



LIFE SCIENCES LIABILITY POLICY COMMON CONDITIONS

NOTICE: THIS IS A CLAIMS MADE POLICY. THE COVERAGE AFFORDED BY THIS POLICY IS LIMITED TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED TO THE COMPANY IN ACCORDANCE WITH THE COMMON CONDITIONS, THE SECTION ENTITLED DUTIES IF THERE IS A CLAIM. DEFENSE COSTS COVERED BY THIS POLICY ARE INCLUDED WITHIN THE LIMIT OF LIABILITY. THE INSURED SHOULD READ THE ENTIRE POLICY CAREFULLY TO DETERMINE RIGHTS, DUTIES AND WHAT IS AND WHAT IS NOT COVERED.

The "Insurer" means the insurer named in the Declarations. Other key words and phrases that appear in **bold** type have special meanings. Refer to the **GLOSSARY OF DEFINED TERMS**. All headings are also in bold whether or not they contain defined terms. See the section entitled HEADINGS below.

In consideration of the payment of the premium, and in reliance upon the statements in the **application**, it is agreed as follows:

ACTION AGAINST THE INSURER

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

ASSIGNMENT

Assignment of interest under this policy is prohibited and shall not bind the Insurer unless and until its consent is endorsed hereon.

BANKRUPTCY

In the event of the **Insured Entity's** bankruptcy, insolvency, receivership or any refusal or inability of the **Insured Entity** to pay **damages** to which this policy applies, the insurance afforded by this policy shall not replace or supplement the deductible or self-insured retention but shall apply in the same manner as though the **Insured Entity** were willing and able to pay. In no event shall the Insurer assume the **Insured Entity's** responsibilities or obligations.

CANCELLATION

This policy may be canceled by the **First Named Insured** by surrender thereof to the Insurer or by mailing to the Insurer written notice stating when thereafter the cancellation shall be effective. This policy may be canceled by the Insurer by mailing to the **First Named Insured** at the address shown in this policy written notice stating when, not less than 90 days thereafter, such cancellation shall be effective except that for cancellation because of nonpayment of premium which shall be effective not less than 10 days after such notice is mailed to the **First Named Insured**. The mailing of such notice shall be sufficient proof of notice. The time of the surrender or the effective date and hour of cancellation stated in the written notice shall become the end of the **policy period**. Electronic delivery of such written notice either by the **First Named Insured** or by the Insurer shall be equivalent to mailing.

If the Insurer cancels this policy, a refund due shall be computed on a pro-rata basis and shall be promptly returned to the **First Named Insured**. However, if the **First Named Insured** cancels this policy, the refund due shall be 90% of the pro-rata unearned paid premium, or 75% of the total annual premium, whichever is less. The **First Named Insured** may elect in writing to the Insurer to have any return premium due the **Insured Entity** applied to the additional premium charged for the **extended reporting period** endorsement if available.



Premium adjustment may be made either at the time cancellation is effective or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

CHANGE OF STATUS OF INSURED

A. Takeover of the First Named Insured

In the event of a **takeover** of the **First Named Insured**, this policy shall automatically and without any notification terminate effective as of the date of such **takeover**, unless the Insurer is notified in writing of the **takeover** prior to the **takeover** effective date and agrees in writing to continue the policy beyond the effective date of **takeover** and the **First Named Insured** accepts any special terms, conditions and exclusions and pays any additional premium charge required by the Insurer.

B. Cessation of Subsidiary

If any organization ceases to be a **subsidiary**, such **subsidiary** shall cease to be an **Insured** with respect to any **incident** that occurs after the date such entity ceased to be a **subsidiary** and all coverage under this policy for such **incidents** will cease on the effective date of such cessation without any notification, unless the Insurer is notified in writing of such cessation prior to the effective date thereof and agrees in writing to continue coverage for such **subsidiary**, and the **First Named Insured** accepts any special terms, conditions and exclusions and pays any additional premium charge required by the Insurer.

CHANGES

Notice to or knowledge possessed by any person shall not effect a waiver or a change in any part of this policy or estop the Insurer from asserting any right under the terms of this policy. The policy's terms shall not be waived or changed except by an endorsement issued by and signed by an authorized representative of the Insurer.

CLASS 1 PRODUCT RECALL EXPENSES PROOF OF LOSS

Solely with respect to a **class 1 product recall**, the **Insured Entity** must send the Insurer a signed, sworn proof of loss containing the information the Insurer requests to investigate the **class 1 product recall** and the **class 1 product recall expenses**. The **Insured Entity** must do this within 60 days after the Insurer's request. The Insurer may examine any **Insured** under oath, while not in the presence of any other **Insured** and at such times as may be reasonably required, about any matter relating to this insurance or the **class 1 product recall** or the **class 1 product recall expenses** incurred, including any **Insured's** books and records. In the event of an examination, any **Insured's** answers must be signed.

CURRENCY

The limits, retentions, premiums and losses of this policy are payable in United States currency unless otherwise specified in the Declarations.

DEFENSE

A. Duty to Defend

The Insurer has the right and duty to defend in the **Insured's** name and on the **Insured's** behalf any covered **claim** even if any of the allegations of such **claim** are groundless, false or fraudulent. The Insurer shall have the right to make such investigation, defense and settlement of a **claim** (including any **claim** within the deductible) as is deemed necessary by the Insurer. The Insurer will designate or, at its option, approve, counsel to defend the **claim**. If a **claim** is subject to arbitration or mediation, the Insurer shall be entitled to exercise all of the **Insured's** rights in the choice of arbitrators or mediators and in the conduct of any arbitration or mediation proceeding involving such **claim**.

B. Exhaustion of Limits

The Insurer is not obligated to investigate, defend, pay or settle, or continue to investigate, defend, pay or settle a **claim** after the applicable limit of the Insurer's liability has been exhausted by payment of **damages** or **defense costs** or by any combination thereof or after the Insurer has deposited the remaining available



limits of liability into a court of competent jurisdiction. In such case, the Insurer shall have the right to withdraw from the further investigation, defense, payment or settlement of such **claim** by tendering control of said investigation, defense or settlement of the **claim** to the **Insured**.

DUTIES AND RIGHTS IN THE EVENT OF A CIRCUMSTANCE OR A POTENTIAL CLASS 1 PRODUCT RECALL

A. Notice of Circumstance

Except as set forth in paragraph **B.** below, if, during the **policy period**, the **Insured Entity** reports a **circumstance** for which there may be coverage under this policy, and the **Insured Entity** gives the Insurer written notice containing:

1. what happened and the **insured work, insured product** or the **professional services** or activities the **Insured Entity** performed that might give rise to a **claim**;
2. the nature of any possible injury or **damages**;
3. how the **Insured Entity** first became aware of such **circumstance**;
4. the identity of the specific **Insureds** allegedly responsible for such specific **professional services** or activities; and
5. the nature of the potential monetary damages or non-monetary relief that may be sought in consequence of such specific **professional services** or activities,

then any **claim** otherwise covered that may subsequently be made against an **Insured** during the **coverage relationship**, or during the automatic **extended reporting period**, arising out of such **circumstance** shall be deemed to have been made against such **Insured** on the date the Insurer received written notice of the **circumstance**.

B. Mandatory Notice of Advisory Memorandum, Class 1 Product Recall or Boxed Warning

Any **circumstance** that is an **advisory memorandum, class 1 product recall** or **boxed warning** must be reported to the Insurer at the time of each such **advisory memorandum, class 1 product recall** or **boxed warning**.

C. Related Circumstances

If, during the **coverage relationship**, the **Insured Entity** reports any **advisory memorandum, class 1 product recall** or **boxed warning**, pursuant to the requirements set forth in paragraphs **A.** or **B.** above, then all **claims** subsequently made against an **Insured** and arising out of any defect or deficiency which is the subject of such **advisory memorandum, class 1 product recall** or **boxed warning**, shall be deemed to be **related claims**. All such **related claims** shall be deemed to be a single **claim** subject to the limits of liability set forth in the policy in effect when such **advisory memorandum, class 1 product recall** or **boxed warning** was reported to the Insurer pursuant to the requirements set forth in paragraphs **A.** or **B.** above.

DUTIES IF THERE IS A CLAIM

It is a condition precedent to coverage that the **Insured**:

- A.** notify the Insurer as soon as reasonably possible of any **claim**. Such must be in writing and be sent to the attention of CNA Healthcare Claims at the e-mail address or phone number set forth in the Policy Declarations. Such notice must be given to the Insurer as soon as reasonably possible but in no event later than ninety days (90) after termination or expiration of the **coverage relationship**, or during the **extended reporting period**, if applicable;
- B.** specify the names and addresses of the persons making a **claim** against the **Insured** and provide the Insurer with information on the time, place and nature of the **claim**;
- C.** promptly forward to the Insurer all documents that the **Insured** receives in connection with the **claim**;



- D. fully cooperate with the Insurer or its designee in the defense of a **claim**, including but not limited to assisting the Insurer in the conduct of suits or other proceedings, settlement negotiations, and the enforcement of any right of contribution or indemnity against another who may be liable to the **Insured**. The **Insured** shall attend hearings and trials and assist in securing evidence and obtaining the attendance of witnesses; and
- E. refuse, except solely at the **Insured's** own cost, to voluntarily, without the Insurer's written approval, make any payment, admit liability, assume any obligation or incur any expense. If **damages** or **defense costs** are incurred by an **Insured** before written notice of such **claim** is given to the Insurer in accordance with this section, the Insurer will not be liable for any such amounts.

After the **Insured** reports a **claim** and the **Insured** has the right under any contract to either reject or demand arbitration or other alternative dispute resolution process, the **Insured** shall only do so with the Insurer's written consent.

ENTIRE CONTRACT

By acceptance of this policy the **Insured Entity** agrees that:

- A. all of the information and statements provided to the Insurer by the **Insured Entity** are true, accurate and complete and shall be deemed to constitute material representations made by all of the **Insureds**;
- B. this policy is issued in reliance upon the **Insured Entity's** representations;
- C. this policy, endorsements thereto, together with the completed and signed **application** (which is deemed to be incorporated herein) embody all of the agreements existing between the **Insureds** and the Insurer and shall constitute the entire contract between the **Insureds** and the Insurer; and
- D. the willful or intentional misrepresentation of any material matter by the **Insured Entity** or its agent will render this policy null and void and relieve the Insurer from all liability herein.

ESTATES, LEGAL REPRESENTATIVES AND SPOUSES

The estates, heirs, legal representatives, assigns, spouses and any **domestic partner** of natural person **Insureds** shall be considered **Insureds** under this policy; provided, however, coverage is afforded to such estates, heirs, legal representatives, assigns and spouses only for a **claim** arising solely out of their status as such and, in the case of a spouse or **domestic partner**, where such **claim** seeks damages from marital community property, jointly held property or property transferred from the **Insured** to the spouse or **domestic partner**.

EXTENDED REPORTING PERIODS

A. Automatic 90 Day Extended Reporting Period

The Insurer will provide an automatic, non-cancelable **extended reporting period** of 90 days (or 5 years with respect to any **claim** that the **Insured Entity** reported to the Insurer as a **circumstance** during the **coverage relationship** in accordance with the **COMMON CONDITIONS**, the section entitled **DUTIES AND RIGHTS IN THE EVENT OF A CIRCUMSTANCE OR POTENTIAL CLASS 1 PRODUCT RECALL**) starting with the end of the **policy period** if no other insurance purchased by the **Insured Entity** to replace this policy applies or would apply but for the exhaustion of the applicable limit of liability.

B. Optional Extended Reporting Period

If the **Insured Entity** or the Insurer cancels or non-renews this policy for any reason the above 90 day reporting period may be substituted by an **extended reporting period** endorsement for a period up to 60 months from the end of the **policy period** or the effective date of cancellation or non-renewal, if the **Insured Entity** makes a written request for an **extended reporting period** within 90 days after the end of the **policy period** or the effective date of cancellation and pays the required additional premium within said 90 days.

C. Extended Reporting Period Premium

The required Additional Premium shall not exceed 200% of the adjusted Annual Premium.

**D. Extended Reporting Period Not a New Policy**

An **extended reporting period** shall not be construed to be a new policy and shall otherwise be governed by all of the terms and conditions of this policy.

E. Extended Reporting Period Limits of Liability

No **extended reporting period** will reinstate or increase the limits of liability specified in the Declarations.

HEADINGS

The descriptions in the headings of this policy are solely for convenience, and form no part of the terms and conditions of coverage.

INSPECTION AND AUDIT

The Insurer shall be permitted but not obligated to inspect the **Insured Entity's** property and operations at any time. Neither the Insurer's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the **Insured Entity** 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 Insurer may examine and audit the **Insured Entity's** books and records at any time during the **policy period** and extensions thereof and within three years after the final termination of the policy as far as they relate to the subject matter of this insurance.

LIMITS OF LIABILITY AND DEDUCTIBLE

A. The Limits of Liability of each **coverage part** are subject to the terms and provisions of this Section.

B. Policy Aggregate Limits of Liability

The Limits of Liability for each **coverage part**, as applicable, are subject to the Policy Aggregate Each **Claim** and Aggregate Limits of Insurance as specified in the Policy Declaration. As such, any each **claim** and aggregate limits of insurance in any **Coverage Part** Declarations are limits of liability which are included within and not in addition to the Policy Aggregate Limits of Insurance.

C. Supplementary Benefits Limits - Mitigation Expenses Sublimits of Liability**1. Sublimit of Liability—each Claim or Circumstance**

Subject to paragraph 2. below, the sublimit of liability of the Insurer for **mitigation expenses** for each **claim** or **circumstance** shall not exceed the **mitigation expenses** sublimit set forth in the Declarations.

2. Sublimit of Liability—in the Aggregate

The sublimit of liability of the Insurer for **mitigation expenses** for all **claims** or **circumstances** shall not exceed the amount stated in the Declarations as the aggregate.

The **mitigation expenses** sublimits set forth in the Declarations are included within and are not in addition to the each **claim** and all **claims** Policy Aggregate limits of liability. As such, the **mitigation expenses** sublimits erode the each **claim** and all **claims** Policy Aggregate limits of liability set forth in the Declarations. All **mitigation expenses**:

- a. arising out of the same **wrongful act** or **related wrongful acts** or;
- b. arising out of the same **occurrence** or **related occurrences**,

are subject to the applicable limits of liability of the policy in effect at the time the first request for **mitigation expenses** was made.

D. Deductible



1. Any applicable deductible shall be paid by the **Insured Entity**, or upon its failure to pay, jointly and severally by all **Insureds**. The limits of liability set forth in the Declarations or in this policy are in addition to and in excess of the applicable deductible. If the Insurer, in the exercise of its discretion and without any obligation to do so, pays any amount in excess of the applicable limits of liability or within the amount of a deductible, the **Insured Entity**, or upon its failure to pay, the **Insureds**, jointly and severally, shall be liable to the Insurer for any and all such amounts and, upon demand, shall pay such amounts to the Insurer.

2. Policy Each Claim and in the Aggregate

The Policy Aggregate each **claim** and aggregate deductibles, if any, shown in the Declarations apply to **damages** and **defense costs** for each **claim** and to all **claims** in the aggregate. As such, any each **claim** and aggregate deductible in any applicable **Coverage Part** erodes the Policy Aggregate each **claim** and aggregate deductibles and are not in addition to such deductibles.

E. Mitigation Expenses Coinsurance Percentage

The **Insured Entity** must pay a coinsurance percentage of all **mitigation expenses** paid by the Insurer. The coinsurance percentage is 20% for **mitigation expenses** unless a different amount is set forth in the Declarations. This coinsurance percentage is in addition to any applicable deductible. The Insurer is liable to pay the remaining percentage of the **mitigation expenses** up to the applicable limits of liability and in excess of any applicable deductible and coinsurance percentage.

F. Multiple Insureds, Claims and Claimants

The limits of liability shown in the Declarations or above and subject to the provisions of this policy are the amounts the Insurer will pay as **damages**, **defense costs**, **mitigation expenses**, applicable **class 1 product recall expenses** or applicable **medical payments** regardless of the number of **Insureds**, **claims** made, **circumstances** reported; **class 1 product recalls** or persons or entities making **claims**.

G. Related Claims

If, during the **policy period**, a **claim** is made and if either the **Insured Entity** or the Insurer declares in writing to the other that such **claim** is likely to give rise to subsequent **related claims**, then such **claim** and all such subsequent **related claims**, shall be deemed a single **claim**. The limits of liability applicable to such single **claim** are the limits of liability in effect for the policy in which the declaration was made.

H. Defense costs within Limits

Defense costs are included within and erode the applicable limit of liability. **Defense costs** with respect to a **claim** will be paid first and payment will reduce the amount available to pay **damages**.

NOTICE OF POTENTIAL CLASS 1 PRODUCT RECALL

The **Insured Entity** must see to it that the Insurer is notified as soon as practicable in writing of any incident that leads the **Insured Entity** to believe a **class 1 product recall** is likely to occur, whether or not the **class 1 product recall expenses** are likely to exceed the **class 1 product recall expenses** deductible shown in the policy or in the Declarations. Notice should include how, when and where the incident took place; the names and addresses of injured persons or witnesses to the incident that may lead to a **class 1 product recall**; and the estimated **class 1 product recall expenses**.

OTHER INSURANCE OR RISK TRANSFER ARRANGEMENTS

If the **Insured** is entitled to be indemnified or otherwise insured in whole or in part by any other insurance, self insurance or indemnity agreement for any **claim** or **incident** which otherwise would have been indemnified in whole or in part by this policy, the limits of liability specified in the Declarations shall apply in excess of, and shall not contribute to a **claim** or **incident** covered by such other insurance. This paragraph does not apply to any other insurance that was bought specifically to apply in excess of the Limits of Liability shown in the Declarations of this policy.



The Insurer will have no duty under this policy to defend the **Insured** against any **claim** if any other insurer has a duty to defend the **Insured** against that **claim**. If no other insurer defends, the Insurer will undertake to do so, but it will be entitled to the **Insured's** rights against all those other insurers.

Solely with respect to any person or organization insured pursuant to the **GLOSSARY OF DEFINED TERMS**, paragraph **H.** of the definition of **Insured**, the insurance afforded by this policy is primary.

PREMIUM

All premium charges under this policy will be computed according to the rules, rates and rating plans that apply at the effective date of the current **policy period**.

The **Insured Entity** shall maintain records of such information as it is necessary for auditable premium computation and shall send copies of such records to the Insurer at the end of the **policy period** and at such times during the **policy period** as the Insurer may direct. Subsequent to audit by the Insurer, the **Insured Entity** shall forward to the Insurer any additional premiums warranted by such audit.

SEPARATION OF INSURED

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the **First Named Insured**, this insurance applies as if each of the **Insured Entities** were the only **Insured Entity** and separately to each **Insured** against whom a **claim** is made.

SOLE AGENT

The **First Named Insured** is authorized to act on behalf of all **Insureds** with respect to giving or receiving notice of cancellation, non-renewal, premium or charges in this policy or request for an **extended reporting period** endorsement.

SUBROGATION

If any **Insured** has rights to recover amounts from another, those rights are transferred to the Insurer to the extent of its payment. The **Insured** must do everything necessary to secure these rights and must do nothing after a **claim** is made to jeopardize them. The Insurer hereby waives subrogation rights against the **Insured Entity's** client to the extent that the **Insured** had, prior to a **claim** or **circumstance**, a written agreement to waive such rights.

The amount recovered as subrogation shall be apportioned in the inverse order of payment of **damages** to the extent of the actual payment. **Defense costs** shall be apportioned in the ratio of respective recoveries.

TERRITORY

This insurance applies anywhere in the world, provided the **Insured's** responsibility to pay **damages** is determined in a suit on the merits brought in the United States of America (including its possessions and territories), Canada or Puerto Rico, or in a settlement to which the Insurer agrees.

TRADE AND ECONOMIC SANCTIONS

This policy does not provide coverage for an **Insured**, transaction or that part of loss that is uninsurable under the laws or regulations of the United States concerning trade or economic sanctions.

WHEN A CLAIM IS DEEMED MADE

Except as set forth in the section entitled **DUTIES AND RIGHTS IN THE EVENT OF A CIRCUMSTANCE OR A POTENTIAL CLASS 1 PRODUCT RECALL claim** is deemed made on the earliest of the following:

- A. in the case of a demand, on the earlier of an **executive officer's** or Insurer's receipt of such demand; or
- B. in the case of a civil proceeding in a court of law or equity, or arbitration, on the date of service upon or other receipt by the **Insured Entity** of a complaint against the **Insured Entity** in such proceeding or arbitration.



Product Name

[Form Type]

IN WITNESS WHEREOF, the Insurer has caused this policy to be signed by its Chairman and Secretary, but this policy shall not be binding upon the Insurer unless completed by the attachment of the Declarations and signed by a duly authorized representative of the Insurer.

Chairman of the Board

Secretary

SPECIMEN

Form No: CNA73164XX (05-2015)

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