

Gerber Life Insurance Company, White Plains, New York agrees to pay Excess Loss Insurance benefits to the Contractholder listed in the Schedule of Excess Loss Insurance based on the provisions of this Contract.

READ YOUR CONTRACT CAREFULLY

This Contract is legally binding between the Contractholder and Gerber Life Insurance Company (Company or We, Us and Our), based on the consideration for this Contract, and reliance on the Application, the Riders, Disclosure Statement, a copy of the Employee Benefit Plan presently in effect, provided to the Company, and the payment of premiums as provided hereinafter.

AGREEMENT

The Company will pay the Aggregate and/or Specific Benefits provided in this Contract, subject to the conditions, limitations and exclusions of this Contract.

The Contractholder agrees to pay premiums when due and to comply with the Contract provisions.

This Contract takes effect on the first day of the Contract Period shown in the Schedule, and terminates at the end of the Contract Period shown in the Schedule. All periods indicated in the Contract begin and end at 12:01 A.M. standard time at the Contractholder's office.

This Contract Form is governed by the laws of the state in which it is issued.

IN WITNESS WHEREOF, Gerber Life Insurance Company has caused this Contract to be executed by its President and Secretary at White Plains, New York.

Signed by the Company:



President and CEO



Secretary

Contract Providing Excess Loss Insurance

Nonparticipating

GERBER LIFE INSURANCE COMPANY
1311 Mamaroneck Avenue
WHITE PLAINS, NY 10605

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**APPLICATION AND SCHEDULE FOR
EXCESS LOSS INSURANCE**

**GERBER LIFE INSURANCE COMPANY
WHITE PLAINS, NY 10605**

Application is hereby made to the Gerber Life Insurance Company ("Company") for Excess Loss Insurance. This Application must be accepted and approved by the Company or its authorized representative prior to any Contract being in existence.

1. Contract Number:

2. Contractholder:

3. Address:

City:

State:

Zip Code:

4. Subsidiary or affiliated companies (companies under common control through stock ownership, contract, or otherwise) to be included (list legal name and addresses):

5. Name and Address of Designated Third Party Administrator:

6. Estimated Initial Enrollment (will be used as the Number of Covered Units during the first Contract Month):

___ Singles and ___ Families (or) ___ Composite

6. (a) Eligible employees: ___ Singles and ___ Families (or) ___ Composite

7. GENERAL SCHEDULE OPTIONS:

(a) Contract Period _____ to _____
Effective date Termination date

(b) *Disabled Persons [] are [] are not covered.
*Retired Employees [] are [] are not covered.
*Cobra Continuees [] are [] are not covered
*(required to be disclosed)

[(c) Aggregate Benefit [] Yes [] No
Benefit Period: Employee Benefit Plan expenses must be
Incurred from _____ through _____, and
Paid from _____ through _____.
Claims Incurred prior to the Contract Effective Date are limited \$ _____.

to:
 Claims Paid after the end of the Contract Period are limited to: \$ _____.

7. GENERAL OPTIONS: (Continued)

Aggregate eligible expenses include:

- Medical Prescription Card Service
- Dental Care Weekly Disability Income
- Vision Care Other _____]

- [Aggregate Monthly Factor per single Employee: \$ _____
- Family: \$ _____
- Composite: \$ _____
- Aggregate Payable Percentage (excess of Deductible): _____ %
- Maximum Eligible Claim Expense Per Covered Person: \$ _____
- Minimum Aggregate Deductible: \$ _____
- Maximum Aggregate Benefit (excess of Deductible): \$ _____

Optional Benefits

- [i. Monthly Aggregate Accommodation Yes No]
- [ii. Aggregate Terminal Liability Yes No]
- [iii. Blended Aggregate Accommodation Yes No]
- [iv. Blended Aggregate Terminal Liability Yes No]

- [(d) Specific Benefit Yes No
- Medical only Medical & Prescription Drug only Yes No
- Benefit Period: Employee Benefit Plan expenses must be
- Incurred from _____ through _____, and
- Paid from _____ through _____.

Claims Incurred prior to the Contract Effective Date are limited to \$ _____

Claims Paid after the end of the Contract Period are limited to \$ _____

Specific Deductible (per person): \$ _____

Specific Payable Percentage (excess of Deductible): % _____

Maximum Specific Benefit per person in excess of Specific Deductible: \$ _____

Aggregating Specific Deductible \$ _____

Optional Benefits

- Advance Funding for Specific Excess Loss Yes No]
- [ii. Specific Terminal Liability Yes No]

The Specific Deductible and Maximum Specific Benefit (per person in excess of Specific Deductible) for the following individual(s) is as shown below:

Name _____	Specific Deductible _____	Maximum Benefit _____
Name _____	Specific Deductible _____	Maximum Benefit _____
Name _____	Specific Deductible _____	Maximum Benefit _____
Name _____	Specific Deductible _____	Maximum Benefit _____

8. PREMIUMS:		
[(a)	Aggregate Premium	
	Premium Per Month Per Unit	\$ _____
	Minimum Annual Aggregate Premium	\$ _____
	Monthly Aggregate Accommodation	
	Premium Per Month Per Unit	\$ _____
	Annual Premium in Advance:	\$ _____
	Aggregate Terminal Liability	
	Blended Aggregate Terminal Liability	
	Premium Per Month Per Unit:	\$ _____
[(b)	Specific Premium	
	Premium Per Month Per:	Single Employee
		Family
		Composite
	Minimum Monthly Specific Premium:	\$ _____
	Minimum Annual Specific Premium:	\$ _____
	Advance Funding for Specific Excess Loss	\$ _____
	Specific Terminal Liability	\$ _____

9. SPECIAL RISK LIMITATIONS:
 Specific: _____
 Aggregate: _____

10. IT IS UNDERSTOOD AND AGREED, AS CONDITIONS PRECEDENT TO THE APPROVAL OF THIS APPLICATION, THAT:

- (a) All documentation requested by the Company must be submitted prior to any approval of this Application and must be received by the Company within [90] days of the requested Effective Date.
- (b) Applicant has provided full disclosure of all information requested by the Company and has, to the best of its knowledge and belief, complied fully with all disclosure requirements.
- (c) If Applicant is electing coverage for disabled and/or retired persons, only those who have been disclosed to The Company will be covered.
- (d) If the Schedule shows disabled persons are not covered, no benefits will be paid under the Contract for expenses Incurred or Paid under the Employee Benefit Plan for a disabled person until:
 - (1) if an employee, he or she returns to active, full-time employment for at least one (1) full working day; or
 - (2) if a dependent or Cobra Continuee, he or she is able to perform the normal functions of a person of like sex and age.
- (e) Issuance of the Contract is in reliance upon the information provided by the Applicant or its Agent. Should subsequent information become known which, if known prior to issuance of the Contract, would have affected the rates, deductibles, terms or conditions for coverage, the Company will have the right to revise the rates, deductibles, terms or conditions as of the Effective Date, by providing written notice to the Insured.
- (f) The Contract, if issued, may be void, if, whether before or after a claim or loss, any material fact or circumstance was concealed or misrepresented on behalf of the Applicant, or if the Applicant or its Agent, committed fraud.

- (g) Receipt of a premium and its deposit in connection with the Application shall not constitute an acceptance of liability. In the event that Gerber Life Insurance Company disapproves this Application, its sole obligation shall be to refund such sum to the Applicant.
- (h) If a Contract is issued and later rescinded, the sum of all benefits paid will be deducted from the sum of all premiums paid. If the result is positive, such amount will be paid by the Company to the Applicant. If the result is negative, such amount will be paid by the Applicant to the Company.
- (i) The initial premium will be paid on or before the Effective Date, and subsequent premiums are due no later than the first day of each Contract Month during the Contract Year.

11. IT IS FURTHER UNDERSTOOD AND AGREED, AS CONDITIONS PRECEDENT TO THE APPROVAL OF THIS APPLICATION, THAT:

- (j) Applicant acknowledges that the Contract which is the subject of this Application is a reimbursement Contract. Applicant must first pay claims before submitting them for reimbursement.
- (k) Oral statements not expressly incorporated herein are not part of this Contract. Only the President or Executive Officer of the Company may make changes to the Contract Form or Addenda on behalf of the Company. All changes to this Contract must be in writing and attached to this Contract.
- (l) NEITHER THIS APPLICATION NOR THE TERMS OF THIS APPLICATION MAY BE ALTERED.

In making this Application, the Applicant represents that, to the best of its knowledge and belief, such information accurately reflects the facts and that the undersigned has authority to bind the Applicant to the proposed Contract. Accordingly, this Application will be a part of the Contract if accepted by the Company or its authorized representative.

Fraud Warning Any person who, knowingly and with intent to injure, defraud or deceive an insurer, makes any claim for the proceeds of an insurance policy containing any false, incomplete or misleading information, may be guilty of insurance fraud.

Dated at _____ this _____ Day of _____, 20 _____

Signed Licensed Agent _____
Print Licensed Agent Name

Agent Tax ID _____ Agent License Number and Issuing State _____

Dated at _____ this _____ Day of _____, 20 _____

Signed for the Applicant/Policyholder _____
Printed Name and Title

ACCEPTANCE

Dated at _____ this _____ Day of _____, 20 _____

Accepted on behalf of the Company By _____
Print Name and Title

1. DEFINITIONS

As used in this Contract, the following definitions shall be applicable:

Agent means the Contractholder's representative, including but not limited to its Designated Agent, Broker, or Third Party Administrator (TPA). Such Agent is at all times acting on behalf of the Contractholder and not on behalf of the Company.

Aggregate Benefit means the amount that the Company agrees to pay the Contractholder after the end of the Benefit Period for eligible claims Paid by the Contractholder as set forth in the Schedule and pursuant to the terms, conditions and limitations of the Contract.

Aggregate Deductible Per Month means the Aggregate Monthly Factor shown in the Schedule multiplied by the Number of Covered Units per Contract Month.

Aggregate Deductible means the sum of each Aggregate Deductible Per Month for each month during the Contract Period or fraction thereof.

Aggregating Specific Deductible is a deductible applied in addition to the Specific Deductible. At the start of the Contract Period, Eligible Claims Payments in excess of the Specific Deductible for each Covered Person who has met the Specific Deductible will be added together until the cumulative total equals the Aggregating Specific Deductible amount shown in the Schedule of Excess Loss Insurance. A Specific excess reimbursement is not paid until the Aggregating Specific Deductible has been satisfied.

Application means the Application and Schedule for excess loss insurance submitted by the Contractholder to the Company and accepted by the Company in connection with the issuance of this Contract.

Benefit Period, as shown in the Schedule, identifies the dates during which Employee Benefit Plan expenses must be Incurred and must be Paid to be considered eligible for reimbursement under this Contract.

COBRA Continuee is a Covered Unit which elects to extend its group health coverage under the Employee Benefit Plans pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA).

Contract means the entire agreement between the Contractholder and the Company, specifically including the signed Contract Application and Schedule, the Contract form, the Contract Riders, Disclosure Statement, and any Contract Addenda.

Contract Month means a period measured from the effective date of this Contract, while this Contract is in force. Each new Contract Month will begin on a day which corresponds to the effective date. If there is no such day in any applicable month, then the last day of the month will be used.

Contract Period is stated in the Schedule.

Contractholder, referred to in this Contract as You or Your, is named in the Schedule.

Covered Person refers to each person, individually, who is a Covered Unit, or, in the case of a dependent, a member of a Covered Unit. In no event will coverage for a dependent become effective before the effective date of coverage of a plan participant under the Employee Benefit Plan.

Covered Unit for purposes of calculation of the premiums and the Aggregate Deductible Per Month, means a plan participant, a plan participant with dependents, or such other defined unit as agreed upon between the Company and the Contractholder, provided such plan participant, dependents or such other defined unit is covered under the Employee Benefit Plan. The Company reserves the right to verify eligibility of each Covered Unit.

Disabled Person is a plan participant who is absent from work and/or on leave due to her or her medical condition, or in the case of a dependent or Cobra Continuees, is by disability unable to perform his or her normal functions of a person of like sex and age on the effective date of this Contract or the date such person becomes eligible for coverage under the Employee Benefit Plan.

Disclosure Statement means the disclosure statement submitted by the Contractholder to the Company and accepted by the Company in connection with the issuance of this Contract.

Eligible Claims Payments means expenses eligible for reimbursement that are the lesser of the Reasonable and Customary charges, and amounts paid, for Medically Necessary services and supplies provided to a Covered Person, that are:

1. listed and described in the express terms and conditions of the Plan Document submitted to The Company on this Contract's Effective Date or as amended during the Incurred Benefit Period only if We have agreed to the Amendment's terms in writing and the expense was Incurred on or after the effective date of the Amendment; and
2. Incurred and Paid during the Benefit Period shown in the Contract Schedule; and
3. not otherwise excluded under the terms of the Plan Document or this Contract.

We do not incorporate the decisions of the Plan or defer to benefit determinations by the Plan. We reserve the right to interpret the terms and conditions of the Plan as it applies to this Policy. Only We have the right to deny or reimburse losses under this Policy without deference to the determinations by the Plan.

Employee Benefit Plan means the master plan document which (a) You have provided to Us, (b) is in effect on the effective date of this Policy and (c) governs the Plan and names the fiduciaries or trustees who jointly and separately have authority to control and manage the operations and administration of the Plan. Employee Benefit Plan does not include:

1. any Employee Handbooks, Employee Policies or other such documents; or
2. any changes You make to your Plan after the effective date unless they have been submitted to and accepted by Us in writing; or
3. any Plan or portion of any Plan providing for any Health Reimbursement Arrangements, Health Savings Accounts or other accounts that are (a) funded by money excludable from Your or Your employees' taxable income and (b) used solely to pay deductibles, co-payments and expenses not covered by Your Plan but enumerated in IRC Section 213(d).

Experimental or Investigational means any treatment, procedure, service, supply or drug, which: (1) is not accepted as standard medical treatment for the illness, disease or injury being treated by physicians practicing the suitable medical specialty; (2) is the subject of scientific or

medical research or study to determine the item's effectiveness and safety, including Phase I, II or III clinical trials; (3) has not been granted, at the time services were rendered, any required approval by a federal or state governmental agency, including, but not limited to the Federal Department of Health and Human Services, Food and Drug Administration, or any comparable state governmental agency, and the Federal Health Care Finance Administration as approved for reimbursement under Medicare Title XVIII; or (4) is performed subject to the Covered Person's informed consent under a treatment protocol that explains the treatment or procedure as being conducted under a human subject study or experiment.

Incurred refers to the date on which a covered medical service was rendered, the date disability benefit payments become due, or a covered medical purchase was made for a Covered Person under the Employee Benefit Plan.

Late Entrant means an individual who does not elect coverage under Your Employee Benefit Plan when he first meets its eligibility requirements, subsequently makes written application, is accepted and becomes enrolled. Late Entrant does not include an individual who first makes written application as a result of a Qualifying Event or who enrolls during any subsequent open enrollment period offered by Your Employee Benefit Plan.

Maximum Aggregate Benefit means the amount set forth in the Schedule as the maximum total Aggregate Benefit payable under the terms, conditions and limitations of this Contract during the Contract Period.

Maximum Eligible Claim Expense Per Person, as it relates to aggregate coverage, means the maximum dollar value of claims Paid on any one Covered Person that can apply toward satisfaction of an Aggregate Deductible, or that can apply toward the calculation of the Aggregate Benefit for a Contract Period.

Maximum Specific Benefit means the amount set forth in the Schedule that is the maximum total Specific Benefit payable under the terms, conditions and limitations of this Contract during the period an individual is a Covered Person under the Employee Benefit Plan, regardless of the number of years the Covered Person is eligible under the Employee Benefit Plan and regardless of whether expenses for this Covered Person were Incurred and Paid during this Contract Period. The Maximum Specific Benefits always excludes the Specific Deductible. In the context of the definition of Maximum Specific Benefit, references to Employee Benefit Plan include all predecessors and successors of the particular plan in effect on the Contract's effective date.

Medically Necessary; Medical Necessity means care, services or supplies, provided by or at the direction of a Physician that

- (a) are needed to restore function and prevent deterioration of the Covered Person's health,
- (b) are commonly recognized by the medical profession appropriate care for control or cure of the illness or injury being treated, by physicians practicing in the same or related specialty, and
- (c) are within accepted standards of medical practice for the Covered Person's injury or sickness, and are not otherwise excluded under the terms of this Policy.

Medically Necessary or Medical Necessity does not include any services or supplies that are:

- a. provided only as a convenience to the Covered Person or to his Physician;
- b. exceed the scope, duration or intensity or the level of care needed to provide safe,

adequate and appropriate diagnosis and treatment; or
c. do not otherwise meet the definition of Covered Expenses contained in this Policy.

Minimum Aggregate Deductible means the lowest possible Aggregate Deductible applicable to the Contract Period or fraction thereof. This amount is set forth in the Schedule.

Number of Covered Units means the total number of Covered Units existing in any Contract Month. It represents both individual employees and employees plus their families.

Paid means that funds are actually disbursed by the Contractholder or his Agent. Payment of a claim is the unconditional and direct payment of a claim to a Covered Person or his health care provider. Payment will be deemed Paid on the date that both (1) the payor directly tenders payment by mailing (or otherwise delivering) a draft or check to a Covered Person or his health care provider, and (2) the account upon which the payment is drawn contains, and continues to contain, sufficient funds to permit the check or draft to be honored. If the account upon which the payment is drawn is funded by a separate account or line of credit or "sweep" account, then the funding account must contain sufficient funds to permit the check or draft to be honored by the institution upon which it is drawn. Authorization for release of funds by the Contractholder or its Agent does not meet the definition of Paid under this Contract.

Payable Percentage means the percentage payable as shown in the Schedule. The calculation of Specific Benefits may be subject to a different Payable Percentage than the calculation of Aggregate Benefits.

Proof of Loss is the form accepted by the Company to be used for the submission of claims as well as the supporting documentation reasonably necessary for the Company's independent evaluation of the legitimacy and extent of the claim. Claims for expenses not specifically identified in previously submitted Proofs of Loss must be accompanied by separate Proofs of Loss.

Reasonable and Customary Charge means the common charge for the same or comparable service or supply in the geographic area in which the service or supply is furnished. A geographic area shall mean an area in which the applicable health care provider is located, expanded such that a reasonable cross section for comparison is achieved. Reasonable and Customary Charges are determined based upon:

1. the amount of resources expended to deliver the treatment; and
2. the complexity of the treatment rendered; and
3. charging protocols and billing practices generally accepted by the medical community including but not limited to providers of similar service, health benefit providers, claims processors, and the Centers for Medicare & Medicaid Services ("CMS"); and
4. the amounts the health care providers in the applicable geographic area are paid for the same or comparable service or supply, after discounts under governmental and private plans.

If the Plan has a contracted fee arrangement with certain health care providers, Reasonable and Customary shall mean the lesser of the applicable fee as defined in that fee arrangement contract and the amount determined by applying the definition of "Reasonable and Customary" above.

Schedule means the Application and Schedule for Excess Loss Insurance.

Specific Benefit means the amount the Company will pay to the Contractholder for Eligible Claims Paid by the Contractholder over and above the Contractholder's Specific Deductible Per Person and any unsatisfied portion of any applicable Aggregating Specific Deductible, and pursuant to the terms, conditions and limitations of the Contract.

Specific Deductible means the per-Covered Person deductible as shown in the Schedule.

SAMPLE

II. BENEFITS

The Company will pay, subject to the terms, conditions and limitations of the Contract, the following benefits, if shown in the Schedule, to the Contractholder within a reasonable time upon receipt of a fully executed Proof of Loss:

1. Aggregate

The Aggregate Benefit for the Contract Period, or fraction thereof, is the total of the Eligible Claim Payments, on an Incurred and Paid basis as shown in the Aggregate Benefit Period of the Schedule:

- a. less the Aggregate Deductible or Minimum Aggregate Deductible, whichever is greater; and
- b. less the amount of the claims Paid by the Contractholder in excess of the Maximum Eligible Claim Expense Per Person as shown in the Schedule; and
- c. less the Specific Excess Loss benefits which have been or will be reimbursed by Us under the Specific Excess Loss Coverage; and
- d. less any amounts recovered from other sources;
- e. multiplied by the Aggregate Payable Percentage.

Aggregate Benefits are not payable until after the end of the Paid Benefit Period shown in the Aggregate Benefit Period of the Schedule.

If this Contract should terminate prior to the end of the Contract Period, the Aggregate Deductible will be deemed not satisfied and the Company will not be liable for any Aggregate Benefit.

In no event will the Aggregate Benefit exceed the Maximum Aggregate Benefit shown in the Schedule.

2. Specific

The Specific Benefit with regard to each Covered Person, is the total of the Eligible Claim Payments, on a Incurred and Paid basis as shown in the Specific Benefit Period of the Schedule:

- a. less the Specific Deductible; and
- b. less any unsatisfied portion of any applicable Aggregating Specific Deductible; and
- c. less amounts recovered from other sources;
- d. amounts for which a claimant is eligible from Medicare or could have received if the claimant had applied to Medicare;
- e. multiplied by the Specific Payable Percentage.

The Contractholder shall not be entitled to any Specific Benefit unless and until the Contractholder has actually Paid the full amount of the Specific Deductible as set forth in the Schedule for the Covered Person(s) for which the Specific Benefit is sought. The Contractholder shall only be entitled to a Specific Benefit up to the amount actually Paid by Contractholder over and above the Specific Deductible.

In the event Eligible Claims Payments are Paid for a Covered Person due to a reversal by an

Independent Review Organization (IRO) of a previous denial of such Eligible Claims Payments, and such Eligible Claims Payments are then Paid after the last Paid date provided in the Contract Period, the Contract Period to pay such Eligible Claims Payments will be extended for a period not to exceed {three-18} months from the last Paid date, provided:

- a. the Employee Benefit Plan is a non-grandfathered plan and the Company was advised of the non-grandfathered status during the underwriting of the Contract;
- b. The Company is advised that the claim for benefits under the Employee Benefit Plan has been submitted to the IRO within ten days of the claim being submitted to the IRO;
- c. the Employee Benefit Plan pays the claim within ten days of the Employee Benefit Plan's receipt of the decision;
- d. the Company is advised of the IRO decision prior to payment of the claim;
- e. all information necessary to determine the eligibility of the claim under the Contract is submitted to the Company within thirty days of payment of the claim; and
- f. such Eligible Claims Payments are not eligible under any other coverage.

When Eligible Claims Payments are Paid pursuant to the above terms and conditions, such Eligible Claims Payments will be allocated to the Contract Period in which they were Incurred and will be excluded from any other Contract Period.

If this Contract should terminate prior to the end of the Contract Period, the Company shall not be liable for Specific Benefits for expenses Incurred or Paid by the Contractholder after the termination date. In addition, the deductible per Covered Person will apply as if the Policy were in force for the entire Policy Year.

In no event will the Specific Benefit with regard to any Covered Person exceed the Maximum Specific Benefit shown in the Schedule.

III. LIMITATIONS

- 1 This Contract will not pay the Contractholder for any loss or expense caused by or resulting from any of the following:
 - a Expenses incurred while the Employee Benefit Plan is not in force with respect to the Covered Person.
 - b Expenses resulting from weekly (disability) income, dental, vision or any prescription card service, unless shown in the Schedule.
 - c Liability assumed by the Contractholder under any contract or service agreement other than the Employee Benefit Plan. This exclusion applies to any liability assumed by the Contractholder pursuant to any employee handbook or other personnel policy not specifically included in the Employee Benefit Plan.
 - d Expenses as the result of extra-contractual damages; compensatory damages; or punitive damages.
 - e Expenses resulting from treatments, procedures, services, supplies or drugs, which are billed in excess of the Reasonable and Customary charge.

- f Any employment for wage or profit, when the Covered Person is entitled to coverage mandated by Workers' Compensation or similar law, whether or not such coverage is in force or a claim has been made.
- g Expenses Incurred by an employee whose employment and coverage under the Plan terminated, but who would have been eligible, as required under any applicable state or federal law, to continue coverage under Your Plan had You offered such continuation in a timely manner.
- h Experimental or Investigational treatment, procedure, service, supply or drug, as defined in this Contract [,except that this limitation shall not apply to routine items and services that (a) would have been Eligible Claim Expenses had they not been Incurred during an approved clinical trial and (b) are provided during an approved clinical trial as required and defined under PHSA section 2709].
- i Expenses for the cost of any treatment, procedure, service, supplies or drugs which are not Medically Necessary.
- j Cost of the administration of claim payments or expense of litigation with individual claimants.
- k Expenses paid on behalf of any Covered Person with coverage under any other plan, [including Medicare,] which, when combined with the benefits payable by such other plan, would cause the total to exceed 100% of the Covered Person's actual expenses.
- l Payments arising out of or caused by or contributed to or in consequence of war, hostilities (whether war be declared or not), invasion or civil war.
- m Any services furnished by an institution which is primarily a rest home, a place for the aged, a nursing home, a convalescent home, a place for custodial care, or any other place of like character.
- n Expenses incurred as a result of any lost savings or discounts offered by a facility or provider due to untimely payment of the bill by the Contractholder or its TPA. In no event shall the Company be liable for Eligible Claims Payments that exceed the discounted amount that the provider would have charged had a timely payment been made. Lost savings or discounts do not include any amounts found upon audit or claims review to (a) exceed maximums specified in the Employee Benefit Plan or (b) represent expenses not covered by the Employee Benefit Plan.
- o Notwithstanding the clerical error provision, this Contract shall exclude any amounts Paid for Covered Persons: 1) whose coverage under the Consolidated Omnibus Budget Reconciliation Act (hereafter referred to as COBRA) is continued beyond the timeframes specified by federal law for any reason including clerical error of the Contractholder; 2) who do not receive a valid COBRA extension offer within the 44 days immediately following the date of notice of a COBRA qualifying event; 3) who fail to make a valid, signed COBRA election within the 60 days immediately following the receipt of COBRA election rights from the Contractholder; or 4) who fail to remit COBRA premium within the minimum periods specified by federal law. The Company will require written documentation that these requirements have been satisfied.

- p Expenses of persons who were not reported on the Disclosure Statement who should have been disclosed in compliance with the terms of the Disclosure Statement. This exclusion shall also apply to expenses of persons listed on the Disclosure Statement where information on the Disclosure Statement regarding such person was inaccurate or incomplete.
 - q Payments the Contractholder or its TPA makes under the Employee Benefit Plan for services and supplies that are not included in the Employee Benefit Plan or that are outside of the requirements of the Employee Benefit Plan or this Contract even when the discretionary authority to make such payments is specifically granted in writing to the Contractholder or its TPA by that same Employee Benefit Plan. The Company will not be bound by the exercise of any discretionary authority by the Contractholder or its TPA in interpretation or application of eligibility provisions, eligible benefits, definitions, limitations and exclusions contained in the Employee Benefit Plan. Any claim submitted for reimbursement by the Contractholder or the TPA will be subject to the terms, conditions, limitations and exclusions of this Contract.
 - r Expenses You have paid under Your Employee Benefit Plan for a Late Entrant whose Disclosure information has not been accepted by Us.
 - s following are not Covered Expenses and are therefore (a) not eligible for reimbursement under this policy and (b) may not be applied to satisfy any individual or Aggregating Specific Deductibles or Aggregate Deductible applicable to this policy:
 - 1. any deductibles, coinsurance or co-payment amounts specified in the Plan Document;
 - 2. reimbursements for any deductibles, coinsurance or co-payment amounts, or any other expenses excluded by the Plan Document or this policy, which have been made from Health Reimbursement Arrangements, Health Savings Accounts or any other accounts that are (a) funded by money excludable from Your or Your employees' taxable income and (b) and enumerated in IRC Section 213(d).
 - 3. any amounts, or any portions of Covered Persons' claims, attributable to any taxes except state premium taxes or assessments levied by any governmental entity, on (a), contributions You make to Your plan, (b) claims Paid by your Plan or (c) premiums You pay to Us for this insurance;
 - 4. any amounts reimbursable under any co-ordination of benefits provisions of the Plan, Medicare or from any other source;
 - 5. prescription drugs, including any mail order prescription plan or any pre-paid prescription drug plan, dental, vision or disability plans unless specifically shown in the Application and Schedule;
 - 6. any treatment or service in violation of any law or regulation;
 - 7. any expenses Incurred by a Covered Person that were required to be, but were not, disclosed on the Disclosure Statement.
2. If the Application and Schedule shows Disabled Persons are not covered, no benefits will be paid under this Contract for expenses incurred or paid under Your Employee Benefit Plan until:
- a. such person, if an employee, returns to active fulltime employment for at least

- b. one full working day; or
 - b. such person, if a dependent or Cobra Continuee, is able to perform the normal functions of a person of like sex and age.
- 3 Retired plan participants and their dependents, who are eligible under the Employee Benefit Plan, will be eligible for coverage under the Contract only if so indicated in the Schedule.

IV. REIMBURSEMENT PROVISIONS

1. **Payment of claims by the Policyholder:** Policyholder agrees to pay all eligible claims under the Plan within 60 days from the date adequate proof is provided to the Policyholder. If the Policyholder fails to pay claims within the 60-day time limit, that claim will not count towards the satisfaction of either the Annual Aggregate Deductible or the Specific Deductible or Aggregating Specific Deductible be reimbursed under this Contract.
2. **Payment of Reimbursements by the Company:** All benefits as they become payable under this Contract will be paid to the Contractholder. The Company shall pay reimbursements upon receipt of fully executed Proofs of Loss and the documentation reasonably necessary to evaluate the eligibility and extent of the claim.

The Company shall not pay for amounts Paid for Losses where evidence of payment in accordance with all of the requirements set forth in this Contract is submitted to the Company more than 90 days after the end of the Specific and/or Aggregate Benefit Period.

2. **Warranty:** Upon presentation of Proof of Loss to the Company for reimbursements, the Contractholder warrants that all monies necessary to pay for services and supplies have been paid to the respective providers of medical services or supplies to which the claim for reimbursement relates and that all such monies were Paid prior to the end of the Benefit Period.
3. **Notice of Claim:** The Contractholder shall give written notice of claims to the Company within 30 days of the date the Contractholder becomes aware of the existence of facts which would reasonably suggest the possibility that benefits will be incurred which are covered by this Contract and which are equal to or exceed 50% of the Specific Deductible.

In addition, the Contractholder shall notify the Company in writing immediately of the expenses of any Covered Person which meet any of the following criteria:

- a. continuous hospitalization for more than two weeks or
- b. a claim for any one of the following conditions: mental disorder requiring hospitalization; brain injury; spinal injury resulting in real or suspected paralysis of the limbs; serious burns involving ten percent 10% or more of the body with third degree burns or thirty percent 30% or more of the body with second degree burns; multiple or serious fracture; crushing or massive internal injuries; premature birth; Acquired Immune Deficiency Syndrome (AIDS).

- c. Any potentially catastrophic claim, including but not limited to: cancers, high risk pregnancies, congenital disorders, congenital heart defects, respiratory failures, renal dysfunction or failure, including dialysis treatment, organ, tissue, bone marrow or stem cell transplant evaluation or surgery, and chronic liver disease.
- d. Any other serious condition that You, Your large case management vendor or Third Party Administrator thinks may have a chance to require large case management or be potentially catastrophic.

You shall submit on a monthly basis proofs, reports, and supporting documents including, but not limited to, a monthly summary of all Eligible Claims Payments You have processed. Failure to furnish written notice within the time required by this Policy will not invalidate or reduce any claim for reimbursement if it was not reasonably possible to provide written notice within such time. However, written notice must be furnished as soon as possible, but in no event later than one year after the date written notice is first required.

V. CONTRACT TERMINATION

The Contract and all benefits hereunder will terminate upon the earliest of the following dates:

1. The termination date specified in writing by the Contractholder provided that the Company is notified not less than 31 days in advance of the termination date.
2. The end of any period for which premiums were paid and subsequent premiums are not paid, as provided in the Grace Period provision.
3. The end of the Contract Period.
4. The date of termination of the Employee Benefit Plan.
5. The date of cancellation of the administrative agreement between the Contractholder and the Designated Third Party Administrator, unless the Company has, prior to such cancellation, consented in writing to the Contractholder's designation of a successor third party administrator.
6. The date the Contractholder suspends active business or is placed in bankruptcy or receivership.

Termination will not affect a claim for Eligible Claim Payments Incurred while coverage was in effect.

VI. MISCELLANEOUS PROVISIONS

1. **Liability:** The Company will have neither the right nor the obligation under this Contract to directly pay any Covered Person or provider of professional or medical services for any benefit which the Contractholder has agreed to provide under the terms of the Employee Benefit Plan. The Company's sole liability hereunder is to the Contractholder, subject to the terms, conditions and limitations of this Contract. Nothing in this Contract shall be construed to permit a Covered Person to have a direct

right of action against the Company.

2. **Payment of Premiums:** Each Premium for this Contract is payable on or before the first day of each Contract Month to the Company or to its authorized representative. Payment of a premium will not maintain this Contract in force beyond the period for which such premium is paid, except as otherwise stated in the Grace Period.

If the effective date of this Contract is other than the first day of a calendar month, premiums payable under this Contract are due and payable on the first of each subsequent calendar month.

3. **Grace Period:** A Grace Period of {30, 45, 60} days will be allowed for the payment of each premium after the first month's premium. Should a premium otherwise due not be paid during the Grace Period, this Contract will terminate without further notice retroactive to the date for which premiums were last paid. The liability of the Company will be limited to claims Paid by the Contractholder prior to the date of termination. There will be no refund of any premium shown in the Schedule.
4. **Entire Contract:** This Contract Form as issued to the Contractholder, together with the Contractholder's signed Application and Schedule, Disclosure Statement, [final signed and accepted proposal,] any Contract Addenda constitute the entire contract.
5. **Incontestability** All statements You have made to obtain this Policy are, in the absence of fraud, considered representations and not warranties. No statement will be used to deny or reduce benefits or be used as a defense to a claim, or to deny the validity of this Policy unless contained in the *Application and Schedule*, and copies are deemed part of this Policy and provided to You at issue.
6. **Concealment, Fraud:** This entire Contract will be void if, whether before or after a claim or loss, the Contractholder or its Agent has concealed or misrepresented any material fact or circumstance concerning this Contract or the subject thereof, including any claim thereunder or in any case of fraud by the Contractholder or its Agent relating thereto.
7. **Clerical Error:** If the Contractholder or the Company makes a clerical error keeping records or calculating premiums or claims pertaining to this Contract, it will not invalidate this Contract. A clerical error will not expand the Company's obligations under this Contract. A clerical error is a mistake in performing a clerical function and does not include intentional acts or failure to comply with the provisions of the Employee Benefit Plan or this Contract. Clerical errors do not include:
 - a) failure to disclose the required information in the Disclosure Statement; or
 - b) failure to process a claim within the Benefit Period of this Contract.
8. **Audits:** The Company will have the right: (1) to inspect and audit all records and procedures of the Contractholder and Designated Third Party Administrator; and (2) to require, upon request, proof of records satisfactory to the Company that payment has been made to the Covered Person or the provider of such services or benefits which are the basis for any claim by the Contractholder hereunder and that such services or benefits are eligible under the Employee Benefit Plan and this Contract.

9. **Notice of Appeal:** Any objection, notice of legal action, or complaint received on a claim processed by the Contractholder or the Third Party Administrator, and on which it reasonably appears a benefit will be payable to the Contractholder under this Contract shall be brought to the immediate attention of the claims department of the Company.
10. **Changes:** Only the President and Executive Officer of the Company have the authority to alter this Contract, or to waive any of the Company's rights and then only in writing. No such alteration of this Contract shall be valid unless endorsed on or attached to this Contract. No Agent, Broker, or Third Party Administrator has the authority to alter this Contract or to waive any of its provisions.
11. **Notice:** For the purpose of any notice required from the Company under the provisions of this Contract, notice to the Contractholder's Designated Third Party Administrator shall be considered notice to the Contractholder.
12. **Amendments to the Employee Benefit Plan:** The Company will not be bound, or accept any changes made to The Employee Benefit Plan while this Contract is in force without the prior written consent of the Company. Notice of any amendment to the Employee Benefit Plan must be given to the Company or its authorized representative at least 30 days prior to the Effective Date of the amendment. The Company will have the sole option to accept the amendment to the Employee Benefit Plan, and if accepted, the Company reserves the right to revise the rates, deductibles, terms or conditions of the Contract as of the Effective Date of the amendment.
13. **Responsibilities of the Contractholder's Designated Third Party Administrator:** Without waiving any of its rights under this Contract, and without making the Designated Third Party Administrator a party to this Contract, the Company agrees to recognize the Designated Third Party Administrator as respects the normal administration of the Contractholder's Plan subject to:
 - a. The Third Party Administrator being responsible on behalf of the Contractholder for auditing, calculating and processing all claims eligible under the Employee Benefit Plan within a reasonable period of time, preparing periodic reports as required by the Company and maintaining and making available to the Company at all times such information as the Company may reasonably require for proof of payment of the claims(s) by the Contractholder;
 - b. The Third Party Administrator performing such other duties as may be reasonably required by the Company, including but not limited to, maintaining an accurate record of eligible Covered Persons of the Contractholder;
 - c. The Company will not be responsible for any compensation due the Designated Third Party Administrator for functions performed in relation to this Contract; and
 - d. This Contract will not be deemed to make the Company a party to any agreement between the Contractholder and the Designated Third Party Administrator.

The parties agree that the Third Party administrator is the agent of the Contractholder and not the Agent of the Company or its Managing General Underwriter, for all purposes.

14. **Covered Units:** The Contractholder or its Third Party Administrator shall be responsible for providing the Company with monthly updates as to the number of Covered Units throughout the Contract Period. The number of Covered Units reported to the Company by the Contractholder or its Third Party Administrator is subject to audit by the Company as appropriate. An individual or family shall be considered a Covered Unit in a Contract Month if he/she/they were considered covered by the Employee Benefit Plan at any time during the Contract Month.

15. **Hold Harmless:**

- a. The Contractholder agrees to indemnify and hold the Company harmless for: (1) liability related to any negligence, error, omission or intentional misconduct of the Contractholder or its Third Party Administrator; or (2) any legal expenses incurred, reasonable settlements made, or judgment(s) awarded, arising out of any dispute involving a participant or former participant of the Contractholder's Employee Benefit Plan provided such legal expenses, settlements, or judgments were not incurred as a result of the sole negligence or intentional wrongful acts of the Company.

The Company, following any notification of its being, or likely to be, named as a defendant on any action concerning the aforementioned dispute will, within a reasonable time, in writing, notify the Contractholder of the dispute. The Company will cooperate with the Contractholder in matters pertaining to the dispute, however, such cooperation with the Contractholder will not waive the right of the Company to solely defend or settle any action in a manner it deems prudent.

- b. The Contractholder shall be responsible for any state premium taxes and assessments incurred with respect to funds paid to or by the Contractholder under the Employee Benefit Plan. Taxes incurred with respect to premiums paid for this Contract will be the responsibility of the Company.

16. **Offset:** The Company has the right, but not the obligation, to offset claim reimbursements to the Contractholder against premiums due and unpaid by the Contractholder and/or any refunds due the Company due to overpayments made to the Contractholder on claim(s).

17. **Assignments:** The Contractholder shall not assign any of its rights under this Contract without the prior written consent of the Company, and any assignment without prior written consent shall be void.

18. **Subrogation, Recovery, and Third Party Liability:** The Contractholder shall pursue any and all valid claims, and enforce any and all rights that the Contractholder may have against Covered Persons, Plan Participants, and/or third parties (including the Covered Person's own insurance) arising out of any occurrence where any other entity is or may become responsible for payment of expenses paid by the Contractholder, and to account for any amounts so recovered. Should the Contractholder fail to protect or enforce such rights and the Company thereupon becomes liable to make payments to the Contractholder under the terms and conditions of this Contract, then the

Company may assume all the Contractholder's rights to pursue such remedies, and the Contractholder will be responsible for any reasonable expenses incurred in the course of the Company's recovery of funds through subrogation and/or recovery from any and all entities.

The Company shall be entitled to recover first up to its full share of reimbursed claims before the Contractholder shares in any amount so recovered whether by way of subrogation or otherwise.

19. **Arbitration:** Any controversy or claim arising out of or relating to this Contract, or the breach thereof, shall, upon agreement of both parties, be settled by Arbitration in accordance with the rules of the American Arbitration Association with the express stipulation that the arbitrator(s) shall strictly abide by the terms of this Contract and shall strictly apply rules of Oregon law applicable thereto. All matters shall be decided by a panel of three arbitrators. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction. This provision shall survive the termination or expiration of this Contract. The parties hereto may alter any of the terms of this provision only by express written agreement, although such alteration may be before or after any rights or obligations arise under this provision.
20. **Legal Action** No action at law or in equity may be brought to recover under this Contract less than 60 days after written proof of loss has been furnished as required by this Contract. No such action will be brought more than three years after the time such written proof of loss must be furnished. If any claim for reimbursement is not settled within six months and action is brought to court, the court will set attorneys' fees to be paid as part of costs of legal action and any subsequent appeal if Your recovery exceeds the amount of payment We have made.
21. **Insolvency:** The insolvency, bankruptcy, financial impairment, receivership, voluntary plan of arrangement with creditors, or dissolution of the Contractholder or the Contractholder's Designated Third Party Administrator shall not impose upon the Company any liability other than the liability defined in this Contract. In particular, the insolvency of the Contractholder shall not make the Company liable to the creditors of the Contractholder, including Covered Persons.
22. **Severability Clause:** Any clause deemed void, voidable, invalid, or otherwise unenforceable, whether or not such a provision is contrary to public policy, shall not render any of the remaining provisions of the Contract invalid.
23. **Successor Contract:** This Contract may not be renewed, but the Company may offer a successor contract. A successor contract will be subject to new premium rates, new underwriting terms, and new Contract terms.
24. **Group Specifications – Changes:** The Company reserves the right to revise rates, deductibles, terms or conditions of the Contract on any of the following dates:
 - a) When the Contractholder adds or deletes a subsidiary or affiliate;
 - b) When there is a change in the geographical area in which the Contractholder is located;

- c) When there is a change in the nature of business in which the Contractholder is engaged;
 - d) When there is an increase or decrease in the number of Covered Units which exceeds 10% in any one month or 20% over any period of three consecutive months.
 - e) A change in any state or federal law or regulation is enacted, adopted, or amended to the extent that it affects The Company's benefit obligations under this Policy.
 - f) The Company reserves the right to recalculate the premium rate and the Aggregate Deductible Factors retroactively for the Contract Period if there is more than a 10% variance between;
 - i. the average monthly Paid claims under the Employee Benefit Plan for the last two months of the 12-month period immediately prior to the Effective Date of this Contract; and
 - ii. the average monthly Paid claims under the Employee Benefit Plan for the first ten months of the 12-month period immediately prior to the Effective Date of this Contract.
 - g) We assume no reasonability for determining that your Employee Benefit Plan meets requirements of applicable law. You agree to hold us harmless should any regulatory authority determine that You are responsible for any expenses not specified in your Employee Benefit Plan. Such expenses will not be Eligible Claim Expenses if they are Incurred before the date You amend Your Employee Benefit Plan and the Company has agreed in writing to accept that amendment.
25. **Reinstatement:** The Company may agree at its sole option and without prejudice to the Company's right under this policy to reinstate coverage as of the effective date of cancellation, on receipt and approval of written request for reinstatement and any and all other material and/or information as the Company may request, including but not limited to all outstanding premiums plus interest due from the effective date of reinstatement at a rate of not less than 1.5% per month compounded monthly. No insurance shall be reinstated until the Company notifies the Contractholder in writing and any premiums have been paid.
26. **Misstated Data:** The Company had relied upon the underwriting information provided by the Contractholder or its Agent in the issuance of this Policy. If the Company subsequently learns of information which was not disclosed prior to the Effective Date of the Policy, and such information would have affected the premium rates, Monthly Aggregate Deductible Factors, Specific or Aggregate Deductibles, terms or any other conditions for coverage, the Company will have the right to:
- 1. rescind the Policy as of the Effective Date. In the event of Policy rescission, the Company's sole liability will be to return any monies Paid by the Contractholder as consideration for this Policy and less any claims or other expenses paid by the Company under this Policy. If such amount paid by the Company are greater than the amount of the refund due the Contractholder, the Contractholder shall pay the amount of the deficit to the

Company within 30 days notify form the Company. If repayment in full is not made within the 30 day period, the Company will be entitled to assess monthly a late payment fee equal to 1.5% of the outstanding balance; or

2. adjust the premium rates, monthly Aggregate Deductible Factor, Specific or Annual Aggregate Deductibles respectively, terms or any other conditions for coverage as of the Effective Date by providing written notice to the Contractholder, or
 3. deny a claim incurred by a Covered Person for whom such information was not disclosed.
27. **Disclaimer:** The Company acts only as a provider of Excess Loss Insurance coverage to the Contractholder's Employee Benefit Plan. The Company is not a fiduciary. The Company does not assume any duty to perform any of the functions or provide any of the reports required by the Employee Retirement Income Security Act of 1974, as amended.

While the determination of benefits under the Employee Benefit Plan is the sole responsibility of the Contractholder, the Company reserves the right to interpret the terms and conditions of the Employee Benefit Plan as it applies to this Contract. The Company has the sole authority to approve or deny reimbursement under this Contract.

The Company has no right or obligation to pay any Covered Person or provider of professional or medical services. The Company's sole liability is to the Contractholder, subject to the terms and conditions of this Contract. Nothing in this Contract shall be construed to permit a Covered Person to have a direct right of action against the Company. The Company will not be considered a party to the Contractholder's Employee Benefit Plan or to any supplement or amendment to it.

The Company assumes no responsibility for determining that Your Employee Benefit Plan meets requirements of applicable law. You agree to hold the Company harmless should any regulatory authority determine that You are responsible for any expenses not specified in Your Employee Benefit Plan. Such expenses will not be Eligible Claim Expenses if they are Incurred before the date You amend Your Employee Benefit Plan and the Company agrees in writing to accept that amendment.

28. **Waiver:** Failure by the Company to enforce any of its rights under this Contract shall not serve to waive the Company's right to enforce such rights, regardless of the frequency of such failures to enforce.