

## PROFESSIONAL SERVICES AGREEMENT

**THIS PROFESSIONAL SERVICES AGREEMENT** (“Agreement”) is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **ISTONISH, INC.**, a Colorado Corporation, registered to do business in Colorado, whose address is 5500 Greenwood Plaza Blvd., Suite 130, Greenwood Village, CO 80111 (“Contractor”), jointly “the parties.”

### RECITALS

**WHEREAS**, the City is desirous of engaging a Managed Service Provider for after-hours, weekends, holidays and on an as needed basis for technology service support, as an effective and reliable extension of the CCD technology team, on behalf of City employees; and

**WHEREAS**, the Contractor has agreed to provide those services under the terms and conditions as set out below.

IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:

The recitals set forth above are incorporated herein.

1. **DEFINITIONS.** Whenever used herein, any schedules, exhibits, order forms, or addenda to this Agreement, the following terms shall have the meanings assigned below unless otherwise defined therein. Other capitalized terms used in this Agreement are defined in the context in which they are used.
  - 1.1 **“Agreement”** means this Professional Services Agreement between City and Contractor, inclusive of all schedules, exhibits, attachments, addenda and other documents incorporated by reference between the City and Contractor, Contract Number 202161371.
  - 1.2 **“City Data”** means all information, whether in oral or written (including electronic) form, created by or in any way originating with City and all information that is the output of any computer processing, or other electronic manipulation, of any information that was created by or in any way originating with City, in the course of using and configuring the Services provided under this Agreement, and includes all records relating to City’s use of Contractor services.
  - 1.3 **“Documentation”** means, collectively: (a) all materials published or otherwise made available to City by Contractor that relate to the functional, operational and/or performance capabilities of the services; (b) all user, operator, system administration, technical, support and other manuals and all other materials published or otherwise made available by Contractor, including marketing materials that describe the functional, operational and/or performance capabilities of the services; (c) any Requests for

Information and/or Requests for Proposals (or documents of similar effect) issued by City, and the responses thereto from Contractor, and any document which purports to update or revise any of the foregoing; (d) work set out in a Statement of Work; and (e) the results of any Contractor "Use Cases Presentation", "Proof of Concept" or similar type presentations or tests provided by Contractor to City or as required to be produced by Contractor subject to the terms of this Agreement. .

- 1.4 **"On-Call"** means any professional services performed in addition to those set out in a Statement of Work, performed pursuant to a mutually agreed upon Order, at hourly rates set out in this Agreement.
- 1.5 **"Protected Information"** includes, but is not limited to, personally-identifiable information, student records, protected health information, criminal justice information or individual financial information and other data defined under §24-72-101 et seq., and personal information that is subject to local, state or federal statute, regulatory oversight or industry standard restricting the use and disclosure of such information. The loss of such Protected Information would constitute a direct damage to the City.

## 2. **RIGHTS AND LICENSE IN AND TO DATA**

- 2.1 The parties agree that as between them, all rights in and to City Data shall remain the exclusive property of City, and Contractor has a limited, nonexclusive license to access and use City Data as provided in this Agreement solely for the purpose of performing its obligations hereunder.
- 2.2 This Agreement does not give a party any rights, implied or otherwise, to the other's data, content, or intellectual property, except as expressly stated in the Agreement.

## 3. **DATA PRIVACY**

- 3.1 Contractor will use City Data only for the purpose of fulfilling its duties under this Agreement and for City's sole benefit and will not share City Data with or disclose it to any Third Party without the prior written consent of City or as otherwise required by law. By way of illustration and not of limitation, Contractor will not use City Data for Contractor's own benefit and, in particular, will not engage in "data mining" of City Data or communications, whether through automated or human means, except as specifically and expressly required by law or authorized in writing by City.
- 3.2 Contractor will provide access to City Data only to those Contractor employees, contractors and Subcontractors ("Contractor Staff") who need to access the City Data to fulfill Contractor's obligations under this Agreement. Contractor will ensure that, prior to being granted access to the City Data, Contractor Staff who perform work under this Agreement have all undergone and passed criminal background screenings; have successfully completed annual instruction of a nature

sufficient to enable them to effectively comply with all data protection provisions of this Agreement; and possess all qualifications appropriate to the nature of the employees' duties and the sensitivity of the City Data they will be handling.

3.3 Contractor may provide City Data to its agents, employees, assigns, and Subcontractors as necessary to perform the work, but shall restrict access to Confidential Information to those agents, employees, assigns, and Subcontractors who require access to perform their obligations under this Agreement. Contractor shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Agreement, and that the nondisclosure provisions are in force at all times the agent, employee, assign, or Subcontractor has access to any Confidential Information. Contractor shall provide copies of those signed nondisclosure provisions to the City upon execution of the nondisclosure provisions if requested by the City.

4. **COMPLIANCE WITH APPLICABLE LAWS AND CITY POLICIES.** Contractor will comply with all applicable laws in performing the services under this Agreement. Any Contractor personnel visiting City's facilities will comply with all applicable City policies regarding access to, use of, and conduct within such facilities. City will provide copies of such policies to Contractor upon request.

4. **WARRANTIES, REPRESENTATIONS AND COVENANTS** Contractor represents and warrants that.

4.1 The services will conform to applicable specifications, and operate and produce results substantially in accordance with the Documentation and the Exhibits attached hereto, and will be free from deficiencies and defects in materials, workmanship, design and/or performance during the Term of this Agreement;

4.2 All technology related services will be performed by qualified personnel in a professional and workmanlike manner, consistent with industry standards;

4.3 Contractor has the requisite ownership, rights and licenses to perform its obligations under this Agreement fully as contemplated hereby and to grant to the City all rights with respect to the software and Services free and clear from all liens, adverse claims, encumbrances and interests of any Third Party;

4.4 There are no pending or threatened lawsuits, claims, disputes or actions: (i) alleging that any software or service infringes, violates or misappropriates any Third Party rights; or (ii) adversely affecting any software, service or supplier's ability to perform its obligations hereunder;

4.5 The service will not violate, infringe, or misappropriate any patent, copyright, trademark, trade secret, or other intellectual property or proprietary right of any Third Party;

- 4.8 Third Party Warranties and Indemnities. Contractor will assign to City all Third Party warranties and indemnities that Contractor receives in connection with any products provided to City. To the extent that Contractor is not permitted to assign any warranties or indemnities through to City, Contractor agrees to specifically identify and enforce those warranties and indemnities on behalf of City to the extent Contractor is permitted to do so under the terms of the applicable Third Party agreements.
- 4.9 Contractor warrants it has complied and shall comply with all applicable federal, state, and local laws and regulations of its domicile and wherever performance occurs during the term of this Agreement.
- 4.10 Delivery of Products shall not be construed to represent Acceptance nor shall Delivery of Products relieve Contractor from its responsibility under any representation or warranty. If the City makes a payment for a Product prior to Acceptance, the payment does not grant a waiver of any representation or warranty by Contractor.

## **5. CONFIDENTIALITY**

- 5.1 Contractor shall keep confidential, and cause all Subcontractors to keep confidential, all City Data, unless the City Data are publicly available. Contractor shall not, without prior written approval of the City, use, publish, copy, disclose to any third party, or permit the use by any third party of any City Data, except as otherwise stated in this Agreement, permitted by law, or approved in writing by the City. Contractor shall provide for the security of all Confidential Information in accordance with all applicable laws, rules, policies, publications, and guidelines. If Contractor or any of its Subcontractors will or may receive the following types of data, Contractor or its Subcontractors shall provide for the security of such data according to the following: (i) the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information, attached to this Contract as an Exhibit if applicable; (ii) the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI; (iii) the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI; and (iv) the federal Health Insurance Portability and Accountability Act for all PHI and in accordance with the HIPAA Business Associate Agreement attached to this Agreement as an Exhibit if applicable.
- 5.2 The Receiving Party agrees to exercise the same degree of care and protection with respect to the Confidential Information that it exercises with respect to its own similar Confidential Information and not to directly or indirectly provide, disclose, copy, distribute, republish or otherwise allow any Third Party to have access to any Confidential Information without prior written permission from the disclosing

party. However: (a) either party may disclose Confidential Information to its employees and authorized agents who have a need to know; (b) either party may disclose Confidential Information if so required to perform any obligations under this Agreement; and (c) either party may disclose Confidential Information if so required by law (including court order or subpoena). Nothing in this Agreement shall in any way limit the ability of City to comply with any laws or legal process concerning disclosures by public entities. Contractor acknowledges that any responses, materials, correspondence, documents or other information provided to City are subject to applicable state and federal law, including the Colorado Open Records Act, and that the release of Confidential Information in compliance with those acts or any other law will not constitute a breach or threatened breach of this Agreement.

5.3 The Receiving Party will inform its employees and officers of the obligations under this Agreement, and all requirements and obligations of the Receiving Party under this Agreement shall survive the expiration or earlier termination of this Agreement. The Receiving Party shall not disclose City Data or Confidential Information to Subcontractors unless such Subcontractors are bound by non-disclosure and confidentiality provisions at least as strict as those contained in this Agreement.

6. **COLORADO OPEN RECORDS ACT.** The parties understand that all the material provided or produced under this Agreement, including items marked Proprietary or Confidential, may be subject to the Colorado Open Records Act., § 24-72-201, et seq., C.R.S. In the event of a request to the City for disclosure of such information, the City shall advise Contractor of such request in order to give Contractor the opportunity to object to the disclosure of any of its documents which it marked as proprietary or confidential material. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and Contractor agrees to intervene in such lawsuit to protect and assert its claims of privilege against disclosure of such material or waive the same. Contractor further agrees to defend, indemnify and save and hold harmless the City, its officers, agents and employees, from any claim, damages, expense, loss or costs arising out of Contractor's intervention to protect and assert its claim of privilege against disclosure under this Article including but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court.

7. **RESERVED.**

8. **TERM:** The term of the Agreement is from January 1, 2022 through February 28, 2027.

9. **COMPENSATION AND PAYMENT:**

9.1 Fee: The fee for the technology related services is described in the attached Exhibit A (the "Fee"). The Fee shall be paid pursuant to the City's Prompt Payment Ordinance.

9.2 Reimbursement Expenses: The fees specified above include all expenses, and no other expenses shall be separately reimbursed or incurred hereunder for the provision of the Service(s).

9.3 Invoicing: Contractor must submit an invoice which shall include the City contract number, clear identification of the deliverable that has been completed, and other information reasonably requested by the City. Payment on all uncontested amounts shall be made in accordance with the City's Prompt Payment Ordinance.

9.4 Maximum Agreement Liability:

9.4.1 Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed **SEVEN HUNDRED FORTY-FIVE THOUSAND FOUR HUNDRED THIRTY-SIX DOLLARS** (\$745,436.00) (the "Maximum Agreement Amount"). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Contractor beyond that specifically described in the attached Exhibits. Any services performed beyond those in the attached Exhibits are performed at Contractor's risk and without authorization under the Agreement.

9.4.2 The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

**10. STATUS OF CONTRACTOR:** The Contractor is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the Contractor nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

**11. TERMINATION:**

11.1 The City has the right to terminate the Agreement with cause upon written notice effective immediately, and without cause upon twenty (20) days prior written notice to the Contractor. However, nothing gives the Contractor the right to perform services under the Agreement beyond the time when its services become unsatisfactory to the Manager.

11.2 Notwithstanding the preceding paragraph, the City may terminate the Agreement if the Contractor or any of its officers or employees are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of

guilty or otherwise admit culpability to criminal offenses of bribery, kick backs, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with Contractor's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

11.3 Upon termination of the Agreement, with or without cause, the Contractor shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work duly requested and satisfactorily performed as described in the Agreement and shall refund to the City any prepaid cost or expenses.

12. **EXAMINATION OF RECORDS AND AUDITS:** Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Contractor's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Contractor shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require Contractor to make disclosures in violation of state or federal privacy laws. Contractor shall at all times comply with D.R.M.C. 20-276.

13. **WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event shall any action by either Party hereunder constitute or be construed to be a waiver by the other Party of any breach of covenant or default which may then exist on the part of the Party alleged to be in breach, and the non-breaching Party's action or inaction when any such breach or default shall exist shall not impair or prejudice any right or remedy available to that Party with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of the Agreement shall be deemed or taken to be a waiver of any other breach.

14. **INSURANCE:**

14.1 **General Conditions:** Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, including any extension thereof, and during any warranty period. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-VIII" or better. Each policy shall require

notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

- 14.2 Proof of Insurance: Contractor may not commence services or work relating to this Agreement prior to placement of coverages required under this Agreement. Contractor certifies that the certificate of insurance attached as **Exhibit B**, preferably an ACORD form, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the certificate of insurance. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.
- 14.3 Additional Insureds: For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), Contractor and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.
- 14.4 Waiver of Subrogation: For all coverages required under this Agreement, Contractor's insurer shall waive subrogation rights against the City.
- 14.5 Subcontractors and Subconsultants: Contractor shall confirm and document that all subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) procure and maintain coverage as approved by the Contractor and appropriate to their respective primary business risks considering the nature and scope of services provided.
- 14.6 Workers' Compensation and Employer's Liability Insurance: Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for



each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.

- 14.7 Commercial General Liability: Contractor shall maintain a Commercial General Liability insurance policy with minimum limits of \$1,000,000 for each bodily injury and property damage occurrence, \$2,000,000 products and completed operations aggregate (if applicable), and \$2,000,000 policy aggregate.
- 14.8 Automobile Liability: Contractor shall maintain Automobile Liability with minimum limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.
- 14.9 Technology Errors & Omissions including Cyber Liability: Contractor shall maintain Technology Errors and Omissions insurance including cyber liability, network security, privacy liability and product failure coverage with minimum limits of \$1,000,000 per occurrence and \$1,000,000 policy aggregate. The policy shall be kept in force, or a Tail policy placed, for three (3) years.

**15. DEFENSE AND INDEMNIFICATION:**

- 15.1 Contractor hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees (“Indemnified Parties”) for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“Claims”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Contractor or its Subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.
- 15.2 Contractor’s duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether claimant has filed suit on the Claim. Contractor’s duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City’s negligence or willful misconduct was the sole cause of claimant’s damages.
- 15.3 Contractor will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City’s exclusive remedy.

- 15.4 Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.
- 15.5 Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and costs) incurred by the Indemnified Parties in relation to any claim that any Deliverable, Service, software, or work product provided by Contractor under this Agreement (collectively, "IP Deliverables"), or the use thereof, infringes a patent, copyright, trademark, trade secret, or any other intellectual property right.
- 15.6 This defense and indemnification obligation shall survive the expiration or termination of this Agreement.
16. **COLORADO GOVERNMENTAL IMMUNITY ACT:** The parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, § 24-10-101, et seq., C.R.S. (2003).
17. **TAXES, CHARGES AND PENALTIES:** The City shall not be liable for the payment of taxes, late charges or penalties of any nature other than the compensation stated herein, except for any additional amounts which the City may be required to pay under D.R.M.C. § 20-107 to § 20-115.
18. **ASSIGNMENT; SUBCONTRACTING:** The Contractor shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under this Agreement without obtaining the Manager's prior written consent. Any assignment or subcontracting without such consent will be ineffective and void and shall be cause for termination of this Agreement by the City. The Manager has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) the Contractor shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any sub-consultant, Subcontractor or assign.
19. **NO THIRD PARTY BENEFICIARY:** Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or the Contractor receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.
20. **NO AUTHORITY TO BIND CITY TO CONTRACTS:** The Contractor lacks any authority to bind the City on any contractual matters. Final approval of all contractual

matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the Denver Revised Municipal Code.

21. **AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS**: Except for the functional requirements provided in response to an RFP and/or any subsequent enhancement of the SOW or other implementation documentation that may be developed after execution of this Agreement, the Agreement is the complete integration of all understandings between the parties as to the subject matter of the Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City.
  
22. **SEVERABILITY**: Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the parties can be fulfilled.
  
23. **CONFLICT OF INTEREST**:
  - 23.1 No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement. The Contractor shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.
  
  - 23.2 The Contractor shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Contractor represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Contractor by placing the Contractor's own interests, or the interests of any party with whom the Contractor has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement in the event it determines a conflict exists, after it has given the Contractor written notice describing the conflict.
  
24. **NOTICES**: All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Contractor at the address first above written, and if to the City at:

Chief Information Officer or Designee  
201 West Colfax Avenue, Dept. 301  
Denver, Colorado 80202

With a copy of any such notice to:

Denver City Attorney's Office  
1437 Bannock St., Room 353  
Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

25. **DISPUTES**: All disputes between the City and Contractor arising out of or regarding the Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the Manager as defined in this Agreement.
26. **GOVERNING LAW; VENUE**: The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District. Contractor shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.
27. **NO DISCRIMINATION IN EMPLOYMENT**: In connection with the performance of work under the Agreement, the Contractor may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Contractor shall insert the foregoing provision in all subcontracts.
28. **USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS**: Contractor shall cooperate and comply with the provisions of Executive Order 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City barring Contractor from City facilities or participating in City operations.
29. **LEGAL AUTHORITY**: Contractor represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action

passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of Contractor represents and warrants that he has been fully authorized by Contractor to execute the Agreement on behalf of Contractor and to validly and legally bind Contractor to all the terms, performances and provisions of the Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either Contractor or the person signing the Agreement to enter into the Agreement.

30. **NO CONSTRUCTION AGAINST DRAFTING PARTY:** The parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.
31. **ORDER OF PRECEDENCE:** In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.
32. **SURVIVAL OF CERTAIN PROVISIONS:** The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Contractor's obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.
33. **INUREMENT:** The rights and obligations of the parties herein set forth shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns permitted under this Agreement.
34. **TIME IS OF THE ESSENCE:** The parties agree that in the performance of the terms, conditions, and requirements of this Agreement, time is of the essence.
35. **FORCE MAJEURE:** Neither party shall be responsible for failure to fulfill its obligations hereunder or liable for damages resulting from delay in performance as a result of war, fire, strike, riot or insurrection, natural disaster, unreasonable delay of carriers, governmental order or regulation, complete or partial shutdown of plant, unreasonable unavailability of equipment or software from suppliers, default of a Subcontractor or vendor (if such default arises out of causes beyond their reasonable control), the actions or omissions of the other party or its officers, directors, employees, agents, Contractors or elected officials and/or other substantially similar occurrences beyond the party's reasonable control ("Excusable Delay") herein. In the event of any such Excusable Delay, time for performance shall be extended for a period of time as may be reasonably necessary to compensate for such delay.
36. **PARAGRAPH HEADINGS:** The captions and headings set forth herein are for convenience of reference only and shall not be construed so as to define or limit the terms and provisions hereof.

37. **CITY EXECUTION OF AGREEMENT:** This Agreement is expressly subject to and shall not be or become effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver.
38. **COUNTERPARTS OF THIS AGREEMENT:** This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement.
39. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** Contractor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.
40. **ADVERTISING AND PUBLIC DISCLOSURE:** The Contractor shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of the Contractor's advertising or public relations materials without first obtaining the written approval of the Manager. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. The Contractor shall notify the Manager in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.
41. **ON-CALL SERVICES** The Contractor may also provide specialized professional services to support the provisioning of technology services to the City and its constituents as long as the Maximum Contract Amount is not exceeded. These specialized services are set out, along with the rates, identified on attached Exhibit A. The City shall authorize specific assignments for the Contractor by placing a written service order signed by the Manager and the Contractor (the "Order") describing in sufficient details the services and/or deliverables and rates to be provided. The City and the Contractor may also enter into flat rate Orders when those are in the best interest of the City as determined by the Manager. The Contractor agrees that during the term of this Agreement it shall fully coordinate its provision of the services with any person or firm under contract with the City doing work or providing services which affect the Contractor's services. The Contractor shall faithfully perform the work in accordance with the standards of care, skill, training, diligence and judgment provided by highly competent individuals and entities that perform services of a similar nature to those described in this Agreement. Contractor represents and warrants that all services will be performed by qualified personnel in a professional and workmanlike manner, consistent with industry standards; all services will conform to applicable specifications and as attached to the Order, if any; and, it has the requisite ownership, rights and licenses to perform its obligations under this Agreement fully as contemplated hereby and to grant to the City all rights with respect to any software and

services free and clear from any and all liens, adverse claims, encumbrances and interests of any third party.

42. **PAYMENT OF CITY MINIMUM WAGE**: Contractor shall comply with, and agrees to be bound by, all requirements, conditions, and City determinations regarding the City's Minimum Wage Ordinance, Sections 20-82 through 20-84 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid no less than the City Minimum Wage in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, Contractor expressly acknowledges that Contractor is aware of the requirements of the City's Minimum Wage Ordinance and that any failure by Contractor, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

**ATTACHED EXHIBITS**

**EXHIBIT A-STATEMENT OF WORK**

**EXHIBIT B-CERTIFICATE OF INSURANCE**

**Contract Control Number:** TECHS-202161371-00  
**Contractor Name:** ISTONISH INC

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

**SEAL**

**CITY AND COUNTY OF DENVER:**

**ATTEST:**

By:

\_\_\_\_\_

\_\_\_\_\_

**APPROVED AS TO FORM:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_

\_\_\_\_\_

By:

\_\_\_\_\_



**Contract Control Number:**  
**Contractor Name:**

TECHS-202161371-00  
ISTONISH INC

By: DocuSigned by:  
*Brad Rich*  
A5D842313AFA4FA... \_\_\_\_\_

Name: Brad Rich  
(please print)

Title: President  
(please print)

ATTEST: [if required]

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

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

## Exhibit A

## Executive Summary:

Istonish shall partner with the City and County of Denver (CCD) as a Managed Service Provider for after-hours, weekends, holidays and on an as needed basis for technology service support. Istonish shall function as a collaborative, effective and reliable extension of the CCD technology team, on behalf of City employees.

Istonish shall provide services to include, but not be limited to:

- The technical set up for our CCD support teams including configuration of the voice handling platform and associated reporting
- The knowledgebase for the program reflecting specific technical remediation processes as defined by the City
- The hiring & onboarding process and the unique ways that our processes must coordinate with the City
- Istonish employee training as it uniquely reflects CCD processes

Istonish shall meet the performance goals of the program as follows:

- Resolve technology related incidents presented by city employees, vendors, and contractors who call the Service Desk phone number after hours
- Exceed the industry average of 70% for incidents resolved on initial contact  
*Note: Above does not include password reset requests*
- Average speed to answer within 2 minute and 30 seconds
- Assist city employees, vendors, and contractors with password resets after-hours
- Properly escalate unsolvable incidents and requests with well documented notes and following documented processes
- All major incidents are identified, documented, and escalated to the incident manager

## Istonish Program Delivery Management Requirements

- Issue management
- Service Desk onboarding and CCD specific background checks
  - CJS training and fingerprints to be sent to CBI
  - New User Computer Account ticket submitted in ServiceNow
  - Tasks for New User Computer Account ticket completed according to the How to Update a New Employee Account process as documented in ServiceNow
- Program Management Oversight
  - Customer Issue Management
  - Calculate metrics
    - Ticket Metrics are maintained in ServiceNow and placed on Istonish Metrics Dashboard
    - Call Metrics are provided via email daily to CCD (or through access to a metrics dashboard), with a summary every other week and will include a spreadsheet with the following data for each call:
      - Timestamp when call entered queue
      - Timestamp when call was answered
      - Timestamp when call ended
      - Speed to answer
      - Handle time
      - Customer's phone number
      - Istonish agent name
  - Analysis of service delivery metrics
    - When there are anomalies in delivery metrics (e.g., unexpected call volume, unusually high abandon rates, etc.), the Service Desk Manager and Service Delivery Manager need to review the supporting details to ascertain potential causes, corrective action and/or follow-up.
  - Service Delivery Change Management

## Exhibit A

- This can include anything from accommodating new KB articles that need to be reviewed, new service offerings that are planned and need to be implemented or accommodated
- Action Item follow-up
- Governance/QBR prep and meetings
- Roadmap monitoring and oversight
- SLA Reporting/Metrics

## Self-service tickets

Istonish will occasionally be assigned to work self-service tickets in ServiceNow if the customer who needs assistance only has work hours during Istonish's coverage period. Notification via MS Teams or email to the Istonish-provided distribution group will occur in these instances. These tickets will count toward the total call/ticket count for the month.

## Base contracted coverage timeframes

Istonish agrees to cover CCD Service Desk between the hours of 5:55pm to 6am weeknights (Monday-Friday) and 24hrs for each weekend day (Saturdays and Sundays). In addition, Istonish shall cover the CCD Service Desk 24hrs for each official city holiday (the city will provide these dates prior to the start of the new year), the day after Thanksgiving, every Friday from 12pm-2pm, and every other Thursday from 12pm-2pm.

## Quality assurance alignment

Istonish shall carry out monthly ticket QA of 30 Istonish created incident (e.g. non password-reset) tickets spread across all active agents. Tickets will be scored using the Incident Ticket QA Standards document attached as Appendix 1 and documented in a spreadsheet stored in MS Teams.

Istonish shall participate in a monthly QA meeting to discuss a random selection of calls and tickets for the purpose of quality improvement.

Istonish shall provide recorded calls placed by CCD employees within 1-business day for the purpose of quality monitoring.

## Performance / billing readouts

Istonish shall meet with CCD Service Desk bi-weekly to readout on performance and discuss ongoing efforts / commitments.

Istonish shall also meet with CCD Service Desk monthly to review ticket and call quality. Tickets and call recordings will be randomly reviewed and discussed to improve service.

## Service Level Agreements (SLA)

<b>Metric</b>	<b>SLA</b>
First Call Resolution	70% (non-password)
Average Speed to Answer	<2:30 (Minutes:Seconds)
Max Connect Time	98.5% in <30 (Minutes)
Assignment Accuracy/Correct	85%
Ticket Quality	80%

Table 1 – Service Level Agreements

### Metric Definitions:

First Call Resolution – Number of **incident** tickets created and resolved by Istonish divided by the total number of incident tickets created by Istonish. Request, hang up, general inquiry, and status calls are not included in this metric.

## Exhibit A

Average Speed to Answer – Average of the total time from a call entering the queue until it has been answered by a technician. Call back calls are not excluded or calculated differently.

Max Connect Time – Total time from entering the queue or a caller requesting a callback and the call being answered or returned by a technician. Call back calls included.

Ticket quality – Scored using the ‘Incident Ticket QA Standards’ document (Appendix 1). Ticket QA shall be completed by Istonish on a random sampling of at least 5% of incident tickets created by Istonish technicians.

Assignment Accuracy – All incidents escalated to a Tier 2 team that were not reassigned divided by all incidents escalated to a Tier 2 team. Assignment accuracy does not include tickets that had to be escalated beyond Tier 2.

### Assumptions:

Istonish and CCD understand that in the case of surges and anomalies, SLA agreements can be unfairly impacted. In an order to avoid this, Istonish will remove Average Speed to Answer and Max Connect Time data if the volume exceeds the following thresholds based on maximum expected call volume for each day of the week:

<i>Day(s) of the Week</i>	<i>Maximum Expected Volume</i>
Monday, Tuesday, Wednesday	20
Thursday	50
Friday, Saturday	40
Sunday	30

Table 2 – Max Ticket Volume Per Day

## SOC 2 Compliance

Istonish shall maintain its SOC 2 type 2 compliance throughout the duration of the agreement.

## Onboarding

Istonish shall complete tasks required to set up all necessary accounts for new Istonish employees. Documentation to process new user accounts can be found in the How to Update a New Employee Account process as documented in ServiceNow. These tasks are not factored into ticket metrics.

## Remedies

### SLA breach:

If Istonish misses any SLA metric for 2 consecutive calendar months, Istonish and CCD shall work on resolution plan. If an SLA is missed for a third consecutive month, Istonish shall refund CCD 2% (for each failed SLA metric, maximum of 10%) of the total previous month’s invoiced amount in penalty. Istonish shall then have 3 months to resolve the SLA breach before CCD can consider the contract to be breached (at sole discretion of CCD). For each month after the initial penalty payment, if Istonish continues to miss the same SLA that triggered the initial penalty, refund penalties double up to a maximum of 10% of the total previous months invoiced amount.

### Service outage and or degradation:

A service interruption is defined as an event impacting Istonish’s ability to handle calls for more than 15 minutes (such as a full Istonish network outage). A service degradation is defined as an event resulting in some calls being handled, but Istonish call handling services not being at full capacity. This can be exposed by Istonish missing SLA’s for a given day. If service degradation is experienced but Istonish is still able to meet the months SLAs, Istonish will not be penalized. In addition, CCD understands that there are certain elements that are out of Istonish’s control (i.e., war, fire, strike, riot or insurrection, natural disaster, governmental or regulation, unreasonable delay of carriers, complete or partial shutdown of plant, or unreasonable unavailability equipment or software from supplier) that Istonish will not be penalized for.

Exhibit A

In the case of a service interruption or service degradation, the following measures shall be applied:

For service interruption, Istonish shall refund CCD the anticipated maximum call value for the impact duration. Refund value is calculated by dividing the maximum expected ticket volume for the day of the week (see Table 2 above) by the hours of coverage for that shift. The result is multiplied by the number of impacted hours followed by the current per-ticket price (see Table 5). For service degradation, this refund value will be reduced by 50%.

Neither of these penalties shall exceed the amount that would have been billed for that day based on the current per-ticket price from Table 5 multiplied by maximum expected ticket volume listed in Table 2.

**Pricing Overview:**

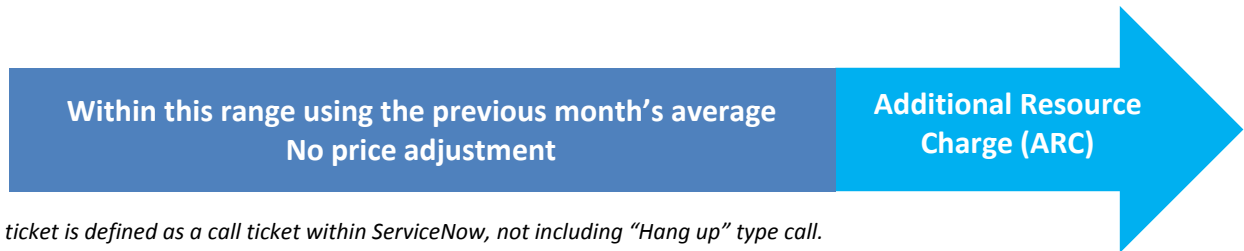
Istonish is pleased to offer a flat monthly rate of \$11,376.

**Pricing Details:**

Istonish shall charge a flat monthly rate for billing with allowances for an additional charge based on actual resource impacts resulting from a >10% variance of volume over the baseline service. Under this plan, Istonish will invoice a fixed monthly fee unless a surge in ticket volume occurs in excess of 110% of the baseline. The monthly baseline of requests is set at 576 tickets\* and the corresponding >10% ARC “ceiling” is illustrated below:

Baseline Ticket Volume	Ceiling (>10%)
576 Tickets	>634 Tickets

Table 3 – Ticket Baseline and ARC Ceiling



Additional charges are calculated at a rate consistent with the impact on Istonish resources. The methodology is outlined below:

- Reports on service volume are tracked and reviewed with CCD.
- The previous month’s ticket count determines whether additional charges will apply.
- If needed, the 576 monthly ticket baseline can be amended at any time to address volume fluctuations, which may include a price change. To be calculated by multiplying the baseline by the per ticket price. Per mutual signed change order agreement.

## Exhibit A

The table below illustrates an *EXAMPLE* billing scenario:

**ARC Example:** A month resulting in 647 tickets worked by Istonish, putting it above the ARC ceiling of 634, results in an additional charge.

**ARC Example Calculation**

Base Fee	\$11,376/Month
Baseline	576 Tickets
ARC Ceiling	ARC: 634 Tickets
Actual Monthly Usage	647 Tickets (Example)
Per Ticket ARC	\$19 per Ticket
ARC Calculation	647 – 634 = 13 x \$19 = \$247 Charge
<b>Monthly Invoicing</b>	<b>\$11,376 Base Fee + \$247 ARC = \$11,623</b>

Table 4 – Example Billing Calculation

Fees along with the 5-year budget below were derived from the data provided by CCD indicating a volume of 133 weekly tickets. The Istonish fixed monthly rate escalates 2% year-over-year due to historical Cost of Living Adjustment (CoLA).

SERVICE FEES			
MONTHLY RECURRING CHARGES (MRC)			
Baseline Monthly Charge @ 576 Tickets/Month <sup>1</sup>			
	Fiscal Year <sup>2</sup>	Ticket Rate	MRC
	2022	\$19.75	<b>\$11,376</b>
	2023	\$20.15	<b>\$11,604</b>
	2024	\$20.55	<b>\$11,836</b>
	2025	\$20.96	<b>\$12,073</b>
	2026	\$21.38	<b>\$12,314</b>

PROPOSED 5-YEAR BUDGET				
	FY 2022	\$136,512	FY 2025	\$144,876
	FY 2023	\$139,248	FY 2026	\$147,768
	FY 2024	\$142,032	<b>Total</b>	<b>\$710,436</b>

Table 5 – Service Fee Detail

<sup>1</sup>Additional 10% of tickets included in baseline monthly charge. Monthly tickets >634 trigger an Additional Resource Charge (ACR)

<sup>2</sup>CCD fiscal years align with calendar years

**Wage Rate Schedule:**

Istonish may be capable of providing services outside the scope of this agreement. The table below provides the starting rates for the various roles Istonish may provide with stakeholder agreement.

Resource / Skill Level	Hourly Rate
Software Developer / DBA	\$192
Server and Network Engineer	\$170
Security Engineer	\$209
Project Manager	\$190
Field Technician	\$110
Remote Service Desk	\$77

Table 6 – Hourly IT Project Resource Fee Schedule

#### Exhibit A

The rates provided in the table above represent our hourly charge for *short-term projects*. Improved rates are provided for recurring work and longer-term projects. Rates valid thru July 2022 and are updated bi-annually by the 31<sup>st</sup> of January and July respectively.

At Istonish, all IT projects are led by experienced Project Managers, consistent progress and communication is provided throughout each project.

Onsite travel pricing, if required, is based on current federal IRS/GSA rates.

#### **Handling Items Out of Scope**

1. Any additional work requested by CCD is provided to Istonish project staff and account leadership to be properly defined, estimated, and prepared in the form of a project Scope of Work for CCD review.
2. The resulting document and associated fee estimate must be approved by CCD and Istonish stakeholders before work begins.

## Exhibit A

Appendix 1 – Incident Ticket QA Scoring	
<b>Customer Information</b>	
Fields	<ul style="list-style-type: none"> <li>• Caller</li> <li>• Caller Location</li> <li>• Caller Phone</li> </ul>
Scoring	<ul style="list-style-type: none"> <li>• Pass               <ul style="list-style-type: none"> <li>○ Fields match information in notes, all fields complete</li> </ul> </li> <li>• Fail               <ul style="list-style-type: none"> <li>○ Any single item incomplete or incorrect</li> </ul> </li> </ul>
<b>Short Description</b>	
Fields	<ul style="list-style-type: none"> <li>• Short Description</li> </ul>
Scoring	<ul style="list-style-type: none"> <li>• Pass               <ul style="list-style-type: none"> <li>○ Short Description provides a good idea of what the customer is unable to do</li> </ul> </li> <li>• Fail               <ul style="list-style-type: none"> <li>○ Short Description is only the CI or “CI Issue”</li> </ul> </li> </ul>
<b>Description</b>	
Fields	<ul style="list-style-type: none"> <li>• Description</li> <li>• Work Notes</li> </ul>
Scoring	<ul style="list-style-type: none"> <li>• Pass               <ul style="list-style-type: none"> <li>○ Clear explanation of the incident in the Description field</li> <li>○ If escalated, enough information in Description and/or Work Notes for another technician to work the ticket</li> <li>○ Screenshots included when applicable</li> </ul> </li> <li>• Fail               <ul style="list-style-type: none"> <li>○ Description field is blank or has very little info, such as only an IP address</li> <li>○ Minimal to no information in Work Notes or screenshots</li> </ul> </li> </ul>
<b>Resolution Notes</b>	
Fields	<ul style="list-style-type: none"> <li>• Resolution Notes</li> <li>• Resolution Code</li> </ul>
Scoring	<ul style="list-style-type: none"> <li>• Pass               <ul style="list-style-type: none"> <li>○ Enough information to replicate the resolution with a similar incident.</li> <li>○ The technician clearly verified resolution with the user or verification is implied or not necessary.</li> <li>○ Best choice of resolution code has been selected</li> </ul> </li> <li>• Fail               <ul style="list-style-type: none"> <li>○ General steps to resolve, but lacking details. Example: “rebooted server” without the name of the server</li> <li>○ Didn’t note whether resolution was verified with the customer</li> <li>○ Poor choice of resolution code</li> <li>○ No notes, or just “resolved”</li> </ul> </li> </ul>
<b>Truly an Incident?</b>	
Fields	<ul style="list-style-type: none"> <li>• N/A</li> </ul>
Scoring	<ul style="list-style-type: none"> <li>• Pass               <ul style="list-style-type: none"> <li>○ Incident was correctly submitted as an incident</li> <li>○ Ticket is for something that is broken or not working as expected</li> </ul> </li> <li>• Fail               <ul style="list-style-type: none"> <li>○ Ticket should have been created as or converted to a request</li> </ul> </li> </ul>







## COMMERCIAL AUTOMOBILE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

# COMMERCIAL AUTOMOBILE BROAD FORM ENDORSEMENT

This endorsement modifies insurance provided under the following:

### BUSINESS AUTO COVERAGE FORM

This endorsement modifies the Business Auto Coverage Form.

#### 1. EXTENDED CANCELLATION CONDITION

Paragraph A.2.b. – CANCELLATION - of the COMMON POLICY CONDITIONS form IL 00 17 is deleted and replaced with the following:

- b. 60 days before the effective date of cancellation if we cancel for any other reason.

#### 2. BROAD FORM INSURED

##### A. Subsidiaries and Newly Acquired or Formed Organizations As Insureds

The Named Insured shown in the Declarations is amended to include:

1. Any legally incorporated subsidiary in which you own more than 50% of the voting stock on the effective date of the Coverage Form. However, the Named Insured does not include any subsidiary that is an "insured" under any other automobile policy or would be an "insured" under such a policy but for its termination or the exhaustion of its Limit of Insurance.
2. Any organization that is acquired or formed by you and over which you maintain majority ownership. However, the Named Insured does not include any newly formed or acquired organization:
  - (a) That is an "insured" under any other automobile policy;
  - (b) That has exhausted its Limit of Insurance under any other policy; or
  - (c) 180 days or more after its acquisition or formation by you, unless you have given us written notice of the acquisition or formation.

Coverage does not apply to "bodily injury" or "property damage" that results from an "accident" that occurred before you formed or acquired the organization.

##### B. Employees as Insureds

Paragraph A.1. – WHO IS AN INSURED – of SECTION II – LIABILITY COVERAGE is amended to add the following:

- d. Any "employee" of yours while using a covered "auto" you don't own, hire or

borrow in your business or your personal affairs.

#### C. Lessors as Insureds

Paragraph A.1. – WHO IS AN INSURED – of SECTION II – LIABILITY COVERAGE is amended to add the following:

- e. The lessor of a covered "auto" while the "auto" is leased to you under a written agreement if:
  - (1) The agreement requires you to provide direct primary insurance for the lessor; and
  - (2) The "auto" is leased without a driver. Such leased "auto" will be considered a covered "auto" you own and not a covered "auto" you hire. However, the lessor is an "insured" only for "bodily injury" or "property damage" resulting from the acts or omissions by:
    1. You;
    2. Any of your "employees" or agents; or
    3. Any person, except the lessor or any "employee" or agent of the lessor, operating an "auto" with the permission of any of 1. and/or 2. above.

#### D. Persons And Organizations As Insureds Under A Written Insured Contract

Paragraph A.1 – WHO IS AN INSURED – of SECTION II – LIABILITY COVERAGE is amended to add the following:

- f. Any person or organization with respect to the operation, maintenance or use of a covered "auto", provided that you and such person or organization have agreed under an express provision in a written "insured contract", written agreement or a written permit issued to you by a governmental or public authority to add such person or organization to this policy as an "insured". However, such person or organization is an "insured" only:

- (1) with respect to the operation, maintenance or use of a covered "auto"; and
- (2) for "bodily injury" or "property damage" caused by an "accident" which takes place after:
  - (a) You executed the "insured contract" or written agreement; or
  - (b) The permit has been issued to you.

**3. FELLOW EMPLOYEE COVERAGE**

EXCLUSION B.5. - FELLOW EMPLOYEE – of SECTION II – LIABILITY COVERAGE does not apply.

**4. PHYSICAL DAMAGE – ADDITIONAL TEMPORARY TRANSPORTATION EXPENSE COVERAGE**

Paragraph A.4.a. – TRANSPORTATION EXPENSES – of SECTION III – PHYSICAL DAMAGE COVERAGE is amended to provide a limit of \$50 per day for temporary transportation expense, subject to a maximum limit of \$1,000.

**5. AUTO LOAN/LEASE GAP COVERAGE**

Paragraph A. 4. – COVERAGE EXTENSIONS - of SECTION III – PHYSICAL DAMAGE COVERAGE is amended to add the following:

**c. Unpaid Loan or Lease Amounts**

In the event of a total "loss" to a covered "auto", we will pay any unpaid amount due on the loan or lease for a covered "auto" minus:

- 1. The amount paid under the Physical Damage Coverage Section of the policy; and
- 2. Any:
  - a. Overdue loan/lease payments at the time of the "loss";
  - b. Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
  - c. Security deposits not returned by the lessor;
  - d. Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and
  - e. Carry-over balances from previous loans or leases.

We will pay for any unpaid amount due on the loan or lease if caused by:

- 1. Other than Collision Coverage only if the Declarations indicate that Comprehensive Coverage is provided for any covered "auto";
- 2. Specified Causes of Loss Coverage only if the Declarations indicate that Specified Causes of Loss Coverage is provided for any covered "auto"; or
- 3. Collision Coverage only if the Declarations indicate that Collision Coverage is provided for any covered "auto".

**6. RENTAL AGENCY EXPENSE**

Paragraph A. 4. – COVERAGE EXTENSIONS – of SECTION III – PHYSICAL DAMAGE COVERAGE is amended to add the following:

**d. Rental Expense**

We will pay the following expenses that you or any of your "employees" are legally obligated to pay because of a written contract or agreement entered into for use of a rental vehicle in the conduct of your business:

**MAXIMUM WE WILL PAY FOR ANY ONE CONTRACT OR AGREEMENT:**

- 1. \$2,500 for loss of income incurred by the rental agency during the period of time that vehicle is out of use because of actual damage to, or "loss" of, that vehicle, including income lost due to absence of that vehicle for use as a replacement;
- 2. \$2,500 for decrease in trade-in value of the rental vehicle because of actual damage to that vehicle arising out of a covered "loss"; and
- 3. \$2,500 for administrative expenses incurred by the rental agency, as stated in the contract or agreement.
- 4. \$7,500 maximum total amount for paragraphs 1., 2. and 3. combined.

**7. EXTRA EXPENSE – BROADENED COVERAGE**

Paragraph A.4. – COVERAGE EXTENSIONS – of SECTION III – PHYSICAL DAMAGE COVERAGE is amended to add the following:

**e. Recovery Expense**

We will pay for the expense of returning a stolen covered "auto" to you.

**8. AIRBAG COVERAGE**

Paragraph B.3.a. - EXCLUSIONS – of SECTION III – PHYSICAL DAMAGE COVERAGE does not apply to the accidental or unintended discharge of an airbag. Coverage is excess over any other collectible insurance or warranty specifically designed to provide this coverage.

**9. AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT - BROADENED COVERAGE**

Paragraph C.1.b. – LIMIT OF INSURANCE - of SECTION III - PHYSICAL DAMAGE is deleted and replaced with the following:

- b. \$2,000 is the most we will pay for "loss" in any one "accident" to all electronic equipment that reproduces, receives or transmits audio, visual or data signals which, at the time of "loss", is:
  - (1) Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;
  - (2) Removable from a permanently installed housing unit as described in Paragraph 2.a. above or is an integral part of that equipment; or
  - (3) An integral part of such equipment.

**10. GLASS REPAIR – WAIVER OF DEDUCTIBLE**

Under Paragraph D. - DEDUCTIBLE – of SECTION III – PHYSICAL DAMAGE COVERAGE the following is added:

No deductible applies to glass damage if the glass is repaired rather than replaced.

**11. TWO OR MORE DEDUCTIBLES**

Paragraph D.- DEDUCTIBLE – of SECTION III – PHYSICAL DAMAGE COVERAGE is amended to add the following:

If this Coverage Form and any other Coverage Form or policy issued to you by us that is not an automobile policy or Coverage Form applies to the same "accident", the following applies:

1. If the deductible under this Business Auto Coverage Form is the smaller (or smallest) deductible, it will be waived; or
2. If the deductible under this Business Auto Coverage Form is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

**12. AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS**

Paragraph A.2.a. - DUTIES IN THE EVENT OF AN ACCIDENT, CLAIM, SUIT OR LOSS of SECTION IV - BUSINESS AUTO CONDITIONS is deleted and replaced with the following:

- a. In the event of "accident", claim, "suit" or "loss", you must promptly notify us when the "accident" is known to:
  - (1) You or your authorized representative, if you are an individual;
  - (2) A partner, or any authorized representative, if you are a partnership;
  - (3) A member, if you are a limited liability company; or
  - (4) An executive officer, insurance manager, or authorized representative, if you are an organization other than a partnership or limited liability company.

Knowledge of an "accident", claim, "suit" or "loss" by other persons does not imply that the persons listed above have such knowledge. Notice to us should include:

- (1) How, when and where the "accident" or "loss" occurred;
- (2) The "insured's" name and address; and
- (3) To the extent possible, the names and addresses of any injured persons or witnesses.

**13. WAIVER OF SUBROGATION**

Paragraph A.5. - TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US of SECTION IV – BUSINESS AUTO CONDITIONS is deleted and replaced with the following:

5. We will waive the right of recovery we would otherwise have against another person or organization for "loss" to which this insurance applies, provided the "insured" has waived

their rights of recovery against such person or organization under a contract or agreement that is entered into before such "loss".

To the extent that the "insured's" rights to recover damages for all or part of any payment made under this insurance has not been waived, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them. At our request, the insured will bring suit or transfer those rights to us and help us enforce them.

**14. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS**

Paragraph B.2. – CONCEALMENT, MISREPRESENTATION or FRAUD of SECTION IV – BUSINESS AUTO CONDITIONS - is deleted and replaced with the following:

If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not void coverage under this Coverage Form because of such failure.

**15. AUTOS RENTED BY EMPLOYEES**

Paragraph B.5. - OTHER INSURANCE of SECTION IV – BUSINESS AUTO CONDITIONS - is amended to add the following:

- e. Any "auto" hired or rented by your "employee" on your behalf and at your direction will be considered an "auto" you hire. If an "employee's" personal insurance also applies on an excess basis to a covered "auto" hired or rented by your "employee" on your behalf and at your direction, this insurance will be primary to the "employee's" personal insurance.

**16. HIRED AUTO – COVERAGE TERRITORY**

Paragraph B.7.b.(5). - POLICY PERIOD, COVERAGE TERRITORY of SECTION IV – BUSINESS AUTO CONDITIONS is deleted and replaced with the following:

- (5) A covered "auto" of the private passenger type is leased, hired, rented or borrowed without a driver for a period of 45 days or less; and

**17. RESULTANT MENTAL ANGUISH COVERAGE**

Paragraph C. of - SECTION V – DEFINITIONS is deleted and replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by any person, including mental anguish or death as a result of the "bodily injury" sustained by that person.

## BUSINESSOWNERS LIABILITY EXTENSION

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

**This endorsement modifies insurance provided under the following:**

### BUSINESSOWNERS COVERAGE FORM

#### TABLE OF CONTENTS

	Page
Supplementary Payments – Bail Bonds And Bonds To Appeal Judgments – No Sublimit	2
Medical Expenses – Three Years To Report Expenses	2
Non-Owned Watercraft Under 55 Feet	2
Non-Owned Aircraft	2
Damage To Property – Exception For Equipment Loaned Or Rented To Insured	2
Who Is An Insured – Subsidiaries Or Newly Acquired Or Formed Organizations	3
Who Is An Insured – Employees (Including For CPR and First Aid) And Volunteer Workers	3
Additional Insured – Lessor Of Leased Equipment	4
Additional Insured – Managers Or Lessors Of Premises	4
Additional Insured - Vendors	5
Additional Insured – Other Persons Or Organizations Pursuant To Contract Or Agreement	6
Damage To Premises Rented To You – \$1,000,000	7
Per Location General Aggregate Limit With Combined Total Aggregate Limit	8
Knowledge/Notice Of Occurrence	9
Bodily Injury, Including Resulting Mental Anguish	9
Coverage Territory, Limited Worldwide	10
Unintentional Failure To Disclose Hazards	10
Other Insurance, Including Primary Provision	10
Waiver Of Subrogation Required By Contract	12

This endorsement modifies the coverages provided under the Businessowners Coverage Form.

Notwithstanding anything to the contrary, the provisions of the Businessowners Coverage Form apply, except as provided in this endorsement. The titles of the various paragraphs of this endorsement are inserted solely for convenience or reference and are not to be deemed in any way to limit or affect the provisions to which they relate.

#### **A. SUPPLEMENTARY PAYMENTS – BAIL BONDS AND BONDS TO APPEAL JUDGMENTS - NO SUBLIMIT**

In **Section II - Liability, Paragraph A. Coverages, 1. f. Coverage Extension – Supplementary Payments**, subparagraphs **(1)(b)** and **(c)** are replaced by the following:

- (b)** The cost of bail bonds, but only for bond amounts within the available limit of insurance. We do not have to furnish these bonds.
- (c)** The cost of bonds to appeal judgments or release attachments, but only for amounts within the available limit of insurance. We do not have to furnish these bonds.

**B. MEDICAL EXPENSES – THREE YEARS TO REPORT EXPENSES**

In **Section II – Liability, Paragraph A. Coverages, 2. Medical Expenses**, subparagraph **a.(b)** is replaced by the following:

- (b) The expenses are incurred and reported to us within three years of the date of the accident; and

**C. NON-OWNED WATERCRAFT UNDER 55 FEET**

In **Section II - Liability, Paragraph B. Exclusions**, subparagraph **(2)** of Exclusion **1.g. Aircraft, Auto Or Watercraft** is replaced by the following:

This exclusion does not apply to:

- (2) A watercraft you do not own that is:
  - (a) Less than 55 feet long; and
  - (b) Not being used to carry persons or property for a charge;

**D. NON-OWNED AIRCRAFT**

In **Section II - Liability, Paragraph B. Exclusions**, the following exception is added to Exclusion **1.g. Aircraft, Auto or Watercraft in Section II – Liability**:

This exclusion does not apply to an aircraft you do not own provided:

- 1. The pilot in command holds a currently effective certificate, issued by the duly constituted authority of the United States of America or Canada, designating that person as a commercial or airline transport pilot;
- 2. It is rented with a trained, paid crew; and
- 3. It does not transport persons or cargo for a charge.

**E. DAMAGE TO PROPERTY - EXCEPTION FOR EQUIPMENT LOANED OR RENTED TO THE INSURED**

In **Section II - Liability, Paragraph B. Exclusions**, the following exception is added to Exclusion **1.k. Damage To Property**:

Paragraphs **(3)** and **(4)** of this exclusion do not apply to "property damage" to equipment rented or loaned to the insured, provided such equipment is not being used to perform any operations at a construction job site.

**F. WHO IS AN INSURED - SUBSIDIARIES OR NEWLY ACQUIRED OR FORMED ORGANIZATIONS**

In **Section II - Liability, Paragraph C. Who is an Insured** is amended to include the following:

If there is no other insurance available, each of the following is also a Named Insured:

- 1. A subsidiary organization of the first Named Insured shown in the Declarations of which, at the beginning of the policy period and at the time of loss, the first Named Insured controls, either directly or indirectly, more than 50 percent of the interests entitled to vote generally in the election of the governing body of such organization; or

2. A subsidiary organization of the first Named Insured shown in the Declarations that the first Named Insured acquires or forms during the policy period, if at the time of loss the first Named Insured controls, either directly or indirectly, more than 50 percent of the interests entitled to vote generally in the election of the governing body of such organization.

**G. WHO IS AN INSURED - EMPLOYEES (INCLUDING CPR AND FIRST AID) AND VOLUNTEER WORKERS**

In **Section II - Liability**, Paragraph **C. Who is an Insured**, Paragraph **2.a.** is replaced by the following:

2. Each of the following is also an insured:

- a. Your "employees" but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, no "employee" is an insured for:

- (1) "Bodily injury" or "personal and advertising injury":

- (a) To you, to any of your directors, managers, members, "executive officers" or partners (whether or not an "employee") or to any co-"employee" while such injured person is either in the course of his or her employment or while performing duties related to the conduct of your business;

- (b) To the brother, child, parent, sister or spouse of such injured person as a consequence of any injury described in Paragraph (a) above; or

- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of any injury described in Paragraph (a) or (b) above.

With respect to "bodily injury" only, the limitations described in Paragraph **2.a.(1)** above do not apply to you or to your directors, managers, members, "executive officers", partners or supervisors as insureds. The limitations also do not apply to your "employees" as insureds, with respect to such damages caused by cardiopulmonary resuscitation or first aid services administered by such an "employee".

- (2) "Property damage" to any property owned, occupied or used by you or by any of your directors, managers, members, "executive officers" or partners (whether or not an "employee") or by any of your "employees". This limitation does not apply to "property damage" to premises while rented to you or temporarily occupied by you with the permission of the owner.

- b. Your "volunteer workers", but only while acting within the scope of their activities for you and at your direction.

**H. ADDITIONAL INSUREDS**

In **Section II - Liability**, Paragraph **C. Who is an Insured**, the following is added:

2. Each of the following is also an insured:

**LESSOR OF LEASED EQUIPMENT**



- e. Any person or organization from whom you lease equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization and only if you are required by a contract or agreement to provide them with such insurance as is afforded by this policy.

However, the insurance afforded to such additional insured:

- (1) Only applies to the extent permitted by law; and
- (2) Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

#### **MANAGERS OR LESSORS OF PREMISES**

- f. Any person or organization from whom you lease premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and only if you are required by a contract or agreement to provide them with such insurance as is afforded by this policy.

However, the insurance afforded to such additional insured:

- (1) Only applies to the extent permitted by law; and
- (2) Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" that takes place after you cease to be a tenant in such premises.
- (2) Structural alterations, new construction or demolition operations performed by or for such additional insureds.

#### **VENDORS**

- g. Any person or organization who is a vendor of "your products", but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business.

However:

- (1) The insurance afforded to such vendor only applies to the extent permitted by law; and
- (2) If coverage provided to the vendor is required by a contract or agreement, the insurance afforded to such vendor will not be broader than that which you are required by the contract or agreement to provide for such vendor.

With respect to the insurance afforded to these vendors, the following additional exclusions apply:

(1) This insurance afforded the vendor does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to the liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
  - (i) The exceptions contained in Subparagraph (d) or (f); or
  - (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

(2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container entering into, accompanying or containing such products.

With respect to the insurance afforded to these vendors, the following is added to Paragraph D. **Liability And Medical Expenses Limits Of Insurance:**

If coverage provided by the vendor is required by a contract or agreement, the most we will pay on behalf of the vendor is the amount of insurance:

- (1) Required by the contract or agreement; or
- (2) Available under the applicable Limits Of Insurance shown in the Declarations;

whichever is less.

This shall not increase the applicable Limits Of Insurance shown in the Declarations.

**OTHER PERSONS OR ORGANIZATIONS PURSUANT TO CONTRACT OR AGREEMENT**

**h.** Any persons or organizations that you are required by a contract or agreement to provide with such insurance as is afforded by this policy. However, such a person or organization is an insured only:

- (1) To the extent such contract or agreement requires the additional insured to be afforded status as an insured; and
- (2) For activities that did not occur, in whole or in part, before the execution of the contract or agreement.

No person or organization is an insured under this provision:

- (1) That is more specifically identified under any other provision of Paragraph **C. Who Is An Insured** (regardless of any limitation applicable thereto).
- (2) With respect to any assumption of liability in a contract or agreement. This limitation does not apply to the liability for damages the additional insured would have in the absence of the contract or agreement.

However, the insurance afforded to such persons or organizations:

- (1) Only applies to the extent permitted by law; and
- (2) Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

The following is added at the end of Paragraph **C. Who Is An Insured**:

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

However, no person or organization is an insured with respect to the:

- a. Ownership, maintenance or use of any assets; or
- b. Conduct of any person or organization whose assets, business or organization;

any Named Insured acquires, either directly or indirectly, for any:

- (1) "Bodily injury" or "property damage" that occurred; or
- (2) "Personal and advertising injury" arising out of an offense first committed;

in whole or in part, before such acquisition is executed.

With respect to the insurance afforded to the persons or organizations described in Paragraphs **e., f., and h.** above, the following is added to Paragraph **D. Liability And Medical Expenses Limits Of Insurance**:

The most we will pay on behalf of such person or organization is the amount of insurance:

- (1) Required by the contract or agreement; or
  - (2) Available under the applicable Limits Of Insurance shown in the Declarations;
- whichever is less.

This shall not increase the applicable Limits Of Insurance shown in the Declarations.

**I. DAMAGE TO PREMISES RENTED TO YOU – \$1,000,000**

In **Section II - Liability**, Paragraph **D. Liability and Medical Expenses Limits of Insurance**, Paragraphs **3.** and **4.** are deleted and replaced with the following:

- 3.** Subject to the **Liability And Medical Expenses Limits Of Insurance**, the most we will pay under Business Liability Coverage for damages because of "property damage" to any one premises while rented to you or while temporarily occupied by you with permission of the owner is \$1,000,000.

**4. Aggregate Limits**

The most we will pay for:

- a. All "bodily injury" and "property damage" that is included in the "products-completed operations hazard" is twice the Liability and Medical Expenses limit.
- b. All:
  - (1) "Bodily injury" and "property damage" except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard";
  - (2) Plus medical expenses;
  - (3) Plus all "personal and advertising injury" caused by offenses committed;is twice the Liability and Medical Expenses Limit.

The Limits of Insurance of Section II – Liability apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

**J. PER LOCATION GENERAL AGGREGATE LIMIT WITH COMBINED TOTAL AGGREGATE LIMIT**

In **Section II - Liability**, Paragraph **D. Liability and Medical Expenses Limits of Insurance**, the following is added:

1. Subject to the Combined Total Aggregate Limit shown in the Declarations, for the sum of all damages that the insured becomes legally obligated to pay for all "bodily injury" and "property damage" caused by "occurrences" under Paragraph A.1. Business Liability, and for all medical expenses caused by accidents under Paragraph A.2. Medical Expenses, which can be attributed only to a single "location":
  - a. A separate Location General Aggregate Limit will apply to each "location", and that limit is equal to the Other than Products/Completed Operations Aggregate Limit shown in the Declarations.
  - b. The separate Location General Aggregate Limit is the most we will pay for the sum of all damages for "bodily injury" or "property damage" under Paragraph A.1. Business Liability, except in connection with "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under Paragraph A.2. Medical Expenses, regardless of the number of:
    - (1) Insureds;
    - (2) Claims made or "suits" brought; or
    - (3) Persons or organizations making claims or bringing "suits".
  - c. Any payments made under Paragraph A.1. or under Paragraph A.2. Medical Expenses shall reduce the separate Location General Aggregate Limit for that "location". Such payments shall not reduce the Other Than Products/Completed Operations Aggregate Limit shown in the Declarations nor shall they reduce the separate Location General Aggregate Limit for any other "location".
  - d. The limits shown in the Declarations for Each Occurrence, Damage To Premises Rented To You and Medical Expense continue to apply. However, instead of being subject to the Other Than Products/Completed Operations Aggregate Limit shown in the Declarations, such limits will be subject to the applicable separate Location General Aggregate Limit.
2. Subject to the Combined Total Aggregate Limit shown in the Declarations, for the sum of all damages that the Insured becomes legally obligated to pay for all "bodily injury" or "property damage" caused by occurrences under Paragraph A.1. Business Liability and for all medical expenses caused by accidents under Paragraph A.2., which cannot be attributed only to operations at a single "location".
  - a. Any payments made under Paragraph A.1. Business Liability for damages or under Paragraph A.2. for medical expenses shall reduce the amount available under the Other Than Products/Completed Operations Aggregate Limit or the Products/Completed Operations Aggregate Limit, whichever is applicable; and
  - b. Such payments shall not reduce the separate Location General Aggregate Limit applicable to a single "location".
3. Subject to the separate Location General Aggregate Limit and all other applicable limits, the Combined Total Aggregate Limit shown in the Declarations is the most we will pay for the combined sum of amounts described above, regardless of the number of "locations".
4. Any payments we make for "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-Completed Operations Aggregate Limit regardless of the number of "locations", and not reduce the Other Than Products/Completed Operations Aggregate Limit nor the separate Location General Aggregate Limit applicable to a single "location."
5. As used in this endorsement, "location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.
6. The provisions of Paragraph D. **Liability and Medical Expenses Limits Of Insurance** not otherwise modified by this endorsement shall continue to apply as stipulated.

#### **K. KNOWLEDGE/NOTICE OF OCCURRENCE**

In **Section II - Liability, Paragraph E. Liability and Medical Expenses General Conditions, 2. Duties In the Event Of Occurrence, Offense, Claim or Suit** is amended to include the following:

- e. Knowledge of an "occurrence" or offense by an agent or "employee" of the insured will not constitute knowledge by the insured, unless an "executive officer" (whether or not an "employee") of any insured or an "executive officer's" designee knows about such "occurrence" or offense. Failure of an agent or "employee" of the insured, other than an "executive officer" (whether or not an "employee") of any insured or an "executive officer's" designee, to notify us of an "occurrence" or offense that such person knows about will not affect the insurance afforded to you.
- f. If a claim or loss does not reasonably appear to involve this insurance, but it later develops into a claim or loss to which this insurance applies, the failure to report it to us will not violate this condition, provided the insured gives us immediate notice as soon as the insured is aware that this insurance may apply to such loss or claim.

#### **L. BODILY INJURY, INCLUDING RESULTING MENTAL ANGUISH**

In **Section II - Liability, Paragraph F. Liability and Medical Expenses Definitions, paragraph 3.** is deleted and replaced with the following:

- 3. "Bodily injury" means physical:
  - a. Injury;
  - b. Sickness; or
  - c. Disease;

sustained by a person, including resulting death, humiliation, mental anguish, mental injury or shock at any time. All such loss shall be deemed to occur at the time of the physical injury, sickness or disease.

#### **M. COVERAGE TERRITORY, LIMITED WORLDWIDE**

In **Section II - Liability, Paragraph F. Liability and Medical Expenses Definitions, paragraph 4.** is deleted and replaced by the following:

- 4. "Coverage territory" means all parts of the world.

However, "coverage territory" does not include any:

- a. "Bodily injury" or "property damage" that takes place or any offense committed outside of the United States of America (including its possessions and territories), Canada and Puerto Rico, unless the insured's responsibility to pay damages is determined by a "suit" on the merits that is brought in the United States of America (including its possessions and territories), Canada or Puerto Rico; or
- b. Injury or damage in connection with any "suit" brought outside the United States of America (including its possessions and territories), Canada and Puerto Rico.

## **N. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS**

In **Section III – Common Policy Conditions, Paragraph C. Concealment, Misrepresentation or Fraud** is amended to include the following additional paragraph:

Unintentional failure of an “employee” of the insured to disclose a hazard or other material information will not violate this condition, unless an “executive officer” (whether or not an “employee”) of any insured knows about such hazard or other material information.

## **O. OTHER INSURANCE, INCLUDING PRIMARY PROVISION**

In **Section III – Common Policy Conditions, Paragraph H. Other Insurance**, subparagraphs **2.** and **3.** are replaced by the following:

### **H. Other Insurance**

If other valid and collectible insurance is available to the insured for a loss we cover under this insurance, our obligations are limited as follows:

#### **1. Primary Insurance**

This insurance is primary except when Paragraph 2 below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph 3 below.

#### **2. Excess Insurance**

a. This insurance is excess over:

(1) Any of the other insurance, whether primary, excess, contingent or on any other basis:

(a) That is Fire, Extended Coverage, Builder’s Risk, Installation Risk or similar coverage for “your work”;

(b) That is insurance that applies to “property damage” to premises rented to you or temporarily occupied by you with permission of the owner; or

(c) If the loss arises out of aircraft, “autos” or watercraft to the extent not subject to Exclusion g. of Section II.B. Exclusions, 1. Applicable to Business Liability Coverage; or

(2) Any other primary insurance available to you covering liability for damages arising out of the premises or operations for which you have been added as an additional insured.

b. When this insurance is excess, we will have no duty to defend the insured against any “suit” if any other insurer has a duty to defend the insured against that “suit.” If no other insurer defends, we will undertake to do so, but we will be entitled to the insured’s rights against all those other insurers.

c. When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(1) The total amount that all such other insurance would pay for the loss in the absence of this insurance;

(2) The total of all deductible and self-insured amounts under all that other insurance.

- d. We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not brought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

**Method of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

**P. WAIVER OF SUBROGATION REQUIRED BY CONTRACT**

In **Section III – Common Policy Conditions, Paragraph K. Transfer of Rights of Recovery Against Others To Us**, subparagraph 2. is replaced by the following:

**2. Applicable to Businessowners Liability Coverage:**

We will waive the rights of recovery we would otherwise have had against another person or organization, for loss to which this insurance applies, provided the insured has waived their rights of recovery against such person or organization in a contract or agreement that is executed before such loss.

To the extent that the insured's rights to recover all or part of any payment made under this Coverage Part have not been waived, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This paragraph does not apply to Medical Expenses Coverage.

All other terms and conditions of the policy remain unchanged.