

A G R E E M E N T

THIS AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a home rule and municipal corporation of the State of Colorado (the “City”) and **PEAK FORM, LLC**, a Colorado limited liability company whose address is 1093 East Bridge Street, Brighton, Colorado 80601(the “Contractor”), jointly (“the Parties”).

The Parties agree as follows:

1. COORDINATION AND LIAISON: The Contractor shall fully coordinate all services under the Agreement with the Executive Director of Risk Management and Worker’s Compensation (“Executive Director”) or, the Executive Director’s Designee.

2. SERVICES TO BE PERFORMED:

a. As the Executive Director directs, the Contractor shall diligently undertake, perform, and complete all of the services and produce all the deliverables set forth on **Exhibit A, Scope of Work**, to the City’s satisfaction.

b. The Contractor is ready, willing, and able to provide the services required by this Agreement.

c. The Contractor shall faithfully perform the services in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals performing services of a similar nature to those described in the Agreement and in accordance with the terms of the Agreement.

3. TERM: The Agreement will commence on **January 1, 2024** (“Effective Date”), and will expire on **December 31, 2026** (the “Term”). The term of this Agreement may be extended by the City under the same terms and conditions by a written amendment to this Agreement for up to two (2) additional one (1) year terms. Subject to the Executive Director’s prior written authorization, the Contractor shall complete any work in progress as of the expiration date and the Term of the Agreement will extend until the work is completed or earlier terminated by the Executive Director.

4. COMPENSATION AND PAYMENT:

a. Budget/Pricing. The City shall pay and the Contractor shall accept as the sole compensation for services rendered and costs incurred under the Agreement the line item

amounts set forth in the budget contained in **Exhibit B**. Amounts billed may not exceed the budget set forth in **Exhibit B**.

b. Reimbursable Expenses: There are no reimbursable expenses allowed under the Agreement. All of the Contractor's expenses are contained in the budget in **Exhibit B**.

c. Invoicing: Contractor shall provide the City with a monthly invoice in a format and with a level of detail acceptable to the City including all supporting documentation required by the City. The City's Prompt Payment Ordinance, §§ 20-107 to 20-118, D.R.M.C., applies to invoicing and payment under this Agreement.

d. Maximum Contract Amount:

(1) Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed **THREE MILLION DOLLARS AND NO CENTS (\$3,000,000.00)** (the "Maximum Contract 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 **Exhibit A**. Any services performed beyond those in **Exhibit A** are performed at Contractor's risk and without authorization under the Agreement.

(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 this 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.

5. 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.

6. TERMINATION:

a. The City has the right to terminate the Agreement with cause upon written notice effective immediately, and without cause upon thirty (30) 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 Executive Director.

b. 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, kickbacks, 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.

c. 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.

d. If the Agreement is terminated, the City is entitled to and will take possession of all materials, equipment, tools and facilities it owns that are in the Contractor's possession, custody, or control by whatever method the City deems expedient. The Contractor shall deliver all documents in any form that were prepared under the Agreement and all other items, materials and documents that have been paid for by the City to the City. These documents and materials are the property of the City. The Contractor shall mark all copies of work product that are incomplete at the time of termination "DRAFT-INCOMPLETE".

7. **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.

8. WHEN RIGHTS AND REMEDIES NOT WAIVED: In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of the Contractor. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.

9. INSURANCE:

a. 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, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. 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 contain a valid provision or endorsement requiring notification to the City in the event any of the above-described 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. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Contractor. 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.

b. Proof of Insurance: Contractor shall provide a copy of this Agreement to its insurance agent or broker. Contractor may not commence services or work relating to the Agreement prior to placement of coverages required under this Agreement. Contractor certifies that the certificate of insurance attached as **Exhibit C**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. 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.

c. Additional Insureds: For Commercial General Liability, Personal Auto Liability, Professional Liability, Cyber, 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.

d. Waiver of Subrogation: For all coverages required under this Agreement, with the exception of Professional Liability, Contractor's insurer shall waive subrogation rights against the City.

e. 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.

f. 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.

g. 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.

h. Personal Automobile Insurance: Contractor shall ensure personal automobile insurance is in force with current state minimum limits for all vehicles used in performing services under this Agreement. Contractor represents, as material representations upon which the City is relying, that Contractor does not own any fleet vehicles and that in performing Services under the Agreement, Contractor's owners, officers, directors, and employees use their personal vehicles. Contractor shall ensure that any person operating a motor vehicle in performing Services under the Agreement shall keep in full force Personal Auto Liability coverage with minimum required limits.

i. Professional Liability (Errors & Omissions): Contractor shall maintain limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit. Policy shall include a severability of interest or separation of insured provision (no insured vs. insured exclusion) and a provision that coverage is primary and non-contributory with any other coverage or self-insurance maintained by the City.

j. Cyber Liability: Contractor shall maintain Cyber Liability coverage with limits of \$1,000,000 per occurrence and \$1,000,000 policy aggregate covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security.

k. Additional Provisions:

(1) For Commercial General Liability, the policy must provide the following:

- (a) That this Agreement is an Insured Contract under the policy;
- (b) Defense costs are outside the limits of liability;
- (c) A severability of interests, separation of insureds provision (no insured vs. insured exclusion); and

(d) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(2) For claims-made coverage:

(a) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.

(b) Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

10. DEFENSE AND INDEMNIFICATION:

a. Contractor hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees 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.

b. 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.

c. 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.

d. 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.

e. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

11. **TAXES, CHARGES AND PENALTIES:** The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance D.R.M.C. § 20-107, *et seq.* The Contractor shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under the Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property.

12. **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 Executive Director's prior written consent. Any assignment or subcontracting without such consent will be ineffective and void, and will be cause for termination of this Agreement by the City. The Executive Director 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 subconsultant, subcontractor or assign.

13. **INUREMENT:** The rights and obligations of the Parties to the Agreement inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Agreement.

14. **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.

15. 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.

16. 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.

17. CONFLICT OF INTEREST:

a. 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.

b. 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 if it determines a conflict exists, after it has given the Contractor written notice describing the conflict.

18. 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:

Executive Director of Risk Management and Worker's Compensation or its Designee
201 W. Colfax Avenue, Department 1105
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.

19. 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 Executive Director as defined in this Agreement.

20. 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 (Denver District Court).

21. 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.

22. PERSONAL INFORMATION AND DATA PROTECTION:

a. **“Data Protection Laws”** means (i) all applicable international, federal, state, provincial and local laws, rules, regulations, directives and governmental requirements relating in any way to the privacy, confidentiality or security of Personal Information (as defined below in Paragraph 25.B); and (ii) all applicable laws and regulations relating to electronic and non-electronic marketing and advertising; laws regulating unsolicited email communications; security breach notification laws; laws imposing minimum security requirements; laws requiring the secure disposal of records containing certain Personal Information; laws imposing licensing requirements; laws and other legislative acts that establish procedures for the evaluation of compliance; and all other similar applicable requirements. Further, and not by way of limitation, Contractor shall provide for the security of all City Data, and Personal Information if applicable, in accordance with all policies promulgated by Denver Technology Services, as amended, and all applicable laws, rules, policies, publications, and guidelines including, without limitation: (i) the most recently promulgated IRS Publication 1075 for all Tax Information, (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, (iv) the Colorado Consumer Protection Act, (v) the Children’s Online Privacy Protection Act (COPPA), (vi) the Family Education Rights and Privacy Act (FERPA), and (vii) Colorado House Bill 18-1128.

b. **“Personal Information”** means all information that individually or in combination, does or can identify a specific individual or from which a specific individual can be identified, contacted, or located. Personal Information includes, without limitation, name, signature, address, e-mail address, telephone number, social security number (full or partial), business contact information, date of birth, national or state identification numbers, bank account number, credit or debit card numbers, and any other unique identifier or one or more factors specific to the individual’s physical, physiological, mental, economic, cultural, or social identity.

c. **Compliance with Law and Regulation:** Contractor each confirms and warrants that it complies with any and all applicable Data Protection Laws relating to the collection, use, disclosure, and other processing of Personal Information and that it will perform

its obligations under this Agreement in compliance with them. This section will survive the termination of this Agreement.

d. Software Programs; Security of Personal Information and access to Software Programs: Contractor will use the software programs designated by the City to collect, use, process, store, or generate all data and information, with or without Personal Information, received as a result of the Contractor's services under this Agreement. Contractor will fully comply with any and all requirements and conditions associated with the use of said software programs as provided by the City. In addition, Contractor will establish and maintain data privacy and information security policies and procedures, including physical, technical, administrative, and organizational safeguards, in order to: (i) ensure the security and confidentiality of Personal Information; (ii) protect against any anticipated threats or hazards to the security or integrity of Personal Information; (iii) protect against unauthorized disclosure, access to, or use of Personal Information; (iv) ensure the proper use of Personal Information; and (v) ensure that all employees, officers, agents, and subcontractors of Contractor, if any, comply with all of the foregoing. Contractor shall also provide for the security of all Personal Information in accordance with all policies promulgated by Denver Technology Services, as amended, and all applicable laws, rules, policies, publications, and guidelines including, without limitation: (i) the Children's Online Privacy Protection Act (COPPA), and (ii) Colorado House Bill 18-1128. Contractor shall submit to the Executive Director, within fifteen (15) days of the Executive Director's written request, copies of the Contractor's policies and procedures to maintain the confidentiality of Personal Information to which the Contractor has access.

e. Confidentiality; No Ownership by Contractor: Unless otherwise permitted expressly by applicable law, all Personal Information collected, used, processed, stored, or generated as the result of the services to be provided under this Agreement will be treated by Contractor as highly confidential information. Contractor will have no right, title, or interest in any Personal Information or any other data obtained or supplied by Contractor in connection with the services to be provided under this Agreement. The City shall own all information, and other work product, with or without Personal Information, developed or obtained by Contractor pursuant to this Agreement ("City Work Product"). Contractor has an obligation to immediately alert the

City if Contractor's security has been breached or if either Contractor is aware of any unauthorized disclosure of Personal Information. This Section will survive the termination of this Agreement.

f. Contractor Use of Personal Information and City Work Product:

Contractor will take all necessary precautions to safeguard the storage of Personal Information and City Work Product including without limitation: (i) keep and maintain Personal Information and City Work Product in strict confidence and in compliance with all applicable Data Protection Laws, and such other applicable laws, using such degree of care as is appropriate and consistent with its obligations as described in this Agreement and applicable law to avoid unauthorized access, use, disclosure, or loss; (ii) use and disclose Personal Information or City Work Product solely and exclusively for the purpose of providing the services hereunder, such use and disclosure being in accordance with this Agreement, and applicable law; (iii) not use, sell, rent, transfer, distribute, or otherwise disclose or make available Personal Information or City Work Product for Contractor's own purposes or for the benefit of anyone other than the City without the prior written consent of the City and the person to whom the Personal Information pertains; and (iv) not engage in "data mining" of Personal Information or City Work Product except as specifically and expressly required by law or authorized in writing by the City. This Section will survive the termination of this Agreement.

g. Employees and Subcontractors: Contractor will ensure that, prior to being granted access to Personal Information or City Work Product, Contractor's 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 data they will be handling. Only those Contractor's Staff who have a direct need for Personal Information, City Work Product, or Confidential Information shall have access to any information provided to V under this Agreement. Prior to allowing any Contractor's Staff to access or use any Personal Information, City Work Product, or Confidential Information, the Contractor shall require any such Contractor's Staff to review and agree to the usage and access terms outlined in this Agreement. Contractor will inform its Contractor's Staff of the obligations under this Agreement, and all requirements and obligations of Contractor under this Agreement shall survive the

expiration or earlier termination of this Agreement. Contractor shall not disclose Personal Information, City Work Product, 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. Unless Contractor provides its own security protection for the information it discloses to a third-party service provider, the Contractor shall require the third party service provider to implement and maintain reasonable security procedures and practices that are appropriate to the nature of the Personal Information, City Work Product, or Confidential Information disclosed and reasonably designed to protect Personal Information, City Work Product, or Confidential Information from unauthorized access, use, modification, disclosure, or destruction. This Section will survive the termination of this Agreement.

h. Loss of Personal Information or City Work Product: In the event of any act, error or omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of Personal Information or City Work Product, Contractor will, as applicable: (i) notify the affected individual and the City as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (ii) cooperate with the affected individual and the City in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by the affected individual or the City; (iii) in the case of Personal Information and if required by applicable law, at the affected individual's sole election: (A) notify the affected individuals in accordance with any legally required notification period; or, (B) reimburse the affected individual for any costs in notifying the affected individuals; (iv) in the case of Personal Information and if required by applicable law, provide third-party credit and identity monitoring services to each of the affected individuals for the period required to comply with applicable law; (v) perform or take any other actions required to comply with applicable law as a result of the occurrence; (vi) indemnify, defend, and hold harmless the City and the affected individual for any and all claims, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from the City or the affected individual in connection with the occurrence; (vii) be responsible for recovering lost data and information in the manner and on the schedule set forth by the City without charge to the affected individual, and (viii) provide to the City and the affected individual a detailed

plan within ten (10) calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence. Notification to affected individuals, as described above, will comply with applicable law, be written in plain terms in English and in any other language or languages specified by the affected individual, and contain, at a minimum: (i) name and contact information of Contractor's representative; (ii) a description of the nature of the loss; (iii) a list of the types of data involved; (iv) the known or approximate date of the loss; (v) how such loss may affect the affected individual; (vi) what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; (vii) contact information for major credit card reporting agencies; and (viii) information regarding the credit and identity monitoring services to be provided by Contractor. This Section will survive the termination of this Agreement.

i. Data Retention and Destruction: Using appropriate and reliable storage media, Contractor will regularly backup all City Work Product and Personal Information used in connection with this Agreement and retain such backup copies consistent with the Contractor's data retention policies. Upon termination of the Agreement, at the City's election, Contractor will either securely destroy or transmit to City the City Work Product in an industry standard format. Upon the City's request, Contractor will supply City a certificate indicating the records disposed of, the date disposed of, and the method of disposition used. With respect to City Work Product controlled exclusively by Contractor, Contractor will immediately preserve the state of the Personal Information or City Work Product at the time of the request and place a "hold" on Personal Information or City Work Product destruction or disposal under its usual records retention policies of records that include Personal Information or City Work Product, in response to an oral or written request from City indicating that those records may be relevant to litigation that City reasonably anticipates. Oral requests by City for a hold on record destruction will be reduced to writing and supplied to Contractor for its records as soon as reasonably practicable under the circumstances. City will promptly coordinate with Contractor regarding the preservation and disposition of these records. Contractor shall continue to preserve the records until further notice by City. This Section will survive the termination of this Agreement.

j. **No Other Databases:** Contractor will not establish or maintain a separate database containing Personal Information or City Work Product to provide the services under the Agreement. This Section will survive the termination of this Agreement.

k. **Data Transfer Upon Termination:** Upon termination or expiration of this Agreement and City's request, Contractor will ensure that all Personal Information and City Work Product is securely transferred to City, or a party designated by City, within thirty (30) calendar days. Contractor will ensure that the data will be provided in an industry standard format. Contractor will provide City with no less than ninety (90) calendar days' notice of impending cessation of its business or that of any Contractor subcontractor and any contingency plans in the event of notice of such cessation. In connection with any cessation of Contractor's business with its customers, Contractor shall implement its contingency and/or exit plans and take all reasonable actions to provide for an effective and efficient transition of service with minimal disruption to City. Contractor will work closely with its successor to ensure a successful transition to the new service or equipment, with minimal downtime and effect on City, all such work to be coordinated and performed in advance of the formal, final transition date mutually agreed upon by Contractor and City. This Section will survive the termination of this Agreement.

23. **COMPLIANCE WITH ALL LAWS:** 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.

24. **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.

25. 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.

26. ORDER OF PRECEDENCE: In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.

27. INTELLECTUAL PROPERTY RIGHTS: The City and Contractor intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, URLs, domain names, music, sketches, web pages, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information created by the Contractor and paid for by the City pursuant to this Agreement, in preliminary or final form and on any media whatsoever (collectively, “Materials”), shall belong to the City. The Contractor shall disclose all such items to the City and shall assign such rights over to the City upon completion of the Project. To the extent permitted by the U.S. Copyright Act, 17 USC § 101, *et seq.*, the Materials are a “work made for hire” and all ownership of copyright in the Materials shall vest in the City at the time the Materials are created. To the extent that the Materials are not a “work made for hire,” the Contractor (by this Agreement) sells, assigns and transfers all right, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such rights in perpetuity.

28. 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.

29. 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 Executive Director. 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 Executive Director in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

30. CONFIDENTIAL INFORMATION:

a. City Information: Contractor acknowledges and accepts that, in performance of all work under the terms of this Agreement, Contractor may have access to Proprietary Data or confidential information that may be owned or controlled by the City, and that the disclosure of such Proprietary Data or information may be damaging to the City or third parties. Contractor agrees that all Proprietary Data, confidential information or any other data or information provided or otherwise disclosed by the City to Contractor shall be held in confidence and used only in the performance of its obligations under this Agreement. Contractor shall exercise the same standard of care to protect such Proprietary Data and information as a reasonably prudent contractor would to protect its own proprietary or confidential data. “Proprietary Data” shall mean any materials or information which may be designated or marked “Proprietary” or “Confidential”, or which would not be documents subject to disclosure pursuant to the Colorado Open Records Act or City ordinance, and provided or made available to Contractor by the City. Such Proprietary Data may be in hardcopy, printed, digital or electronic format.

31. CITY EXECUTION OF AGREEMENT: The Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

32. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS: 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.

33. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS: Contractor shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A 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 contract personnel being barred from City facilities and from participating in City operations.

34. 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 under the Agreement, 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.

List of Exhibits

Exhibit A – Scope of Work.

Exhibit B – Budget/Pricing.

Exhibit C – Certificate of Insurance.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

Contract Control Number: FINAN-202371601
Contractor Name: PEAK FORM PHYSICAL THERAPY

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:

FINAN-202371601
PEAK FORM PHYSICAL THERAPY

By:  _____
39E73FFC651244F...

Name: Jeanette Hrubes
(please print)

Title: CEO.
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

AGREEMENT

With

PEAK FORM, LLC



EXHIBIT A

SCOPE OF WORK

Exhibit A
WORKERS' COMPENSATION DESIGNATED PROVIDER
SCOPE OF WORK AND TECHNICAL REQUIREMENTS

The scope of work and technical requirements for this contract include the below requirements, as well as any and all additional information provided by the vendor in their RFP response.

Vendor will provide initial and subsequent treatment for employee injuries or illnesses sustained in the workplace. Each exam will be documented electronically through the medical provider's notes and shared with the City's Workers Compensation Unit staff. Vendor will have the means to communicate effectively with all persons within the City with whom communication is necessary, including but not limited to City Attorney's Office, and managers and supervisors of various City agencies and departments. Vendor will make all attempts to see City employees the same day of the injury, but in no circumstance more than 72 hours after being notified of the injury, except on weekends and holidays. The first visit with a City employee will be with a Level II accredited physician and all work restrictions will be addressed by a physician as per statutory requirement.

Vendor will effectively respond to or possess the following:

1. A thorough understanding of the State of Colorado's Workers' Compensation statutes and Workers Compensation Rules of Procedure including but not limited to the following:
 - a. Colorado Division of Workers' Compensation's Medical Treatment Guidelines (Colorado Rules of Workers' Compensation Procedure, Rule 17, Exhibits 1 through 9) as applicable
 - b. Colorado Rules of Workers' Compensation Procedure, Rule 16, Utilization Standards
 - c. Rule 8-5 and one time change of authorized physicians
 - d. Workers' Compensation Rules of Procedure Rule 12 Permanent Impairment Rating Guidelines with on staff physicians who assess permanent medical impairment ratings

2. All appointments will be thoroughly documented providing:
 - a. Name of employee and personal identification information
 - b. Date of Injury
 - c. Date of appointment
 - d. Employee arrival time and departure time of scheduled appointment
 - e. Diagnostics performed
 - f. Treatment provided
 - g. Prescriptions given
 - h. Clearly described mechanism of alleged injury, accident, or occupational disease, and job duties

- i. Causation analysis within a reasonable degree of medical probability
 - j. Clearly defined work capacity/restrictions by a physician
 - k. Referral services
 - l. Treatment Plan
 - m. Estimated Maximum Medical Improvement (MMI) date
 - n. Estimated duration of time before employee can be expected to return to full duty and/or suggested time frame for follow up visit and evaluation
3. Provide dictated Progress Reports at least every 45 days on open cases. The report will include and is not limited to updated treatment plan and estimated date of MMI.
4. Be available on reasonable notice (at least 2 weeks) for any necessary court testimony, depositions, and conferences with the parties and their attorneys at no additional charges beyond what is allowed under the fee schedule.
5. Provide first visit treatment with Level II accredited M.D./D.O. Every third visit thereafter will be with a Level II accredited M.D./D.O. Any MMI finding or determination for a City employee will be with a Level II accredited M.D./D.O.
6. On-site nurse case managers or patient care coordinators, who will act as a liaison with the City's Workers' Compensation staff as follows:
 - a. Notify the City's Workers' Compensation staff of missed appointments on a weekly basis.
 - b. Assist with deviations from Medical Treatment Guidelines.
 - c. Facilitate and coordinate missing reports, referrals, closures, reopening, and employee/employer requests on a timely basis as needed.
 - d. Stalled estimated MMI dates and/or work restrictions/capabilities.
 - e. Be willing and able to meet with the City's Workers' Compensation staff every six (6) weeks to ensure that cases are moving along the continuum of care.
7. Comply with any existing contracts between the City and providers of ancillary services including but not limited to contracts for pharmacy services, diagnostic services, therapy, and any alternative providers of ancillary services.
8. Avail specialists prior to the initial visit of all accessible X-rays, medical test results, and records. Vendor will obtain specialists' reports within ten (10) business days for following. Vendor will coordinate and manage reasonable and necessary treatment subject to the City's Workers' Compensation staff approval in a timely manner for the following services:
 - a. Occupational Therapy
 - b. Physical Therapy
 - c. Massage Therapy
 - d. Chiropractic Therapy

- e. Specialist Consultations
- f. Eye Care
- g. Dental Care
- h. Mental Health Care

9. Provide a clearly defined treatment plan for short and long-term concussion cases including referrals to medical specialists that treat concussion cases.

10. Provide a clearly defined treatment plan for Blood borne Pathogens Exposure cases.

11. Provide post-accident drug and alcohol testing in compliance with any and all federal and state statutes and in accordance with proper protocols and City procedures.

12. Provide walk-in capability for injured employees requiring medical treatment with reasonable wait time. Maximum wait time is 30 minutes. OuchLine reports of accident will be sent in advance providing as much notice and claim information as possible.

13. Communicate with the City's Workers Compensation Unit staff within two (2) hours of the appointment to discuss the treatment plan on complex medical referrals, if emergency transport is necessary, if red flags are noted, causation is unclear, etiology is unclear and/or the employee is taken off work.

14. Deliver a Colorado State Form WC164 or Work Status Summary electronically to City's Workers Compensation Unit staff immediately following initial appointment.

15. Meet with the City's Workers Compensation Unit staff every 6 weeks to review active cases. The City must have same-day access to office support staff for the resolution of case issues such as scheduling, invoicing, and treatment plan clarification. If vendor cannot meet with City's Workers Compensation Unit staff every 6 weeks, then a detail explanation of why the meeting did not take place and a written report of the active cases must be sent to the City. The City will notify Vendor if a meeting is not needed.

16. Address surgical consults, specialist referrals, and diagnostic referrals, such as MRI's and therapies with required pre-authorization before the referral appointment.

17. Evaluate employees no later than fourteen (14) days post-operatively (sooner if the surgeon's report is available).

18. Evaluate employees within fourteen (14) days while unable to work or with restricted hours due to a work-related injury.

19. Contact employer representative immediately following hearing loss evaluation.

20. Address invoices and recordkeeping, segregated by the date of injury and body part treated. For example, if a knee and shoulder have been injured on separate injury dates, treatment and invoicing for those injuries must be separated by the injury date and body part. Treatment for multiple body parts, having the same date of injury, may be billed together for the same event.

21. Facilitate bill submission to the City's bill review vendor, fee schedule application, and any additional discounting as appropriate. Currently this vendor is Rising Medical Solutions.

22. Provide a facility, or preferably, multiple facilities that comply with the requirements of all federal and state laws, including but not limited to the Americans with Disabilities Act, that are applicable to providing Workers' Compensation services.

23. Support Employee Return to Work Program as follows:

- a. Facilitate returning employees to their normal job function and identify the ability to participate in modified duty whenever possible. The focus, whenever medically possible, will be on determining work capacity/restrictions applicable to each injured City employee.
- b. In cases requiring a physician's signature on a modified job description, the Vendor physician(s) are required to sign offer letters for temporary modified duty pursuant to Rule 6 of the Colorado Division of Workers' Compensation Rules of Procedure and return the signed offer letter to the City's Workers' Compensation staff within 24 hours of the designated provider's receipt of the letter.
- c. Vendor physician(s) will provide written return-to-work releases to the City's Workers' Compensation staff by end of day or no later than the following morning after a medical visit by a City employee. Vendor must refrain from providing retroactive off-work releases which cover time periods prior to the employee being seen by the authorized provider.
- d. Any return-to-work issues shall be addressed by M.D. or D.O., not a physician's assistant or nurse practitioner for Workers' Compensation Rule 6-1 compliance.
- e. Vendor physician(s) will report to the City's Workers' Compensation staff by the end of day or no later than the following morning any issues relating to modified duty restrictions, including but not limited to specific restriction requirements or accommodations that are needed.
- f. Vendor's medical director is required to participate in monthly (at a maximum) six-month modified duty reviews regarding employees on modified duty for six (6) months or more from the date of injury, if any.

Recordkeeping, Documentation, and Electronic Records

Vendor will maintain medical records for each employee and provide an electronic report to the City within 72 hours after each appointment. Vendor will be able to provide the City and our Third-

Party Administrator (TPA) access to the complete employee medical files as permitted by laws. Vendor will maintain the releases for medical information signed by the employee and provide a notice of Privacy Practice to the employee or applicant relating to their physical or mental health, in compliance with Health Insurance Portability and Accountability Act (HIPAA), about safeguarding that information. Vendor will provide the City with documentation of all tests or medical surveillance performed for the employee's medical file.

AGREEMENT

With

PEAK FORM, LLC



EXHIBIT B

PRICING & FEES

Exhibit B - Pricing
RFP 29495 - Designated Providers for Workers' Compensation Medical
Services

Vendor Name: Peak Form Medical Center

Post Conditional Job Offer Physicals	Additional information about the requirement:	Per Each Pricing
Senior Utility Workers-Post Conditional Job Offer	Pre employment Physical, Range of Motion Test Level 2	\$ 175.00
Pre-employment PT/OT Exam	Human Performance Evaluation	\$ 75.00
Civil Svc Post Cond Job Offer Physical with Range of Motion	Pre employment Physical, Range of Motion Test Level 2, CBC w/ diff, Metabolic panel	\$ 253.00
DOT Physicals (renewals)	DOT Physical	\$ 95.00
DOT Physicals (new)	DOT Physical, Regulated Drug Screen including MRO	\$ 95.00
DOT Drug Screens	Regulated Drug Screen including MRO	\$ 60.00
Retirement Physical	Physical	\$ 175.00
Fit For Duty	Fit For Duty Physical Level 2	\$ 300.00
Other Services		
Established Visit-Level II (non-job related)		\$ 175.00
Established Visit-Level III (non-job related)		\$ 175.00
Human Performance Evaluation (HPE) establishment	Establishment of Human Performance Evaluation for designated job classification, including on-site task review and development of HPE	\$ 250.00
Human Performance Evaluation	In-clinic HPE for perspective new-hires	\$ 50.00
DPD Firing Range Surveillance Exam	Physical, Audiogram, CBC w/Diff, Metabolic Panel (includes BUN, Creatine), Blood Lead ZPP	\$ 359.00
Lead Exposure Exam	Lead & ZPP-whole blood, CBC w/ Diff, Metabolic Panel (includes BUN and Creatine)	\$ 184.00
Breath Alcohol Test		\$ 35.00
Hearing Screening	Audiogram	\$ 40.00
Vision Test		
Vision Titmus		\$ 45.00
Vision Ishihara/Color	Vision Ishihara/Color	\$ 45.00
Respirator Fit Test Qualitative	Respirator Fit Test Qualitative	\$ 45.00
Respirator Use Training		\$ 25.00
Respirator Training & Qualitative Fit		\$ 70.00
Testing Combined		\$ 70.00
Initial Exposure Exam		\$ 110.00
Follow-Up Exposure Exam		\$ 110.00

Requested Drug Screen (XO 94)	Regulated Drug Screen/5 Panel Rapid Drug Screen	\$	60.00
Hep B Shot (per injection)	Hep B Shot	\$	150.00
Flu Shot	Flu Shot	\$	35.00
PPD	PPD	\$	40.00
Two Step PPD	PPD x2	\$	80.00
MMR Vaccine	MMR Vaccine	\$	120.00
Rapid Drug Screen	Rapid Drug Screen 5 panel	\$	60.00
Combined Post Offer & DOT Physical	DOT Physical & EO94 Physical	\$	270.00
Impairment Exam By Treating Physician		\$	700.00
Hazmat Medical Review	Periodic Hazmat Physical, CBC w/ diff, Metabolic Panel, Lipid	\$	253.00
Disability Retirement (Without Physical)		\$	300.00
Disability Retirement Physical		\$	500.00
Blood work:	Albumin; Bilirubin, Total; Calcium; Carbon Dioxide; Chloride; Creatine; Glucose; Alkaline Phosphatase; Potassium; Protein, Total ; Sodium; SGOT; (AST); SGPT (ALT); BUN	\$	37.00
CBC with Diff	Heamatocrit; Hemoglobin; RBC Count (red blood cells);WBC Count (white blood cell);WBC Differential	\$	41.00
Lipid Panel	Total Cholesterol, HDL, Triglycerides	\$	24.00
Blood Lead	Blood Lead	\$	50.00
Blood Lead ZPP	Blood Lead ZPP	\$	56.00
Chem 23	Chem 23	\$	37.00
On-Site Testing:			
Hourly Fee	Minimum 2 hours	\$	125.00
Drug Screen Collection Fee	Minimum 10 participants	\$	125.00
Breath Alcohol Test	Minimum 1 participant	\$	100.00
Physical Exam Testing (on-site)		\$	250.00

Mandatory Testing	Per Each Pricing		
Medical history review		\$	25.00
Physical Exam (includes vision)		\$	175.00
Respirator questionnaire review		\$	25.00
Audiometry		\$	40.00
Range of Motion Testing (performed by a Physical Therapist)		\$	50.00
Chem Screen/Complete CBC		\$	78.00
PFT (Pulmonary function test) or Spirometry		\$	55.00
Optional Testing (performed based on medical necessity)			
PA & LAT Chest X-Ray		\$	75.00
EKG		\$	50.00
Stress EKG	Sub-max Treadmill MET	\$	250.00
Lead Testing		\$	50.00
Thyroid		\$	21.00
Additional Testing			
VD		\$	40.00

AGREEMENT

With

PEAK FORM, LLC



EXHIBIT C

ACORD Certificate of Liability Insurance

BUSINESSOWNERS LIABILITY ENHANCEMENTS FOR HEALTHCARE INDUSTRY

Named Insured			Endorsement Number
Policy Symbol	Policy Number	Policy Period to	Effective Date of Endorsement
Issued By (Name of Insurance Company)			

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	2
Who Is An Insured – Employees And Volunteer Workers	3
Additional Insured – Lessor Of Leased Equipment	3
Additional Insured – Managers Or Lessors Of Premises	4
Additional Insured – Other Persons Or Organizations Pursuant To Contract Or Agreement	4
Damage To Premises Rented To You – \$1,000,000	5
Per Location General Aggregate Limit With Combined Total Aggregate Limit	5
Coverage Territory, Limited Worldwide	6
Unintentional Failure To Disclose Hazards	7
Other Insurance, Including Primary Provision	7
Waiver Of Subrogation Required By Contract	8
Stop Gap – Employers Liability Coverage (if you have “employees” in North Dakota, Ohio, Washington or Wyoming) Bodily Injury By Accident \$1,000,000 Bodily Injury By Disease Each Employee \$1,000,000 Aggregate \$1,000,000	8
Employee Benefits Liability Coverage – Claims Made Aggregate \$1,000,000 Each Employee \$1,000,000 Deductible \$1,000	13

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



Medical Protective
Princeton Insurance Company
PLICO
MedPro RRG

06/02/2023

Peak Form, LLC
1093 E Bridge St
Brighton, CO 80601

Re: Policy Number HN010505
Policy Effective Date 06/01/2023 to 06/01/2024

Thank you for trusting us to defend and protect your reputation and assets. Enclosed please find a copy of your policy issued by National Fire & Marine Insurance Company.

In the event you have questions about the claims process, please call us at 800-4MEDPRO (800-463-3776) to speak with a claims representative who will be able to answer your questions and discuss solutions for claim-related issues. Additionally, if you need to report a claim as required by the reporting requirements of this policy, please send your notice of claims as follows:

Via Email: reportclaim@medpro.com

Via Mail: MedPro Group
Attn: First Claim Reports
5814 Reed Road
Fort Wayne, IN 46835

I also encourage you to visit www.medpro.com to access our Prevention & Education Center for up-to-date risk information and recommended strategies to help promote patient safety and satisfaction.

In closing, thank you for joining more than 200,000 clients who entrust MedPro Group to provide the peace of mind, expertise and choice they expect from their healthcare liability insurer.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Kenesey".

Tim Kenesey
President and CEO

MedPro Group is the marketing name used to refer to the insurance operations of The Medical Protective Company, Princeton Insurance Company, PLICO, Inc. and MedPro RRG Risk Retention Group. All insurance products are administered by MedPro Group and underwritten by these and other Berkshire Hathaway affiliates, including National Fire & Marine Insurance Company. Product availability is based upon business and regulatory approval and may differ among companies. Visit medpro.com/affiliates for more information.

PLCYCVLTR-00-1215

Colorado Surplus Lines Warning Statement

This contract is delivered as surplus line coverage under the 'Nonadmitted Insurance Act'. The insurer issuing this contract is not licensed in Colorado but is an approved nonadmitted insurer. There is no protection under the provisions of the 'Colorado Insurance Guaranty Association Act'.

Name of Surplus Lines Broker _____

This policy may contain claims-made coverage(s) which provides liability coverage only if a claim is made during the policy period or any applicable extended reporting period.



HEALTHCARE LIABILITY POLICY DECLARATIONS

NOTICE:

This policy may contain claims-made and reported coverage. Please read this policy carefully.

ISSUING COMPANY: National Fire & Marine Insurance Company, as administered by a MedPro Group company
Omaha, Nebraska

POLICY NUMBER: HN010505

ITEM 1	<p>FIRST NAMED INSURED: Peak Form, LLC</p> <p>ADDRESS: 1093 E Bridge St Brighton, CO 80601</p> <p><input type="checkbox"/> Administrative First Named Insured</p>																
ITEM 2	<p>POLICY PERIOD: From 06/01/2023 to 06/01/2024 both days at 12:01 a.m. at the address of the First Named Insured stated herein.</p>																
ITEM 3	<p>COVERAGE PARTS SELECTED: (Please refer to the applicable Schedule of Named Insureds for detailed Retroactive Dates, Limits of Liability, Retentions, etc.)</p> <p>Professional Liability: Occurrence</p> <p>Cyber Liability and Breach Response: Claims-Made and Reported</p>																
ITEM 4	<p>RETROACTIVE DATE:</p> <p>Professional Liability: n/a</p> <p>Cyber Liability and Breach Response: 06/01/2015</p> <p>All days at 12:01 a.m. at the address of the First Named Insured stated herein.</p>																
ITEM 5	<p>LIMITS OF LIABILITY:</p> <p>Professional Liability:</p> <table style="width: 100%; border: none;"> <tr> <td style="padding-left: 20px;">Per Event Limit</td> <td style="text-align: right;">\$1,000,000</td> </tr> <tr> <td style="padding-left: 20px;">Aggregate Limit</td> <td style="text-align: right;">\$3,000,000</td> </tr> <tr> <td style="padding-left: 20px;">Claims Expenses</td> <td style="text-align: right;">Defense Outside Limits</td> </tr> </table> <p>Cyber Liability and Breach Response:</p> <table style="width: 100%; border: none;"> <tr> <td style="padding-left: 20px;">Coverage A - Multimedia Liability</td> <td style="text-align: right;">\$ 50,000 each claim/aggregate</td> </tr> <tr> <td style="padding-left: 20px;">Coverage B - Security and Privacy Liability</td> <td style="text-align: right;">\$ 50,000 each claim/aggregate</td> </tr> <tr> <td style="padding-left: 20px;">Coverage C - Privacy Regulatory Defense and Penalties</td> <td style="text-align: right;">\$ 50,000 each claim/aggregate</td> </tr> <tr> <td style="padding-left: 20px;">Coverage D - Privacy Breach Response Costs, Customer Notification Expenses, and Customer Support and Credit Monitoring Expenses</td> <td style="text-align: right;">\$ 50,000 each claim/aggregate</td> </tr> <tr> <td style="padding-left: 20px;">Coverage E - Network Asset Protection</td> <td style="text-align: right;">\$ 50,000 each claim/aggregate</td> </tr> </table>	Per Event Limit	\$1,000,000	Aggregate Limit	\$3,000,000	Claims Expenses	Defense Outside Limits	Coverage A - Multimedia Liability	\$ 50,000 each claim/aggregate	Coverage B - Security and Privacy Liability	\$ 50,000 each claim/aggregate	Coverage C - Privacy Regulatory Defense and Penalties	\$ 50,000 each claim/aggregate	Coverage D - Privacy Breach Response Costs, Customer Notification Expenses, and Customer Support and Credit Monitoring Expenses	\$ 50,000 each claim/aggregate	Coverage E - Network Asset Protection	\$ 50,000 each claim/aggregate
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Coverage E - Network Asset Protection	\$ 50,000 each claim/aggregate																

	Coverage F - Cyber Extortion \$ 50,000 each claim/aggregate Coverage G - Cyber Terrorism \$ 50,000 each claim/aggregate Coverage H - Regulatory Proceeding n/a each claim/aggregate Coverage I - E-Discovery Claim Expenses and E-Discovery Regulatory Investigation Expenses \$ 50,000 each claim/aggregate Coverage J - Data Protection Reputational Harm \$ 50,000 each claim/aggregate Aggregate Limit \$ 50,000 Claims Expenses Defense Within Limits
ITEM 6	RETENTION: Professional Liability: \$Nil Per Event / \$Nil Aggregate Cyber Liability and Breach Response: \$Nil Each Claim Self-Insured Retention 8 hours' Time Retention (Coverages E.2. and G) 180 consecutive days Period of Indemnity (Coverage J)
ITEM 7	PREMIUM: Policy Premium \$ 15,814 (Does not include any applicable surplus lines taxes, which must be collected by the producer.)
ITEM 8	FORMS & ENDORSEMENTS: Refer to attached Schedule of Forms and Endorsements
ITEM 9	PRODUCER: Brown & Riding Insurance Services Inc ADDRESS: 3405 Piedmont Rd NE Ste 470 Atlanta, GA 30305-1799
ITEM 10	CLAIMS NOTICES: Via Email: reportclaim@medpro.com Via Mail: MedPro Group Attn: First Claim Reports 5814 Reed Road Fort Wayne, IN 46835
ITEM 11	SERVICE OF SUIT: Service of process in any lawsuit or mandated alternative dispute resolution (ADR) proceeding instituted against the company shall be made upon: General Counsel, National Fire & Marine Insurance Company, 1314 Douglas Street, Omaha, Nebraska 68102-1944. The General Counsel is authorized and directed to accept service of process on behalf of the company in any suit or ADR proceeding. Further, pursuant to any law which makes provision therefore, the company hereby designates the Superintendent, Commissioner, Director of Insurance, deputy, or department employee specified as attorney or agent for receipt of lawful service of process or ADR proceeding instituted by or on behalf of the insured or any beneficiary within this contract. Additionally, the General Counsel is hereby authorized as the company's designee upon whom the service of process may be served.

IN WITNESS WHEREOF, National Fire & Marine Insurance Company has caused this policy to be signed by its President (and countersigned by its duly Authorized Representative, where necessary).


 President

Premium	\$15,814.00
Company Fee	\$0.00
Broker Fee	\$700.00
Inspection Fee	\$0.00
State Tax	\$495.42
Total	\$17,009.42

Countersigned By: _____

Date: _____

"This contract is delivered as surplus line coverage under the "Non-admitted Insurance Act. The insurer issuing this contract is not licensed in Colorado but is an eligible nonadmitted insurer. There is no protection under the provisions of the Colorado Insurance Guaranty Association Act." - Brown and Riding Insurance Services, Inc. Lic. #294353

"This policy is issued by an insurance company that is not regulated by the Colorado Division of Insurance. The insurance company may not provide claims service and may not be subject to service of process in Colorado. If the insurance company becomes insolvent, insureds or claimants will not be eligible for protection under Colorado insurance law." - Brown and Riding Insurance Services, Inc. Lic. #294353

"This policy is a claims-made policy which provides liability coverage only if a claim is made during the policy period or any applicable extended reporting period."

"The cost of the insurance coverage provided herein includes a fee to a wholesale intermediary in addition to the premium charges."



Issuing Company:
National Fire & Marine Insurance Company
Omaha, Nebraska

Forming Part of Policy No.: HN010505

Issued to: Peak Form, LLC

Policy Period: From 06/01/2023 to 06/01/2024 at 12:01 a.m. at the address of the First Named Insured stated herein.

SCHEDULE OF FORMS AND ENDORSEMENTS

Forms and Endorsements attached to this Policy:

FORM NAME	FORM NUMBER	ENDORSEMENT NUMBER
Healthcare Liability Policy Declarations	0001-PXX-00-0121	
Schedule of Forms and Endorsements	0002-PXX-00-1215	
Schedule of Named Insureds - Professional Liability	0006-PPX-00-1215	
Schedule of Named Insureds - Cyber Liability and Breach Response	0008-PCX-00-0121	
Healthcare Liability Policy Common Policy Provisions and Conditions	0010-PXX-00-0121	
Healthcare Liability Policy - Professional Liability Coverage Part	0011-PPF-00-0121	
Healthcare Liability Policy - Cyber Liability and Breach Response Coverage Part	0013-PCX-00-0121	
Schedule of Additional Insureds Endorsement	1120-PXX-00-0121	1
Schedule of Waiver of Subrogation Endorsement	1128-PXX-00-1215	2
Disciplinary, Licensing and Credentialing Actions Endorsement (Professional Liability)	1303-PPX-00-0121	3
Intentional Acts Exclusion with Carveback for Innocent Insureds Endorsement (Professional Liability)	1308-PPF-00-0121	4



Issuing Company:
National Fire & Marine Insurance Company
Omaha, Nebraska

Forming Part of Policy No.: HN010505

Issued to: Peak Form, LLC

Policy Period: From 06/01/2023 to 06/01/2024 at 12:01 a.m. at the address of the First Named Insured stated herein.

SCHEDULE OF NAMED INSUREDS – PROFESSIONAL LIABILITY

Only with respect to coverage provided under the Professional Liability Coverage Part, and in consideration of the premium due, and in reliance upon the representations of all **insureds**, the **company** and the **insureds** agree the organizations and persons listed below are designated as **named insureds** and the Retroactive Dates, Limits of Liability and Retentions shown on the Declarations are amended as follows, but only with respect to the designated **named insureds**.

SCHEDULE OF NAMED INSUREDS						
NAMED INSURED	ID NUMBER	RETRO-ACTIVE DATE	TERMINATION DATE	LIMITS OF LIABILITY (PER EVENT LIMIT/ AGGREGATE LIMIT)	RETENTION (PER EVENT/ AGGREGATE)	PREMIUM
Peak Form, LLC	929656	n/a		\$1,000,000 / \$3,000,000	\$Nil / \$Nil	\$8,214

Physician FTEs :

Physician FTE 1	ID NUMBER	RETRO-ACTIVE DATE	TERMINATION DATE	FNI	RETENTION (PER EVENT/ AGGREGATE)	PREMIUM
Troy Leslie Manchester MD	1169206			Physician FTE 1	\$Nil / \$Nil	Included
Ethan Moses MD	1180356			Physician FTE 1	\$Nil / \$Nil	Included
Ryan J Parsons MD	1491736			Physician FTE 1	\$Nil / \$Nil	Included
Annu Ramaswamy MD	1941605			Physician FTE 1	\$Nil / \$Nil	Included

* Indicates any applicable surcharges, taxes or fees.

As used in this Schedule, "FNI" means the **first named insured**.

All other terms and conditions of the policy remain unchanged.



Issuing Company:
National Fire & Marine Insurance Company
Omaha, Nebraska

Forming Part of Policy No.: HN010505

Issued to: Peak Form, LLC

Policy Period: From 06/01/2023 to 06/01/2024 at 12:01 a.m. at the address of the First Named Insured stated herein.

SCHEDULE OF NAMED INSUREDS – CYBER LIABILITY AND BREACH RESPONSE

Only with respect to coverage provided under the Cyber Liability and Breach Response Coverage Part, and in consideration of the premium due, and in reliance upon the representations of all **insureds**, the **company** and the **insureds** agree the organizations and persons listed below are designated as **named insureds** and the Retroactive Dates, Limits of Liability and Retentions shown on the Declarations are amended as follows, but only with respect to the designated **named insureds**.

LIMITS OF LIABILITY:

Coverage A - Multimedia Liability	\$50,000 each claim/aggregate
Coverage B - Security and Privacy Liability	\$50,000 each claim/aggregate
Coverage C - Privacy Regulatory Defense and Penalties	\$50,000 each claim/aggregate
Coverage D - Privacy Breach Response Costs, Customer Notification Expenses, and Customer Support and Credit Monitoring Expenses	\$50,000 each claim/aggregate
Coverage E - Network Asset Protection	\$50,000 each claim/aggregate
Coverage F - Cyber Extortion	\$50,000 each claim/aggregate
Coverage G - Cyber Terrorism	\$50,000 each claim/aggregate
Coverage H - Regulatory Proceeding	n/a each claim/aggregate
Coverage I - E-Discovery Claim Expenses and E-Discovery Regulatory Investigation Expenses	\$50,000 each claim/aggregate
Coverage J - Data Protection Reputational Harm	\$50,000 each claim/aggregate
Annual Aggregate Limit	\$50,000
Claims Expenses	Defense Within Limits

RETENTION:

\$Nil Each Claim Self-Insured Retention

8 hours' Time Retention (Coverages E.2. and G)

180 consecutive days Period of Indemnity (Coverage J)

SCHEDULE OF NAMED INSUREDS				
NAMED INSURED	ID NUMBER	RETRO-ACTIVE DATE	TERMINATION DATE	PREMIUM
Peak Form, LLC	929656	06/01/2015		Included

* Indicates any applicable surcharges, taxes or fees.

All other terms and conditions of the policy remain unchanged.



Issuing Company:
National Fire & Marine Insurance Company
Omaha, Nebraska

HEALTHCARE LIABILITY POLICY
COMMON POLICY PROVISIONS AND CONDITIONS

NOTICE:

This policy may contain claims-made and reported coverage. Please read this policy carefully.

In consideration of the payment of the premium due, and in reliance upon the representations of all **insureds**, the **company** and all **insureds** agree as follows, subject to the terms and conditions of this policy, including the applicable Limits of Liability:

I. DEFINITIONS

These definitions apply to all Coverage Parts:

- A. **Additional insured** means any person or organization listed on a Schedule of Additional Insureds.
- B. **Advertisement** means a notice that is broadcast or published to the general public or specific market segments about any **named insured's** goods, products, or services for the purpose of attracting customers or supporters. For the purposes of this definition:
 - 1. notices that are published include material placed on the internet or on similar electronic means of communication; and
 - 2. regarding websites, only that part of a website that is about any **named insured's** goods, products, or services for the purposes of attracting customers or supporters is considered an **advertisement**.
- C. **Application** means all information, documents and material provided to the **company** for purposes of obtaining coverage under this policy.
- D. **Authorized insured** means:
 - 1. an executive officer of;
 - 2. a member of a human resources, risk management or in-house general counsel's office of; or
 - 3. a person or organization authorized to report a **claim** or **potential claim** to any insurer, including any self-insured or captive program, by;
 a **named insured** or an organization acquired by a **named insured**.
- E. **Automobile** or **auto** means:
 - 1. any land motor vehicle, trailer or semi-trailer, including any attached machinery and equipment, designed for use on public roads; or
 - 2. any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.
 However, **automobile** or **auto** does not include **mobile equipment**.
- F. **Bodily injury** means any damage to the human body, including sickness or disease and any mental injury, shock, emotional distress, or death arising therefrom. In addition, it includes damages claimed for the cost of any care, loss of services, or loss of consortium arising therefrom.
- G. **Case management** means identifying **patients** or **residents** with specific health care needs and developing a plan to ensure an efficient use of resources to achieve the best outcome.

- H. **Claim** means an express, written demand upon an **insured** for money or services as compensation for damages, including a suit. As used in this definition, "suit" means a civil proceeding in which damages to which this insurance applies are alleged. Suit also includes an arbitration or other alternative dispute resolution proceeding in which such damages are claimed and to which an **insured** must submit or does submit with the **company's** consent. However, this definition does not apply to coverage provided under the Cyber Liability and Breach Response Coverage Part.
- I. **Claims expense** means all costs and expenses incurred in connection with the investigation, adjustment, and defense of any **claim** or **potential claim**. Such costs and expenses:
1. shall only include:
 - a. attorneys' fees paid to the law firm selected to defend an **insured**;
 - b. court costs;
 - c. expert fees;
 - d. reporter fees;
 - e. the cost of any alternative dispute resolution ordered by a court, otherwise required by law, or pre-approved by the **company**;
 - f. post-judgment interest on that portion of the judgment that does not exceed the Limit of Liability available under the particular coverage provided; and
 - g. such other costs and expenses that the **company** determines to be reasonably related to the defense of a **claim** or **potential claim**.
 2. shall not include:
 - a. **loss**;
 - b. attorneys' fees awarded to a claimant;
 - c. the salary of any **employee** of an **insured**; or
 - d. the forgiveness of any amounts owed for the cost of care or services rendered by an **insured**.

However, this definition does not apply to coverage provided under the Cyber Liability and Breach Response Coverage Part.

- J. **Company** means the Issuing Company shown on the Declarations.
- K. **Employee** means any person who is under the supervision and control of any **named insured** and who was acting within the scope of their duties on behalf of that **named insured** at the time of the **event**, offense, **health care event** or any other act or omission that results in a **claim** or **potential claim**. **Employee** also includes any leased worker, temporary worker or volunteer so long as such person is or was acting within the scope of their duties on behalf of a **named insured** that is an organization.

As used in this definition:

1. "leased worker" means a person leased to, or used by, a **named insured** under an agreement between a **named insured** and organizations providing staffing to a **named insured** to perform duties related to the conduct of that **named insured's** business. Leased worker does not include a temporary worker;
2. "temporary worker" means a person who is furnished to a **named insured** to substitute for a permanent **employee** on leave or to meet seasonal or short-term workload conditions. A temporary worker does not include a leased worker; and
3. "volunteer" means a person who provides their services or labor to a **named insured**, without being paid by that **named insured**, under the supervision or direction of the **named insured**. Volunteer does not include any independent contractor or staff physician.

However, only with respect to the coverage provided under the Professional Liability Coverage Part, **employee** does not mean any physician, surgeon, podiatrist, chiropractor, dentist, certified registered nurse anesthetist, midwife, resident or intern.

Additionally, this definition does not apply to coverage provided under the Cyber Liability and Breach Response Coverage Part.

- L. **Event** means an accident resulting in injury. All injuries arising out of, or in connection with:
1. the same or related acts or omissions, including a series of related acts or omissions; or
 2. the continuous or repeated exposure to substantially the same harmful conditions;
- will be considered one **event**. For the purposes of this definition, all injuries to a mother and fetus (or fetuses) from conception through delivery shall constitute one **event**.
- M. **Extended reporting period** means the period of time after the cancellation or nonrenewal of any Coverage Part shown on the Declarations or any endorsement as "Claims-Made and Reported" during which an **insured** may report a **claim** or **potential claim**.
- N. **First named insured** means the person or organization shown as the First Named Insured on the Declarations.
- O. **Health care event** means any **event** in the rendering of, or failure to render, **professional services** that results in injury to a **patient** or to a **resident**. All injuries to a **patient** or to a **resident** arising out of, or in connection with, the same or related acts or omissions, including a series of related acts or omissions, in furnishing **professional services** to a **patient** or to a **resident**, whether by one or more **insureds** or other persons, shall be considered one **health care event**.
- P. **Impaired property** means tangible property, other than the **insured's product** or the **insured's work**, which cannot be used or becomes less useful because:
1. it incorporates the **insured's product** or **insured's work** that is known or thought to be defective, deficient, inadequate, or dangerous; or
 2. an **insured** has failed to fulfill the terms of a contract or agreement if such property can be restored to use by:
 - a. the repair, replacement, adjustment, or removal of the **insured's product** or **insured's work**; or
 - b. an **insured's** fulfillment of the terms of the contract.
- Q. **Insured** means:
1. the **first named insured**;
 2. any **named insured**;
 3. any **employee**;
 4. any administrator, partner, superintendent, director, officer, member, trustee, stockholder, medical director, department head or head of the medical staff, student, board or committee member or staff member, but only to the extent that they are acting within the scope of their duties on behalf of any **named insured**. As used to define **insured**, student means an unlicensed person, other than a resident, enrolled in a licensed or accredited training program operated by any **named insured** that is an organization relative to the delivery of **professional services**;
 5. any spouse or domestic partner of any individual **insured**, but only with respect to the conduct of the business of a **named insured** that is an organization. As used in this definition, "domestic partner" means any person qualifying as such under any federal, state or local laws or under a **named insured's** employee benefit plans or employee benefits program;
 6. any organization formed or acquired by a **named insured** that is an organization during the **policy period**, over which that **named insured** maintains at least majority ownership; however, coverage under this subparagraph is afforded only:
 - a. until the 90th day after the **named insured** acquires or forms the organization or the end of the **policy period**, whichever is earlier;
 - b. for a **loss, event, offense, health care event, bodily injury, property damage** or **personal and advertising injury** or other **claim** or **potential claim** otherwise covered by this policy that occurred after the organization was formed or acquired by the **named insured**; and

- c. unless otherwise stated on a Schedule of Named Insureds, the newly formed or acquired organization will share Limits of Liability with the **named insured** that formed or acquired that newly formed or acquired organization;
7. the estate, heirs, executors, administrators, assigns and legal representatives of an **insured** in the event of such **insured's** death, incapacity, insolvency or bankruptcy, but only to the extent that such **insured** would have been provided coverage under this policy; or
8. any organization, or any person other than an **employee**, while acting as a **named insured's** real estate manager.

R. **Insured contract** means:

1. a contract for a lease of premises, except for that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to an **insured** or temporarily occupied by an **insured** with permission of the owner;
2. an agreement between a railroad and an **insured** under which the **insured** will hold the railroad harmless for certain liability arising out of the use of a sidetrack;
3. any easement or license agreement, except in connection with construction or demolition operations on, or within 50 feet of, a railroad;
4. an obligation, as required by ordinance, law or regulation, to indemnify a municipality, except in connection with work for a municipality;
5. any agreement to maintain an elevator; or
6. any provision in any other contract or agreement pertaining to an **insured's** business (including an indemnification of a municipality in connection with work performed for a municipality) under which an **insured** assumes the tort liability of another party to pay for **bodily injury** or **property damage** to a third person or organization. As used in this definition, "tort liability" means a liability that would be imposed by law in the absence of any contract or agreement. This does not include any provision:
 - a. that indemnifies a railroad for **bodily injury** or **property damage** arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
 - b. that indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (1) preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (2) giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
 - c. under which the **insured**, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the **insured's** rendering or failure to render professional services, including those listed in b. above and supervisory, inspection, architectural or engineering activities.

S. **Insured's product**

1. means:
 - a. any goods or products, other than real property, manufactured, sold, handled, distributed, or disposed of by:
 - (1) a **named insured**;
 - (2) others trading under a **named insured's** name; or
 - (3) a person or organization whose business or assets a **named insured** has acquired.
 - b. containers (other than vehicles), materials, parts, or equipment furnished in connection with such goods or products.

2. includes:
 - a. warranties or representations made at any time with regard to the fitness, quality, durability, performance, or use of the goods or the **insured's products**; or
 - b. the providing of, or the failure to provide, warnings or instructions.
3. does not include:
 - a. vending machines; or
 - b. other property rented to, or located for, the use of others, but not sold to others by a **named insured**.

T. Insured's work

1. means:
 - a. work or operations performed by, or on behalf of, a **named insured**; or
 - b. materials, parts, or equipment furnished in connection with such work or operations.
2. includes:
 - a. warranties or representations made at any time with regard to the fitness, quality, durability, performance, or use of the work or operations; or
 - b. the providing of, or the failure to provide, warnings or instructions.

U. Loading or unloading means the handling of property:

1. after it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft, or **auto**;
2. while it is in or on an aircraft, watercraft, or **auto**; or
3. while it is being moved from an aircraft, watercraft, or **auto** to the place where it is finally delivered.

It does not include the movement of property by means of a mechanical device, other than a hand truck, which is not attached to the aircraft, watercraft, or **auto**.

V. Location means a premises involving the same or connecting lots, or a premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

W. Loss

1. Means civil damages, including prejudgment interest, which an **insured** becomes legally obligated to pay through adjudication or settlement.
2. Does not include:
 - a. any damages that are greater than any applicable Limit of Liability;
 - b. any injunctive or other equitable relief;
 - c. **claims expense**;
 - d. attorneys' fees awarded to a claimant as a fine, penalty, or sanction based upon any **insured's** misconduct; however, attorneys' fees awarded as a part of the claimant's damages in a covered **claim** for any other purpose will be included as **loss**;
 - e. the salary of any **employee**; or
 - f. the forgiveness of any amounts owed for the cost of care or services rendered by an **insured**.

X. Managed care services means services provided to manage and/or administer a health care plan. As used in this definition "health care plan" means a medical benefits plan administered by a health maintenance organization, preferred provider organization, or other similar organization which provides, or arranges to provide, healthcare services to members under a written contract or agreement. These services can include any of the following acts provided on behalf of the health care plan:

1. the creation, sale, and marketing of a health care plan;

2. the selection, credentialing, and contracting of health care providers;
3. the evaluation of the cost, quality and proper utilization of treatment options available or being provided to participants;
4. the adjustment, investigation, and processing of claims for benefits; or
5. **case management.**

However, **managed care services** do not include **treatment** rendered, or which should have been rendered, to a **patient** or to a **resident**.

Y. **Medical expenses** means the reasonable cost of necessary:

1. first aid administered at the time of the accident;
2. medical, surgical, diagnostic, and dental services;
3. prosthetic devices; and
4. ambulance, hospital, professional nursing, and funeral services.

Z. **Mobile equipment**

1. Means any of the following types of land vehicles, including any attached machinery or equipment:
 - a. bulldozers, farm machinery, forklifts, and other vehicles designed for use principally off public roads;
 - b. vehicles maintained for use only on, or next to, premises owned or rented by a **named insured**;
 - c. vehicles that travel on crawler treads;
 - d. vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - (1) power cranes, shovels, loaders, diggers, or drills; or
 - (2) road construction or resurfacing equipment, such as graders, scrapers, or rollers;
 - e. vehicles not described in subparagraphs 1.a, b, c, or d above, that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - (1) air compressors, pumps, and generators, including spraying welding, building cleaning, geophysical exploration, lighting, and well-servicing equipment; or
 - (2) cherry pickers and similar devices used to raise or lower workers; or
 - f. vehicles not described in subparagraphs 1.a, b, c, or d above, maintained primarily for purposes other than the transportation of persons or cargo.
2. Does not include self-propelled vehicles with the following types of permanently attached equipment, but will be considered **autos**:
 - a. equipment designed primarily for:
 - (1) snow removal,
 - (2) road maintenance (but not construction or resurfacing); or
 - (3) street cleaning;
 - b. cherry pickers and similar devices mounted on car or truck chassis and used to raise or lower workers; and
 - c. air compressors, pumps, and generators, including spraying, welding, building cleaning, geophysical exploration, lighting, and well-servicing equipment.
3. Does not include land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered **autos**.

AA. **Named insured** means any of the following, but only if listed by name on a Schedule of Named Insureds:

1. any organization, including any corporations, partnerships or joint ventures;

2. any individual person, but only to the extent that such person was acting in the course and scope of their duties of employment with the **first named insured** or another **named insured**; or
3. a **location**.

BB. **Patient** means any person receiving **professional services** from an **insured**.

CC. **Personal and advertising injury** means injury, including consequential **bodily injury**, arising from one or more of the following offenses:

1. false arrest, detention, or imprisonment;
2. malicious prosecution;
3. the wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling, or premises that a person occupies, committed by or on behalf of its owner, landlord, or lessor;
4. oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products, or services; or
5. oral or written publication, in any manner, of material that violates a person's right of privacy; or the use of another's advertising idea in the **insured's advertisement**.

DD. **Policy period** means the period of time shown on the Declarations as the Policy Period. However, if the policy is terminated before the later of the dates shown on the Declarations, **policy period** means the period between the first date shown on the Declarations and the date the policy was terminated.

EE. **Pollutants** means any solid, liquid, gaseous, fuel, lubricant, thermal, acoustic, electrical, or magnetic irritant or contaminant, including but not limited to smoke, vapor, soot, fumes, fibers, radiation, acid, alkalis, petroleum, chemicals or waste. As used in this definition, "waste" means medical waste, biological infectants, and all other materials to be disposed of, recycled, stored, reconditioned or reclaimed.

FF. **Potential claim** means an **event** that an **authorized insured** knows or reasonably should know is likely to result in a **claim**.

GG. **Products completed operations hazard**

1. Means all **bodily injury** and **property damage** occurring away from any premises an **insured** owns or rents, and arising out of the **insured's product** or **insured's work** except:
 - a. products that are still in the physical possession of an **insured**; or
 - b. work that has not yet been completed or has been abandoned. However, the **insured's work** will be deemed completed at the earliest of the following times:
 - (1) when all of the work called for in the **insured's** contract has been completed;
 - (2) when all of the work to be done at the job site has been completed if the contract calls for work at more than one job site; or
 - (3) when that part of the work at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.Work that may need service, maintenance, correction, repair, or replacement, but which is otherwise complete, will be deemed completed.
2. Does not include **bodily injury** or **property damage** arising out of, or in connection with:
 - a. the transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by an **insured** and that condition was created by the **loading or unloading** of the vehicle by an **insured**;
 - b. the existence of tools, uninstalled equipment, or abandoned or unused materials; or
 - c. products or operations for which the classification, shown on the Declarations or in a policy schedule, states that **products completed operations hazard** is subject to the General Aggregate Limit.

HH. **Professional services** means **treatment**, peer review and utilization management not involving **managed care services**. As used in this definition:

1. "peer review" means the evaluation of a health care provider's fitness and qualification to provide **treatment** by a professional review board or committee through formally adopted, written procedures for the purposes of granting, determining or revoking clinical staff privileges at a hospital, clinic or other medical facility that is a **named insured**, and which results in a **claim** or **potential claim** by a **patient** or by a **resident** arising from **treatment**; and
2. "utilization management" means the process of evaluating **treatment** to a **patient** or to a **resident** for its appropriateness or necessity which results in a **claim** or **potential claim** by a **patient** or by a **resident** alleging **loss** arising from **treatment**. In clarification and not in limitation of the foregoing, utilization management will include prospective review of proposed **treatment**, concurrent review of **treatment**, retrospective review of already rendered **treatment**, disease management, **case management**, and the use of predictive modeling to identify individuals or populations for disease management or **case management**.

II. **Property damage** means:

1. physical injury to tangible property, including any resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
2. loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the **event** that caused it.

However, this definition does not apply to coverage provided under the Cyber Liability and Breach Response Coverage Part.

JJ. **Resident** means a person who lives or resides at a long-term care facility or other residential healthcare facility listed by name on a Schedule of Named Insureds.

KK. **Residents' rights** means any right granted to a **resident** under the Nursing Home Quality Reform Act of 1987, any federal regulations promulgated pursuant to such law, including 42 C.F.R. 483.10, or any similar state law or regulation regulating long-term care facilities or residential healthcare facilities.

LL. **Sexual misconduct** means:

1. any actual or threatened consensual or non-consensual conduct, physical acts, gestures or communications of a sexual act or nature, including, but not limited to: sexual intimacy, sexual molestation, sexual assault, sexual battery, sexual abuse, sexual harassment, sexual exploitation, or alienation of affection; or
2. the negligent or improper hiring, employment, retention, investigation, supervision, training, or failure to report to proper authorities or to act upon or warn, of any person who has, or is alleged to have, engaged in conduct as described in subparagraph 1 above.

MM. **Treatment** means:

1. medical, surgical, dental, mental health, or nursing services, including those rendered in connection with a clinical trial. This shall also include first aid rendered at the scene of an accident without expectation of monetary compensation;
2. the provision of medical examinations, opinions, or consultations regarding a person's medical condition within an **insured's** practice as a licensed health care provider;
3. postmortem handling of bodies, including autopsies, organ donation or harvesting or other procedures; or
4. the furnishing of any of the following, but only as it relates to the rendering of medical, surgical, dental, or nursing services:
 - a. food and beverages;
 - b. blood, blood products, medications, supplies, equipment, or appliances; or
 - c. counseling or other social services.

As used in this definition, "clinical trial" means a structured study with predetermined protocols approved by an institutional review board, an independent ethics committee, an ethical review board or a research ethics board

which has been formally designated to approve, monitor, and review research involving humans in order to develop effectiveness or safety data or treatment plans, pharmaceutical products or medical devices.

II. DEFENSE AND SUPPLEMENTAL PAYMENTS

These provisions apply to all Coverage Parts:

A. DEFENSE

The **company** will have the exclusive right and duty to defend any **claim**, and the exclusive right to defend a **potential claim**, against an **insured** to which this policy applies, strictly conditioned upon an **authorized insured's** compliance with the Reporting Requirements condition. However, the **company** has no duty to:

1. defend a **potential claim**;
2. defend an **insured** until any applicable Self-Insured Retention has been exhausted by the payment of **loss** or **claims expense**;
3. defend an **insured** after the applicable Limits of Liability have been exhausted by the payment of **loss** or **claims expense**;
4. appeal any judgment; however, the **company** may appeal any judgment as it deems expedient; or
5. pay any **claims expense** incurred by an attorney not retained or approved by the **company**, in writing, to represent the **insured**.

Upon the exhaustion of the applicable Limit of Liability provided under this policy, the **insured** shall become responsible for all further **claims expense** arising from any **claim** or **potential claim** and the **company** has the right to withdraw from the further defense of such **claim** or **potential claim** by tendering such defense to the **insured**. If the **insured** cannot come to an agreement with the attorney assigned by the **company** regarding the payment of future fees and costs, the **insured** shall take all steps necessary to allow the attorney to withdraw from the matter.

B. SUPPLEMENTAL PAYMENTS

The **company** shall also pay, in addition to the Limits of Liability:

1. the premium on any bond required to proceed with an appeal approved by the **company** or to release attachments to an **insured's** property; however, the face value of the bond may not exceed the applicable Limit of Liability or the total **loss** payable under the policy, whichever is less; in addition, the **company** has no duty to apply for or furnish any such bond; and
2. reimbursement of reasonable expenses incurred by an **insured** at the **company's** request to assist in the investigation and defense of a **claim** or **potential claim**; payment for actual loss of earnings shall not exceed \$500 for each day an individual **insured** is required to attend hearings, trials, or an **insured's** own deposition.

C. DEFENSE OUTSIDE THE LIMITS/WITHIN THE LIMITS SHOWN ON DECLARATIONS

Subject to the Deductibles and Retentions section, the **company's** duty to defend shall also include a duty to pay **claims expenses** either:

1. in addition to the applicable Limits of Liability such that payment of **claims expenses** will not reduce or exhaust the applicable Limits of Liability, if shown on the Declarations as "Defense Outside Limits;" or
2. as part of the applicable Limits of Liability such that payment of **claims expenses** will reduce and can exhaust the applicable Limits of Liability, if shown on the Declarations as "Defense Within Limits."

III. EXCLUSIONS

The coverage provided under any Coverage Part of this policy does not apply to:

A. ADA

Any **claim** or **potential claim** arising out of, or in connection with, an **insured's** duty to comply with the Americans with Disabilities Act of 1990 (ADA). This also includes any amendment or regulation that applies thereto or any comparable federal, state, or local law. This exclusion does not apply to any such **claim** or **potential claim** that is based on an **insured's** alleged negligence in the rendering of or failure to render **professional services**.

B. ANTITRUST

Any **claim** or **potential claim** arising out of, or in connection with, an **insured's** antitrust activity, except to the extent such **claim** or **potential claim** arises out of any **insured's** alleged rendering of, or failure to render, **professional services**. As used in this exclusion, "antitrust activity" means any actual or alleged price fixing, restraint of trade, price discrimination, predatory pricing, monopolization, unfair business practices, or violation of common law or the Federal Trade Commission Act of 1914, the Sherman Antitrust Act of 1890, the Clayton Act of 1914, any similar federal, state, or local antitrust statute or law, or any rule or regulation promulgated under the Act, statute, or law.

C. BUSINESS PRACTICES

Any **claim** or **potential claim** arising out of, or in connection with, an **insured's** billing practices or advertising activities. However, this exclusion does not apply to the coverage provided under the Personal and Advertising Injury Liability Insuring Clause.

D. CLAIM OR POTENTIAL CLAIM REPORTED OR DISCOVERED PRIOR TO THE POLICY PERIOD

Only with respect to any Coverage Part shown on the Declarations as "Claims-Made and Reported":

1. any **claim** or **potential claim** which has or which should have been reported to any insurer, including through any self-insured or captive program, prior to the **policy period**; and
2. any **potential claim** that was first known about or discovered, or should reasonably have been known about or discovered by, an **authorized insured** prior to the **policy period**.

E. CRIMINAL ACTS

Any **claim** or **potential claim** arising out of, or in connection with, any criminal act committed by, or at the direction of, the **insured**.

F. DEFAULT JUDGMENT AND FAILURE TO COOPERATE

Any **claim** or **potential claim** that the **company** was unable to timely investigate or defend due to the acts or omissions of any **insured**, including any resulting damages from a default judgment.

G. DISCRIMINATION

Any **claim** or **potential claim** arising out of, or in connection with, the violation of any statute, law, ordinance or regulation prohibiting discrimination or humiliation because of race, creed, color, national origin, religion, age, gender or any other protected class as defined by statute, law, ordinance or regulation, including any allegations of negligent or improper hiring, employment, retention, investigation, supervision, training, failure to report to proper authorities, or to act upon or warn.

H. ECONOMIC SANCTIONS EXCLUSION

Whenever coverage provided by this policy would be in violation of any U.S. economic trade sanctions such as, but not limited to, those sanctions administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control, such coverage shall be null and void. Similarly, any coverage relating to or referred to in any certificates or other evidences of insurance or any **claim** or **potential claim** that would be in violation of U.S. economic or trade sanctions as described above shall also be null and void.

I. ELECTRONIC DATA

Any **claim** or **potential claim** arising out of, or in connection with, the below, also including any actual or alleged negligent hiring, employment, retention, investigation, supervision, or training:

1. loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data;"
2. unauthorized or improper access to, collection of, use or disclosure of, or failure to protect "personal and confidential information;" or

3. violation of any statute, regulation, common-law, or any other law governing access to, collection of, use or disclosure of, or failure to protect "personal and confidential information."

For purposes of this exclusion, "personal and confidential information" means any non-public confidential or personal information, including, but not limited to, any patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information, or any other type of non-public information, in the form of "electronic data."

For purposes of this exclusion, "electronic data" includes, but is not limited to, information, facts or programs stored as or on, created or used on, or transmitted to or from, computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices, any other media which are used with electronically controlled equipment, or by means of the internet.

However, this exclusion does not apply to coverage provided under the Cyber Liability and Breach Response Coverage Part.

J. EMPLOYEE BENEFITS LIABILITY

Any **claim** or **potential claim** arising out of, or in connection with, any group benefits administered on behalf of a **named insured's employees**, including:

1. group insurance plans or programs, such as life, health, accident, dental, or legal advice;
2. individual retirement accounts, salary reduction plans under I.R.S. Code 401(k), or any amendment thereto, savings plans, pension plans, stock ownership plans or employee stock subscription plans;
3. travel or vacation plans; or
4. workers' compensation, occupational disease, unemployment, Social Security, or disability benefits insurance.

K. EMPLOYER'S LIABILITY

Any **claim** or **potential claim** arising out of, or in connection with, **bodily injury** to:

1. an **employee** of a **named insured** arising out of, or in connection with, and in the course of:
 - a. employment by that **named insured**; or
 - b. performing duties related to the conduct of that **named insured's** business; or
2. the spouse, child, parent, brother, or sister of that **employee** as a consequence of subparagraph 1 above.

This exclusion shall apply whether a **named insured** may be held liable as an employer, or in any other capacity, and to any obligation to share damages with, or repay someone else who must pay damages, because of the injury. This exclusion does not apply to liability assumed by an **insured** under an **insured contract**.

L. EMPLOYMENT PRACTICES

Any **claim** or **potential claim** arising out of, or in connection with, any act listed below, by an **insured**, including any allegations of negligent or improper hiring, employment, retention, investigation, supervision, training, failure to report to proper authorities, or to act upon or warn:

1. breached an actual or implied contract of employment;
2. violated an anti-discrimination statute;
3. engaged in any form of harassment, coercion, defamation or humiliation related to an employment relationship;
4. engaged in libel or slander related to an employment relationship;
5. retaliated for the exercise of a public right or duty;
6. engaged in intentional or negligent infliction of emotional distress arising out of, or in connection with, an employment relationship;
7. wrongfully failed to hire, promote, or grant tenure;
8. wrongfully demoted, evaluated, reassigned or disciplined; or
9. wrongfully terminated employment.

M. ERISA

Any **claim** or **potential claim** seeking to impose liability under the Employee Retirement Income Security Act of 1974 (ERISA), or any amendment or regulation that applies thereto.

N. FRAUDULENT CLAIMS

Any **claim** or **potential claim** made by an **insured** who knows that the **claim** or **potential claim** is false or fraudulent, as regards to amount or otherwise; additionally, this policy shall become void and all **claims** and **potential claims** hereunder shall be forfeited.

O. GOVERNMENTAL IMMUNITY AND OTHER PROTECTIONS

Any **claim** or **potential claim** for which an **insured** has:

1. immunity as a volunteer or as an employee or contractor of a federal, state, or local government; or
2. immunity, insurance, indemnity, or any other protection pursuant to any federal, state, or local laws, including but not limited to the Federal Tort Claims Act.

P. INJUNCTIVE RELIEF, TAXES, FINES AND PENALTIES

Any **claim** or **potential claim** or other matter seeking:

1. injunctive relief;
2. any relief other than **loss**; or
3. the award of taxes, fines, penalties, or sanctions.

Q. INSURED VERSUS INSURED

Any **claim** or **potential claim** initiated, alleged, or caused to be brought about, by any **insured** against any other **insured**. However, this exclusion does not apply if the **claim** or **potential claim** arises out of:

1. an **insured** providing **professional services** to another **insured**;
2. the Cyber Liability and Breach Response Coverage Part; or
3. any **event** related to the **administration** of **employee benefits** coverage provided under an Employee Benefits Liability endorsement issued to form a part of this policy.

R. MANAGED CARE SERVICES

Any **claim** or **potential claim** arising out of, or in connection with, any **managed care services**.

S. MEDICARE OR MEDICAID

Any **claim** or **potential claim** arising out of, or in connection with, any Medicare/Medicaid Claim. As used in this exclusion, a "Medicare/Medicaid Claim" means a claim based on or arising out of, or in connection with, any actual or alleged violation of law, regulation or rule with respect to Medicare, Medicaid, Tricare or any similar federal, state or local governmental program.

T. MULTI-POLICY AND ANTI-STACKING

If more than one policy, Coverage Part or Insuring Clause applies, the following multi-policy and anti-stacking exclusions apply:

1. if more than one policy issued by the **company** or by a past, present or future parent, subsidiary or affiliate applies to the liability of an **insured**, the **company's** duty to pay for a **loss** will be confined to the policy containing the largest applicable Limit of Liability; or
2. if more than one Coverage Part or Insuring Clause under this policy applies to the liability of an **insured**, the **company's** duty to pay **loss** will be confined to the Coverage Part or Insuring Clause containing the largest applicable Limit of Liability.

U. NUCLEAR ENERGY LIABILITY

Any **claim** or **potential claim**:

1. for which an **insured** has coverage under a nuclear energy liability policy issued by the:
 - a. Nuclear Energy Liability Insurance Association;
 - b. Mutual Atomic Energy Liability Underwriters;
 - c. Nuclear Insurance Association of Canada; or
 - d. any successor or assign of the entities set forth in the subparagraphs above.

This policy also does not apply if such coverage did exist, but was terminated by the exhaustion of the **insured's** limit of liability.

2. resulting from the hazardous properties of nuclear material for which an **insured**:
 - a. was required to maintain financial protection under the Atomic Energy Act of 1954 or any amendment or regulation that applies thereto; or
 - B. was entitled to indemnity by the United States government or any agency thereof or would have been entitled to had this policy not been issued.

V. OWNERSHIP OR MANAGEMENT OF NON-INSURED ENTITIES

Any **claim** or **potential claim** arising out of, or in connection with, the acts or omissions of any organization, partnership, joint venture, or other business enterprise that is not a **named insured**, but which is owned, managed or supervised by an **insured**. However, this exclusion does not apply to an organization defined as an **insured**.

W. RICO

Any **claim** or **potential claim** arising out of, or in connection with, an **insured's** violation of the Racketeer Influenced Corrupt Organizations Act (RICO), or any comparable federal, state or local laws or any amendment or regulation that applies thereto.

X. WAR

Any **claim** or **potential claim** arising out of, or in connection with:

1. war, including undeclared or civil war;
2. warlike action by a military force, including action in hindering or defending against an actual or expected attack by any governmental, sovereign, or other authority using military personnel or other agents; or
3. insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

Y. WORKERS' COMPENSATION AND OTHER SIMILAR LAWS

Any **claim** or **potential claim** arising out of, or in connection with, any obligation or damages arising under any law related to:

1. workers' compensation;
2. occupational disease;
3. unemployment compensation;
4. disability benefits; or
5. other similar law that provides for scheduled benefits as a result of an injury or disease.

The exclusions for "EMPLOYMENT PRACTICES," "EMPLOYER'S LIABILITY," "WAR" and "WORKER'S COMPENSATION AND OTHER SIMILAR LAWS" do not apply to damage by fire to premises while rented to an **insured** or temporarily occupied by an **insured** with the permission of its owner. Only with respect to the coverage provided under the General Liability Coverage Part, a separate limit of liability applies to Damage to Premises Rented to an Insured as described in the Limits of Liability.

IV. DEDUCTIBLES AND RETENTIONS

These provisions apply to all Coverage Parts:

A. LOSS AND CLAIMS EXPENSE

1. If a Deductible is shown on the Declarations, and is designated as "Loss and Claims Expense," it is agreed and understood that the **company's** duty to pay **loss** and **claims expense** for any **claim** or **potential claim** thereunder will be limited in the following manner:
 - a. the Deductible shall be applied to **claims expense** first, then to **loss**;
 - b. the **company** will pay the **loss** and **claims expense** and seek reimbursement from the **first named insured** for the Deductible;
 - c. the **first named insured** shall reimburse the **company** within 30 days of the **company's** payment of the Deductible for all **loss** and **claims expense** up to the amount of the Deductible, subject to any Deductible Aggregate, payment of which shall not be unreasonably withheld. Failure to reimburse the **company** for any such Deductible amount will result in cancellation for nonpayment;
 - d. the applicable Limits of Liability shall be reduced by the amount of the Deductible; and
 - e. the Deductible shall apply to all **loss** and **claims expense** arising from an **event, health care event, offense** or other covered incident, regardless of the number of **insureds** found liable for the **loss** and/or **claims expense**.
2. If a Self-Insured Retention is shown on the Declarations, and is designated as "Loss and Claims Expense," it is agreed and understood that the **company's** duty to pay **loss** and **claims expense** for any **claim** or **potential claim** thereunder will be limited in the following manner:
 - a. the **company** shall pay **loss** and **claims expense** only in excess of the Self-Insured Retention;
 - b. the Self-Insured Retention shall be applied to **claims expense** first, then to **loss**;
 - c. the **first named insured** shall have a duty to pay all **loss** and **claims expense** up to the amount of the Self-Insured Retention, subject to any applicable Self-Insured Retention Aggregate, payment of which shall not be unreasonably withheld;
 - d. the applicable Limits of Liability shall not be reduced by the amount of the Self-Insured Retention; and
 - e. the Self-Insured Retention shall apply to all **loss** and **claims expense** arising from an **event, health care event, offense** or other covered incident, regardless of the number of **insureds** found liable for the **loss** and/or **claims expense**.

B. LOSS ONLY

1. If a Deductible is shown on the Declarations, and is designated as "Loss Only," it is agreed and understood that the **company's** duty to pay **loss** for any **claim** or **potential claim** thereunder will be limited in the following manner:
 - a. the **company** will pay the **loss** and seek reimbursement from the **first named insured** for the Deductible;
 - b. the **first named insured** shall reimburse the **company** within 30 days of the **company's** payment of the Deductible for all **loss** up to the amount of the Deductible, subject to any Deductible Aggregate, payment of which shall not be unreasonably withheld. Failure to reimburse the **company** for any Deductible amount will result in cancellation for nonpayment.
 - c. the applicable Limits of Liability shall be reduced by the amount of the Deductible; and
 - d. the Deductible shall apply to all **loss** arising from an **event, health care event, offense** or other covered incident, regardless of the number of **insureds** found liable for the **loss**.
2. If a Self-Insured Retention is shown on the Declarations, and is designated as "Loss Only," it is agreed and understood that the **company's** duty to pay **loss** for any **claim** or **potential claim** thereunder will be limited in the following manner:
 - a. the **company** shall have a duty to pay **loss** only in excess of the Self-Insured Retention;

- b. the **first named insured** shall have a duty to pay all **loss** up to the amount of the Self-Insured Retention, subject to any applicable Self-Insured Retention Aggregate, payment of which shall not be unreasonably withheld;
- c. the applicable Limits of Liability shall not be reduced by the amount of the Self-Insured Retention; and
- d. the Self-Insured Retention shall apply to all **loss** arising from an **event, health care event**, offense or other covered incident, regardless of the number of **insureds** found liable for the **loss** and/or **claims expense**.

If more than one Deductible or Self-Insured Retention applies to **loss** and/or **claims expense** from an **event, health care event**, offense or other covered incident, regardless of the number of **insureds**, the **first named insured's** duty to pay all applicable **loss** and/or **claims expense** will be limited to the largest Deductible or Self-Insured Retention.

V. CONDITIONS

These conditions apply to all Coverage Parts:

A. ACTION AGAINST THE COMPANY

- 1. No action shall lie against the **company** unless each **insured** is in full compliance with all of the terms of this policy.
- 2. No person shall have the right to join the **company** as a party to a **claim** to determine an **insured's** liability under this policy. Further, an **insured** shall not interplead the **company** into a **claim**.
- 3. No action shall lie against the **company** until the amount of **loss** has been finally determined by entry of judgment or written agreement between the **insured**, the claimant, and the **company**. Once the amount of **loss** has been finally determined, the claimant shall be entitled to recover under the terms of this policy.

B. ARBITRATION

- 1. The **company** and the **insureds** agree that in any dispute, **claim, potential claim** or controversy arising out of, relating to, or in connection with this policy, whether brought by or on behalf of an **insured**, the **company**, or any other party, the **company** may elect to submit any such dispute, **claim, potential claim** or controversy to binding arbitration, in accordance with Title 9 USC Sec. 1 et seq. (the Federal Arbitration Act) and shall be governed by the Commercial Arbitration Rules of the American Arbitration Association.
- 2. The arbitration shall be presided over by three arbitrators chosen from the Commercial Insurance Panel of the American Arbitration Association. The arbitrators shall be governed by the law of the state of the address of the **first named insured**, as shown on the Declarations. The arbitration shall take place in the county that the capital of that state is located.
- 3. The arbitrators shall have the discretion to order pre-arbitration discovery, including an exchange of documents and deposition of potential witnesses. Each party shall bear its own arbitration costs and expenses including attorneys' fees, unless otherwise provided by law.
- 4. Any arbitration award shall be in writing and shall specify the factual and legal bases of the award. Judgment on the award rendered by the arbitrator shall be final and may be entered in any court having jurisdiction thereof. Furthermore, this arbitration provision shall be a complete defense to any suit, action or proceeding in any federal, state or local court or before any administrative tribunal with respect to any dispute, **claim, potential claim** or controversy arising out of, relating to or in connection with this policy.

C. ASSISTANCE AND COOPERATION

- 1. After any **claim** is made, or any **potential claim** is first discovered, the **insured** shall not contract any expense, voluntarily assume any liability in any situation, nor make or contract any settlement of the **claim** or **potential claim**, except at the **insured's** own cost and responsibility, without the written authorization of the **company**.

2. The **company's** duty to defend and pay **loss** for any **claim** or **potential claim** is strictly conditioned upon all **insureds'** cooperation with the **company** in the investigation, defense, and/or settlement of any matter to which this policy applies. Such cooperation shall include, but is not limited to:
 - a. attendance at any deposition, hearing, or trial, as requested by the **company**;
 - b. assistance in securing and giving evidence;
 - c. obtaining the attendance of witnesses;
 - d. doing nothing to prejudice the **company's** ability to investigate, defend, and/or manage any matter to which this policy applies;
 - e. submitting to recorded and/or sworn statements and to examinations under oath as requested by the **company**; and
 - f. promptly producing, at the **company's** request, any records, documents and other information in an **insured's** possession, custody or control.
3. If a **claim** or **potential claim** is, or might be, covered under any other policy of insurance, the **insured** shall promptly give notice to such other insurers. The **insured** shall also provide the **company** with copies of the applicable policies. The **insured** shall further act in good faith to enforce any rights held under such policies, including the right to a defense.

D. BANKRUPTCY OR INSOLVENCY

The bankruptcy or insolvency of an **insured** or an **insured's** estate, or the non-payment by an **insured** or by any other organization responsible for a Deductible or Self-Insured Retention, shall not act to modify any duty owed by an **insured** or the **company** under the policy. Under no circumstances will such bankruptcy, insolvency or non-payment require the **company** to assume or in any way be responsible for any Deductible or Self-Insured Retention, or otherwise assume any obligation owed by any **insured** under this policy. The **company** will have no duty to pay **loss** or **claims expense** for any **claim** or **potential claim** unless the **insured** or any other organization responsible for the Self-Insured Retention timely pays the Self-Insured Retention in full.

E. CANCELLATION, NONRENEWAL AND/OR TERMINATION OF COVERAGE

1. This policy may be canceled by the **first named insured**. The **first named insured** shall provide written notice to the **company** requesting cancellation. The cancellation shall be effective on the date requested by the **first named insured** or the date the notice is received by the **company**, whichever is later.
2. Any coverage contained within this policy may be terminated by the **first named insured**. The **first named insured** shall provide written notice to the **company** requesting the coverage termination. The termination shall be effective on the date requested by the **first named insured** or the date the notice is received by the **company**, whichever is later.
3. This policy, or any coverage contained therein, may also be canceled, terminated or nonrenewed by the **company**. The **company** will send notice to the **first named insured** at the last address on record with the **company**.
4. If the **first named insured** cancels this policy, or terminates any coverage contained therein, earned premium shall be computed in accordance with the standard short rate tables and procedure. If the **company** cancels this policy, or terminates any coverage contained therein, earned premium shall be computed pro rata. Premium adjustments shall be made within a reasonable period of time after cancellation. However, payment or tender of unearned premium shall not be a condition of cancellation.
5. If the **company** cancels or nonrenews this policy for any reason other than non-payment of premium, the **company** shall provide written notice to the **first named insured** not less than 30 days prior to the effective date of such cancellation or nonrenewal. If the **company** cancels this policy for non-payment of premium, the **company** shall provide written notice to the **first named insured** not less than 10 days prior to the effective date of such cancellation or nonrenewal.

6. If the **company** cancels or nonrenews this policy, coverage under the policy shall terminate on the earlier of:
 - a. the date stated on the cancellation or nonrenewal notice; or
 - b. the date an **insured** procures replacement coverage.

F. COVERAGE TERRITORY

This policy applies to **claims** or **potential claims** arising from acts, omissions, occurrences or offenses (including offenses that take place through the Internet or similar electronic means of communication) occurring anywhere in the world, with the exception of any country or jurisdiction which is subject to trade or other economic sanction or embargo by the United States of America, provided that the **claim** or **potential claim** is made and any legal proceedings are pursued within the United States, its territories and possessions, including Puerto Rico.

G. EXTENDED REPORTING PERIOD

Only with respect to any Coverage Part shown on the Declarations as "Claims-Made and Reported," the following provisions apply:

1. Automatic Limited Extended Reporting Period

- a. In the event that coverage under this policy is terminated for any reason, the **company** will provide an automatic limited **extended reporting period** of 30 days, starting with the end of the **policy period**, during which **claims** and **potential claims** arising out of any specific coverage(s) may be reported to the **company** in writing, provided, however, that such **extended reporting period** will remain in effect only as long as no other insurance policy, program of indemnity, self-insured retention or retained amount is available, or would have been available but for the exhaustion of the limits of liability under such, for any **claim** or **potential claim** reported during such **extended reporting period**. However, the **claim** must have been first made against an **insured** during the **policy period**, or the **potential claim** must have been first discovered by an **insured** during the **policy period**.
- b. This automatic limited **extended reporting period** shall not extend the **policy period** or change the scope of the coverage provided. Any **claim** or **potential claim** first reported to the **company** during the automatic limited **extended reporting period** will be deemed to have been made on the last date on which this policy is in effect. The Limits of Liability that apply at the end of the **policy period** are not renewed or increased for **claims** or **potential claims** first reported during the automatic limited **extended reporting period**.

2. Optional Extended Reporting Period

- a. The **company** shall, upon written request by or on behalf of the **first named insured**, make an offer for an **extended reporting period** to the **first named insured** if coverage is or will be canceled or nonrenewed, subject to the following:
 - (1) any such written request by or on behalf of the **first named insured** must be received by the **company** no later than 30 days after the cancellation or nonrenewal of the coverage;
 - (2) the **company** shall be required to send the offer for an **extended reporting period** only to the **first named insured** or its authorized representative;
 - (3) the coverage has been or will be canceled or nonrenewed with respect to:
 - a) the entire policy;
 - b) a Coverage Part; or
 - c) a **named insured** who:
 - i) has Limits of Liability listed in the Limits of Liability column of a Schedule of Named Insureds – Professional Liability;
 - ii) does not share Limits of Liability with another **named insured** with respect to the General Liability Coverage Part or the Cyber Liability and Breach Response Coverage Part; or
 - iii) shares Limits of Liability with another **named insured**, but only when all coverage available under that shared limit is terminated; and

- (4) the **company** has no duty to make an offer for an **extended reporting period** unless all premiums and Deductible amounts have been paid.
- b. The **first named insured** may accept the **company's** offer of an **extended reporting period** by paying the premium due within 30 days from either the date on which the policy expires or the date on which the **company** receives the request for an **extended reporting period**, whichever is later. Failure to pay the full premium within this 30-day period will be deemed a rejection of the offer.
- c. In the event of the purchase of an **extended reporting period**, the entire premium for such **extended reporting period** shall be deemed earned at its commencement.
- d. If an **extended reporting period** is purchased, a **claim** otherwise covered by this policy may be reported for the period of time set forth in the applicable **extended reporting period** endorsement issued after termination of the **policy period**. The **extended reporting period** will begin at the end of the **policy period**. However, the **extended reporting period** shall not:
 - (1) extend the **policy period**;
 - (2) apply to any **claim** arising from a **health care event, event, offense, bodily injury, property damage, or personal and advertising injury** that took place after the **policy period**; or
 - (3) otherwise expand the coverage provided under this policy.

H. FIRST NAMED INSURED

- 1. The **first named insured** shall be authorized to act on behalf of all **insureds** with respect to this policy, with full authority to bind all **insureds**. The **first named insured's** authority shall include, but is not limited to, the following actions:
 - a. receipt of notices of cancellation or nonrenewal;
 - b. requesting or receiving endorsements issued to form a part of this policy;
 - c. payment of premiums due;
 - d. receiving return premium; and
 - e. receiving and/or responding to an offer for an **extended reporting period** for any **insured**.
- 2. The **first named insured** shall notify the **company** in writing of any changes that might affect the insurance provided under this policy, including cancellation and nonrenewal.

I. FRAUD WARNING

Any person, who knowingly and with intent to defraud any insurance company or other person, files an application for insurance or statement of claim containing any materially false information or conceals, for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties, which may include voiding of the policy if allowed by law.

J. GOVERNMENTAL ACCESS TO RECORDS

If required by section 952 of the Omnibus Reconciliation Act of 1980, and after receipt of written request from the **first named insured**, the **company** will allow the U.S. Secretary of Health and Human Services or the U.S. Comptroller General access to this policy as well as all books, documents and records necessary to verify the cost of this policy. The **company** will also allow access to subcontracts between the **company** and any of its related organizations, and to such organization's books, documents and other records to the extent required by law, and to the extent that the **company** has possession, custody or control of such books, documents and records. Access will be provided for up to 4 years after the services provided pursuant to this policy cease.

K. INSPECTION AND AUDIT

The **company** shall be permitted, at its own discretion and for its own benefit, to audit an **insured's** property, operations, and any business records. The **company** shall also have the right to obtain a copy of any current or prior insurance records. Any findings or recommendations made by the **company** as a result of an audit shall inure only to the **company's** benefit. As a result, they may not be used as evidence of the **insured's** compliance with any safety regulations or other industry standards.

L. MODIFICATIONS

Except as provided herein, this policy may not be modified except by written endorsement attached to and made a part of this policy by the **company**. The **company's** decision not to insist on an **insured's** compliance with any provision of this policy shall not operate to waive, modify, or void that provision, or any other provision, condition or term of this policy.

M. NON-ASSIGNABILITY

No interest of an **insured** under this policy shall be assignable without the prior written consent of the **company**. However, if the **insured** is a person and dies, the coverage afforded by this policy shall inure to the benefit of that **insured's** estate.

N. OTHER INSURANCE

Unless otherwise noted in a Coverage Part:

1. if any other valid and collectible insurance is available to any **insured** with respect to a liability covered by this policy, and such insurance is afforded under a policy issued by a past, present or future parent, subsidiary or affiliate of the **company**, then the maximum limits of liability under all policies shall not exceed the highest remaining applicable limit of liability under any one policy; or
2. if any other valid and collectible insurance is available to any **insured** for a **claim** or **potential claim** under a policy not issued by a past, present or future parent, subsidiary or affiliate of the **company**, then this insurance will be excess over such other insurance even if such other insurance is stated to be primary, excess, contingent or otherwise. The **company** will pay only the **company's** share of the **loss**, if any, that exceeds the sum of:
 - a. the total amount that all such other insurance would pay for the **loss** in the absence of this insurance; and
 - b. the total of all deductible and self-insured amounts under all such other insurance.

This condition shall not apply if such other valid insurance is written to be specifically excess of this policy.

O. PREMIUMS

1. The **company's** obligation to perform any duty under the policy is strictly conditioned upon the payment of the premium when due. Therefore, this policy shall not be deemed to have been issued, delivered, or renewed and shall not be applicable to any matter which would otherwise be covered herein, until:
 - a. the premium has been paid in full; or
 - b. if the **company** has agreed to finance the policy, the first installment has been paid in full.

If payment is made by check, electronic transfer or money order, it shall not be considered "paid in full" until honored by the payor's bank.

2. Premiums for this policy shall be computed in accordance with the **company's** rules, rates, and rating plans.
3. Any premium designated as deposit premium is merely a deposit on the actual amount owed. At the close of the **policy period**, the **company** will compute the earned premium for that period. The deposit premium will then be credited to that amount. If the deposit premium exceeds the earned premium, the **company** will refund the difference to the **first named insured**. If the earned premium exceeds the deposit premium, the **company** will bill the **first named insured** for the difference.
4. The **first named insured** shall maintain records of the information necessary for premium computation. The **first named insured** shall send copies of these records to the **company** at the end of the **policy period** as directed by the **company**. Such information shall be subject to audit and verification by the **company**.

P. REPORTING REQUIREMENTS

1. The **company's** duty to pay **loss** for any **claim** or **potential claim** otherwise covered under this policy is strictly conditioned upon an **authorized insured's** forwarding, as soon as practicable, notice of every **claim**, **potential claim**, demand, suit, summons, or legal paper an **insured** receives.
2. If the Retention shown on the Declarations is a:

- a. Deductible, an **authorized insured** shall, as soon as practicable, report any **claim** or **potential claim**;
- b. Self-Insured Retention, an **authorized insured** shall, as soon as practicable, report any **claim** or **potential claim** that:
 - (1) an **authorized insured** believes will result in damages that exceed the applicable Self-Insured Retention;
 - (2) has a loss reserve exceeding 50% of the applicable Self-Insured Retention;
 - (3) involves a claimant's demand which exceeds the applicable Self-Insured Retention;
 - (4) contains allegations of unfair claim practices or bad faith;
 - (5) involves a suit naming the **company** or its affiliates as defendants; or
 - (6) caused:
 - a) neurological injury, such as brain injury, spinal cord injury or nerve injury resulting in paralysis;
 - b) injury during pregnancy or delivery;
 - c) significant limitation of daily activities, such as feeding, continence or sexual function;
 - d) loss of sight or hearing;
 - e) severe disfigurement, such as burns, amputation or scarring;
 - f) loss of any organ; or
 - g) death.
3. All such reports and documents shall be directed to the **company** in writing and include the following information:
 - a. the identity of all **insureds** implicated;
 - b. all reasonably obtainable information with respect to the time, place and circumstances of the **health care event, event**, offense or other matter for which coverage is sought under this policy;
 - c. the nature and extent of the injury;
 - d. the names and addresses of any injured persons;
 - e. the names and addresses of available witnesses; and
 - f. the basis for the **insured's** belief that a **claim** is reasonably likely to be made, as well as the date the **insured** first came to this belief.
4. A **health care event, event**, offense, accident or other matter reported to the **company** as part of risk management or loss control services shall not constitute the report of a **claim** or **potential claim** for purposes of coverage under this policy.

Q. REPRESENTATIONS

1. By acceptance of this policy, each **insured** agrees, represents, and warrants that the statements and particulars made in all **applications** are true and correct. It is further understood and agreed that all **applications** are incorporated into, and shall form a part of, this policy. Therefore, this policy and any endorsements hereto, and all **applications**, embody all agreements between the **company** and any of its authorized representatives, and all **insureds** relating to this insurance.
2. In the event any **application** was executed or endorsed by an **insured's** insurance producer, the **insured** acknowledges that the insurance producer has acted under the **insured's** express authority and that the **insured** has thoroughly reviewed the information contained on any **application**.
3. The representations made by an **insured** in the **applications** are the basis for the coverage provided, as well as the **company's** calculation of the applicable premium. Therefore, it is understood and agreed that, to the extent permitted by law, the **company** reserves all rights, including the right to rescind this policy, or deny any coverage provided for a **claim** or **potential claim**, based upon any material misrepresentation made by

any **insured**. As used in this condition, "material misrepresentation" means concealment, misrepresentation, omission or fraud which, if known by the **company**, would have led to refusal by the **company** to make this contract or provide coverage, or to make this contract or provide coverage on different terms or conditions.

4. No knowledge or information possessed by any **insured** shall be imputed to any other **insured**, except for material facts or information known to the person or persons who signed or submitted an **application** to the **company**. In the event of any material misrepresentation in connection with any of the particulars or statements in the **application**, this policy shall be void with respect to any **insured** who knew of such material misrepresentation or to whom such knowledge is imputed.

R. SEPARATION OF INSUREDS

Except for any duties specifically assigned to the **first named insured** and Limits of Liability applicable to any **insured**, this policy applies:

1. separately to each **insured** against whom a **claim** or **potential claim** is made; and
2. as if each **insured** were the only **insured** under this policy.

S. SETTLEMENT

The **company** may only settle a **claim, potential claim** or other matter brought against an **insured** with the consent of the **first named insured**.

T. SUBROGATION

The **company** shall be subrogated to the rights of any **insured** to the extent of any payments made, or as allowed by law. **Insureds** shall do nothing to prejudice those rights. At the **company's** request, an **insured** shall bring suit or transfer those rights to the **company**. **Insureds** shall also help the **company** enforce its rights.

U. TERMS CONFORM TO STATUTE OR REGULATION

If any term of this policy, or any duty arising therefrom, would cause the **company** to violate any federal, state or local law or regulation, the policy is amended to bring the **company** into compliance with such statute or regulation.



Issuing Company:
National Fire & Marine Insurance Company
Omaha, Nebraska

HEALTHCARE LIABILITY POLICY
PROFESSIONAL LIABILITY COVERAGE PART

NOTICE:

This Coverage Part may contain claims-made and reported coverage. Please read this Coverage Part carefully.

I. INSURING CLAUSES

A. PROFESSIONAL LIABILITY

1. Claims-Made and Reported

If "Claims-Made and Reported" is shown on the Declarations with respect to this Coverage Part, the following provisions apply:

- a. The **company** will pay on behalf of any **insured** all **loss** and **claims expense**, subject to any applicable Deductible or Self-Insured Retention, and up to the Limits of Liability shown on the Declarations with respect to this Coverage Part, arising from a **health care event** that took place on or after the applicable Retroactive Date shown on the Declarations. Moreover, to be covered under this policy, the **loss** or **claims expense** must arise from:
 - (1) a **claim** that was first made against, and received by, an **insured** during the **policy period**, and reported to the **company**, in writing, during the **policy period** or within any applicable **extended reporting period**; or
 - (2) a **potential claim** that was first known about or discovered by an **insured** during the **policy period**, and reported to the **company**, in writing, during the **policy period** or within the automatic limited **extended reporting period**.
- b. All **claims** and **potential claims** arising out of, or in connection with, a **health care event** will be deemed to have been first made on the date that the first of those **claims** is made against any **insured**, or the date the first of such **potential claims** is discovered by an **authorized insured**, whichever date is earlier. Only the policy in effect when the first such **claim** is made and reported to the **company**, or the first such **potential claim** is discovered and reported to the **company**, whichever is earlier, will apply to the **health care event**, no matter when any subsequent **claims** are made or reported, or **potential claims** are discovered and reported. If, prior to the effective date of this policy, the first such **claim** is made, or the first such **potential claim** is discovered, this policy will not apply to any subsequent **claim** or **potential claim** made during this **policy period** or any **extended reporting period**.

2. Occurrence

If "Occurrence" is shown on the Declarations with respect to this Coverage Part, the following provisions apply:

- a. The **company** will pay on behalf of an **insured** all **loss** and **claims expense**, subject to any applicable Deductible or Self-Insured Retention, and up to the Limits of Liability shown on the Declarations with respect to this Coverage Part, arising from a **health care event** that occurred during the **policy period**.
- b. A **health care event** will be deemed to have occurred on the earliest date of any related acts or omissions that gave rise to or contributed to the **health care event**.

II. EXCLUSIONS

The coverage provided under this Coverage Part does not apply to:

A. CONTRACTUAL LIABILITY

Liability for the acts of another assumed by an **insured** under any contract or agreement, whether written, oral or implied. This exclusion does not apply to liability for damages that the **insured** would have in the absence of the contract or agreement.

B. INTENTIONAL ACTS

Any **claim** or **potential claim** arising out of, or in connection with, any act listed below, also including any allegations of negligent or improper hiring, employment, retention, investigation, supervision, training, or failure to report to proper authorities or to act upon or warn of any person who has or is alleged to have engaged in any of these acts:

1. any criminal, intentional, dishonest or fraudulent act;
2. any romantic relationship, or any actual or threatened **sexual misconduct**;
3. any willful violation of any law, statute, or regulation;
4. any breach of contract or guaranty regarding the efficacy of **treatment**;
5. **professional services** by the **insured** while under the influence of alcohol, drugs or intoxicants of any kind; or
6. any creation, alteration, modification or destruction, with deceptive intent, of any medical record.

However, the **company** will pay **claims expense** to defend any **insured** against any **claim** or **potential claim** involving any excluded act listed above when intertwined with any other act triggering any insuring clause of this Coverage Part.

The **company's** defense of an **insured** will cease when it is established by trial or arbitration verdict, court ruling, regulatory ruling, legal admission, nolo contendere/no contest plea, or Alford plea that the **insured** engaged in any act excluded from coverage under this exclusion.

The **company's** defense of a **named insured** organization will cease when it is established by trial or arbitration verdict, court ruling, regulatory ruling or legal admission, nolo contendere/no contest plea, or Alford plea that an **authorized insured** knew at the time of the actual or alleged excluded act, that the person accused of having engaged in the act had previously engaged in, or was alleged to have previously engaged in, such acts.

C. LICENSURE

Any **claim** or **potential claim** arising from, or in connection with, any **treatment** rendered by any individual who was not authorized to provide such **treatment** due to the suspension, revocation, surrender, or restriction of, or failure to obtain, the proper professional license, certification or authorization.

D. RESIDENTS' RIGHTS BROUGHT BY ANOTHER PERSON

Any **claim** or **potential claim** arising out of, or in connection with, any violation of any law relating to **residents' rights** brought by any person other than a **resident** or a **resident's** legal representative.

E. RESIDENTS' RIGHTS BROUGHT BY MULTIPLE RESIDENTS

Any **claim** or **potential claim** arising out of, or in connection with, any violation of any law relating to **residents' rights** laws brought by multiple claimants, groups of claimants, multi-party actions, potential class actions or certified classes that allege the same or similar violations.

F. TREATMENT BY AN ADMINISTRATOR OR COMMITTEE MEMBER

Any **claim** or **potential claim** arising out of, or in connection with:

1. an administrator or committee member's ownership, supervision, or management of any organization that is not an **insured**; or
2. the rendering of, or failure to render, **treatment** by an administrator or committee member, unless it was provided in an emergency without an expectation of compensation.

As used in this exclusion:

1. "administrator" means an owner, partner, stockholder, director, trustee, executive officer, medical director, department head, or faculty member of a **named insured**; and
2. "committee member" means a person serving as a member of a committee or board formed or controlled by a **named insured**. It also includes any person executing the directives of such a committee or board.

III. ADDITIONAL CONDITIONS

In addition to the conditions in the Common Policy Provisions and Conditions, the following conditions apply to this Coverage Part:

A. RETROACTIVE DATES

1. A **named insured** that has a date listed under the Retroactive Date column in a Schedule of Named Insureds has "Claims-Made and Reported" coverage.
2. A **named insured** that has "n/a" listed under the Retroactive Date column in a Schedule of Named Insureds has "Occurrence" coverage.

B. TERMINATION DATES

If a **named insured** has a date listed under the Termination Date column in a Schedule of Named Insureds, any **health care event** must have taken place before that date, and after any applicable Retroactive Date, to be covered. However, coverage for such **named insured** shall automatically terminate in the event the policy is canceled or nonrenewed, unless an **extended reporting period** is purchased for that **named insured**.

C. LIMITS OF LIABILITY - SHARED AND SEPARATE

1. A **named insured** that has "FNI" or the name of any other **named insured** listed under the Limits of Liability column in a Schedule of Named Insureds will share the Per Event and Aggregate Limits of Liability provided to that **first named insured** or **named insured**.
2. If any **named insured** has an amount listed under the Limits of Liability column in a Schedule of Named Insureds, and any other **named insured** lists that same **named insured** in its Limits of Liability column, all such **named insureds** will share the Per Event and Aggregate Limits of Liability provided to that **named insured**.
3. A **named insured** that has an amount listed under the Limits of Liability column in a Schedule of Named Insureds does not share the **first named insured's** or any other **named insured's** Per Event and Aggregate Limits of Liability as long as no other **named insured** lists that same **named insured** in their Limits of Liability column.

D. RETENTIONS

1. A **named insured** that has "FNI" or the name of any other **named insured** listed under the Retention column in a Schedule of Named Insureds is subject to any Deductible or Self-Insured Retention, as shown on the Declarations, applicable to that **first named insured** or **named insured**.
2. If any **named insured** has an amount listed under the Retention column in a Schedule of Named Insureds, and any other **named insured** lists that same **named insured** in its Retention column, all such **named insureds** will share the Deductible or Self-Insured Retention, as shown on the Declarations.
3. A **named insured** that has an amount listed under the Retention column in a Schedule of Named Insureds does not share the **first named insured's** or any other **named insured's** Deductible or Self-Insured Retention, as shown on the Declarations, as long as no other **named insured** lists that same **named insured** in its Retention column.

E. FULL-TIME EQUIVALENT POSITIONS

1. A **named insured** who is listed as an FTE Physician or FTE Provider in a Schedule of Named Insureds is a **named insured** who, along with other **named insureds**, performs **professional services** and shares in a full-time equivalent position that is filled by any number of **named insureds** during the **policy period**.
2. A **named insured** may have multiple full-time equivalent positions during the policy period. Each such full-time equivalent position shall be identified numerically (e.g., FTE #1; FTE #2; etc.) on the applicable Schedule of Named Insureds.

F. SLOT POSITIONS

1. A **named insured** who is listed as a Slot Physician or Slot Provider in a Schedule of Named Insureds is a **named insured** who, along with other **named insureds**, performs **professional services** and shares in a full-time slot position that is filled by any number of **insureds** during the **policy period**.
2. A **named insured** may have multiple full-time slot positions during the **policy period**. Each such full-time slot position shall be identified numerically (e.g., Slot #1; Slot #2; etc.) on the applicable Schedule of Named Insureds.
3. Only one **insured** may occupy a full-time slot position at a time.

IV. LIMITS OF LIABILITY

A. PER EVENT LIMIT

The Per Event Limit of Liability shown on the Declarations is the most the **company** will pay under this Coverage Part for any **health care event** regardless of the number of:

1. **insureds** who share a Per Event Limit of Liability;
2. **claims** made or **potential claims** first discovered;
3. persons alleged to make an **insured** vicariously liable, or for whom an **insured** is allegedly negligent in hiring, retaining, supervising, or other negligence pertaining to employing other persons; or
4. persons or organizations making **claims** or **potential claims**.

B. AGGREGATE LIMIT

The Aggregate Limit of Liability shown on the Declarations is the most the **company** will pay under this Coverage Part for all **health care events** regardless of the number of:

1. **health care events**;
2. **insureds** who share an Aggregate Limit of Liability;
3. **claims** made or **potential claims** first discovered;
4. persons alleged to make an **insured** vicariously liable, or for whom an **insured** is allegedly negligent in hiring, retaining, supervising, or other negligence pertaining to employing other persons; or
5. persons or organizations making **claims** or **potential claims**.



**Issuing Company:
National Fire & Marine Insurance Company
Omaha, Nebraska**

**HEALTHCARE LIABILITY POLICY
CYBER LIABILITY AND BREACH RESPONSE COVERAGE PART**

NOTICE:

This Coverage Part contains Claims-Made and Reported coverage. If designated as "Claims-Made" in the title of the particular Insuring Clause, the coverages provided by that Insuring Clause will only cover claims first made against an insured during the policy period, and reported to the company during the policy period or during any applicable extended reporting period. All claims are subject to the applicable Limits of Liability and the applicable Retention(s) as shown on the Declarations. Note that the Limits of Liability for Coverages A, B, C and H include claim expenses. Please read this Coverage Part carefully.

I. INSURING CLAUSES

A. COVERAGE A - MULTIMEDIA LIABILITY - CLAIMS-MADE

The **company** will pay on behalf of an **insured** all amounts in excess of the **retention** and within the applicable Limits of Liability that such **insured** becomes legally obligated to pay as **damages**, including liability **assumed under contract**, and related **claim expenses**, resulting from a **claim** for a **multimedia peril** committed by an **insured**, provided that:

1. the **multimedia peril** is committed on or after the **retroactive date**;
2. the **claim** is first made against an **insured** during the **policy period**; and
3. the **claim** is reported to the **company**, in writing, during the **policy period**, or within 30 days thereafter.

B. COVERAGE B - SECURITY AND PRIVACY LIABILITY - CLAIMS-MADE

The **company** will pay on behalf of an **insured** all amounts in excess of the **retention** and within the applicable Limits of Liability that such **insured** becomes legally obligated to pay as **damages** and related **claim expenses**, resulting from a **claim** for a **security and privacy wrongful act** resulting in a **security breach** or **breach of privacy regulations**, provided that:

1. the **security breach** or **breach of privacy regulations** as applicable, and **security and privacy wrongful act**, takes place on or after the **retroactive date**;
2. the **claim** is first made against an **insured** during the **policy period**; and
3. the **claim** is reported to the **company**, in writing, during the **policy period**, or within 30 days thereafter.

C. COVERAGE C - PRIVACY REGULATORY DEFENSE AND PENALTIES - CLAIMS-MADE

The **company** will pay on behalf of an **insured** all amounts in excess of the **retention** and within the applicable Limits of Liability that such **insured** becomes legally obligated to pay as a **regulatory compensatory award** or **regulatory fines and penalties** (to the extent insurable by law), and related **claim expenses**, resulting from a **privacy regulatory proceeding** instituted against an **insured** resulting from a **security breach** or **breach of privacy regulations**, provided that:

1. the **security breach** or **breach of privacy regulations** takes place on or after the **retroactive date**;
2. the **privacy regulatory proceeding** is first instituted against an **insured** during the **policy period**; and
3. the **privacy regulatory proceeding** is reported to the **company**, in writing, during the **policy period**, or within 30 days thereafter.

D. COVERAGE D - PRIVACY BREACH RESPONSE COSTS, CUSTOMER NOTIFICATION EXPENSES, AND CUSTOMER SUPPORT AND CREDIT MONITORING EXPENSES

The **company** will indemnify an **insured** for all amounts in excess of the **retention** and within the applicable Limits of Liability that such **insured** incurs during the **policy period** as **privacy breach response costs, customer notification expenses** and/or **customer support and credit monitoring expenses** resulting from a **security breach, a privacy breach or breach of privacy regulations**, provided that:

1. the **security breach, privacy breach or breach of privacy regulations** takes place during the **policy period**;
2. the **security breach, privacy breach or breach of privacy regulations** is reported to the **company**, in writing, no later than 60 days after the date the **security breach, privacy breach or breach of privacy regulations** is discovered; and
3. the **privacy breach response costs, customer notification expenses** and/or **customer support and credit monitoring expenses** are incurred with the **company's** consent.

E. COVERAGE E - NETWORK ASSET PROTECTION

1. Loss of Digital Assets

The **company** will reimburse an **insured business** for all amounts in excess of the **retention** and within the applicable Limits of Liability that such **insured business** incurs as **digital assets loss** and **special expenses** due to damage, alteration, corruption, distortion, theft, misuse or destruction of an **insured business's digital assets** directly caused by a **covered cause of loss**, provided that:

- a. the **covered cause of loss** first occurs and is discovered by the Chief Information Officer, Chief Technology Officer, Chief Security Officer, Risk Manager or General Counsel of the **insured business** during the **policy period**; and
- b. the **covered cause of loss** is reported to the **company**, in writing, no later than 60 days after the date the **covered cause of loss** is discovered.

Digital assets loss and **special expenses** will be reimbursed for a period of up to 12 months following the discovery of the damage, alteration, corruption, distortion, theft, misuse or destruction of **digital assets**, unless specified otherwise by endorsement. **Digital assets loss** and **special expenses** will only be paid where there is clear evidence provided by an **insured business** that such **digital assets loss** and **special expenses** resulted from a **covered cause of loss**.

2. Non-Physical Business Interruption and Extra Expense

The **company** will reimburse an **insured business** for all amounts in excess of the **retention** and within the applicable Limits of Liability that such **insured business** incurs as **income loss, interruption expenses**, and **special expenses** resulting from the total or partial interruption, degradation in service or failure of the **insured business's computer system** directly caused by a **covered cause of loss**, provided that:

- a. the **covered cause of loss** first occurs and is discovered by the Chief Information Officer, Chief Technology Officer, Chief Security Officer, Risk Manager or General Counsel of the **insured business** during the **policy period**;
- b. the **covered cause of loss** is reported to the **company**, in writing, no later than 60 days after the date the **covered cause of loss** is discovered;
- c. the **income loss, interruption expenses** and/or **special expenses** are incurred during the **period of restoration**; and
- d. the total or partial interruption, degradation in service or failure of the **insured business's computer system** exceeds the **time retention**.

F. COVERAGE F - CYBER EXTORTION

The **company** will indemnify an **insured business** for all amounts in excess of the **retention** and within the applicable Limits of Liability that such **insured business** pays as **cyber extortion expenses** and/or **cyber**

extortion monies directly caused by a **cyber extortion threat** or series of **cyber extortion threats**, including a demand for **cyber extortion monies**, provided that:

1. the **cyber extortion threat** is first made against an **insured business** during the **policy period**; and
2. the **cyber extortion threat** is reported to the **company**, in writing, no later than 60 days after the date the **cyber extortion threat** is received by an **insured**.

Cyber extortion expenses and **cyber extortion monies** shall not be paid without prior consultation with the **company** and the **company's** express agreement. An **insured business** must make every reasonable effort to notify the local law enforcement authorities and the Federal Bureau of Investigation or similar equivalent foreign agency before surrendering any **cyber extortion monies** in response to a **cyber extortion threat**.

G. COVERAGE G - CYBER TERRORISM

The **company** will reimburse an **insured business** for all amounts in excess of the **retention** and within the applicable Limits of Liability that such **insured business** incurs as **income loss, interruption expenses** and **special expenses** resulting from the total or partial interruption, degradation in service or failure of an **insured business's computer system** directly caused by an **act of terrorism**, provided that:

1. the **act of terrorism** takes place during the **policy period**;
2. the **act of terrorism** is reported to the **company**, in writing, no later than 60 days after the date the **act of terrorism** is discovered;
3. the **income loss, interruption expenses** and/or **special expenses** are incurred during the **period of restoration**; and
4. the total or partial interruption, degradation in service or failure of an **insured business's computer system** exceeds the **time retention**.

H. COVERAGE H - REGULATORY PROCEEDING - CLAIMS-MADE

The **company** will reimburse an **insured** for all amounts in excess of the **retention** and within the applicable Limits of Liability that such **insured** becomes legally obligated to pay as **regulatory fines and penalties** (to the extent insurable by law) and **claims expenses** and/or **shadow audit expenses** (where applicable) resulting from a **regulatory proceeding**, provided that:

1. the wrongful act, error or omission giving rise to the **regulatory proceeding** is committed on or after the **retroactive date**;
2. the **regulatory proceeding** is first instituted against an **insured** during the **policy period**; and
3. the **regulatory proceeding** is reported to the **company**, in writing, during the **policy period**, or within 30 days thereafter.

The **company** shall have no duty to defend an **insured** under Coverage H, but only to reimburse an **insured** for covered **claim expenses, shadow audit expenses**, and/or **regulatory fines and penalties**. An **insured** shall have complete freedom of choice with respect to the selection of the licensed attorney who provides legal services in connection with any **regulatory proceeding** triggering coverage under Coverage H. Upon receiving notice from an **insured** of a **regulatory proceeding**, the **company** or its authorized agent will provide the **insured** with the name(s) of panel counsel. If an **insured** retains panel counsel, the **company** will, subject to all other provisions of this Coverage Part, pay 100% of covered **claim expenses, shadow audit expenses**, and/or **regulatory fines and penalties** in excess of the **retention**, up to the applicable Limits of Liability under Coverage H. If an **insured** retains non-panel counsel, the **insured** must pay a co-payment of 25%, and the **company** will pay the remaining 75% of covered **claim expenses, shadow audit expenses**, and/or **regulatory fines and penalties** in excess of the **retention**, up to the applicable Limits of Liability under Coverage H.

I. COVERAGE I - E-DISCOVERY CLAIM EXPENSES AND E-DISCOVERY REGULATORY INVESTIGATION EXPENSES - CLAIMS-MADE

The **company** will:

1. indemnify an **insured** for all amounts in excess of the **retention** and within the applicable Limits of Liability that such **insured** incurs as **e-discovery claim expenses** and/or **e-discovery regulatory investigation expenses** resulting from a **regulatory proceeding**; and
2. provide **e-discovery consulting services** to an **insured** during the **policy period**, provided that:
 - a. the wrongful act, error or omission giving rise to the **regulatory proceeding** is committed on or after the **retroactive date**;
 - b. the **regulatory proceeding** is first instituted against an **insured** during the **policy period**; and
 - c. the **regulatory proceeding** is reported to the **company**, in writing, during the **policy period**, or within 30 days thereafter.

J. COVERAGE J - DATA PROTECTION REPUTATIONAL HARM

The **company** will reimburse an **insured business**, in excess of the **retention** and within the applicable Limits of Liability, for the net ascertained loss of value to such **insured business's reputation**, being the loss of **net profit** suffered by the **insured business** during the **period of indemnity** and/or any **recoverable costs** and/or any **increase in cost of working** incurred by the **insured business** during the **period of indemnity**, solely and directly caused by a **data protection breach**, provided, that:

1. the **data protection breach** first occurs and is discovered by the Chief Information Officer, Chief Technology Officer, Chief Security Officer, Risk Manager or General Counsel of the **insured business** during the **policy period**; and
2. the Chief Information Officer, Chief Technology Officer, Chief Security Officer, Risk Manager or General Counsel of the **insured business** reports the **data protection breach** to the **company**, in writing, within 60 days of any **adverse media report**.

II. ADDITIONAL EXCLUSIONS

In addition to the exclusions contained in the Exclusions section of the Common Policy Provisions and Conditions, the following exclusions apply to this Coverage Part:

This insurance does not apply to:

- A. any **claim** based upon, arising out of, directly or indirectly resulting from, in any way involving or attributable to:
 1. any **multimedia peril** under Coverage A;
 2. any **security and privacy wrongful act** under Coverage B;
 3. any **security breach, privacy breach** or **breach of privacy regulations** under Coverage C;
 4. any **covered cause of loss** under Coverage E;
 5. any **cyber extortion threat** under Coverage F;
 6. any **act of terrorism** under Coverage G;
 7. any acts, errors or omissions under Coverages H and I; or
 8. any **data protection breach** under Coverage J;

committed, allegedly committed or that occurred, in whole or in part, prior to the applicable **retroactive date**.
- B. any **claim** based upon, arising out of, directly or indirectly resulting from, in any way involving or attributable to:
 1. any **multimedia peril** under Coverage A;
 2. any **security and privacy wrongful act** under Coverage B;
 3. any **security breach, privacy breach** or **breach of privacy regulations** under Coverage D;
 4. any **covered cause of loss** under Coverage E;
 5. any **cyber extortion threat** under Coverage F;

6. any **act of terrorism** under Coverage G;
7. any acts, errors or omissions under Coverages H and I; or
8. any **data protection breach** under Coverage J;

that any **insured** knew, or could have reasonably foreseen, prior to the effective date of this Coverage Part, could be the basis of a **claim**.

- C. any **claim** or circumstance involving the Coverages available under this Coverage Part notified to a previous insurer prior to the effective date of this Coverage Part.
- D. any **claim** made by or on behalf of an **insured** against another **insured**; however, this exclusion shall not apply to:
 1. an otherwise covered **claim** under Coverage B made by any past, present or future **employee** for a **security and privacy wrongful act**, but only if such **employee** did not commit, participate in or contribute to such **security and privacy wrongful act** or a **security breach** or **breach of privacy regulations**; or
 2. any **billing errors proceeding** instituted by an **insured** against an **insured** as a **qui tam plaintiff** or brought by an **insured** under the United States False Claims Act.
- E. any **claim** alleging or arising out of any willful, deliberate, malicious, fraudulent, dishonest or criminal act, error or omission, or any intentional violation of the law or of an **insured business's** privacy policy, or the gaining of any profit or advantage to which any **insured** is not legally entitled, if any of the aforementioned is committed by an **insured**, whether acting alone or in collusion with other persons. However, the insurance afforded by this Coverage Part shall apply to **claims expenses** incurred in defending any such **claim**, but shall not apply to any **damages, regulatory fines and penalties** or other **loss** that an **insured** might become legally obligated to pay. The **company** will have the right to recover those **claims expenses** incurred from those parties found to have committed criminal, dishonest, fraudulent or malicious acts, errors or omissions by a court, jury or arbitrator. This exclusion shall not apply to a **claim** under Coverage E for **employee** sabotage.
- F. any **claim** arising out of any **insured's** activities as a trustee, partner, officer, director, or **employee** of any employee trust, charitable organization, corporation, company, or business other than that of an **insured business**.
- G. any **claim** arising out of an **insured's** insolvency or bankruptcy or the insolvency or bankruptcy of any other entity including, but not limited to, the failure, inability, or unwillingness to make payments because of the insolvency, liquidation, or bankruptcy of any individual or entity.
- H. **bodily injury**, except that this exclusion shall not apply to negligent infliction of emotional distress or mental anguish arising out of any actual or alleged **multimedia peril, security and privacy wrongful act, security breach** or **breach of privacy regulations**.
- I. any **claim** for **property damage**.
- J. any **claim** based upon, arising out of, directly or indirectly resulting from, in any way involving or attributable to:
 1. satellite failures;
 2. electrical or mechanical failures and/or interruption, including, but not limited to, electrical disturbance, spike, brownout, or blackout; or
 3. outages to gas, water, telephone, cable, telecommunications or other infrastructure, unless such infrastructure is under an **insured business's** operational control and unless such **claim** otherwise triggers coverage under Coverage E or G.
- K. any **claim** based upon, arising out of, directly or indirectly resulting from, in any way involving or attributable to the wear and tear, drop in performance, progressive deterioration or aging of electronic equipment and other property or **computer hardware** used by an **insured**.
- L. any **claim** based upon, arising out of, directly or indirectly resulting from, in any way involving or attributable to failure of overhead transmission and distribution lines.
- M. any **claim** based upon, arising out of, directly or indirectly resulting from, in any way involving or attributable to gradual deterioration of subterranean insulation.

- N. any **claim** based upon, arising out of, directly or indirectly resulting from, in any way involving or attributable to fire, smoke, explosion, lightning, wind, water, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, force majeure, or any other physical event however caused, unless such **claim** otherwise triggers coverage under Coverages E or G.
- O. any **claim** based upon, arising out of, directly or indirectly resulting from, in any way involving or attributable to coupons, prize discounts, prizes, awards or any other valuable consideration given in excess of the total contracted or expected amount.
- P. any **claim** based upon, arising out of, directly or indirectly resulting from, in any way involving or attributable to the actual or alleged inaccurate, inadequate, or incomplete description of the price of goods, products, or services.
- Q. any **claim** based upon, arising out of, directly or indirectly resulting from, in any way involving or attributable to an **insured's** cost guarantees, cost representations, contract price or cost estimates being exceeded.
- R. any **claim** based upon, arising out of, directly or indirectly resulting from, in any way involving or attributable to the violation of any economic or trade sanctions by the United States government including, but not limited to, sanctions administered and enforced by the United States Treasury Department's Office of Foreign Assets Control ('OFAC').
- S. any **claim** based upon, arising out of, directly or indirectly resulting from, in any way involving or attributable to any breach of any express, implied, actual or constructive contract, warranty, guarantee or promise. This exclusion shall not apply to:
1. any liability or obligation that any **insured** would have in the absence of such contract or agreement;
 2. unintentional breach of contract; or
 3. a breach of an **insured business's** privacy policy.
- T. any **claim** based upon, arising out of, directly or indirectly resulting from, in any way involving or attributable to the liability of others assumed by an **insured** under any contract or agreement, either oral or written. This exclusion shall not apply:
1. to the extent such **insured** would have been liable in the absence of such contract or agreement; or
 2. with respect to any **multimedia peril, security and privacy wrongful act, security breach or breach of privacy regulations**, to the extent an **insured business** has assumed such liability in the form of a written hold harmless or indemnity agreement that predates the first **multimedia peril, security and privacy wrongful act, security breach or breach of privacy regulations**.
- U. any **claim** based upon, arising out of, directly or indirectly resulting from, in any way involving or attributable to:
1. any presence of **pollutants** or contamination of any kind;
 2. any actual, alleged, or threatened discharge, dispersal, release, or escape of **pollutants** or contamination of any kind including, but not limited to, solid, liquid, gaseous, or thermal irritants or contaminants including asbestos, smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste (waste includes materials to be recycled, reconditioned, or reclaimed), wherever such occurs, whether or not such results from an **insured's** activities or the activities of others, is sudden or gradual, and is accidental, intended, foreseeable, expected, fortuitous, or inevitable;
 3. any governmental or regulatory directive or request that an **insured business** or anyone acting under an **insured business's** direction or control test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize said **pollutants**; or
 4. any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize **pollutants** or in any way respond to or assess the effects of **pollutants** or contamination of any kind.
- V. any **claim** based upon, arising out of, directly or indirectly resulting from, in any way involving or attributable to the actual or alleged loss of value of any securities.
- W. any **claim** based upon, arising out of, directly or indirectly resulting from, in any way involving or attributable to caused by or resulting from unauthorized trading. "Unauthorized trading" means trading by an **insured**, which at the time of the trade is:

1. in excess of permitted financial limits; or
 2. outside of permitted product lines.
- X. any **claim** based upon, arising out of, directly or indirectly resulting from, in any way involving or attributable to the actual or alleged purchase, sale, offer of, or solicitation of an offer to purchase or sell securities, or violation of any securities law including, but not limited to, the provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, the Sarbanes-Oxley Act of 2002, or any regulation promulgated under the foregoing statutes, or any federal, state, local, or foreign laws similar to the foregoing statutes, including 'Blue Sky' laws, whether such law is statutory, regulatory, or common law.
- Y. any **claim** based upon, arising out of, directly or indirectly resulting from, in any way involving or attributable to the actual or alleged government enforcement of any state or federal regulation including, but not limited to, regulations promulgated by the United States Federal Trade Commission, Federal Communications Commission, or the Securities and Exchange Commission. This exclusion does not apply to any **claim** triggering coverage under Coverage C.
- Z. any **claim** based upon, arising out of, directly or indirectly resulting from, in any way involving or attributable to any employer-**employee** relations, policies, practices, acts or omissions; any actual or alleged refusal to employ any person; or any misconduct with respect to **employees**.
- AA. any **claim** based upon, arising out of, directly or indirectly resulting from, in any way involving or attributable to any actual or alleged harassment or discrimination of any kind including, but not limited to, age, color, race, gender, creed, national origin, marital status, sexual preferences, disability or pregnancy.
- BB. any **claim** based upon, arising out of, directly or indirectly resulting from, in any way involving or attributable to the violation of any pension, healthcare, welfare, profit sharing, mutual, or investment plans, funds, or trusts; or any violation of any provision of the Employee Retirement Income Security Act of 1974 and its amendments and/or the Pension Protection Act of 2006 and its amendments, or any regulation, ruling, or order issued pursuant thereto.
- CC. any **claim** based upon, arising out of, directly or indirectly resulting from, in any way involving or attributable to:
1. strikes or similar labor actions;
 2. war, invasion, act of foreign enemy, hostilities or warlike operations (whether declared or not), civil war, mutiny, civil commotion assuming the proportions of, or amounting to, a popular uprising, military uprising, insurrection, rebellion, revolution, military or usurped power, or any action taken to hinder or defend against these actions;
 3. confiscation or nationalization or requisition or destruction of, or damage to, property by or under the order of any government or public or local authority; or
 4. any action taken in controlling, preventing, suppressing or in any way relating to any of 1 through 3 above.
- This exclusion shall not apply to an **act of terrorism**.
- DD. any **claim** based upon, arising out of, directly or indirectly resulting from, in any way involving or attributable to an **insured's** commercial decision to cease providing a particular product or service, but only if the **insured** is contractually obligated to continue providing such products or services.
- EE. any **claim** based upon, arising out of, directly or indirectly resulting from, in any way involving or attributable to gambling or pornography or the sale or provision of prohibited, restricted or regulated items including, but not limited to, alcoholic beverages, tobacco or drugs.
- FF. any **claim** based upon, arising out of, directly or indirectly resulting from, in any way involving or attributable to:
1. any fine or penalty arising out of any agreement by an **insured** to comply with or follow the Payment Card Industry Standard or any Payment Card Company Rules; or
 2. the implementation, maintenance, or compliance with any security measures or standards relating to any payment card data including, but not limited to, any fine or penalty imposed by a payment card company on a merchant bank or payment processor that an **insured** has paid or agreed to reimburse or indemnify.

This exclusion shall not apply to civil penalties and fines to the extent insurable by law arising out of an otherwise covered **claim** under Coverage C.

- GG. any **claim** based upon, arising out of, directly or indirectly resulting from, in any way involving or attributable to any actual or alleged unfair competition, price fixing, antitrust violations, deceptive trade practices, or restraint of trade or antitrust statute, legislation, or regulation.
- HH. any **claim** based upon, arising out of, directly or indirectly resulting from, in any way involving or attributable to any actual or alleged infringement of any patent or the misappropriation, theft, copying, display or publication of any trade secret by, or with the active cooperation, participation or assistance of any **insured**.
- II. any **claim** based upon, arising out of, directly or indirectly resulting from, in any way involving or attributable to:
 1. any wear or tear, latent or time-delayed damage arising from services an **insured** provided prior to the **policy period**;
 2. gradual deterioration of an **insured business's computer system**; or
 3. an **insured business's** failure, or the failure of those acting on an **insured business's** behalf, to maintain any **computer system** or network, computer software or any other equipment.
- JJ. any **claim** based upon, arising out of, directly or indirectly resulting from, in any way involving or attributable to the manufacturing, mining, use, sale, installation, removal, distribution of, or exposure to, asbestos, materials or products containing asbestos or asbestos fibers or dust or any **claim** alleging **bodily injury** or **property damage** arising out of asbestos or asbestos containing materials including, but not limited to:
 1. inhaling, ingesting, or being physically exposed to asbestos or goods or products containing asbestos;
 2. the use of asbestos in constructing or manufacturing any goods, products, or structures;
 3. the removal of asbestos from any goods, products or structures;
 4. the manufacture, encapsulation, transportation, storage, handling, distribution, sale, application, mining, consumption, or disposal of asbestos or goods or products containing asbestos;
 5. any governmental direction or request that the **insured** or any other party, test for, monitor, clean up, remove, contain, treat, detoxify or neutralize asbestos or asbestos containing products; or
 6. manufacturing or mining or the use, sale, installation, removal, distribution of or exposure to asbestos, materials, or products containing asbestos, asbestos fibers or dust.
- KK. any **claim** based upon, arising out of, directly or indirectly resulting from, in any way involving or attributable to the use of programs that are not **operational programs**.
- LL. any **claim** based upon, arising out of, directly or indirectly resulting from, in any way involving or attributable to the use of programs that are not **delivered programs**.
- MM. any **claim** based upon, arising out of, directly or indirectly resulting from, in any way involving or attributable to any **insured's** intentional use of illegal or unlicensed programs that are in violation of the provisions or laws referring to software protection.
- NN. any **claim** based upon, arising out of, directly or indirectly resulting from, in any way involving or attributable to the confiscation, commandeering, requisition, destruction of, or damage to, **computer hardware** by order of a government de jure or de facto, or by any public authority for whatever reason.
- OO. any **claim** alleging **bodily injury** or **property damage** resulting from exposure to or the manifestation, release, dispersal, seepage, migration, discharge, appearance, presence, reproduction or growth of mold, mildew, spores, mycotoxins, fungi, organic pathogens, or other micro organisms of any type, nature, or description, including:
 1. any cost, expense, or charge to test, monitor, clean up, remediate, remove contain, treat, detoxify, neutralize, rehabilitate, or in any way respond to or assess the effects of mold, mildew, spores, mycotoxins, fungi, organic pathogens, or other micro organisms of any type, nature, or description; or
 2. any resulting cost, expense, charge, fine or penalty, incurred, sustained, or imposed by order, direction, request, or agreement of any court, governmental agency, or any civil, public, or military authority.

With respect to this exclusion, 'organic pathogens' means any organic irritant or contaminant including, but not limited to, mold, fungus, bacteria, virus, or their byproducts such as mycotoxins, mildew, or biogenic aerosol. 'Organic pathogens' include, but are not limited to, Aspergillus, Penicillium, Stachybotrys Chartarum, Stachybotrys Atra, Trichodema, and Fusarium Memnoniella.

- PP. any **claim** based upon, arising out of, directly or indirectly resulting from, in any way involving or attributable to the existence, emission or discharge of any electromagnetic field, electromagnetic radiation, or electromagnetism that actually or allegedly affects the health, safety or condition of any person or the environment or that affects the value, marketability, condition or use of any property.
- QQ. any **claim** based upon, arising out of, directly or indirectly resulting from, in any way involving or attributable to any legal liability directly or indirectly caused by, involving, attributed to, arising from:
1. ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
 2. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
- RR. any **claim** based upon, arising out of, directly or indirectly resulting from, in any way involving or attributable to any criminal prosecution against an **insured**. For purposes of this exclusion, "criminal prosecution" shall mean any governmental action for enforcement of criminal laws, including those offenses for which conviction could result in imprisonment and/or criminal fine.
- SS. with respect to Coverage E.1. Loss of Digital Assets:
1. any amount incurred in restoring, updating or replacing **digital assets** to a level beyond that which existed prior to the **covered cause of loss**;
 2. physical damage to the **computer hardware** or data center, other than that covered under **covered cause of loss**, under paragraph E.1.a.;
 3. contractual penalties or consequential damages;
 4. any liability to third parties for whatever reason, including legal costs and expenses of any type;
 5. fines or penalties imposed by law;
 6. the economic or market value of **digital assets**, unless the **company** has agreed by endorsement to reimburse an **insured business** based upon an agreed value amount for defined categories or specific **digital assets**;
 7. costs or expenses incurred to identify, patch or remediate software program errors or **computer system** vulnerabilities;
 8. costs to upgrade, redesign, reconfigure or maintain an **insured business's computer system** to a level of functionality beyond that which existed prior to the **covered cause of loss**; or
 9. any losses paid under Coverage E.2. Non-Physical Business Interruption and Extra Expense.
- TT. with respect to Coverage E.2. Non-Physical Business Interruption and Extra Expense:
1. any loss arising out of a physical cause or natural peril, including, but not limited to fire, wind, water, flood, subsidence or earthquake, which results in physical damage to **computer hardware** and/or any data center;
 2. any loss expense arising out of updating or replacing **digital assets** to a level beyond that which existed prior to the **covered cause of loss**;
 3. contractual penalties or consequential damages;
 4. any liability to third parties for whatever reason, including legal costs and expenses of any type;
 5. fines or penalties imposed by law;
 6. costs or expenses incurred to identify, patch or remediate software program errors or **computer system** vulnerabilities;
 7. loss of goodwill and reputational harm;

8. costs to upgrade, redesign, reconfigure or maintain an **insured business's computer system** to a level of functionality beyond that which existed prior to the **covered cause of loss**; or
9. any losses paid under Coverage E.1. Loss of Digital Assets.

UU. with respect to Coverage H:

1. any amounts incurred in connection with a **shadow audit** not previously approved by the **company**;
2. **restitution** or repayment of monies received by an **insured**, to which the **insured** was not entitled as a result of billing errors made by such **insured**;
3. any amounts incurred by a consulting professional whose services were not previously approved by the **company**; or
4. billing errors for medical services or items which are not provided or prescribed by the **First Named Insured** or any subsidiary.

VV. with respect to Coverage J:

1. any loss, cost, liability or expense incurred by the **insured business** in an effort to re-establish the **reputation** of the **insured business**, other than **public relations expenses**;
2. any loss, cost, liability or expense incurred in any **claim** that is insured by any other insurance, except excess insurance;
3. any loss, cost, liability or expense incurred in connection with an **adverse media report** that also affects or refers in similar terms to a general security issue, an industry or specific competitors of an **insured business**, without any specific allegations regarding an **insured business's** breach of data protection of its customers;
4. any civil or regulatory liability to third parties for whatever reason, including legal costs and expenses of any type;
5. contractual penalties or consequential damages;
6. **customer notification expenses**;
7. fines or penalties imposed by law or regulation; or
8. any losses paid under Coverage D.

III. LIMITS OF LIABILITY AND RETENTIONS

- A. The Limits of Liability applicable to each Coverage of this Coverage Part is the **company's** maximum Limit of Liability, including **claim expenses** where applicable, for each **claim** first made during the **policy period** under each Coverage and in the aggregate for all **claims** first made during the **policy period** under each Coverage, regardless of the number of:
 1. claimants;
 2. **claims**; or
 3. **insureds** involved.
- B. The Aggregate Limit for this Coverage Part is the **company's** maximum Limit of Liability, including **claim expenses** where applicable, for all **claims** first made during the **policy period** under this Coverage Part, regardless of the number of:
 1. claimants;
 2. **claims**;
 3. **insureds** involved; or
 4. Coverages under this Coverage Part.
- C. All payments made under this Coverage Part will reduce the Aggregate Limit for this Coverage Part. In no event will the **company** pay more than the Aggregate Limit for this Coverage Part.

- D. All **claims** made under any one Coverage, which arise out of the same, related or continuing acts, facts, events or circumstances, without regard to the number of **insureds, claims,** or claimants, shall be considered a single **claim** and only one Limit of Liability and **retention** will apply to such **claim**. Such **claim** shall be deemed to be first made at the earliest of the following times:
1. the time at which the earliest **claim** arising out of the same, related or continuing acts, facts, events or circumstances is first made; or
 2. the time at which the **claim** arising out of the same, related or continuing acts, facts, events or circumstances shall be deemed to have been made pursuant to Section IV., A.2. of this Coverage Part.
- E. In the event that any **claim** shall be covered, in whole or in part, under two or more Coverages of this Coverage Part, the total applicable Limit of Liability shall not exceed the single largest applicable Limit of Liability. Such largest applicable Limit of Liability shall apply only once to such **claim**. The **company** has the sole discretion to allocate **claims** paid, if any, against the appropriate Limit of Liability.
- F. The Limits of Liability for the **extended reporting period**, if exercised, shall be part of, and not in addition to, the Limits of Liability applicable to this Coverage Part. The exercise of the **extended reporting period** shall not in any way increase or reinstate the Limits of Liability applicable to this Coverage Part.
- G. The applicable **retention** amount for each Coverage of this Coverage Part shall apply separately to each **claim**. The **retention** shall be satisfied by an **insured's** monetary payments of any amounts covered under this Coverage Part, including **claim expenses** where applicable. If a **claim** attaches to more than one Coverage of this Coverage Part, only the highest **retention** applies.
- H. An **insured's** payment of the applicable **retention** is a condition precedent to payment by the **company** of any amounts covered under this Coverage Part, and the **company** shall only be liable for the amount in excess of such **retention**, not to exceed the total applicable Limit of Liability. The **insured** shall make direct payments within the **retention** to the appropriate parties designated by the **company**.
- I. With respect to Coverages E.1. and G, the **time retention** shall apply to each **period of restoration**. Once the **time retention** is met, the **insured** will be responsible to pay any co-insurance percentage or **retention** applicable to Coverages E.1. and G.

IV. ADDITIONAL CONDITIONS

In addition to the terms contained in the Conditions section of the Common Policy Provisions and Conditions, the following conditions apply to this Coverage Part:

A. NOTICE PROVISIONS

1. Notice of Claim.

Except as otherwise provided in any Coverage of this Coverage Part, the Chief Information Officer, Chief Technology Officer, Chief Security Officer, Risk Manager or General Counsel of the **insured business** shall give to the **company** written notice of any **claim** during the **policy period**, but in no event later than 30 days after expiration of the **policy period**.

2. Notice of Potential Claim.

If, during the **policy period**, an **insured** first becomes aware of any acts, facts or circumstances that could reasonably be the basis for a **claim**, and if the Chief Information Officer, Chief Technology Officer, Chief Security Officer, Risk Manager or General Counsel of the **insured business** gives the **company** written notice during the **policy period**, of:

- a. specific details of the acts, facts or circumstances that could reasonably be the basis for a **claim**;
- b. possible **damages**, penalties or other amounts potentially covered under this Coverage Part that may result or that have resulted from the acts, facts or circumstances; and
- c. details regarding how the **insured** first became aware of the acts, facts or circumstances,

then any **claim** made subsequently arising out of such acts, facts or circumstances shall be deemed to have been made at the date the written notice complying with the above requirements was first given to the **company**.

B. LOSS DETERMINATION UNDER COVERAGE E

1. Loss Determination under Coverage E.1.

For any and all coverage(s) provided under Coverage E.1., **digital assets loss** will be determined as follows:

- a. if the impacted **digital asset** was purchased from a third party, the **company** will pay only the lesser of the original purchase price of the **digital asset** or the reasonable and necessary **digital assets loss**; or
- b. if it is determined that the **digital assets** cannot be replaced, restored or recreated, then the **company** will only reimburse the actual and necessary **digital assets loss** incurred up to such determination.

2. Loss Determination under Coverage E.2.

For any and all coverage(s) provided under Coverage E.2., **income loss** will be determined as the reduction of the **insured business's income** during the **period of restoration**, which is:

- a. an **insured business's net income (net profit** or loss before income taxes) that would have been reasonably projected, but which has been lost directly as a result of total or partial interruption, degradation in service or failure of the **insured business's computer system** caused directly by a **covered cause of loss**. The revenue projection will take into account the prior experience of the **insured business's** business during the previous 12 months immediately before the date of the **covered cause of loss** and the probable experience had no **covered cause of loss** occurred. Revenues include the amount of money paid or payable to the **insured business** for goods, products or services sold, delivered or rendered in the normal course of the **insured business's** business. Revenue projection will be reduced by the extent to which the **insured business** uses substitute methods, facilities or personnel to maintain its revenue stream. The **company** will take into consideration the **insured business's** documentation of the trends in the business and for variations in or other circumstances affecting the business before or after the **covered cause of loss**, which would have affected the **insured business's** business had no **covered cause of loss** occurred; and
- b. any fixed operating expenses (including ordinary payroll) incurred, but only to the extent that such operating expenses must continue during the **period of restoration**.

C. LOSS DETERMINATION UNDER COVERAGE J

For any and all coverage(s) provided under Coverage J, the net loss of value suffered by the **insured business** during a **period of indemnity** shall be assessed and ascertained by auditors or adjusters appointed by the **company**. Their assessment in respect of the loss of **net profit** shall be based upon the difference between the anticipated **net profit** for the **period of indemnity**, as established during the pre-bind underwriting process, and the actual **net profit** for the **period of indemnity**. An **insured business** will provide accounting information to identify the potential loss of the **insured business's reputation** insured hereunder following an **adverse media report**.

D. EXTENDED REPORTING PERIOD

1. If this Coverage Part is cancelled or non-renewed by the **First Named Insured** or if the **company** refuses to renew the policy for reasons other than non-payment of premium or noncompliance with the terms and conditions of this Coverage Part, then the **First Named Insured** shall have the right, upon payment of an additional premium, to an extension of the coverage granted by this Coverage Part with respect to any **Claim** first made during the period of time elected after the effective date of such cancellation or, in the event of such refusal to renew, after the policy's expiration date, but only with respect to:
 - a. any **multimedia peril** under Coverage A;
 - b. any **security and privacy wrongful act** under Coverage B;
 - c. any **security breach** or **breach of privacy regulations** under Coverage C;
 - d. any **covered cause of loss** under Coverage E;

- e. any **cyber extortion threat** under Coverage F;
- f. any **act of terrorism** under Coverage G;
- g. any acts, errors or omissions under Coverages H and I; or
- h. any **data protection breach** under Coverage J;

committed before the effective date of cancellation or, in the event of a refusal to renew, before the policy's expiration date.

2. The quotation of a different premium, **retention** or Limits of Liability for renewal does not constitute a cancellation or refusal to renew.
3. As a condition precedent to the right to purchase the **extended reporting period**, the total premium for the policy must have been paid. The right to purchase the **extended reporting period** shall terminate unless written notice, together with full payment of the premium for the **extended reporting period**, is received by the **company** within 30 days after the effective date of cancellation, or, in the event of a refusal to renew, within 30 days after the Policy expiration date. If such notice and premium payment is not so given to the **company**, there shall be no right to purchase the **extended reporting period**.
4. In the event of the purchase of the **extended reporting period**, the entire premium therefore shall be deemed earned at its commencement.
5. The exercise of the **extended reporting period** shall not in any way increase the **company's** Limits of Liability under this Coverage Part.

V. **ADDITIONAL DEFINITIONS**

Only with respect to coverage provided under this Coverage Part, the following additional definitions apply:

- A. **Act of terrorism** means an act, including but not limited to, the use of force or violence and/or the threat thereof, by any person or group(s) of persons, whether acting alone or on behalf of, or in connection with any organization(s) or government(s), which is committed for political, religious, ideological, or similar purposes including the intention to influence any government and/or put the public, or any section of the public, in fear.
- B. **Administrator** means an owner, partner, stockholder, director, trustee, executive officer, medical director, department head or faculty member of an **insured business**.
- C. **Adverse media report** means:
 1. with respect to Coverage D, any unpredictable report or communication of an actual or potential **security breach, privacy breach or breach of privacy regulations**, which has been publicized through any media channel including, but not limited to, television, **print media**, radio or electronic networks, the **internet**, and/or electronic mail, that threatens material damage to an **insured business's reputation** and which results in the incurring of **privacy breach response costs**;
 2. with respect to Coverage J, extracts or completed versions of communications, which have been publicized through any media channel including, but not limited to, television, **print media**, radio or electronic networks, the **internet**, and/or electronic mail, that cause negative perception or harm to an **insured business's reputation**, leading to **income loss**.
- D. **Assumed under contract** means liability for **damages** resulting from a **multimedia peril** where such liability has been assumed by an **insured** in the form of a written hold harmless or indemnity agreement that predates the first **multimedia peril**.
- E. **Billing errors proceeding** means:
 1. civil or administrative investigations or other civil or administrative proceedings instituted against an **insured** by a **qui tam plaintiff, government entity or commercial payer** alleging the presentation of, causing or allowing to be presented, or being liable for the presentation of any actual or alleged erroneous billings by an **insured** to a government health benefit payer or **commercial payer** from which the **insured** seeks and/or has received payment or reimbursement for medical services or items provided or prescribed by the **insured**; or

2. any of 1. above instituted against an **insured** as a result of **voluntary self disclosure**.

- F. **BPO service provider** means any third party independent contractor that provides business process outsourcing services for the benefit of an **insured business** under a written contract with the **insured business**, including, but not limited to, call center services, fulfillment services, and logistical support.
- G. **Breach of privacy regulations** means a breach by an **insured**, a **BPO service provider** or **outsourced IT service provider** of any of the following regulations as well as similar statutes and regulations, as they currently exist and as amended, associated with the confidentiality, access, control, and use of personally identifiable, non-public information:
1. Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191), known as HIPAA, and related state medical privacy laws;
 2. Gramm-Leach-Bliley Act of 1999 (G-L-B), also known as the Financial Services Modernization Act of 1999;
 3. state and Federal statutes and regulations regarding the security and privacy of consumer information;
 4. governmental privacy protection regulations or laws associated with the control and use of personal information;
 5. privacy provisions of consumer protection laws, including the Federal Fair Credit Reporting Act (FCRA) and similar state laws;
 6. Children's Online Privacy Protection Act or similar laws; and
 7. the EU Data Protection Act or other similar privacy laws worldwide.
- H. **Claim** means:
1. with respect to Coverages A or B:
 - a. a written demand received by an **insured** for monetary damages or non-monetary relief against any **insured**;
 - b. a written request to toll or waive a statute of limitations relating to a potential **claim** against an **insured**;
or
 - c. the service of a civil suit or the institution of arbitration proceedings against an **insured** seeking **damages** or a temporary restraining order or a preliminary or permanent injunction against an **insured**.

A **claim** under Coverages A or B will be deemed to be first made when notice of any of the foregoing is first received by an **insured**.
 2. with respect to Coverage C, a **privacy regulatory proceeding** instituted against an **insured**. A **claim** under Coverage C will be deemed to be first made when it is first received by an **insured**.
 3. with respect to Coverage D, a written report by an **insured** to the **company** of an **adverse media report, security breach, privacy breach** or **breach of privacy regulations**. A **claim** under Coverage D will be deemed to be first made when such written report is received by the **company**.
 4. with respect to Coverage E, a written report by an **insured** to the **company** of the occurrence of a **covered cause of loss**. A **claim** under Coverage E will be deemed to be first made when such written report is received by the **company**.
 5. with respect to Coverage F, a written report by an **insured** to the **company** of a **cyber extortion threat**. A **claim** under Coverage F will be deemed to be first made when such written report is received by the **company**.
 6. with respect to Coverage G, a written report by an **insured** to the **company** of an **act of terrorism**. A **claim** under Coverage G will be deemed to be first made when such written report is received by the **company**.
 7. with respect to Coverages H and I, a **regulatory proceeding** instituted against an **insured**. A **claim** under Coverage H will be deemed to be first made when it is first received by an **insured**.

8. with respect to Coverage J, a written report by an **insured** to the **company** of a **data protection breach**. A **claim** under Coverage J will be deemed to be first made when such written report is received by the **company**.

I. **Claims expenses** means:

1. reasonable and necessary fees incurred with the **company's** consent and charged by an attorney(s) designated by the **company** to defend a **claim**; and
2. all other reasonable and necessary fees, costs, and expenses resulting from the investigation, adjustment, defense, and appeal of a **claim**, if incurred by the **company**, or by an **insured** with the **company's** prior written consent.

Claims expenses do not include any wages, salaries, fees, overhead or other charges incurred by, or paid to, any **insured** for any time spent in cooperating in the defense and investigation of any **claim** or any circumstance which might lead to a **claim** notified under this Coverage Part. With respect to Coverage H, **claim expenses** do not include the costs associated with the adoption and implementation of any corporate integrity agreement, compliance program or similar provision regarding the operations of an **insured's** business, negotiated as part of a settlement with or by order of a **government entity**.

J. **Commercial payer** means any private health insurance company.

K. **Committee member** means a person serving as a member of a committee or board formed or controlled by an **insured business**. **Committee member** also includes any person executing the directives of such a committee or board.

L. **Computer hardware** means the physical components of any **computer system** including CPU's, memory, storage devices, storage media, and input/output devices and other peripheral devices and components, including, but not limited to, cable, connectors, fiber optics, wire, power supply units, keyboards, display monitors and audio speakers.

M. **Computer program(s)** means an organized set of instructions that, when executed, causes a computer to behave in a predetermined manner. **Computer program(s)** include, but are not limited to, communications, networking, operating system and related **computer programs** used to create, maintain, process, retrieve, store and/or transmit electronic **data**.

N. **Computer system(s)** means interconnected electronic, wireless, web or similar systems (including all **computer hardware** and software) used to process and store **data** or information in an analogue, digital, electronic or wireless format including, but not limited to, **computer programs**, electronic data, operating systems, **firmware**, servers, media libraries, associated input and output devices, mobile devices, networking equipment, websites, extranets, off line storage facilities (to the extent that they hold electronic **data**), and electronic backup equipment.

O. **Computer virus** means a program that possesses the ability to create replicas of its self (commonly known as 'auto-reproduction' program) within other programs or operating system areas or which is capable of spreading copies of its self wholly or partly to other **computer systems**.

P. **Counseling** means formal therapy rendered to a patient by a licensed professional approved and credentialed by the **insured** to provide such therapy.

Q. **Covered causes of loss** means:

1. Accidental Damage or Destruction

- a. accidental physical damage or destruction of **electronic media**, so that stored **digital assets** are no longer machine-readable;
- b. accidental damage or destruction of **computer hardware**, so that stored **data** is no longer machine-readable;
- c. failure in power supply or under/over voltage only if such power supply is under the direct operational control of an **insured business**. Direct operational control includes back-up generators;
- d. **programming error** of **delivered programs**; or

e. electrostatic build-up and static electricity.

2. Administrative or Operational Mistakes

An accidental, unintentional or negligent act, mistake, error or omission by an **insured**, a **BPO service provider** or **outsourced IT service provider** in:

- a. the entry, or modification of an **insured business's** electronic **data**, which causes damage to such **data**;
- b. the creation, handling, development, modification or maintenance of an **insured business's digital assets**; or
- c. on-going operation or maintenance of an **insured business's computer system**, excluding the design, architecture, or configuration of an **insured business's computer system**.

3. Computer Crime and Computer Attacks

An act, mistake, negligent error or omission by an **insured**, a **BPO service provider** or **outsourced IT service provider** in the operation of an **insured business's computer system** or in the handling of an **insured business's digital assets**, which fails to prevent or hinder any of the following attacks intended to maliciously cause harm to an **insured business's computer system**:

- a. a **denial of service attack**;
- b. **malicious code**;
- c. **unauthorized access**; or
- d. **unauthorized use**.

- R. **Customer notification expenses** means those reasonable and necessary legal expenses, forensic and investigation fees, **public relations expenses**, postage expenses, and related advertising expenses an **insured** incurs, with the **company's** prior written consent, to comply with governmental privacy legislation mandating customer notification in the event of a **security breach**, **privacy breach**, or **breach of privacy regulations**.
- S. **Customer support and credit monitoring expenses** means those reasonable and necessary expenses an **insured** incurs, with the **company's** prior written consent, for the provision of customer support activity, including the provision of credit file monitoring services and identity theft education and assistance for up to a period of 12 months from the date of enrollment in such credit file monitoring services, in the event of a **privacy breach**.
- T. **Cyber extortion expenses** means all reasonable and necessary costs and expenses an **insured business** incurs, with the **company's** prior written consent, as a direct result of a **cyber extortion threat**, other than **cyber extortion monies**.
- U. **Cyber extortion monies** means any funds or property paid by an **insured business**, with the **company's** prior written consent, to a person(s) or entity(ies) reasonably believed to be responsible for a **cyber extortion threat**, for the purpose of terminating such a **cyber extortion threat**.
- V. **Cyber extortion threat** means a credible threat or series of related credible threats, including, but not limited to, a demand for **cyber extortion monies**, directed at an **insured business** to:
1. release, divulge, disseminate, destroy or use the confidential information of a third party taken from an **insured** as a result of **unauthorized access** to, or **unauthorized use** of, an **insured business's computer system**;
 2. introduce **malicious code** into an **insured business's computer system**;
 3. corrupt, damage or destroy an **insured business's computer system**;
 4. restrict or hinder access to an **insured business's computer system**, including, but not limited to, the threat of a **denial of service attack**; or
 5. electronically communicate with an **insured business's** customers and falsely claim to be the **insured business** or to be acting under the **insured business's** direction in order to falsely obtain personal

confidential information of the **insured business's** customers (also known as "pharming," "phishing," or other types of false communications).

W. **Damages** mean a monetary judgment, award or settlement, including prejudgment and post judgment interest and punitive **damages** to the extent insurable under the law pursuant to which this Coverage Part is construed.

Damages do not include:

1. any **insured's** future profits or royalties, restitution or disgorgement of any **insured's** profits;
2. the costs to comply with orders granting injunctive or non-monetary relief, including specific performance, or any agreement to provide such relief;
3. loss of any **insured's** fees or profits, return or offset of any **insured's** fees or charges or any **insured's** commissions or royalties provided or contracted to be provided;
4. taxes, fines or penalties or sanctions;
5. the multiple portion of any multiplied **damages**;
6. liquidated **damages**;
7. any amount which an **insured** is not financially or legally obligated to pay;
8. disgorgement of any remuneration or financial advantage to which an **insured** was not legally entitled;
9. settlements negotiated without the **company's** consent; or
10. monetary judgments, awards, settlements or any other amounts which are uninsurable under the law pursuant to which this Coverage Part is construed or any legal fees and costs awarded pursuant to such judgments, awards or settlements.

X. **Data** means any machine readable information, including ready for use programs, applications, account, customer, health and medical information or electronic information subject to back up procedures, irrespective of the way it is used and rendered including, but not limited to, text or digital media.

Y. **Data protection breach** means the appearance of any **adverse media report** that there has been a failure, error, omission, neglect or breach of duty by an **insured**, a **BPO service provider** or **outsourced IT service provider** to protect the security and confidentiality of non-public proprietary corporate information, personally identifiable non-public information of customers or other personal or confidential paper records of customers.

Z. **Delivered programs** means programs, applications, and software where the development stage has been finalized, having passed all test-runs and been proven successful in a live environment.

AA. **Denial of service attack** means an event caused by unauthorized or unexpected interference or a malicious attack intended by the perpetrator to overwhelm the capacity of a **computer system** by sending an excessive volume of electronic **data** to such **computer system** in order to prevent authorized access to such **computer system**.

BB. **Digital assets** mean **data** and **computer programs** that exist in a **computer system**. **Digital assets** do not include **computer hardware**.

CC. **Digital assets loss** means reasonable and necessary expenses and costs an **insured business** incurs to replace, recreate or restore **digital assets** to the same state and with the same contents immediately before it was damaged, destroyed, altered, misused or stolen, including expenses for materials and machine time as well as costs associated with restoration, recreation and replacement. **Digital Assets Loss** also includes amounts representing **employee** work time to replace, recreate or restore **digital assets** which shall be determined on a predefined billable hours or per hour basis as based upon the **first named insured's** schedule of **employee** billable hours.

DD. **E-Discovery claim expenses** means **claim expenses** relating to the collection, processing, converting, reviewing and producing electronically stored information, which is performed solely by an e-discovery service provider designated by the **company** in connection with the investigation and defense of any **regulatory proceeding**.

- EE. **E-Discovery consulting services** means e-discovery readiness assessment and consulting services rendered solely by an e-discovery service provider designated by the **company** in connection with the investigation and defense of any **regulatory proceeding**.
- FF. **E-Discovery regulatory investigation expenses** means **claim expenses** incurred by an **insured business** for services rendered solely by an e-discovery service provider designated by the **company** in the collection, processing, converting, reviewing and producing electronically stored information in connection with any **regulatory proceeding**.
- GG. **Electronic media** means floppy disks, CD ROMs, hard drives, magnetic tapes, magnetic discs, or any other media on which electronic **data** is recorded or stored.
- HH. **Employee(s)** means any person employed by, or under contract with, an **insured business** at the time of a **claim**. **Employees** include:
1. any authorized volunteer worker;
 2. any physician or dentist, including residents; and
 3. any certified registered nurse anesthetist, nurse midwife, nurse practitioner, physician's assistant, podiatrist or surgical assistant.
- Employees** do not include any **administrator, committee member** or **student**.
- II. **EMTALA proceeding** means proceedings instituted against an **insured** by a **government entity** alleging violations of the Emergency Medical Treatment and Labor Act (EMTALA).
- JJ. **Firmware** means the fixed programs that internally control basic low-level operations in a device.
- KK. **Government entity** means:
1. any department, agency, task force or other organization created by any U.S. federal or state law, regulation, rule or executive order;
 2. any department, agency, task force or other organization operated, funded or staffed, in whole or in part, by the U.S. federal government or any state government; or
 3. any organization operating as a Medicare Integrity Program Contractor.
- LL. **Income** means all income of an **insured business** within any given period which is derived from the exploitation of the **insured business's reputation** and/or from the **insured business's** business activities, products or services.
- MM. **Income loss** means financial loss sustained by an **insured business**, as determined in accordance with the provisions of Coverage E.2., Non-Physical Business Interruption and Extra Expense.
- NN. **Increase in cost of working** means the additional expenditure (other than any advertising or marketing costs or the like undertaken to rehabilitate an **insured business's reputation** and/or any legal costs or expenses) necessarily and reasonably incurred by an **insured business** for the sole purpose of avoiding or minimizing a net trading loss or a reduction in **net profit** which would otherwise have occurred during the **policy period** as a consequence of a **data protection breach**. The amount of such additional expenditure recoverable hereunder shall in no case exceed the amount of the net trading loss or reduction in **net profit** thereby avoided.
- OO. **Insured business** means any corporation, entity, partnership or professional association shown on the Declarations or listed in a Schedule of Named Insureds applicable to this Coverage Part.
- PP. **Insured business's computer system** means:
1. a **computer system** operated by and either owned by, or leased to an **insured business**;
 2. with respect to Coverage B only, a **computer system** operated by a **BPO service provider** or **outsourced IT service provider** and used for the purpose of providing hosted computer application services to an **insured business** or for processing, maintaining, hosting or storing an **insured business's** electronic **data**, pursuant to a written contract with the **insured business** for such services.

- QQ. **Internet** means the worldwide public network of computers which enables the transmission of electronic **data** between different users, including a private communications network existing within a shared or public network platform.
- RR. **Interruption expenses** means those expenses, excluding **special expenses**, incurred by an **insured business**, in accordance with the provisions of Coverage E.2., Non-Physical Business Interruption and Extra Expense, to:
1. avoid or minimize the suspension of business as a result of the total or partial interruption, degradation in service or failure of an **insured business's computer system** caused directly by a **covered cause of loss**, which the **insured business** would not have incurred had no **covered cause of loss** occurred. **Interruption expenses** include, but are not limited to, the use of rented/leased external equipment, substitution of other work or production procedures, use of third party services or additional staff expenditures or labor costs; and/or
 2. minimize or avoid a **covered cause of loss** and continue an **insured business's** business.
- The amount of **interruption expenses** recoverable under subparagraph 1 above shall in no case exceed the amount by which the covered **income loss** is reduced by such incurred **interruption expenses**.
- SS. **Malicious code** means software intentionally designed to insert itself and damage a **computer system** without the owner's informed consent by a variety of forms including, but not limited to, virus, worm, Trojan horses, spyware, dishonest adware, and crime-ware.
- TT. **Multimedia perils** means the release of, or display of, any **electronic media** on an **insured business's internet** site or **print media** for which an **insured business** is solely responsible, which directly results in any of the following:
1. any form of defamation or other tort related to the disparagement or harm to the **reputation** or character of any person or organization, including libel, slander, product disparagement or trade libel, and infliction of emotional distress, mental anguish, outrage or outrageous conduct, if directly resulting from any of the foregoing;
 2. invasion, infringement or interference with an individual's right of privacy or publicity, including false light, intrusion upon seclusion, commercial misappropriation of name, person, or likeness, and public disclosure of private facts;
 3. plagiarism, piracy or misappropriation of ideas under an implied contract;
 4. infringement of copyright, trademark, trade name, trade dress, title, slogan, service mark or service name; or
 5. domain name infringement or improper deep-linking or framing.
- UU. **Net profit** means an **insured business's** net trading profit (exclusive of all capital receipts and accretions and all outlay improperly chargeable to capital) within any given period generated from an **insured business's income** after due provision has been made for all standing and other charges including depreciation, but before the deduction of any taxation chargeable on profits.
- VV. **Operational programs** means programs and software which are ready for operational use, having been fully developed, tested, and accepted by an **insured business**.
- WW. **Outsourced IT service provider** means a third party independent contractor that provides information technology services for the benefit of an **insured business** under a written contract with the **insured business**. Outsourced services include, but are not limited to, hosting, security management, co-location, and **data** storage.
- XX. **Period of indemnity** means the period of time elected by an **insured business** which both begins and ends within the period commencing with the date of the first **adverse media report** of a **data protection breach** and continuing thereafter for the time period specified in the policy schedule and not limited by the expiration date of the policy. During the **period of indemnity**, coverage against any further occurrence of any **data protection breach** shall continue only until the expiration date of this policy.
- YY. **Period of restoration** means the period of time that commences on the date when the interruption, degradation or failure of an **insured business's computer system** began and ends on the later of:

1. the date when an **insured business's computer system** is restored or could have been repaired or restored with reasonable speed to the same condition, functionality and level of service that existed prior to a **covered cause of loss** plus no more than 30 consecutive days after the restoration of an **insured business's computer system** to allow for restoration of the business; or
 2. 120 consecutive days after notice of a **covered cause of loss** is received by the **company**.
- ZZ. **Print media** means newspapers, newsletters, magazines, books and literary works in any form, brochures or other types of publications, and advertising materials, including packaging, photographs, and digital images.
- AAA. **Privacy breach** means a common law breach by an **insured**, a **BPO service provider** or **outsourced IT service provider** of confidentiality, infringement or violation of any right to privacy including, but not limited to, a breach of an **insured business's** privacy policy, breach of a person's right of publicity, false light, intrusion upon a person's seclusion or public disclosure of a person's private information. A series of continuing **privacy breaches** or related or repeated **privacy breaches** shall be considered a single **privacy breach** and shall be deemed to have occurred at the time of the first such **privacy breach**.
- BBB. **Privacy breach response costs** means those reasonable and necessary fees an **insured** incurs, with the **company's** prior written consent, for the employment of a public relations consultant if an **insured** reasonably considers that action is needed in order to avert or mitigate any material damage to an **insured business's reputation** that results or reasonably will result from an **adverse media report** that has been notified to the **company**.
- CCC. **Privacy regulatory proceeding** means a formal civil administrative proceeding or regulatory action instituted against an **insured** by a federal, state or local governmental regulatory body for a **security breach** or **breach of privacy regulations**.
- DDD. **Programming error** means an error which occurs during the development or encoding of a **computer program**, software, or application, which would, when in operation, result in a malfunction or incorrect operation of a **computer system**.
- EEE. **Property damage** means physical injury to, impairment, destruction, or corruption of any tangible property, including the loss thereof. **Data** is not considered tangible property.
- FFF. **Public relations expenses** means:
1. with respect to Coverage D, reasonable and necessary expenses incurred by an **insured business** to re-establish its **reputation**, which was damaged as a direct result of an **adverse media report**.
 2. with respect to Coverage J, reasonable and necessary expenses incurred by an **insured business** to re-establish its **reputation**, which was damaged as a direct result of a **data protection breach**.
- However, **public relations expenses** do not include any salaries, overhead, fees, loss of earnings, or benefit expenses incurred by, or paid to, any **insured**.
- GGG. **Qui tam plaintiff** means a private plaintiff under the U.S. False Claims Act.
- HHH. **Recoverable costs** mean, within any period in which an **insured business's net profit** is nil, any standing and other charges incurred by an **insured business** in excess of its **income**, up to, but not exceeding, 20% of its anticipated **net profit** for such period.
- III. **Regulatory compensatory award** means a sum of money which an **insured** is legally obligated to pay as an award or fund for affected individuals, including a regulatory agency's monetary award to a third party due to an adverse judgment or settlement arising out of a **privacy regulatory proceeding**. **Regulatory compensatory award** does not include a criminal penalty or fine issued by a regulatory agency of any kind, including federal, state, or local governmental agencies.
- JJJ. **Regulatory fines and penalties** mean civil fines or penalties imposed against an **insured** by a **government entity** as a result of a **privacy regulatory proceeding** triggering coverage under Coverage C or a **regulatory proceeding** triggering coverage under Coverage H.
- KKK. **Regulatory proceeding** means:
1. With respect to Coverage H, any of the following instituted against an **insured** during the **policy period**:

- a. **billing errors proceeding;**
 - b. **EMTALA proceeding;** or
 - c. **Stark proceeding.**
2. With respect to Coverage I, any of the following instituted against an **insured** during the **policy period**:
- a. any investigation or request for information by the Office for Human Research Protection (OHRP) under Title 45, Part 46, Code of Federal Regulations (45 CFR part 46);
 - b. any request for information by the Office of Inspector General (OIG) as part of its audits, investigations, inspections and evaluations; or
 - c. any request for information by the Food and Drug Administration (FDA) as part of its audits, investigations, inspections and evaluations.
- LLL. **Reputation** means the estimation of trust that patients, customers or clients have in doing business with an **insured business** or in purchasing the products or services of an **insured business**.
- MMM. **Restitution** means repayment of fees, reimbursement, profits, charges or other benefit payments:
1. received by an **insured** from:
 - a. a governmental health benefit payer or program, carrier or intermediary making payments as part of, or in connection with, any such program;
 - b. a **commercial payer;** or
 - c. any patient.
 2. to which such **insured** was not legally entitled by reason of a billing error or errors, the return of which is sought in a **billing errors proceeding**.
- NNN. **Retention** means the amount shown on the Declarations applicable to this Coverage Part, which must be borne by the **insureds** uninsured and at their own risk in respect to **damages, claim expenses** and any other amounts covered under this Coverage Part. The **company** has no liability to pay **damages, claim expenses** or any other amounts covered under this Coverage Part until the **retention** has been fully paid and satisfied by the **insureds**, unless otherwise provided in this Coverage Part. The **retention** shall apply separately to each **claim** under each of the Coverages of this Coverage Part. If a **claim** attaches to more than one of the Coverages of this Coverage Part, only the highest **retention** applies.
- OOO. **Retroactive date** means the date shown on the Declarations applicable to this Coverage Part that an **insured** has no coverage under Coverages A, B, C, H or I.
- PPP. **Security and privacy wrongful act** mean any of the below, whether actual or alleged, but only if committed or alleged committed by an **insured** in their capacity as such:
1. the failure to prevent or hinder **unauthorized access** to or **unauthorized use** of an **insured business's computer system;** security failures; or social engineering techniques devised to trick the user into surrendering personal information ('phishing' or 'pharming') that in turn results in:
 - a. the alteration, copying, corruption, destruction, deletion, or damage to electronic **data** stored on an **insured business's computer system;**
 - b. theft, loss or unauthorized disclosure of electronic confidential commercial, corporate, personally identifiable, or private information that is in the care, custody or control of an **insured business;**
 - c. theft, loss or unauthorized disclosure of electronic confidential commercial, corporate, personally identifiable, or private information that is in the care, custody or control of a **BPO service provider** or **outsourced IT service provider** that is holding, processing or transferring such information on behalf of an **insured business;** provided, however, that the theft, loss or unauthorized disclosure occurs while an **insured business's** written contract with such **BPO service provider** or **outsourced IT service provider** is still in effect; or
 - d. **unauthorized use** of or **unauthorized access** to a **computer system** other than an **insured business's computer system.**

2. an **insured business's** failure to timely disclose a **security breach** affecting personally identifiable, non-public information, or the failure to dispose of personally identifiable information within the required time period, in **breach of privacy regulations** in effect now or in the future;
3. the failure to prevent the transmission of **malicious code** or **computer virus** from an **insured business's computer system** to the **computer system** of a third party;
4. a **breach of privacy regulations**;
5. the failure to prevent or hinder participation by an **insured business's computer system** in a **denial of service attack** directed against **internet** sites or the **computer system** of any third party; or
6. loss of personally identifiable or private information of an **employee** in an electronic format.

QQQ. **Security breach** means:

1. **unauthorized access** to or **unauthorized use** of an **insured business's computer system**, including **unauthorized access** or **unauthorized use** resulting from the theft of a password from an **insured business's computer system** or from any **insured**;
2. a **denial of service attack** against an **insured business's computer system**; or
3. infection of an **insured business's computer system** by **malicious code** or the transmission of **malicious code** from an **insured business's computer system**,
whether any of the foregoing is a specifically targeted attack or a generally distributed attack. A series of continuing **security breaches**, related or repeated **security breaches**, or multiple **security breaches** resulting from a continuing failure of computer security, shall be considered a single **security breach** and be deemed to have occurred at the time of the first such **security breach**.

RRR. **Shadow audit** means an audit performed by a qualified professional, which examines the same billing records and related documents as those subject to an ongoing **billing errors proceeding**, with the intent of providing an **insured** with a private expert opinion. Such **shadow audits** are subject to the **company's** prior approval.

SSS. **Shadow audit expenses** means the fees for the services of a qualified audit professional and associated expenses incurred by an **insured** in the course of a **shadow audit**.

TTT. **Social services** means programs provided by an **insured** to help maintain or improve the quality of life for the patient, including family counseling and educational programs. These programs do not include therapy for the direct benefit of anyone other than the patient.

UUU. **Special expenses** means reasonable and necessary costs and expenses an insured business incurs to:

1. prevent, preserve, minimize, or mitigate any further damage to an **insured business's digital assets**, including the reasonable and necessary fees and expenses of specialists, outside consultants or forensic experts an **insured business** retains;
2. preserve critical evidence of any criminal or malicious wrongdoing;
3. purchase replacement licenses for **computer programs** because the copy protection system and/or access control software was damaged or destroyed by a **covered cause of loss**; or
4. notify customers of a total or partial interruption, degradation in service or failure of an **insured business's computer system** resulting from a **covered cause of loss**.

VVV. **Stark proceeding** means proceedings instituted against an **insured** by a **government entity** alleging violation of any federal, state or local anti-kickback or self-referral laws.

WWW. **Student** means an unlicensed person, other than a resident, enrolled in a licensed or accredited training program operated by an **insured business** relative to the delivery of **treatment**.

XXX. **Time retention** means the number of hours that must elapse, as shown on the Declarations applicable to this Coverage Part, before the recovery of loss under Coverage E.2., Non-Physical Business Interruption and Extra Expense, or Coverage G, can be considered.

YYY. **Unauthorized access** means the gaining of access to a **computer system** by an unauthorized person or persons.

- ZZZ. **Unauthorized use** means the use of a **computer system** by an unauthorized person or persons or an authorized person in an unauthorized manner.
- AAAA. **Voluntary self disclosure** means an **insured** discloses information, without inquiry, to any **government entity** or **commercial payer**, which may serve as grounds for a **billing errors proceeding** against an **insured**. Such information must have become known to the **insured** fortuitously and subsequent to the initial effective date of this insurance.



Issuing Company:
National Fire & Marine Insurance Company
Omaha, Nebraska

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Endorsement No.:	1
Forming Part of Policy No.:	HN010505
Issued to:	Peak Form, LLC
Effective Date of Endorsement:	06/01/2023 at 12:01 a.m. at the address of the First Named Insured stated herein.

SCHEDULE OF ADDITIONAL INSUREDS ENDORSEMENT

Only with respect to coverage provided under this endorsement, and in consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **insureds**, the **company** and the **insureds** agree to amend the policy as follows:

The definition of **additional insured** in the Definitions section of the Common Policy Provisions and Conditions is deleted.

As used in this endorsement, and only with respect to the Coverage Part(s) listed in the Schedule of Additional Insureds below, **additional insured** means any person or organization listed in that Schedule of Additional Insureds; however, any such person or organization is not an **additional insured** with respect to a **health care event, event** or offense arising from, or in connection with, any acts or omissions alleged to have been committed by that person or organization.

The following subparagraph is added to the Insuring Clause(s) of the Coverage Part(s) listed in in the Schedule of Additional Insureds below:

The **company's** duty to defend and pay **losses** or **claims expense** on behalf of any **insured** shall extend to any **additional insured** meeting the terms and conditions of this policy, but only with respect to any **loss** or **claims expense** payable as the result of the **additional insured's** vicarious liability for the acts or omissions of an **insured** otherwise covered under this Coverage Part.

However, the coverage provided to an **additional insured** shall not be broader than that which an **insured** is required by written contract or agreement to provide to that **additional insured** and is subject to all other conditions, definitions, exclusions and terms applicable to the **insured**. Additionally, coverage shall not apply to structural alterations, new construction or demolition operations performed by or on behalf of an **additional insured**.

The following provision is added to the Limits of Liability section(s) of the Coverage Part(s) listed in the Schedule of Additional Insureds below:

ADDITIONAL INSUREDS

Additional insureds share the Limits of Liability of the **insured** for which the **additional insured** is alleged to be vicariously liable for the acts or omissions of the **insured** otherwise covered under this Coverage Part.

SCHEDULE OF ADDITIONAL INSUREDS		
ADDITIONAL INSURED	ADDRESS / DESCRIPTION OF OPERATIONS	COVERAGE PART
City of Boulder and its officials and employees	Contract for services	General Liability

All other terms and conditions of the policy remain unchanged.



Issuing Company:
National Fire & Marine Insurance Company
Omaha, Nebraska

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Endorsement No.: 2
Forming Part of Policy No.: HN010505
Issued to: Peak Form, LLC
Effective Date of Endorsement: 06/01/2023 at 12:01 a.m. at the address of the First Named Insured stated herein.

SCHEDULE OF WAIVER OF SUBROGATION ENDORSEMENT

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **insureds**, the **company** and the **insureds** agree to amend the policy as follows:

Only with respect to coverage provided under the Coverage Part(s) listed in the Schedule of Waiver of Subrogation below, the following condition is added to the Conditions section of the Common Policy Provisions and Conditions:

WAIVER OF SUBROGATION

The **company** shall waive any right of recovery the **company** may have against a person or organization listed on a Schedule of Waiver of Subrogation to the extent that the **insured** has agreed in writing prior to the date of loss to waive the **insured's** rights of recovery against that person or organization.

SCHEDULE OF WAIVER OF SUBROGATION		
PERSON OR ORGANIZATION	ADDRESS / DESCRIPTION OF OPERATIONS	COVERAGE PART
City of Boulder and its officials and employees	Contract for services	General Liability

All other terms and conditions of the policy remain unchanged.



Issuing Company:
National Fire & Marine Insurance Company
Omaha, Nebraska

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Endorsement No.: 3
Forming Part of Policy No.: HN010505
Issued to: Peak Form, LLC
Effective Date of Endorsement: 06/01/2023 at 12:01 a.m. at the address of the First Named Insured stated herein.

**DISCIPLINARY, LICENSING AND CREDENTIALING ACTIONS ENDORSEMENT
 (PROFESSIONAL LIABILITY)**

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **insureds**, the **company** and the **insureds** agree to amend the policy as follows:

The following provision is added to the Insuring Clause section of the Professional Liability Coverage Part:

DISCIPLINARY, LICENSING, AND CREDENTIALING ACTIONS

The **company's** duty to defend a **claim** includes the defense of any disciplinary, licensing, or credentialing action brought against an **insured** who is a person by (1) a state board of medical examiners or state dental board responsible for investigating and disciplining licensees, (2) a hospital or facility professional review board or committee through formally adopted, written procedures, or (3) the United States Drug Enforcement Administration, subject to the following additional conditions:

- A. If the policy provides coverage to such an **insured** on a Claims-Made and Reported basis:
 1. the action must arise from the **insured's** rendering of, or failure to render, **professional services**, after the **retroactive date**, but before the end of the **policy period**, and for which there is no other insurance available; and
 2. the action must be first initiated against the **insured** during the **policy period**.
- B. If the policy provides coverage to such an **insured** on an Occurrence basis, the action must arise from the **insured's** rendering of, or failure to render, **professional services** during the **policy period**, and for which there is no other insurance available.
- C. The payment of **claims expense** for such actions will be in addition to the applicable Limit of Liability. However, the **company** will not pay more than \$25,000 in **claims expense** on behalf of an **insured** for any single action. Furthermore, the **company** will not pay more than \$100,000 for **claims expense** on behalf of all **insureds** for all such actions covered under the policy.
- D. The **company** has no duty to pay any fines, penalties, or other costs assessed against an **insured** as a result of any such action.

However, payments for **claims** under this Insuring Clause shall not be subject to any Deductible or Self-Insured Retention.

All other terms and conditions of the policy remain unchanged.



Issuing Company:
National Fire & Marine Insurance Company
Omaha, Nebraska

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Endorsement No.:	4
Forming Part of Policy No.:	HN010505
Issued to:	Peak Form, LLC
Effective Date of Endorsement:	06/01/2023 at 12:01 a.m. at the address of the First Named Insured stated herein.

**INTENTIONAL ACTS EXCLUSION WITH CARVEBACK FOR INNOCENT INSUREDS ENDORSEMENT
 (PROFESSIONAL LIABILITY)**

In consideration of the payment of the additional premium due, if any, and in reliance upon the representations of all **insureds**, the **company** and the **insureds** agree to amend the policy as follows:

The Intentional Acts exclusion in the Exclusions section of the Professional Liability Coverage Part is deleted and replaced with the following:

INTENTIONAL ACTS

Any **claim** or **potential claim** arising out of, or in connection with, any act listed below, also including any allegations of negligent or improper hiring, employment, retention, investigation, supervision, training, or failure to report to proper authorities or to act upon or warn of any person who has or is alleged to have engaged in any of these acts:

1. any criminal, intentional, dishonest or fraudulent act;
2. any romantic relationship, or any actual or threatened **sexual misconduct**;
3. any willful violation of any law, statute, or regulation;
4. any breach of contract or guaranty regarding the efficacy of **treatment**;
5. **professional services** by the **insured** while under the influence of alcohol, drugs or intoxicants of any kind; or
6. any creation, alteration, modification or destruction, with deceptive intent, of any medical record.

However, the **company** will pay **claims expense** to defend any **insured** against any **claim** or **potential claim** involving any excluded act listed above when intertwined with any other act triggering any insuring clause of this Coverage Part.

This exclusion does not apply to any **claim** or **potential claim** brought against the **named insured** organization if both of the following apply: (1) it did not direct or act in concert to commit, directly participate in or direct another in connection with any act listed above; and (2) an **authorized insured** did not know at the time of the actual or alleged excluded act, that the person accused of having engaged in the act had previously engaged in, or was alleged to have previously engaged in, such act.

This exclusion does not apply to any **claim** or **potential claim** brought against an **insured** other than a **named insured** organization, if that **insured** did not direct or act in concert to commit, directly participate in or direct another in connection with any of the acts excluded from coverage under this exclusion.

The **company's** defense of an **insured** will cease when it is established by trial or arbitration verdict, court ruling, regulatory ruling, legal admission, nolo contendere/no contest plea, or Alford plea that the **insured** engaged in any act excluded from coverage under this exclusion. The **company's** defense of a **named insured** organization will cease when it is established by trial or arbitration verdict, court ruling, regulatory ruling, legal admission, nolo contendere/no contest plea, or Alford plea that an **authorized insured** knew at the time of the actual or alleged

excluded act, that the person accused of having engaged in the act had previously engaged in, or was alleged to have previously engaged in, such acts.

All other terms and conditions of the policy remain unchanged.