whole or in part, of any medical record pertaining to the person whose **treatment** is the subject of the **claim**, including, but not limited to, any medical or business record pertaining to the condition, **treatment** and/or consent of such person to any **professional service**, in whole or in part, by or at the direction of an **Insured**, after the happening of the activity reflected in such document or record. However, this exclusion does not apply to bona fide corrections to records made in accordance with applicable generally accepted professional standards, but this exception only applies if such corrections are identified as such, dated and signed by the person making them.

This following exclusion is added to General Exclusions:

Any **excess loss** arising from, or in connection with, any act listed in the subparagraphs below, and any **health care event** when intertwined with, or inseparable from, any such act:

1. any malicious act or intentional tort;
2. any actual or threatened sexual act, behavior or conduct, including, but not limited to, assault, exploitation, harassment or molestation, by any person of another person while in the care, custody, or control of any **Insured**, whether under the guise of **treatment** or not; or the negligent employment, investigation, supervision, reporting to the proper authorities, or failure to so report, or retention of a person for whom any **Insured** is or ever was legally responsible and whose conduct would be excluded under this exclusion;
3. any personal, romantic, sexual, or other non-professional relationship with a current, former, or prospective patient, whether under the guise of **treatment** or not;
4. any willful violation of any law, statute, or regulation;
5. any dishonest or fraudulent act;
6. any breach of contract or guaranty regarding the efficacy of **treatment**;
7. **professional services** rendered or which should have been rendered if it is determined that an **Insured** was in any manner, extent or degree impaired by or under the influence of alcohol, narcotics, hallucinogenic agents, drugs or intoxicants of any nature or kind; or,
8. any fabrication, alteration or destruction, in whole or in part, of any medical record pertaining to the person whose **treatment** is the subject of the **claim**, including, but not limited to, any medical or business record pertaining to the condition, **treatment** and/or consent of such person to any **professional service**, in whole or in part, by or at the direction of an **Insured**, after the happening of the activity reflected in such document or record. However, this exclusion does not apply to bona fide corrections to records made in accordance with applicable generally accepted professional standards, but this exception only applies if such corrections are identified as such, dated and signed by the person making them.

This exclusion does not apply to any **claims** arising from a **health care event**, brought against any **Insured** who did not participate in, or direct another, in connection with any of the actions excluded from coverage under this provision.

All other terms and conditions of the policy remain unchanged.



# National Fire & Marine Insurance Company

Omaha, Nebraska

All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.

Endorsement No.  7	Forming Part of Policy No. EN004806	First Named Insured  Laser Spine Institute, LLC
Effective Date of Endorsement  03/01/2015		

## EXCESS AUTO COVERAGE EXCESS COMMERCIAL GENERAL LIABILITY INSURING AGREEMENT

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the Excess Commercial General Liability Insuring Agreement as follows:

### ENDORSEMENT DECLARATIONS

Per Event Limit of Liability (Excess Auto Coverage): \$ 20,000,000

### MODIFIED COVERAGES

The exclusion for Aircraft, Auto, or Watercraft in *EXCLUSIONS – COVERAGE A: BODILY INJURY AND PROPERTY DAMAGE* is amended by adding the following language to the exclusion:

This exclusion does not apply to:

**Bodily injury or property damage** arising from the use of an **auto** owned by, leased or rented to, or while being used in the furtherance of the business of, a **scheduled excess insured business**, but only if the **auto** is covered by scheduled commercial auto liability insurance listed on the Excess Schedule of Underlying Insurance.

This exception shall not apply to any duty owed by an **Insured** under a no fault, underinsured, or uninsured motorists insurance policy or law.

The following provision is added to *LIMITS OF LIABILITY – ALL EXCESS COMMERCIAL GENERAL LIABILITY COVERAGES*:

Notwithstanding the Per Event Limit of Liability set forth on the Schedule of Excess Insured Businesses, the **Company's** duty to pay excess loss on behalf of **scheduled excess insured businesses** or their agents for any **bodily injury or property damage** arising from an event involving the use of an **auto**, shall not exceed the Per Event Limit of Liability shown on the Endorsement Declarations above. This limit shall apply regardless of the number of:

1. **Insureds**;
2. **claims made or suits brought**;
3. **persons or organizations making claims or bringing suits**; or,
4. **policies issued by the Company**.

All other terms and conditions of the policy remain unchanged.

EXCESS GENERAL LIABILITY

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Edition Date: 1/2011



# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.  8	Forming Part of Policy No.  EN004806	First Named Insured  Laser Spine Institute, LLC
Effective Date of Endorsement  03/01/2015		

## ***DROP DOWN ENDORSEMENT –DEFENSE WITHIN SCHEDULED LIMITS EXCESS COMMERCIAL GENERAL LIABILITY INSURING AGREEMENT (DEFENSE WITHIN LIMITS)***

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the Commercial General Liability Insuring Agreement as follows:

### **MODIFIED COVERAGES**

The following provisions are added to *DEFENSE AND SUPPLEMENTAL PAYMENTS - ALL EXCESS COMMERCIAL GENERAL LIABILITY COVERAGES*:

*Defense Not Provided by Scheduled Coverage Due to Exhaustion of Scheduled Limits.*

- A. In any **claim** or **suit** covered under this Insuring Agreement for which the **Insured** has exhausted its limits of liability under a **scheduled coverage** and therefore is not entitled to a defense under that **scheduled coverage**, the **Company** shall have the right and duty to defend the **Insured**. However, the **Company** has no duty to:
1. defend an **Insured** against a **claim** or **suit** after the **Insured's** applicable limit of liability under this Insuring Agreement is exhausted by the payment of judgments or settlements;
  2. appeal any judgment. However, the **Company** has the right to appeal any judgment that exceeds the **scheduled limit**. If the **Company** decides to appeal any judgment, all costs associated with the appeal shall be included as **claims expense**, shall be payable by the **Company**, and shall reduce the applicable limit of liability; or,
  3. pay any **claims expense** incurred by or for an attorney who was not retained, or approved by the **Company** in writing, to defend the **Insured**.
- B. All **claims expenses** paid by the **Company** under this endorsement shall be included as **excess loss** and shall erode the applicable limit of liability under this Insuring Agreement. The **Company** shall have no duty to pay any **claims expense**, premium, or other expense incurred after the **Insured's** applicable limit of liability under this Insuring Agreement is exhausted.
- C. All **claims expense** and supplemental payments paid by the **Company** under this endorsement shall be subject to any deductible applicable to the underlying **scheduled coverage** as if it were in effect.

As it applies to the Excess Commercial General Liability Insuring Agreement only, the *Reduction or Exhaustion of Scheduled Limits* condition is deleted from the Excess General Conditions and replaced with the following:

#### EXCESS GENERAL LIABILITY

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Reduction or Exhaustion of Scheduled Limits.

If the **Insured's** applicable **scheduled limit** has been reduced or exhausted by the payment of **claims, events** or offenses that are otherwise eligible for coverage under this Insuring Agreement, the **Company** will pay **excess loss** above the remaining limits of the **scheduled limit**, less any deductible.

All damages paid by the **Company** under this endorsement shall be subject to any deductible applicable to the **scheduled coverage** as if it were in effect.

All other terms and conditions of the policy remain unchanged.



# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.  9	Forming Part of Policy No.  EN004806	First Named Insured  Laser Spine Institute, LLC
Effective Date of Endorsement  03/01/2015		

## ***NON-SCHEDULED WAIVER OF SUBROGATION ENDORSEMENT EXCESS COMMERCIAL GENERAL LIABILITY INSURING AGREEMENT***

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the Excess Commercial General Liability Insuring Agreement as follows:

### **MODIFIED COVERAGES**

The following provision is added to the *ADDITIONAL CONDITIONS – ALL COMMERCIAL GENERAL LIABILITY COVERAGES*:

#### *Waiver of Subrogation.*

The **Company** shall waive any right of recovery the **Company** may have against a person or organization to the extent that the **Insured** has agreed in writing prior to the date of loss to waive the **Insured's** rights of recovery against that person or entity.

All other terms and conditions of the policy remain unchanged.

EXCESS GENERAL LIABILITY

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# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.  10	Forming Part of Policy No.  EN004806	First Named Insured  Laser Spine Institute, LLC
Effective Date of Endorsement  03/01/2015		

## ***NON-SCHEDULED ADDITIONAL INSURED (PRIMARY AND NON-CONTRIBUTORY) ENDORSEMENT EXCESS COMMERCIAL GENERAL LIABILITY INSURING AGREEMENT***

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the Excess Commercial General Liability Insuring Agreement as follows:

### **MODIFIED COVERAGES**

The definition of **additional insured** is deleted from the *DEFINITIONS – ALL EXCESS COMMERCIAL GENERAL LIABILITY COVERAGES* and replaced with the following:

**Additional insured** means:

1. any person or entity listed on the applicable Excess Schedule of Additional Insureds; or,
2. only with respect to any **excess loss** or damages payable as the result of the **additional insured's** vicarious liability for the acts or omissions of an **Insured** otherwise covered under this Insuring Agreement, any person or entity with which the **scheduled excess insured business** has entered into a written contract or agreement agreeing:
  - a. to add the person or entity as an **additional insured**; or
  - b. to hold harmless or indemnify such person or organization.

This definition does not apply:

- i. unless the written contract or agreement has been executed prior to the **excess loss**. The contract or agreement will be considered executed when the **Insured's** performance begins, or when the contract is signed, whichever occurs first; or
- ii. to **excess losses** arising from or in connection any of the **additional insured's** own acts or omissions.

The following provision is added to *LIMITS OF LIABILITY – ALL EXCESS COMMERCIAL GENERAL LIABILITY COVERAGES*:

All **additional insureds** meeting the definition provided herein share the Limits of Liability applicable to any **claim** or **suit** with any **Insured** for which the **additional insured** is alleged to be vicariously liable with respect to that same **claim** or **suit**.

Solely with respect to any **additional insured(s)** meeting the description provided by subsection 2 of the definition of **additional insured** set forth in this endorsement, the following Additional Condition is added to the *ADDITIONAL CONDITIONS – ALL EXCESS COMMERCIAL GENERAL LIABILITY COVERAGES*:

Only if required by written contract or agreement with the **scheduled excess insured business**, coverage for any

#### EXCESS GENERAL LIABILITY

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**additional insured(s)** provided by this endorsement shall be primary and non-contributory as respects any other insurance policy issued to such **additional insured**. Otherwise, the Other Insurance provision of the Excess General Conditions applies as written.

All other terms and conditions of the policy remain unchanged.



# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.	Forming Part of Policy No.	First Named Insured
11	EN004896	Laser Spine Institute, LLC
Effective Date of Endorsement		
03/01/2015		

## ***DROP DOWN ENDORSEMENT—DEFENSE WITHIN SCHEDULED LIMITS EXCESS PROFESSIONAL LIABILITY INSURING AGREEMENT (DEFENSE WITHIN LIMITS)***

In consideration of the payment of the premium charged and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the Excess Professional Liability Insuring Agreement as follows:

### **MODIFIED COVERAGES**

The ***NO DUTY TO DEFEND*** provision of the Excess Defense and Supplemental Payments is deleted and replaced with the following:

#### ***DUTY TO DEFEND***

In any **claim** covered under this Insuring Agreement for which the **Insured** has exhausted its limits of liability under a **scheduled coverage** and therefore is not entitled to a defense under that **scheduled coverage**, the **Company** shall have the right and duty to defend the **Insured**. However, the **Company** has no duty to:

- A. defend an **Insured** against a **claim** after the **Insured's** applicable limit of liability under this Insuring Agreement is exhausted by the payment of judgments or settlements;
- B. appeal any judgment. However, the **Company** has the right to appeal any judgment that exceeds the **scheduled coverage**. If the **Company** decides to appeal any judgment, all costs associated with the appeal shall be included as **claims expense**, shall be payable by the **Company**, and shall reduce the applicable limit of liability; or,
- C. pay any **claims expense** incurred by or for an attorney who was not retained, or approved by the **Company** in writing, to defend the **Insured**.

All **claims expenses** paid by the **Company** under this endorsement shall be included as **excess loss** and shall erode the applicable limit of liability under this Insuring Agreement. The **Company** shall have no duty to pay any **claims expense**, premium, or other expense incurred after the **Insured's** applicable limit of liability under this Insuring Agreement is exhausted.

All **claims expense** and supplemental payments paid by the **Company** under this endorsement shall be subject to any deductible applicable to the underlying **scheduled coverage** as if it were in effect.

#### **EXCESS PROFESSIONAL LIABILITY**

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The *Reduction or Exhaustion of Scheduled Limits* condition of the Excess General Conditions, as it applies to the Excess Professional Liability Insuring Agreement only, is deleted and replaced with the following:

*Reduction or Exhaustion of Scheduled Limits.*

If the **Insured's** applicable **scheduled limit** has been reduced or exhausted by the payment of **claims** for **events** that are otherwise eligible for coverage under this Insuring Agreement, the **Company** will pay excess loss above the remaining limits of the **scheduled limit**.

All damages paid by the **Company** under this endorsement shall be subject to any deductible applicable to the **scheduled coverage** as if it were in effect.

All other terms and conditions of the policy remain unchanged.



# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.  12	Forming Part of Policy No.  EN004806	First Named Insured  Laser Spine Institute, LLC
Effective Date of Endorsement  03/01/2015		

## EXCESS FLORIDA AMENDATORY ENDORSEMENT

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the policy as follows:

### EXCESS GENERAL CONDITIONS

The Cancellation, Nonrenewal and/or Termination of Coverage section in the Excess General Conditions is deleted and replaced with the following:

#### Cancellation, Nonrenewal and/or Termination of Coverage

1. This policy may be canceled by the **first named insured**. The **first named insured** shall mail written notice to the **Company** requesting cancellation. The cancellation shall be effective on the date requested by the **first named insured** or the date the notice is received by the **Company**, whichever is later.
2. Any coverage contained within this policy may be terminated by the **first named insured**. The **first named insured** shall mail written notice to the **Company** requesting the coverage termination. The termination shall be effective on the date requested by the **first named insured** or the date the notice is received by the **Company**, whichever is later.
3. This policy may also be canceled by the **Company**. The **Company** will send notice of the cancellation, including the specific reason for the cancellation, to the **first named insured** at its last known address.
  - a. If the policy has been in effect for less than 90 days, the **Company** may cancel by sending written notice that states when, not less than 20 days thereafter, such cancellation shall be effective.
  - b. If the policy has been in effect for at least 90 days, or is a renewal policy, the **Company** may cancel by sending written notice that states when, not less than 45 days thereafter, such cancellation shall be effective.
  - c. However, only 10 days notice will be required to cancel:
    - i. for nonpayment of premium;
    - ii. for policies cancelled for material misrepresentation; or,
    - iii. where there is a failure to comply with underwriting requirements.
4. If the **first named insured** cancels this policy, or terminates any coverage contained therein, earned premium shall be computed in accordance with the standard short rate tables and procedure. If the **Company** cancels this policy, or terminates any coverage contained therein, earned premium shall be computed pro rata. Premium adjustments shall be made within a reasonable period of time after cancellation. However, payment or tender of unearned premium shall not be a condition of cancellation.
5. This policy may be nonrenewed by the **Company** by mailing or delivering written notice of nonrenewal to the **first named insured** at its last known address at least 45 days prior to the end of the **policy period**. The notice will also contain the specific reason for the nonrenewal.
6. If the **Company** cancels or nonrenews an **Insured's** policy, the **Insured's** coverage under that policy shall terminate on the earlier of:

#### EXCESS FLORIDA AMENDATORY ENDORSEMENT

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- a. the date stated on the cancellation or nonrenewal notice; or,
- b. the date the Insured procures replacement coverage.

All other terms and conditions of the policy remain unchanged.



# National Fire & Marine Insurance Company

Omaha, Nebraska

All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.

Endorsement No.	Forming Part of Policy No.	First Named Insured
13	EN004806	Laser Spine Institute, LLC
Effective Date of Endorsement		
03/01/2015		

## EXCESS MANUSCRIPT ENDORSEMENT

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the policy as follows:

The following exclusion is deleted from provision A. of *I. EXCLUSIONS* of the Excess General Exclusions:

7. **professional services** rendered or which should have been rendered if it is determined that an **Insured** was in any manner, extent or degree impaired by or under the influence of alcohol, narcotics, hallucinogenic agents, drugs or intoxicants of any nature or kind; or,

The following exclusion is deleted from *I. EXCLUSIONS* of the Excess General Exclusions:

- D. Any damages over and above actual compensatory damages. This includes punitive, exemplary, and multiple damages.

and replaced with the following exclusion:

- D. Any damages over and above actual compensatory damages. This includes punitive, exemplary, and multiple damages. However, to the extent that coverage for punitive, exemplary and multiple damages is allowed by law, this exclusion does not apply to the first \$5,000,000 of coverage provided under the Aggregate Limits of Liability of the policy.

The following provision is deleted from paragraph 1. of B. *Reporting Requirements* of the Excess General Conditions:

- b. for which the **Company** providing the **scheduled limit** has set a loss reserve which exceeds \$100,000;

and replaced with the following provision:

- b. for which the **Company** providing the **scheduled limit** has set a loss reserve which exceeds \$500,000;

The definition of **claims expense** in the Excess General Definitions is deleted and replaced with the following:

**Claims expense** means all costs and expenses incurred in connection with the investigation, adjustment, and defense of any **claim**. Such costs and expenses shall only include:

1. attorney fees paid to the law firm selected by the **Company** to defend an **Insured**;
2. court costs;
3. expert fees;
4. reporter fees;
5. the cost of any alternative dispute resolution ordered by a court, otherwise required by law or pre-approved by the **Company**;
6. post-judgment interest on that portion of the judgment that does not exceed the limit of liability available under the applicable Insuring Agreement; and,
7. such other costs and expenses that the **Company** determines to be reasonably related to the defense of a



**claim.**

However, **claims expense** does not include:

1. **excess loss;**
2. attorney fees awarded to a claimant;
3. the salary of any **employee** of an **Insured**; however, the salary of attorneys paid by the **first named insured** who are directly handling **claims** otherwise covered under this policy will be included as **claims expense**, but only to the extent that the services provided by the attorneys are directly attributable to the defense and management of covered **claims**, and only the portion of each attorney's salary that can be reasonably allocated to the handling and management of the covered **claims** will be included as **claims expense**; or,
4. the forgiveness of any amounts owed for the cost of care or services rendered by an **Insured**.

All other terms and conditions of the policy remain unchanged.



# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.  14	Forming Part of Policy No.  EN004806	First Named Insured  Laser Spine Institute, LLC
Effective Date of Endorsement  07/01/2015		

## ***EXCESS SCHEDULED ADDITIONAL INSUREDS ENDORSEMENT WITH NOTICE OF CANCELLATION***

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the policy as follows:

### **MODIFIED COVERAGES**

The following persons or entities scheduled below are added as **additional insureds** under the Insuring Agreement indicated below, but only with respect to any damages payable as a result of the **additional insured's** vicarious liability for the acts or omissions of an **Insured** otherwise covered under the applicable Insuring Agreement. This insurance does not apply to sums or damages arising from or in connection with liability for any acts or omissions alleged against the **additional insured**.

All **additional insureds** share the Limits of Liability applicable to any **claim** or **suit** with any **Insured** for which the **additional insured** is alleged to be vicariously liable with respect to that same **claim** or **suit**.

It is further agreed that in the event that the **Company** cancels this policy for any reasons other than either non-payment of premium before the expiration date of the **policy period**, or at the request of the **first named insured**, the **Company** shall provide prior notice of such cancellation to the **additional insured** listed on the schedule below at the same time notice is provided to the **first named insured**.

All other terms and conditions of the policy remain unchanged.

EXCESS SCHEDULE OF ADDITIONAL INSUREDS		
ADDITIONAL INSURED	ADDRESS	INSURING AGREEMENT
Texas Capital Bank, National Association, as Administrative Assistant	2000 McKinney Ave Ste 700 Dallas, TX 75201	*Excess Commercial General Liability Insuring Agreement

### EXCESS COMMON ENDORSEMENTS

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Edition Date: 08/2014



# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.	Forming Part of Policy No.	First Named Insured
15	EN004806	Laser Spine Institute, LLC
Effective Date of Endorsement		
03/01/2015		

## CHANGE ENDORSEMENT

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the policy as follows:

It is agreed and understood that the Schedule of Insureds, Excess Professional Liability Insuring Agreement (Claims-Made), has been amended for the following **scheduled excess professional liability insured(s)**:

SCHEDULE OF INSURED		
SCHEDULED EXCESS PROFESSIONAL LIABILITY INSURED	ID NUMBER	RETROACTIVE DATE
Laser Spine Surgery Center of Tampa, LLC	943051	03/01/2015
Laser Spine Surgery Center of Warwick, LLC	943052	03/01/2015

This endorsement reflects the addition of Scheduled Excess Professional Liability Insureds.

Premium Adjustment:      \$0      Additional Premium

All other terms and conditions of the policy remain unchanged.



# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.	Forming Part of Policy No.	First Named Insured
16	EN004806	Laser Spine Institute, LLC
Effective Date of Endorsement		
03/01/2015		

## CHANGE ENDORSEMENT

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the policy as follows:

It is agreed and understood that the Schedule of Insureds, Excess Commercial General Liability Insuring Agreement (Occurrence), has been amended for the following **scheduled excess insured business(es)**:

SCHEDULE OF INSURED	
SCHEDULED EXCESS INSURED BUSINESS	ID NUMBER
Laser Spine Surgery Center of Tampa, LLC	943051
Laser Spine Surgery Center of Warwick, LLC	943052

This endorsement reflects the addition of Scheduled Excess Insured Businesses.

Premium Adjustment:      \$0      Additional Premium

All other terms and conditions of the policy remain unchanged.



# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.  17	Forming Part of Policy No.  EN004806	First Named Insured  Laser Spine Institute, LLC
Effective Date of Endorsement  03/01/2015		

## CHANGE ENDORSEMENT

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the policy as follows:

It is agreed and understood that the Schedule of Insureds, Excess Professional Liability Insuring Agreement (Claims-Made), has been amended for the following **scheduled excess professional liability insured(s)**:

SCHEDULE OF INSUREDS		
SCHEDULED EXCESS PROFESSIONAL LIABILITY INSURED	ID NUMBER	RETROACTIVE DATE
Laser Spine Institute Consulting LLC	626955	06/30/2011
Laser Spine Surgery Center of St. Louis, LLC	637294	06/30/2014
LSI HoldCo LLC	626956	12/05/2012

This endorsement reflects a change in Scheduled Excess Professional Liability Insureds.

Premium Adjustment:      \$0      Additional Premium

All other terms and conditions of the policy remain unchanged.

EXCESS COMMON ENDORSEMENTS

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# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.	Forming Part of Policy No.	First Named Insured
18	EN004806	Laser Spine Institute, LLC
Effective Date of Endorsement		
03/01/2015		

## CHANGE ENDORSEMENT

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the policy as follows:

It is agreed and understood that the Schedule of Insureds, Excess Commercial General Liability Insuring Agreement (Occurrence), has been amended for the following **scheduled excess insured business(es)**:

SCHEDULE OF INSURED	
SCHEDULED EXCESS INSURED BUSINESS	ID NUMBER
Laser Spine Institute Consulting LLC	626955
Laser Spine Surgery Center of St. Louis, LLC	637294
LSI HoldCo LLC	626956

This endorsement reflects a change in Scheduled Excess Insured Businesses.

Premium Adjustment:      \$0      Additional Premium

All other terms and conditions of the policy remain unchanged.

EXCESS COMMON ENDORSEMENTS

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Edition Date: 1/2011



# National Fire & Marine Insurance Company

Omaha, Nebraska

*All effective dates are 12:01 a.m. Standard Time at the address of the First Named Insured.*

Endorsement No.  19	Forming Part of Policy No.  EN004806	First Named Insured  Laser Spine Institute, LLC
Effective Date of Endorsement  03/01/2015		

## CHANGE ENDORSEMENT

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **Insureds**, the **Company** and the **Insureds** agree to amend the policy as follows:

It is agreed and understood that the Schedule of Insureds, Excess Professional Liability Insuring Agreement (Claims-Made), has been amended for the following **scheduled excess professional liability insured(s)**:

SCHEDULE OF INSUREDS		
SCHEDULED EXCESS PROFESSIONAL LIABILITY INSURED	ID NUMBER	RETROACTIVE DATE
Health Care Provider FTE 4		03/21/2005
All Certified Registered Nurse Anesthetics Employed or Contracted by Laser Spine Institute, LLC	945592	

This endorsement reflects the addition of a Scheduled Excess Professional Liability Insured.

Premium Adjustment:      \$0      Additional Premium

All other terms and conditions of the policy remain unchanged.

EXCESS COMMON ENDORSEMENTS

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