

Aspen American Insurance Company  
590 MADISON AVENUE, 7TH FLOOR  
NEW YORK, NY 10022  
(A stock insurance company, herein called the Company)

IMPORTANT NOTICE

THIS IS KNOWN AS A CLAIMS-MADE POLICY. SUBJECT TO ITS TERMS, CONDITIONS AND EXCLUSIONS, THIS COVERAGE IS LIMITED GENERALLY TO CLAIMS ARISING OUT OF A MEDICAL INCIDENT SUBSEQUENT TO THE RETROACTIVE DATE STATED IN THE DECLARATIONS AND FIRST MADE AGAINST THE COMPANY WHILE THE POLICY IS IN FORCE. PLEASE READ THE POLICY CAREFULLY.

In consideration of the payment of the premium and in reliance upon the representations in the **Insured's** completed and signed application attached hereto and made a part hereof and any materials submitted therewith for this Insurance, and subject to the Policy wording including the Insuring Agreements, Conditions, Definitions and Exclusions made a part hereof, the **Company** agrees with the **Insured** as follows:

**I. SUPPLEMENTARY PAYMENTS**

The **Company** will pay, in addition to the applicable limit of liability:

- A.** All expenses incurred by the **Company**, all costs taxed against the **Insured** in any suit defended by the **Company**, and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before the **Company** has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the **Company's** liability thereon; and
- B.** Premiums on appeal bonds required in any such suit, premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limit of liability of this policy, and the cost of bail bonds required of the **Insured** because of accident or traffic law violation arising out of the use of any vehicle to which this policy applies, not to exceed \$250 per bail bond, but the **Company** shall have no obligation to apply for or furnish any such bonds.

**II. DEFENSE, SETTLEMENT, INVESTIGATION**

The **Company** shall have the right and duty to defend any suit against the **Insured** seeking **Damages** because of such **Injury** even if any of the allegations of the suit are groundless, false or fraudulent. The **Company** may make such investigation and settlement of any **Claim** or suit as it deems expedient. The **Company** shall not be

obligated to pay any **Claim** or judgment or to defend any suit after the applicable limit of the **Company's** liability has been exhausted by payment of judgment or settlements.

### III. WHEN CLAIM IS TO BE CONSIDERED AS FIRST MADE

A **Claim** for **Injury** shall be considered as being first made at the earlier of the following times:

- A. when the **Insured** first gives written notice to the **Company** that a **Claim** has been made; or
- B. when the **Insured** first gives written notice to the **Company** of specific circumstances involving a particular person which may result in a **Claim**.

Reports of incidents made by the **Insured** to the **Company** as part of engineering or loss control services shall not be considered notice of **Claim**.

All **Claims** arising out of the same **Medical Incident** shall be considered as having been made at the time the first **Claim** is made.

### IV. PERSONS INSURED

Each of the following is an **Insured** under this insurance to the extent set forth below:

- A. the **Named Insured**;
- B. if the **Named Insured** is designated in the Declarations as a partnership, any partner thereof, but only with respect to that partner's liability as such; and
- C. if the **Named Insured** is designated in the Declarations as other than an individual or partnership, any executive officer, hospital administrator, stockholder or member of the board of directors, trustees or governors of the **Named Insured** while acting within the scope of that person's duties as such.

### V. LIMITS OF LIABILITY

Regardless of the number of **Insureds** under this insurance or of the number of **Claims** made or suits brought, the **Company's** liability is limited as follows:

- A. The total liability of the **Company** for all **Damages** because of all **Injury** to which this insurance applies shall not exceed the limits of liability stated in the Declarations as "aggregate".
- B. Subject to the above provisions with respect to "aggregate", the total liability of the **Company** for all **Damages** because of all **Injury** arising out of any one **Medical Incident** shall not exceed the limit of liability stated in the Declarations as applicable to "each **Medical Incident**".

## VI. OTHER INSURANCE

The insurance afforded by this policy is primary insurance, except when stated to apply in excess of or contingent upon the absence of other insurance. When this insurance is primary and the **Insured** has other insurance, which is stated to be applicable to the loss on an excess or contingent basis, the amount of the **Company's** liability under this policy shall not be reduced by the existence of such other insurance.

When both this insurance and the other insurance apply to the loss on the same basis, whether primary, excess or contingent, the **Company** shall not be liable under this policy for a greater proportion of the loss than that stated in the applicable contribution provision below:

**Contribution by Equal Shares:** If all of such other valid and collectible insurance provides for contribution by equal shares, the **Company** shall not be liable for a greater proportion of such loss than would be payable if each insurer contributes an equal share until the share of each insurer equals the lowest applicable limit of liability under any one policy or the full amount of the loss is paid, and with respect to any amount of loss not so paid the remaining insurers then continue to contribute equal shares of the remaining amount of the loss until each such insurer has paid its limit in full or the full amount of the loss is paid.

**Contribution by Limits:** If any of such other insurance does not provide for contribution by equal shares, the **Company** shall not be liable for a greater proportion of such loss than the applicable limit of liability under this policy for such loss bears to the total applicable limit of liability of all valid and collectible insurance against such loss.

## VII. LEGAL ACTION AGAINST THE COMPANY

No action shall lie against the **Company** unless, as a condition precedent thereto, there shall have been full compliance with all of terms of this policy, nor until the amount of the **Insured's** obligation to pay shall have been finally determined either by judgment against the **Insured** after actual trial or by written agreement to the **Insured**, the claimant and the **Company**.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the **Company** as a party to any action against the **Insured** to determine the **Insured's** liability, nor shall the **Company** be impleaded by the **Insured** or his legal representative. Bankruptcy or insolvency of the **Insured** or of the **Insured's** estate shall not relieve the **Company** of any of its obligations hereunder.

## **VIII. INSPECTION AND AUDIT**

The **Company** shall be permitted, but not obligated to, inspect the **Named Insured's** property and operations at any time. Neither the **Company's** right to make inspections nor the making thereof or any report thereon shall constitute an undertaking on behalf of or for the benefit of the **Named Insured** or others, to determine or warrant that such property or operations are safe or healthful, or are in compliance with any law, rule or regulation.

The **Company** may examine and audit the **Named Insured's** books and records at any time during the **Policy Period** and extension thereof and within three years after the final termination of this policy, as far as they relate to the subject matter of this insurance.

## **XI. FALSE OR FRAUDULENT CLAIMS**

If the **Insured** shall give notice of any **Claim** or potential **Claim** knowing the same to be false or fraudulent, this Insurance shall become void and all rights hereunder shall be forfeited by the **Insured**.

## **X. CHANGES**

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or stop the **Company** from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy.

## **XI. CONDITIONS**

### **A. INSURED'S DUTIES IN THE EVENT OF OCCURRENCE, CLAIM OR SUIT**

As a condition precedent to the protection afforded by this Insurance, the **Insured** shall as soon as practicable, but in no event later than sixty (60) days after expiration of the **Policy Period**, give written notice to the **Company** of every **Claim** first made against the **Insured** during the **Policy Period**. The **Insured** must immediately forward to the **Company** every demand, notice, summons or other legal papers received in connection with the **Claim**. In the event a **Claim** is reported to the **Company** within sixty (60) days after the expiration of this policy, the **Claim** shall be deemed to have been reported on the last day of the **Policy Period**.

If an **Insured** first discovers a **Medical Incident** that may subsequently give rise to a **Claim** otherwise covered by the policy and gives the **Company** written notice of such **Medical Incident** with full particulars during the **Policy Period**, then any subsequent **Claim** made against the **Insured** arising out of the **Medical Incident** shall be treated as if it had been first made during the **Policy Period**.

Potential **Claims** reported after termination or expiration date of this policy will not trigger coverage under the policy.

All written notices should include: (i) the date the **Medical Incident** occurred; (ii) the date the **Claim** was received (if applicable); (iii) how, when and where the **Medical Incident** took place; (iv) the names and addresses of any injured persons and witnesses; and (v) the nature and location of any **Injury** or **Damage** arising out of the **Medical Incident**.

## **B. PREMIUM**

Notwithstanding anything to the contrary set forth within this policy, all premiums for this policy shall be computed in accordance with the **Company's** rules, rates, rating plans, premiums and minimum premiums applicable to the insurance afforded herein. Premium designated in this policy, as "advance premium" is a deposit premium only, which shall be credited to the amount of the earned premium due at the end of the **Policy Period**. At the close of each period (or part thereof terminating with the end of the **Policy Period**) set forth in the Declarations as the audit period the earned premium shall be computed for such period and, upon notice thereof to the **Name Insured**, shall become due and payable. If the total earned premium for the policy is less than the premium previously paid, the **Company** shall return to the **Name Insured** the unearned portion paid by the **Name Insured**. The **Name Insured** shall maintain records of such information as is necessary for premium computation, and shall send copies of such records to the **Company** at the end of the **Policy Period** and at such times during the **Policy Period** as the **Company** may direct.

## **C. SUBROGATION**

In the event of any payment under this policy, the **Company** shall be subrogated to all the **Insured's** rights of recovery therefore against any person or organization and the **Insured** shall execute and deliver instruments and papers and to whatever else is necessary to secure such rights. The **Insured** shall do nothing after loss to prejudice such rights.

## **D. ASSIGNMENT**

Assignment of interest under this policy shall not bind the **Company** until its consent is endorsed hereon, provided that if the **Named Insured** shall die, such insurance as is afforded by this policy shall apply: (1) to the **Named Insured's** legal representative, as the **Name Insured**, but only while acting within the scope of his duties as such; and (2) with respect to the property of the **Named Insured**, to the person having proper temporary custody thereof, as **Insured**, but only until the appointment and qualification of the legal representative.

## E. CANCELLATION

This policy may be cancelled by the **Named Insured** by surrender thereof to the **Company** or any of its authorized agents or by mailing to the **Company** written notice stating when thereafter the cancellation shall be effective. This policy may be cancelled by the **Company** by mailing to the **Named Insured** at the address shown in this policy, written notice stating when not less than twenty (20) days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of surrender of the effective date and hour of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice either by the **Name Insured** or by the **Company** shall be equivalent to mailing.

If the **Named Insured** cancels, earned premiums shall be computed in accordance with the customary short rate table and procedure. If the **Company** cancels, earned premium shall be computed pro-rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

## F. DECLARATIONS

By acceptance of this policy, the **Named Insured** agrees that the statements in the Declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations, and that this policy embodies all agreements existing between him and the **Company** or any of its agents relating to this insurance.

## XII. EXCLUSIONS

This Policy does not apply to any **Claim** arising directly or indirectly from any:

- A. bodily injury to any employee of the **Insured** arising out of and in the course of that person's employment by the **Insured**;
- B. obligation for which the **Insured** or any carrier acting as insurer may be held liable under any workers' compensation, unemployment compensation, or disability benefits law or under any similar law;
- C. liability of an **Insured**, if an individual, for such **Insured's** personal acts or omissions, involving a **Medical Incident**;
- D. **Injury** arising out of the ownership, maintenance, operation, use, loading or unloading of any motor vehicle, trailer, watercraft or aircraft;
- E. bodily injury, property damage, personal injury or advertising injury which arises out of the transmission of communicable disease;

- F. Claims** alleging any act of sexual abuse by the **Insured**, or by any other person for whose act the **Insured** is legally responsible, connected to the performance or professional services;
- G.** act of war, including undeclared or civil war, action by a military force, action in hindering or defending against an actual or expected attack, by any government, sovereign, or other authority using military personnel or other agents, insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these;
- H.** act of terrorism, including any action taken in hindering or defending against an actual or expected incident, the use, release, or escape of nuclear materials, or directly or indirectly results in nuclear reaction or radiation or radioactive contamination.
- I.** bodily injury resulting from the hazardous properties of nuclear material, if: (i) the nuclear material is at any nuclear facility owned by, or operated by or on behalf of the **Insured**, or has been discharged or dispersed therefrom; (ii) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of the **Insured**; or (iii) the bodily injury arises out of the furnishing by the **Insured** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility.

### **XIII. DEFINITIONS**

When used in reference to this insurance (including endorsement forming a part of a policy):

**Claim** means any written demand for **Damages** received by the **Insured** resulting from a **Medical Incident**, including but not limited to the filing of a lawsuit against the **Insured**.

**Company** means Aspen American Insurance Company.

**Damages** mean a compensatory settlement, award or judgment which the **Insured** is obligated to pay. **Damages** include pre-judgment interest. **Damages** do not include:

- (a) punitive or exemplary **Damages**, fines or penalties, or any **Damages** which are a multiple of compensatory **Damages**;
- (b) the return or restitution of fees, compensation, profits, charges and/or expenses paid to the **Insured** for services rendered; or
- (c) judgments or awards deemed uninsurable by law.

**Extended Reporting Period** means the time after the end of the **Policy Period** for reporting **Claims** arising out of a **Medical Incident** occurring subsequent to the **Retroactive Date** and prior to the end of the **Policy Period** and otherwise covered by this insurance.

**Injury** means bodily injury, sickness, disease, mental anguish, mental injury or emotional distress suffered by a person, including death at any time resulting therefrom.

**Medical Incident** means any act or omission:

- (a) in the rendering of, or failure to render, professional services by the **Insured**, any employee of the **Insured**, or any person acting under the personal direction, control or supervision of the **Insured**;
- (b) in the service by the **Insured** as a member of a formal accreditation, standards review or similar professional board or committee;
- (c) in the furnishing of, or failure to render, professional services by: (i) any member, partner, officer, director, shareholder or employee of the **Insured**; or (ii) any person acting under the personal direction, control or supervision of the **Insured**.

Any such act or omission, together with all related acts or omissions in the furnishing of such services to any one person shall be considered one **Medical Incident**. All related acts, errors or omissions (whether related logically, casually, or in any other way) in the rendering of, or failure to render, professional services to any one patient (as defined by the applicable law) shall be considered one **Medical Incident** and only one Limit of Liability will apply. If a **Medical Incident** arises from a series of related medical services, such **Medical Incident** will be deemed to have happened at the time of the first act, error or omission in respect of which the **Insured** may be legally obligated to pay damages

**Named Insured** means the **Named Insured** set forth in the Declarations for this policy and any additional **Insured** identified in the Declarations or added by endorsement to this Policy.

**Partnership** means:

- (1) A Professional Service Corporation (PSC)
- (2) A Limited Liability Partnership (LLP)
- (3) A Domestic and Foreign Corporation (Corp. or Inc.)
- (4) A Limited Liability Corporation (LLC)

**Policy Period** means the period from the inception date and hour of this Policy to the earlier of the Policy expiration date and hour or the end of the Extended Reporting Period, if purchased, set forth in the Declarations or any other termination date effected in accordance with the terms of this Policy.

**Retroactive Date** means, if not otherwise stated, the same date as of the inception date of the first of a series of continued renewed claims-made policies.