



WORKERS' COMPENSATION POLICY

January 1, 2018

CHAPTER 1. GENERAL PROVISIONS

Section 1.01. Purpose

This Policy shall be known and cited as the as the "TWCC Workers' Compensation Policy" and shall be administered by the third party administrator (TPA or Administrator), named on the Certificate of Coverage provided herewith. The purpose of the Policy is to establish the rights and benefits of employees of the named Employer for on-the job bodily injuries due to accidents or occupational disease as set forth herein.

Section 1.02. No Waiver of Sovereign Immunity

Nothing in this Policy shall be deemed or construed as waiver of Sovereign Immunity by any Tribal government and/or any of its affiliated entities or Employer. Neither the State of South Dakota's statutory workers' compensation system, nor any other State's worker's compensation system, shall apply to employees of Employer or any of its affiliated entities. Neither TWCC nor the Employer consent to the jurisdiction of any state's Workers' Compensation Appeals Board or to the jurisdiction of any other court of law or equity.

Section 1.03. Insurance

TWCC shall: (1) require a loss prevention/control program sufficient to enable Employer to provide a safe workplace for all workers, and; (2) assist the Employer in reducing hazards in the workplace and in the implementation of continued safety policies and procedures.

Section 1.04. Definitions

- A. Pronouns of the masculine gender used in this Policy shall apply to both sexes. Unless stated otherwise in specific section of the Policy, time limits shall be calculated using calendar days.
- B. Unless the context otherwise requires, the definitions which follow govern the construction and meaning of the terms used in this Policy:
 1. "Administrator" or "Tribal Workers Benefit System Claim Administrator" shall mean RAS, Inc., or such other entity set forth on the Certificate of Coverage.
 2. "Attending Physician" shall mean the Physician, or other approved medical care provider that is responsible for planning, provision, and oversight of medical treatment to a covered worker who sustains a covered injury.
 3. "Average Weekly Wage" shall be as follows:

- a. For covered workers hired to regular full or part time position expected to last at least 14 weeks, the average weekly wage shall be calculated based on the preceding fourteen (14) weeks of the covered worker's actual wage earning from a covered Employer. In the case of a worker who has not worked for a covered Employer within the immediate preceding fourteen (14) weeks, the average weekly wage shall be calculated based on the salary level the worker was hired at or is currently receiving.
 - b. For covered workers hired on a temporary, emergency or special projects basis who has continuously worked for a minimum of fourteen (14) weeks, the average weekly wage shall be calculated as provided in subparagraph 1, above.
 - c. For covered workers hired on a temporary, emergency, or special projects basis who have not continually worked for the preceding fourteen (14) weeks, the average weekly wage shall be calculated by taking the expected total gross wages and divide by the expected number of work weeks.
 - d. For covered workers serving as volunteers, the average weekly wage shall be the salary of similarly paid positions for the covered Employer performing similar work.
 - e. For purposes of this definition, the work week shall be as defined by the personnel manual or policy applicable to the covered employee at the time of injury.
4. "Benefits" shall mean the indemnity and medical payments provided by this Policy. "Indemnity" shall mean total disability and partial disability income benefits and impairment payments; and "Medical" shall mean medical expense, mileage, and other expenses associated with medical treatment.
 5. "Child" includes dependent natural legitimate children, dependent stepchildren, adopted children and acknowledged illegitimate children; but does not include married children unless they are shown to be dependent.
 6. "Claimant" means the injured covered worker, or in the event of death of the covered worker, dependents of the deceased.
 7. "Consulting Physician" shall mean the Physician, other health care provider or other care expert that is retained by the Administrator to assist the Administrator in carrying out his duties and responsibilities under this Policy. Such activities may include, but are not limited to, the determination of the validity of a claim; review of an attending physician's diagnosis and treatment plans; determination of MMI; and the determination of impairment rating. At the discretion and expense of the Administrator, an injured worker may be required to be seen by the consulting physician to assist in making any required recommendations to the Administrator.
 8. "Course and Scope of Employment" shall mean the Employer's employment of the covered worker at the time the injury occurred. An injury must arise out of and be in the course and scope of employment, and the worker must be acting in the furtherance of the Employer's interest at the time of the incident and/or accident, in order for a claim to be compensable.
 9. "Covered Employer" and "Employer" shall mean the Employer set forth on the Certificate of Coverage.
 10. "Covered Worker" and "Worker" means every person who has entered into the employment of or performs work for an Employer, works under contract of service, express or implied, or apprenticeship, for an Employer, every executive officer elected or appointed and empowered under and in accordance with the charter and bylaws of a corporation, including a person holding an official position, or standing in a representative capacity of the Employer, including officials

(elders) elected or appointed by the Employer, compensated monetarily or otherwise, except as hereinafter specified. The terms “covered worker” and “worker” shall not include an independent contractor working under contract for an employer, whether that contract be express or implied. Covered workers shall include all persons employed by the Employer regardless of where they work. Covered workers shall include volunteers or other persons providing work for an Employer who do so without receiving compensation.

11. “Death” is any fatality of the covered worker proximately and directly caused by work injury or occupational disease.
12. “Dependents” are the following persons, and they shall be deemed to be the only recognizable dependents under the provisions of this Policy:
 - a. The widow or widower, if legally married and living with the deceased at the time of deceased’s death and legally entitled to be supported by the deceased as a dependent defined by the most recent federally filed 1040 tax return. For purposes of this Policy, a covered worker may, in a written self-declaration to be provided by the Employer, designate a person as their domestic partner, which person shall be treated as a dependent widow(er) if the person was living with the deceased covered worker at the time of his/her death and must listed on the most recently federally filed 1040 tax return.
 - b. A child, natural or adopted, under 18 years of age, or incapable of self-support and unmarried; or a child under 25 years of age enrolled as a full-time student in an accredited education institute at the time of the covered worker’s death.
13. “Disability” means the inability of the covered worker to obtain and/or retain wages equivalent to the pre-injury wage rate as a result of a direct loss of functional capacity compromising that individual’s ability to perform the necessary duties of the job. This functional loss must be directly and materially attributable to a compensable work-related injury and/or occupational disease and must be supported by the worker’s attending physician and, if requested by the Administrator, the consulting physician. “Partial Disability” is distinguished as any incapacity less than 100% inability as defined above.
14. “Impairment” means any anatomic or functional abnormality or loss existing after Maximum Medical Improvement (MMI) as defined herein that results from a compensable injury and/or occupational disease and is reasonably presumed to be permanent based on reasonable medical probability.
15. “Injury” shall mean any physical impairment, including, without limitation, death and/or occupational disease as further herein defined. “Arising out of and in the course of employment” excludes an injury sustained while a covered worker is at home or preparing for work. “Injury” excludes any injury resulting primarily from the natural aging process, or normal daily activities, or an injury sustained during voluntary recreational or social activities. The injury must arise out of and in the course of employment, requiring medical services or resulting in disability or death; and is further defined as a specific, traumatic incident at a definite time and place, while in the course of employment, that produces an immediate onset of pain and is established by medical evidence supported by objective findings.
16. “Intoxication” means blood alcohol content in excess of .02 percent or conviction of the offense of driving while intoxicated (or words to that effect) by any jurisdiction or loss of the normal use of one’s mental and/or physical faculties resulting from the voluntary introduction into the body of (1) an alcoholic beverage; (2) a controlled substance; (3) a mind-altering drug and/or hallucinogenic; (4) a glue or aerosol paint; or (5) any other similar substance.
17. “Maximum Medical Improvement” (MMI) means the earlier of:

- a. The point which further material recovery from or last improvement to an injury can no longer reasonably be anticipated, based on the reasonable medical probability; or
 - b. The expiration of 36 months from the date of injury, or in the case of an occupational disease or cumulative trauma, 36 months from the earliest of the first manifestation of the symptoms or notification from a physician that the illness is inherent or related to the worker's occupation.
18. "Occupational Disease" or "Cumulative Trauma" shall be only those diseases or trauma which arise out of an in the course and scope of the worker's employment. Such diseases or trauma shall have a direct causal connection with the employment and must have followed as a natural incident thereto from injurious exposure occasioned by the nature of the employment. Such disease or trauma must be incidental to the character of the business, occupation, or process in which the worker was employed and not independent of the employment. Such disease or trauma need not have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have resulted from that source as an incident and rational consequence. A disease or trauma which follows from a hazard to which a worker has or would have been equally exposed outside of said occupation is not compensable as an occupational disease or trauma.
19. "Policy" shall mean the terms and conditions set forth herein, together with the Certificate of Coverage issued to the participating Employer.
20. "Settlement" shall mean the date the release of all claims is executed and the monetary terms of the agreement met.

Section 1.05. Acknowledgement of Policy

- A. All covered workers and persons asserting a claim shall be conclusively presumed to have elected to take workers benefits in accordance with the tenants, conditions, and provisions of this Policy by virtue of employment with the Employer or other Employers as defined herein. All covered workers and/or persons asserting a claim for workers benefits acknowledge that the Employer is a part of a federally recognized American Indian Tribe and is exercising its inherent sovereign authority in providing workers benefits under this Policy.
- B. The Employer shall be responsible for and shall have posted in a conspicuous location a notice as follows:

NOTICE TO EMPLOYEES

AS EMPLOYEES, YOU ARE INSURED FOR ON-THE-JOB INJURIES UNDER THE TRIBAL WORKERS COMPENSATION CLAIM POLICY

If you are injured or sustain an occupational disease while at work, you may be entitled to benefits as provided by the Tribal Workers Compensation Policy. NOTIFY YOUR EMPLOYER IMMEDIATELY OF ANY INJURIES, NO MATTER HOW SLIGHT. If you fail to do so, you may lose your benefits under the Tribal Workers Benefits System. In no event shall benefits be paid to a worker who failed to notify their employer within twenty (20) days after sustaining such work-related injury, except in cases where an extraordinary reason prevented the worker from reporting the injury or occupational disease to the employer in a timely manner.

It is your responsibility to file a claim for benefits under the Policy with the Administrator of the System. You are required to file a claim for any injuries or occupational disease no more than twenty (20) days after you have knowledge thereof. It is your responsibility to obtain any necessary forms from the Tribal Workers Benefits System Claim Administrator.

Your exclusive remedy for any work connected injury or disease is through the Tribal Workers Benefits System. The State's Workers Compensation System has no authority to accept a claim from you under the TWCC Workers' Compensation Policy as you are employed by the Employer, a sovereign Indian Nation employer, which is exclusively under the jurisdiction of its own Tribal Workers Benefits System.

Section 1.06. Notification to Employer of Injury by Worker

- A. Any covered worker and/or person claiming benefits under this Policy must notify his supervisor, department director or the human resources director of any and all injuries immediately, and in no event later than twenty (20) days from the date of the single event occurrence or in the event of an occupational disease or cumulative trauma, twenty (20) days from the date the worker is advised by a health care provider an occupational disease or cumulative trauma is work related. Failure to report such on-the-job injury shall result in the worker's forfeiture of benefits under this Policy, unless the claimant can demonstrate an extraordinary reason that prevented the reporting of the injury or occupational disease in a timely manner.
- B. The supervisor/ department director/ human resources director receiving the report of the incident or accident shall submit the report to the Administrator within twenty (20) days of receipt from the covered worker. In addition, the supervisor/ department director/ human resources director receiving the report shall prepare, or have prepared by the covered worker's direct supervisor, and submit an incident report on the circumstances surrounding the on-the-job injury, including the identification of those who may have witnessed the incident or accident. Failure of the Employer to provide notice within the time allowed to the Administrator shall constitute a forfeiture of coverage by Employer.

Section 1.07. Time Limit for Reporting of Incidents and Filing of Claims

- A. Claims for single event injury shall be made by the covered worker to the Administrator within twenty (20) days of the date of injury. For purposes of this Policy, a covered worker filing a claim for benefits under this Policy with the human resources office shall constitute filing a claim with the Administrator.
- B. Claims for occupational disease or cumulative trauma shall be made by the covered worker to the Administrator within twenty (20) days from the date of first notice to the claimant by a physician and in no event longer than thirty (30) days from the date the worker terminates his employment with the Employer.
- C. Failure to give notice of injury to the Employer as required by section 1.06, or to file a claim with the Administrator, within the time limit set forth in this section shall constitute a forfeiture by the covered worker, or his representatives in case of death, of all benefits available and payable under this Policy.
- D. Payment of premium assessed to Employer is a prerequisite of coverage under this Policy. Premiums shall be due within thirty (30) days of receipt of premium notice. Should payment not be made within thirty (30) days, or other arrangements made for payment within thirty (30) days, coverage under this Policy shall be cancelled and deemed null and void.

Section 1.08. Burden of Proof

The burden of proof shall rest upon the covered worker, or his dependents in the case of death, to prove:

- A. That the injury alleged was a result of an incident, accident or occupational disease as defined herein;
- B. That it arose out of the covered worker's employment;
- C. That it arose while in the course and scope of employment and arose proximately out of covered employment; and
- D. That it arose while in the furtherance of the Employer's interests.

Section 1.09. Right to Waive Defenses

The Administrator and/or TWCC shall have the right and power to waive any and all defenses affecting the compensability of a covered injury under this Policy.

Section 1.10. Guardian for Minor or Incompetent

Any person who is mentally incompetent and/or under the age of eighteen (18) and is entitled to receive compensation under this Policy, shall be appointed a guardian or other representative by the Employer if a guardian has not been appointed in a prior action.

CHAPTER 2. ADMINISTRATIVE DUTIES AND POWERS

Section 2.01. Custodian Duties

The Administrator or its designee shall be the payor of the workers benefits and all authorized disbursements therefrom shall be paid by the Administrator or a representative with its stated authority, and shall be the custodian of all claim files and related documents.

Section 2.02. Payment and Distribution of Benefits

The Administrator shall administer this Policy in accordance with the terms and conditions described herein, and remit payment for all matters of benefit claims as provided for in this Policy. Further, the Administrator shall have the authority to determine the distribution of benefit checks.

Section 2.03. Tribal Workers Benefit System Administrator Powers and Duties

- A. The Administrator for the Tribal Workers Benefit System shall be empowered to request medical reports, police reports, autopsy reports, and special investigations, engage the services of adjusters and consultants, and perform other activities as required to process any claim for benefits or to further this Policy.
- B. In the case of death of a covered worker, the Administrator shall have the right to request the performance of an autopsy on the decedent from an appropriate official licensed to perform autopsies, and further the Administrator shall have the right to request any and all reports made from such autopsies. If requested, the legal beneficiaries of the deceased worker are entitled to have a representative present at any autopsy ordered by the Administrator.
- C. Retain a consulting physician for purposes of assisting the Administrator to carry out the duties and powers of this Policy.
- D. Complete and accurate administrative records and claim files shall be maintained on all activities relating to the claims made under the Policy. All closed files shall be preserved for not less than six (6) years.

Section 2.04. Acceptance/Denial of Claim

Upon receiving a claim for benefits from an injured worker, the Administrator shall promptly investigate the claim and begin payment of compensation within twenty-one (21) days of a valid claim or the Administrator shall send the claimant written notice, within twenty-one (21) days, that further investigation is needed and the reasons for further investigation. The Administrator shall complete its investigation within forty-five (45) days of receipt of the claim and shall commence the payment of benefits or notify the claimant in writing that the claim is denied.

CHAPTER 3. COVERAGE AND COMPENSABILITY

Section 3.01. Entitlement of Benefits

- A. Any claimant seeking benefits under this Policy shall be responsible for filing his claim with the Administrator.
- B. Coverage exists under the Policy for a covered worker's injury without regard to fault or negligence if the injury arises out of and in the course and scope of employment and if the worker was acting in furtherance of the Employer's interest at the time of the injury and/or incident, including, without limitation, any covered worker whose work at the time of injury was subject to the Longshore and Harbor Workers Compensation Policy (33 U.S.C. §§ 901-950), the Jones Policy (46 U.S.A. appx. § 688), or any other Federal Workers Compensation Policies. If an injury is an occupational disease as defined herein, the Employer in whose employ the worker was last injuriously exposed to the hazards of the disease is considered to be the Employer of the worker for purposes of obtaining benefits under this Policy.

Section 3.02. Disclosure of Pre-Existing Disabilities/Conditions

- A. All workers shall disclose any pre-existing physical or mental disorder and/or disability that could potentially affect or impair the worker's ability to perform in a reasonable and safe manner the activities involved in the position in which they work. Disclosure shall be made in the employment application or interview before commencing employment or before commencing new job duties after job reclassification, reassignment, promotion, demotion, or other change in job duties. The content of such disclosure shall be made promptly by the covered worker after submitting a claim for benefits under this Policy.
- B. Any claim resulting from an employment-related aggravation of a pre-existing condition which was not disclosed as required under this Policy shall be declined by the Administrator under this Policy if the claimant had knowledge of the pre-existing condition and failed to disclose such condition pursuant to section 3.02(A).

Section 3.03. Mental Trauma Injuries

- A. Mental traumas, disorders, and/or conditions, even if manifested in physical symptoms and/or related to stress, are not compensable injuries under this Policy, except that mental trauma is only recoverable if resulting from accidental physical injury traceable to a definite time, place, and cause rather than from repetitive mental trauma.
- B. Regardless of section 3.03(A), a mental trauma or emotional injury that arises principally from a personal action, including, without limitation, a transfer, promotion, demotion, or termination is not a compensable injury under this Policy.

Section 3.04. Going to and Returning from Work

An accident and/or incident occurring to a worker while on the way to or from work, including breaks, is not within the course and scope of employment except when such traveling is directly connected with the worker's work and in furtherance of the Employer's interest. This exception will not apply if the worker deviates from a reasonably direct route of travel and/or is not acting in the interests of the Employer.

Section 3.05. Benefits Precluded by Neglect and/or Refusal of Worker to Submit to Treatment

- A. No benefits shall be payable for the death and/or disability of a worker if the worker's death and/or disability is caused by, or the worker's disability aggravated, caused or continued by, an unreasonable refusal and/or neglect to submit to and/or follow any competent or reasonable surgical or medical

treatment, medical aid, or advice. A worker who has refused and/or neglected to submit to medical and/or therapeutic treatment, or to take medications prescribed, will be deemed to have reached Maximum Medical Improvement as defined herein. Any such existence of a disability that could have been reasonably treated to success with reasonable medical probability will be discontinued in determining the appropriate incapacity rating as described herein.

- B. Any covered worker entitled to benefits under this Policy shall be presumed to have reached Maximum Medical Improvement if such claimant has refused and/or neglected to seek appropriate medical treatment within thirty (30) days from the date of injury or thirty (30) days from the date physician recommends a return follow up visit.

Section 3.06. Injury or Death by Consumption and/or Application of Drugs and/or Chemicals

No benefits of any nature shall be payable for injury and/or death caused or contributed to by any drug, including narcotics and hallucinogens, whether organic or chemical in nature, or any gas, vapors, and/or fumes taken and/or inhaled voluntarily, or by voluntarily poisoning, except those drugs prescribed by a physician or other practitioner licensed to prescribe such medication and taken within the recommended dosage levels.

Section 3.07. Intoxication

No benefits of any nature shall be payable for any covered worker injured or killed while intoxicated as defined in section 1.04(B)(16), regardless of whether or not the intoxicated condition was the proximate cause of the injury or death. It is only necessary to prove that the covered worker was intoxicated at the time of the incident or accident to deny benefits under this Policy. All workers accepting employment with an Employer and under this Policy, agree to submit to post-incident/post-accident drug and alcohol screening as authorized in the applicable Tribal personnel policies, and agree to waive any privilege associated with the results of said tests. There shall be a rebuttable presumption that any post accident drug test is an accurate measure of an injured worker's intoxication

Section 3.08. False Statement or Representation to Obtain Compensation; Penalty and Forfeiture

If, in order to obtain any benefits under the provisions of this Policy, any person willfully makes a false statement or representation, they shall forfeit all rights to compensation, benefits, or payment upon proof that the offense was committed. Any claim resulting from an employment-related aggravation of a pre-existing condition which was not disclosed as required under this Policy will be declined by the Administrator pursuant to section 3.02.

Section 3.09. Injuries Resulting from Self-Inflicted Injuries, Willful Misconduct, "Horseplay", or Safety Violation

No benefits of any nature shall be payable for any covered worker's injury or death caused by a covered worker's willful intention to injure himself or another. An injury sustained during "horseplay" is not incurred in the course and scope of employment, and thus such an injury under this Policy is not compensable. In addition, the willful disregard of a safety order from the Employer to the worker to wear or use a safety device and/or to perform work in a certain manner shall cause such person to forfeit all rights to compensation, benefits, or payment upon proof that the offense was committed and that such disregard or performance was the direct and proximate cause of the injury, death, and/or occupational disease. A covered worker's willful disabling of safety devices on equipment constitutes a willful intention to injure himself thereby precluding eligibility for her benefits under this Policy.

Section 3.10. Injuries Resulting from Natural Causes

No benefits of any nature shall be payable for any covered worker injured or killed when the injury or death results from natural causes, i.e., heart attack, stroke or other natural function failure, which does not arise out of the course and scope of employment while the worker was acting in furtherance of the Employer's interest.

Section 3.11. Recreational, Social or Athletic Activities

- A. No benefits shall be payable for any covered worker injured or killed if the injury or accident occurred as a result of the worker's voluntary participation in an off-duty, recreational, social, or athletic activity not constituting part of the worker's work-related duties, except where these activities are expressly required by the employment.
- B. No benefits under this Policy shall be payable to any covered worker if the injury, disease, or death arises from participation in voluntary physical fitness activities during the regular work day, regardless of whether the employee is or is not compensated for the time in which the physical fitness activities take place.

Section 3.12. Injuries Caused by Third Parties

No benefits of any nature shall be payable for any covered worker injured or killed as the result of a third party, including co-workers, who intended to injure the worker because of reasons personal to that worker and not directed at the worker for reasons related/relevant to his employment.

Section 3.13. Secondhand Smoke

No benefits under this Policy shall be payable to or on behalf of any covered worker injured or killed as a result of exposure to or injury by secondhand smoke.

CHAPTER 4. BENEFITS – GENERAL PROVISIONS

Section 4.01. Right to Compensation and Medical Treatment Benefits

Every covered worker coming within the provisions of this Policy who is injured, and in the event of a worker's death, the dependents of every such covered worker, arising out of and in the course and scope of employment and while acting in furtherance of the Employer's interest at the time of the incident and/or accident, unless the injury is otherwise limited or excluded by the terms and conditions of this Policy, shall be entitled to receive, and shall be paid, for loss sustained on account of the injury, death and/or occupational disease, such benefits as provided under this Policy.

Section 4.02. Workers Benefit as Exclusive Remedy

The rights and remedies provided by the provisions of this Policy for a worker on account of injury or occupational disease for which benefits under this Policy are recoverable, shall be the exclusive and only rights and remedies of such worker, the worker's personal or legal representative, dependents, or next of kin, at a common law or otherwise, on account of such injury and/or occupational disease against the Employer, the Employer's representatives, TWCC, any insurer, guarantor or surety, or the administrator for any matter relating to the occurrence of or payment for an injury or death covered under this Policy or related to the handling of such claim. To that end, all civil causes of action against the covered Employer and its employees, or the Administrator and its employees, arising from said injuries or death, and the jurisdiction of all courts over such causes of action are hereby abolished and barred, except as specifically provided by this Policy.

Section 4.03. Effect of Compensation Paid in Other Jurisdictions or Third Party Recovery

An injured worker who pursues and recovers compensation under laws of another jurisdiction or from a third party shall notify the Administrator. The injured worker forfeits compensation under this Policy in proportion to their recoveries from the other jurisdiction or third party.

Section 4.04. Liability of Third Parties - Subrogation

- A. The Employer and/or their representative, insurer, guarantor, or surety shall be subrogated to the common law rights of the worker to pursue any claims for compensation against any third party that is liable for the death of, or injuries to, said worker arising out of and in the course and scope of employment and while the worker was acting in the furtherance of the Employer's interest to the extent of the benefits bestowed upon the said worker.
- B. In case of recovery, the Administrator shall enter judgment for distribution of the proceeds thereof as follows:
 - 1. A sum sufficient to repay the Employer and/or the Administrator for the amount of the compensation actually paid to the worker under this Policy up to that time;
 - 2. A sum sufficient to pay the Employer the present worth, computed at the current legal interest rate for court judgments and decrees, of the future payments of compensation for which the Employer is liable, but the sum is not the final adjudication of the future payments which the worker is entitled to receive and if the sum received by the Employer is in excess of the amount required to pay the compensation, the excess shall be paid to the worker.
 - 3. The balance, if any, shall be paid over to the worker.
- C. For subrogation purposes hereunder, any payment made to a covered worker, his guardian, parent, next of kin, or legal representative, by or on behalf of any third party, his or its principal or agent liable for, connected with, or involved in causing an injury to such worker shall be considered as having been so paid as damages resulting from and because said injury was under circumstances creating a legal liability against said third party, whether such payment be made under a covenant not to sue, compromise settlement, denial of liability, or otherwise.

Section 4.05. Assignability of Benefits – Attachment of Liens

Benefits received under this Policy are not assignable, except that a legal beneficiary may assign the right to death benefits. Income from death benefits are subject only to the following liens or claims, to the extent of any income or death benefits that are unpaid on the date the Administrator receives written notice of the lien, judgment, or claim in the following order of priority:

- A. Court-ordered child support issued or recognized by the Employer;
- B. A subrogation interest established under this Policy; and
- C. Debts owed to the Employer;

Section 4.06. Aggravation of Pre-Existing Disease or Condition

If a covered worker is suffering from a pre-existing disease and/or injury at the time an occupational incident, accident and /or disease occurs or arises in the course and scope of employment with the worker was acting in furtherance of the Employer's interest at the time of the injury and/or incident, and the pre-existing disease and/or injury is aggravated thereby, the aggravation of the disease or injury is, subject to provisions herein,

compensable under this Policy. The amount of the award for that disability as set forth in this Policy may be reduced or denied in its entirety by the Administrator in consideration of the following:

- A. A prior settlement from any source for the same impairment;
- B. The difference between the degree of impairment of the worker before the covered accident and/or occupational disease and the degree of impairment after the covered accident or occupational disease; or
- C. The benefits to be paid for impairments and/or disabilities would be in excess of 100% of the whole person. For purposes of this subsection, benefits include those benefits or payments made under this Policy, benefits from the worker's compensation laws of any other jurisdiction or payments from third parties.

Section 4.07. Termination of Benefits Upon Death

Where a worker is entitled to compensation under this Policy for an injury sustained, and death ensues from any cause not resulting from the injury for which he was entitled to the compensation, payments of the unpaid balance for such injury shall cease and all liability for such compensation thereafter shall terminate.

Section 4.08. Notice by Worker of Absence from Locality

Any worker leaving the locality in which he or she is receiving medical treatment, without prior written approval from the Employer or Administrator, will forfeit the right to all compensation during such time.

CHAPTER 5. BENEFITS

Section 5.01. Vocational Rehabilitation

Vocational rehabilitation benefits or training are not mandatory under this Policy, but may, at the discretion of the Administrator, be ordered pursuant to his authority established herein.

Section 5.02. Waiting Period

An initial waiting period of three (3) consecutive calendar days is to accrue before the covered worker shall be entitled to indemnity benefits under this Policy.

Section 5.03. Temporary Total Disability and Partial Disability Income Benefits

- A. When the worker is disabled from work duty as determined by the consulting physician, or in the Administrator's discretion, the attending physician, by reason of a compensable injury or occupational disease, benefits shall be payable as follows:
 - 1. If the covered worker is 100% disabled, benefits are payable at 70% of the worker's pre-injury average weekly wage which shall in no case exceed \$1,100.00. These benefits are payable to the covered worker for the earlier of a medical release from 100% disability or death. These benefits shall not be commuted to a lump sum.
 - 2. If the covered worker is less than 100% disabled, benefits are payable at 70% of the difference between the worker's pre-injury average weekly wage and the wage the covered worker is earning or capable of earning in his partially disabled condition. In no event shall the covered worker exceed 80% of their pre-injury average weekly wage.

- B. Except as otherwise specified in this Policy, such benefits will continue to be paid in accordance with the terms of this Policy until which time the earliest of the following occur:
1. In case of a nonsurgical soft tissue injury, temporary total disability or partial disability benefits shall not exceed eight (8) weeks per claim;
 2. The consulting physician, or in the discretion of the Administrator, the attending physician, declares that the worker has reached Maximum Medical Improvement;
 3. The claimant is incarcerated;
 4. A full, unrestricted release is provided by the consulting physician, or in the discretion of the Administrator, the attending physician;
 5. A modified or light duty release is provided by the consulting physician, or in the discretion of the Administrator, the attending physician, and a bona fide job offer of suitable work consistent with the worker's disability is rejected;
 6. The covered worker has retired or has removed themselves from the workforce;
 7. The covered worker was terminated from employment for cause and has been released to work with restrictions;
 8. A new or intervening incident is the proximate cause of disability;
 9. Benefits are refused by the worker;
 10. Presumption of MMI or abandonment of medical treatment as defined by section 4.05 of this Policy;
 11. Suspension of benefits by the Administrator for reasons authorized in this Policy or by the authority of the arbitrator established under this Policy;
 12. The worker's earning capacity is reduced for reasons other than the disability from the work-related injury;
 13. The worker received other compensation during this time including but not limited to, sick time, vacation time, and personal time off (PTO);
 14. The covered worker dies from any cause not resulting from the injury for which he was entitled to compensation under this section, and the covered worker's estate is not entitled to any further benefits as defined by this Policy.

Section 5.04. Soft Tissue Injuries

- A. **NONSURGICAL** – In case of a nonsurgical soft tissue injury, temporary total disability or partial disability benefits shall not exceed eight (8) weeks per claim.
- B. **SURGICAL** – A claimant who has been recommended by a treating physician for surgery for a soft tissue injury may petition the Administrator for an extension of temporary total disability or partial disability benefits and the Administrator may authorize such an extension if the treating physician indicates that such an extension is appropriate and as agreed to by all parties. In the event the surgery is not performed, the benefits for the extension period shall be terminated as of the date of cancellation of the surgery.

1. Injections are not considered a surgical procedure.
 2. If surgery is recommended but cannot be performed due to an underlying or unrelated condition, the covered worker will not be entitled to temporary total disability or partial disability benefits. Temporary total disability or partial disability benefits will only resume once the covered worker is able to undergo the recommended surgical procedure.
- C. For purposes of this section, “soft tissue injury” means damage to one or more of the tissues that surround bones and joints. Soft tissue injury includes, but is not limited to: sprains, strains, contusions, tendonitis, and muscle tears. Cumulative trauma is to be considered a soft tissue injury.
- D. Soft tissue injury does not include any of the following:
1. Injury to the spine, spinal disks, spinal nerves or spinal cord, where corrective surgery is performed.
 2. Brain or closed-head injury as evidenced by
 - a. Sensory or motor disturbances;
 - b. Communication disturbances;
 - c. Complex integrated disturbances of cerebral function, or
 - d. Episodic neurological disorders.
 3. Any joint replacement.
- E. In all cases of soft tissue injury, the worker shall only be entitled to appropriate and necessary medical care and temporary total or partial disability benefits. No Impairment Benefits are payable for a soft tissue injury where surgery is not recommended or performed.

Section 5.05. Hernia; Operations

- A. A worker, in order to be entitled to compensation for a hernia, must prove by a preponderance of evidence:
1. The hernia is of recent origin;
 2. That its appearance was accompanied by an immediate onset of pain;
 3. That this was immediately preceded by some accident suffered in the course and scope of employment; and
 4. That it did not exist prior to the date of the alleged injury.
- B. Benefits for a hernia shall be limited to six (6) week of temporary total or partial disability benefits; and should the worker be released to return to work prior to the end of the six (6) weeks, the worker shall be compensated only for the number of week during which the physician restricted the claimant from work.
- C. The worker is not entitled to Impairment Benefits under this Policy.

Section 5.06. Impairment Benefits

- A. Except as otherwise specified in this Policy, at the expiration of 36 months from the date of the incident, accident and/or occupational disease, the worker is presumed to have reached MMI regardless of disability and/or current medical status. The consulting physician, or in the discretion of the Administrator, the attending physician, is to provide an impairment rating in accordance with the most current edition of the American Medical Association (AMA) based on reasonable medical probability and objective medical findings. In addition, at this time the consulting physician, or in the discretion of the Administrator, the attending physician, is required to provide a treatment plan for reasonable and necessary future medical needs. The attending physician’s impairment rating and treatment may be subject to review and revision by the consulting physician at the discretion of the Administrator.

B. Impairment benefits are measured by multiplying 70% of the gross average weekly wage times the number of weeks reflected as in the Benefits for Total Loss of use in subsection (C) of this section times the percentage of permanent impairment. The gross average weekly wage shall in no case exceed \$1,100.00

C. Benefits for Total Loss of Use:

Arm	200 weeks
Hand	155 weeks
Thumb	47 weeks
First Finger (Index Finger)	30 weeks
Second Finger	25 weeks
Third Finger	16 weeks
Fourth Finger	12 weeks
Leg	195 weeks
Foot	155 weeks
Great Toe	24 weeks
One Toe	8 weeks
Eye (One) – Total Blindness	200 weeks
Ear (One) – Total Deafness	78 weeks
Ear (Two) – Total Deafness	300 weeks
Body as a Whole	355 weeks

D. A rating may not be issued prior to the declaration of MMI. The Administrator may reserve issuance of payment under the following conditions:

1. Contribution of prior impairment ratings;
2. Clarification by the Administrator as to the validity of the date for MMI;
3. Similar rating or MMI issues to be resolved by the consulting physician or, if necessary, the arbitration panel established under this Policy.

E. The rating recognized by the arbitrator is binding. The rating will not be retroactively paid for weeks accrued in resolving the rating issue subsequent to the date of MMI. Such benefits will become effective the date of the ruling and commence at that time.

F. Notwithstanding provisions herein, the Administrator shall retain the right and discretion to order Lump Sum Settlements by way of Compromise and Release.

Section 5.07. Benefit Issuance Period

Except as provided herein:

- A. All benefits under this chapter are to be issued bi-weekly.
- B. There shall be no acceleration of benefits under this Policy.
- C. Any settlement issued on behalf of a covered worker shall be executed by signed memorandum only.

Section 5.08. Not to Exceed Pre-Injury Average Weekly Wage

In no event may the worker's disability income benefits, or other income sources supplementing the loss income exceed 100% of the worker's pre-injury average weekly wage.

Section 5.09. Benefit Offsets

The Administrator is entitled to reduce benefits payable to covered workers under this Policy in an amount equal to employee payments paid for by the Employer for any pecuniary wages plan in the form of social security, long-term and short term disability, Employer elected salary contribution, vacation or sick leave, or any other entitlement of a similar nature paid in whole or in part by the Employer. Further, if any overpayment is made under this chapter to the covered worker of any disability income benefits as set forth in section 5.03 of this Policy, such shall be deducted from any benefits payable under functional impairment benefits as set forth in section 5.06 of this Policy; or in the case where no functional impairment benefits are payable, then such overpayment of benefits may be deducted through payroll deductions by Employer.

Section 5.10. Re-Opening Rights

A claim may be re-opened upon an application based upon a change in condition for the worse as supported by objective medical findings. The covered worker must request the application from the Administrator. Re-opening rights are forever barred if:

- A. The application is not filed within three (3) years from the date of the single event occurrence or an occupational disease or cumulative trauma;
- B. The covered worker was deemed MMI due to abandoned medical care or neglect;
- C. A new or intervening injury was sustained;
- D. If a Lump Sum Settlement by way of Compromise and Release is issued;
- E. There is a separation of employment with the Employer or employment is not continuous.

CHAPTER 6. DEATH BENEFITS

Section 6.01. Distribution of Death Benefits

- A. When death ensues to the covered worker by reason of a compensable injury or occupational disease, benefits shall be payable to the dependents who were dependant as defined in Section 1.04 on the earnings of the worker for support at the time of his injury, compensation upon the basis of 70% of the worker's average weekly wage not to exceed \$1,100.00, commencing from the date of death as follows:
 - 1. If there are no children entitled to benefits, then all to the surviving spouse for the projected probable life span of the decedent based on established mortality tables, the life of the surviving spouse or until remarriage, whichever comes first; provided that upon remarriage two years' benefits shall be paid to the surviving spouse in a lump sum. To be an eligible "surviving spouse" under this Policy, the surviving spouse must have been married and living with the decedent at the time of the compensable injury; proof of eligibility may be required. If there are surviving children that qualify as eligible "dependents" under this Policy, the surviving spouse shall be entitled to one-half of death benefits, and the other one-half shall be divided by the surviving children in equal shares;
 - 2. If there is no surviving spouse, an equal share to all children who qualify as dependents as defined in Section 1.04

- B. Where a worker is entitled to compensation under this Policy for an injury sustained, and death ensues from any cause not resulting from the injury for which he was entitled to the compensation, payments of the unpaid balance for such injury shall cease and all liability thereafter shall terminate.

Section 6.02. Redistribution of Death Benefits

- A. If a legal beneficiary as defined in section 6.01 dies or otherwise becomes ineligible for death benefits, benefits shall be redistributed to the remaining legal beneficiaries in accordance with section 6.01.
- B. If all legal beneficiaries cease to be eligible, any duty to pay the remaining death benefits payable under section 6.01 shall cease immediately.

Section 6.03. Verification of Eligibility of Death Benefits

Upon request from the Administrator, all persons claiming to be eligible for death benefits shall furnish all necessary documentation to support their claim of eligibility.

Section 6.03. Burial Benefits

If death results from a compensable injury, the person and/or entity who incurred the liability for the costs of the burial shall be reimbursed for either the actual costs incurred for such reasonable burial expenses, or \$10,000, whichever is less.

CHAPTER 7. MEDICAL BENEFITS

Section 7.01. Entitlement to Medical Benefits

All covered workers are entitled to reasonable health care, supplies and reasonably necessary transportation incurred for such services. Medical benefits are payable from the date the compensable injury or accident occurred and will cease effective the date the claim closes. Where possible and if the covered worker is eligible, all health care should be received through Indian Health Services or the IHS designee or referral.

Section 7.02. Right to Select Physician; Employer Selection

- A. Except in an emergency, all health care must be approved or recommended by the Administrator. Health care treatment must be offered promptly and be reasonably suited to treat the injury. If the worker has reason to be dissatisfied with the care offered, he should communicate the basis of such dissatisfaction to the Administrator, in writing, following which the Administrator may agree to alternate care reasonably suited to treat the injury. Any non-authorized treatment of the covered worker is not payable under this section and shall be at the worker's sole expense.
- B. Chiropractic, osteopathic, naturopathic, acupuncture, or other non-traditional forms of treatment must be pre-approved by the Administrator and approved by the attending physician. Duration of treatment and/or number of visits to such medical providers shall be subject to Administrator's approval, who may rely upon the advice of the consulting or attending physician.

Section 7.03. Release of Medical-Related Information

Any worker, Employer or insurance carrier or its agents making or defending a claim for benefits agrees to release all information to which the worker, Employer, carrier, or its agents have access concerning the worker's physical or mental condition relative to the claim and further waives any privilege for the release of such information. The information shall be made available to any party or the party's representative upon request, and includes any third-party health care providers. Any institution or person releasing the

information to a party or the party's representative shall not be liable for criminally for civil damages by reason of the release of the information.

Section 7.04. Medical Expenses

Medical costs and expenses shall be limited to those customarily paid in workers' compensation claims. Charges believed to be excessive or unnecessary may be denied by the Administrator. Any institution or person rendering treatment to a worker under this Policy agrees to be bound by such charges as allowed by the Administrator and shall not recover in law or equity any amount in excess of that set by the Administrator.

Section 7.05. Settlement of Future Medical

The worker may negotiate settlement of future medical expenses. For purposes of settling the future medical expenses, the basis for settlement will be the value of the current and future medical plan. Settlements under this section are not to exceed \$100,000 unless approved by Employer.

CHAPTER 8. ADJUDICATION OF DISPUTES

Section 8.01. Appeals from Decisions of the Administrator

- A. The Administrator shall administer this Policy in accordance with the terms and conditions set forth in this Policy. Any appeals from final decisions of the Administrator shall follow the procedures as set forth in this Policy.
- B. First Level – Managerial Review. Whenever a written decision has been made on a claim, in the event of any disagreement or dispute arising there from, a “Covered Worker” must request a managerial review of such final written decision at the Administrator level, and the following shall apply:
 - a. Such a request must be submitted in writing to the Administrator and made within thirty (30) days of the written decision. The failure to adhere to this requirement shall render the written decision the Administrator final and binding, and shall constitute a waiver to any subsequent appeals or dispute resolution processes set forth under this Policy.
 - b. Upon receipt of a timely request for managerial review, the Administrator shall respond in writing via certified mail as to whether the written decision being appealed shall be upheld, amended, or overturned and the justification for same, within a reasonable time not to exceed ninety (90) days. If the Administrator fails to respond within the timeframe proscribed herein, the decision shall be deemed upheld by the Administrator and an aggrieved “Covered Worker” may proceed with the process set forth under Section C below.
- C. Second Level – Arbitration. Subject to the provisions of Section 8.01(A) and 8.01(B) above, if a “Covered Worker” has adhered to the requirements under Section 8.01(B) and continues to disagree with recommendation of the Administrator, or if the Administrator fails to respond to a timely request within the ninety (90) days, final arbitration may be requested. Such a request must be made within thirty (30) days of the Administrator's Managerial Review response under Section 8.01(B) above, or thirty (30) days from the ninety-first (91st) day should the Administrator fail to respond in the time-frame allotted thereunder where a timely request has been made. A failure to make a timely request for arbitration under this section for any reason will forever bar further appellate remedy and will render the Administrator's final written decision binding. Where a timely request for arbitration is made pursuant to this section, an independent arbitrator approved by TWCC shall be selected, and an arbitration conference shall be scheduled within sixty (60) days of the request. The arbitrator shall:

- a. Be bound by this Policy, but may at his or her discretion use other workers' compensation law, solely as a non-binding source of reference or information.
- b. Take all action necessary to ensure an equitable, orderly, and expeditious review.
- c. Regulate all aspects of the arbitration conference including, but not limited to, the administering of applicable oaths and affirmations, admissibility of evidence, and admissibility of expert or lay witness testimony.

Any evidence that either party wishes to submit or have reviewed pursuant to or in consideration of the arbitration hearing must submit true copies thereof to the opposing parties no later than fifteen (15) days prior to the date of the arbitration conference.

Both parties agree to abide by the arbitrator's findings. Except as specifically expressed herein, nothing shall be deemed or interpreted as a waiver of Sovereign Immunity, nor does the Employer and/or TWCC consent to enforcement of this provision by any other court, forum, or venue, except as provided by this Policy. The Employer and/or TWCC expressly waives its immunity from suit only as to participation in the arbitration hearing described under this provision, and under the following limited scenario:

Enforcement of Arbitration Award. The enforcement of an award of compensation and/or workers' compensation benefits by arbitration provided the arbitrator and/or court shall have no authority or jurisdiction to order execution against any assets or revenues of the TWCC or its Administrator except: (a) what is provided for under a valid policy of workers' compensation insurance, but only up to the available limit therein; (b) funds specifically set aside or designated by the TWCC for payment of such compensation and/or workers' compensation benefits; or (c) any other proceeds of any applicable insurance policies. In no instance shall any enforcement of any kind whatsoever be allowed against any assets of the TWCC or its Administrator other than specified in this Subsection.

- D. Third level – Tribal Court. In the event that a Covered Worker or Employer disagrees with the decision of the Arbitrator, an appeal may be taken to a Tribal Court of competent jurisdiction. Notice of an appeal must be filed with the Tribal Court within thirty (30) days after the date of the final written decision of the Arbitrator. Failure to file a timely Notice of Appeal will constitute a waiver of the right to appeal and the final written decision of the Arbitrator shall be forever binding on the Covered Worker.

For the purposes of any appeal to Tribal Court, all issues of fact determined by the Arbitrator shall be given deference by the Tribal Court and shall not be disturbed absent a showing of an abuse of discretion by the Arbitrator.

CHAPTER 9. MEDICARE SET ASIDES

Section 9.01. Medicare Set Asides. The Medicare/Medicaid SCHIP Extension Policy (MMSEA) sets forth reporting requirements for insurers where criteria established pursuant to the Policy have been met. The TWCC recognizes those requirements (*see, e.g. Section 7.1 of the NGHP User Guide*), and nothing herein shall prevent the Administrator from protecting Medicare's interests where required to do so. Where a "Covered Worker" is entitled to supportive medical care after maximum medical improvement is achieved, such supportive care will only be provided as specified by a medical provider authorized by the TWCC or its Administrator and only for the duration specified by that medical provider. Where a claim has been closed due to abandonment, award, or settlement, neither TWCC nor its insurer or Administrator shall have any further obligation to pay benefits under this Policy, inclusive of any subsequent Medicare liens.

CHAPTER 10. MISCELLANEOUS

Section 10.01. Attorney's Fees. The maximum attorneys' fee permitted is 25% of the first \$4,000 of monetary compensation awarded to the covered worker and 20% of the next \$60,000 of monetary compensation awarded to the covered worker. This contingency attorney fee for recovery of monetary compensation is also presumed to be adequate to cover the recovery of medical and rehabilitation benefits or services that are concurrently in dispute. Covered workers are responsible for paying their attorney's fees for the recovery of medical expenses, rehabilitation services, or vocational rehabilitation services. All fees for legal services related to the same injury are cumulative and cannot exceed \$13,000. If a lump sum payment is made, the amount of the covered worker's weekly benefit shall be reduced by the same percentage that partial lump sum bears to the total lump sum commutation.