

A G R E E M E N T

THIS AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **JAMES PILCHER ENTERPRISES, INC**, a Colorado corporation, dba DataOne, Inc., whose address is 533 Old Stone Drive, Highlands Ranch, CO 80126-2117 (the “Consultant” and referred to herein, together with the City, as the “Parties” or each individually as a “Party”).

The Parties agree as follows:

1. COORDINATION AND LIAISON: The Consultant shall fully coordinate all services under the Agreement with the Executive Director of the City’s Department of Transportation and Infrastructure (“Executive Director”), or the Executive Director’s designee.

2. SERVICES TO BE PERFORMED:

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

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

c. The Consultant 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. DSBO: Small Business Enterprise Requirements

a. This Agreement is subject to Article V of Chapter 28, Denver Revised Municipal Code (“D.R.M.C.”), designated as §§ 28-117 to 28-199 D.R.M.C. (the “Goods and Services Ordinance”); and any Rules and Regulations promulgated pursuant thereto. In accordance with § 28-142, D.R.M.C., the Consultant shall self-perform no less than thirty percent (30%) of the total amount of the contract or purchase order.

b. Under § 28-146, D.R.M.C., the Consultant has an ongoing, affirmative obligation to maintain for the duration of this Agreement, at a minimum, compliance with the SBE defined selection pool requirements and self-performance requirements upon which this Agreement was awarded, unless the City initiates a material modification to the scope of work affecting SBE

Consultant scope of work under this Agreement through change order or contract amendment under § 28-147, D.R.M.C. The Consultant acknowledges that:

(1) It must establish and maintain records and submit regular reports, as required, which will allow the City to assess the Consultant's compliance with the defined selection pool requirements and self-performance requirements.

(2) Consultant shall have a continuing obligation to promptly inform DSBO in writing of any agreed upon increase or decrease in the scope of work of this Agreement, upon any of the bases under § 28-147, D.R.M.C., regardless of whether such increase or decrease in scope of work has been reduced to writing at the time of notification of the change to the City. Any increase in the scope of services of this Agreement, whether by amendment or other modification, which increases the dollar value of the Agreement, if such change is within the scope of work designated for performance by the Consultant shall be promptly submitted to the DSBO.

(3) The Consultant shall achieve defined selection pool and self-performance requirements by performing such work as required under the contract and the Goods and Services Ordinance.

(4) The Consultant shall supply to the DSBO Director documentation required by ordinance with respect to the increased dollar value of this Agreement. The Consultant shall not, during the term of this Agreement:

(i) Fail to in fact perform as an SBE to achieve the work scope originally listed at proposal submission in order to achieve defined selection pool and self-performance requirements; or

(ii) Modify or eliminate all or any portion of the scope of work based on the contract as awarded, unless otherwise directed by the City.

(5) Failure to comply with these provisions may subject the Consultant to sanctions set forth in § 28-150 of the Goods and Services Ordinance.

(6) Should any questions arise regarding SBE and DSBO requirements the Consultant should consult the Goods and Services Ordinance, the Consultant may contact the DSBO representative at (720) 913-1999.

4. **TERM:** The term of this Agreement shall commence upon final execution by all Parties and shall terminate on August 31, 2025, unless extended or terminated in accordance with the terms of the Agreement (the “Term”). Subject to the Executive Director’s prior written authorization, the Consultant shall complete any work in progress as of the expiration date and the Term of this Agreement will extend until the work is completed or earlier terminated by the Executive Director. The Executive Director shall have the right, in his/her sole discretion, to extend the Term of this Agreement for up to two (2) additional renewal periods of one (1) year each by written agreement signed by the Executive Director and the Consultant.

5. **COMPENSATION AND PAYMENT:**

a. **Fee:** The City shall pay and the Consultant shall accept as the sole compensation for services rendered and costs incurred under this Agreement the line item amounts set forth in the schedule contained in **Exhibit B**. Amounts billed may not exceed the amounts set forth in **Exhibit B**.

b. **Reimbursable Expenses:** There are no reimbursable expenses allowed under the Agreement. All of the Consultant’s expenses are contained in the amounts set forth in **Exhibit B**.

c. **Invoicing:** Consultant 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 **NINE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$950,000.00)** (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 Consultant beyond that specifically described in **Exhibit A**. Any services performed beyond those in **Exhibit A** are performed at Consultant’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.

6. **STATUS OF CONSULTANT:** The Consultant is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the Consultant 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. Without limiting the foregoing, the Parties specifically acknowledge that: the Consultant is not entitled to unemployment insurance benefits (unless unemployment compensation coverage is provided by the Consultant or some other entity besides the City); the Consultant is not entitled to workers' compensation benefits from the City; and the Consultant is obligated to pay federal and state income taxes on any monies earned pursuant to this Agreement. Consultant has executed and delivered to the City its Independent Status Declaration which is attached hereto as **Exhibit D**.

7. **TERMINATION:**

a. The City has the right to terminate the Agreement with cause upon written notice effective immediately, and without cause upon ten (10) days prior written notice to the Consultant. However, nothing gives the Consultant 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 Consultant or any of its officers or employees are convicted, plead *nolo contendere*, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kick backs, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with Consultant'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 Consultant 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 Consultant's possession, custody, or control by whatever method the City deems expedient. The Consultant 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 Consultant shall mark all copies of work product that are incomplete at the time of termination "DRAFT-INCOMPLETE".

8. EXAMINATION OF RECORDS: 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 Consultant's performance pursuant to this agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Consultant shall cooperate with City representatives and City representatives shall be granted access to the forgoing 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 Consultant to make disclosures in violation of state or federal privacy laws. Consultant shall at all time comply with D.R.M.C. 20-276.

9. 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 Consultant. 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.

10. INSURANCE:

a. General Conditions: Consultant 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. Consultant 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. 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, Consultant 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 Consultant. Consultant 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 Consultant. The Consultant 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: Consultant may not commence services or work relating to the Agreement prior to placement of coverages required under this Agreement. Consultant 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 « Consultant'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, Auto Liability and Excess Liability/Umbrella (if required) Consultant and subconsultant'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, Consultant's insurer shall waive subrogation rights against the City.

e. **Subcontractors and Subconsultants:** Consultant 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 Consultant and appropriate to their respective primary business risks considering the nature and scope of services provided.

f. **Workers' Compensation/Employer's Liability Insurance:** The Consultant Parties recognize and agree that the Consultant is engaged in an independent occupation and profession and is free from control and direction in the performance of the services contracted for herein consistent with that mandated by C.R.S. §8-40-202(2)(a). It is understood and agreed by the Parties that the City does not (1) require the Consultant to work exclusively for the City, provided that the Consultant may have elected to work exclusively for the City for the period of time specified in the term of this Agreement; (2) establish a quality standard for the Consultant, provided that the parties agree that while the City may provide plans regarding its expectancy of the work to be performed by the Consultant, the City will not oversee the actual work of the Consultant or instruct the Consultant as to how the work will be performed; (3) pay a salary or hourly wage to the Consultant instead of the fixed contract rate stated herein; (4) terminate the work of the Consultant for cause during the term of this Agreement unless the Consultant violates the terms of the Agreement or fails to produce a work product or result that meets the specific terms provided in the Agreement; (5) provide any training for the Consultant other than

minimal orientation to the site or other parameters of the Consultant activity; (6) provide tools or benefits to the Consultant; (7) dictate the time of performance; except that the Agreement completion date together with the range of negotiated and mutually agreeable work hours has been established herein; (8) pay the Consultant personally instead of making City warrants payable to the professional name of the Consultant, except that in this Agreement the Consultant is an individual and sole proprietor; and (9) combine the regular operation of the City in any way with the professional or business operations of the Consultant instead of maintaining office operations separately and distinctly.

These provisions are separately stated in Exhibit D, "Separate Declaration Regarding Independent Status", constituting the writing mandated by C.R.S. 8-40-202(2)(b), which must be signed and notarized by the Consultant and the Manager. The Mayor hereby delegates to the Manager the authority to execute on behalf of the City Exhibit D, "Separate Declaration Regarding Independent Status."

g. Commercial General Liability: Consultant shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

h. Automobile Liability: Consultant shall maintain Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

i. Technology Errors & Omissions: Consultant shall maintain Technology Errors and Omissions insurance including network security, privacy liability and product failure coverage with limits of \$1,000,000 per occurrence and \$1,000,000 policy aggregate.

11. DEFENSE AND INDEMNIFICATION:

a. Consultant 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

Consultant 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. Consultant'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. Consultant'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. Consultant 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 Consultant under the terms of this indemnification obligation. The Consultant 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.

12. 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 Consultant 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.

13. ASSIGNMENT; SUBCONTRACTING: The Consultant 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 Consultant shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any sub-consultant, subcontractor or assign.

14. 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.

15. 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 Consultant receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

16. NO AUTHORITY TO BIND CITY TO CONTRACTS: The Consultant 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.

17. 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.

18. 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 Consultant 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 Consultant shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Consultant 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 Consultant by placing the Consultant's own interests, or the interests of any

party with whom the Consultant 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 Consultant written notice describing the conflict.

19. 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 Consultant at the address first above written, and if to the City at:

Executive Director of Department of Transportation and Infrastructure
201 West Colfax Avenue, Department 601
Denver, CO 80202

With a copy of any such notice to:

Denver City Attorney's Office
1437 Bannock Street, 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.

20. NO EMPLOYMENT OF WORKERS WITHOUT AUTHORIZATION:

a. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "Certification Ordinance").

b. The Consultant certifies that:

(1) At the time of its execution of this Agreement, it does not knowingly employ or contract with a worker without authorization who will perform work under this Agreement.

(2) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

(3) It will not enter into a contract with a subconsultant or subcontractor that fails to certify to the Consultant that it shall not knowingly employ or contract with a worker without authorization to perform work under the Agreement.

(4) It is prohibited from using either the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and it is required to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

(5) If it obtains actual knowledge that a subconsultant or subcontractor performing work under the Agreement knowingly employs or contracts with a worker without authorization, it will notify such subconsultant or subcontractor and the City within three (3) days. The Consultant shall also terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the worker without authorization, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with a worker without authorization.

(6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. 20-90.3.

c. The Consultant is liable for any violations as provided in the Certification Ordinance. If Consultant violates any provision set forth in this Section 19 or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Consultant shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City,

constitute grounds for disqualifying Consultant from submitting bids or proposals for future contracts with the City.

21. VERIFICATION STATUTE: This Agreement is subject to the provisions of Article 76.5, Title 24, Colorado Revised Statutes, and any rules adopted pursuant thereto, as now existing or as amended. On the request of the Agency, the Consultant shall verify the lawful presence in the United States, of each natural person eighteen (18) years of age or older (the “Applicant”), who applies for Federal, State or Local Public Benefits (“Benefits”) conferred pursuant to this Agreement, as such Benefits are defined in the Applicant Verification Statute. On the request of the Agency, the Consultant shall require the Applicant to produce one of the forms of identification listed in the Applicant Verification Statute, and execute an affidavit in the form approved by the City. Where applicable, the Consultant shall maintain copies of each Applicant’s identification documentation and affidavit, and shall make such copies available to the City upon request.

22. DISPUTES: All disputes between the City and Consultant 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.

23. 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).

24. NO DISCRIMINATION IN EMPLOYMENT: In connection with the performance of work under the Agreement, the Consultant may not refuse to hire, discharge, promote or 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, military status, sexual orientation, gender identity, gender expression, marital

status, source of income, protective hairstyle, or disability. The Consultant shall insert the foregoing provision in all subcontracts.

25. COMPLIANCE WITH ALL LAWS: Consultant 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.

26. LEGAL AUTHORITY: Consultant 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 Consultant represents and warrants that he has been fully authorized by Consultant to execute the Agreement on behalf of Consultant and to validly and legally bind Consultant 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 Consultant or the person signing the Agreement to enter into the Agreement.

27. 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.

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

29. INTELLECTUAL PROPERTY RIGHTS: The City and Consultant 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 Consultant and paid for by the City pursuant to this Agreement, in preliminary or final form and on any media whatsoever (collectively, the “Materials”), shall belong to the City. The Consultant shall disclose any such items to the City and shall register any such items in the name of the City and County of Denver unless the Executive Director directs otherwise in writing. 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 Consultant (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.

30. 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 Consultant’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.

31. ADVERTISING AND PUBLIC DISCLOSURE: The Consultant shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of the Consultant’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 Consultant 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. The Consultant shall fully coordinate all logo use under to the Agreement with the Executive Director, or his designee (the “Project Manager”). The Consultant shall submit sponsor proposals to the Project Manager. No sponsorship shall be arranged which would violate other City obligations or any law, rule, or executive order of the City. Except for variances clearly marked, identified and approved by the Project Manager, sponsorship and logo use shall conform precisely to forms which have been pre-approved by the City. Other promotional opportunities or rights must be included as the subject of a regularly executed written agreement to which the City is a party. The Consultant agrees to refrain from doing anything which would tend to discredit, dishonor, reflect adversely upon or in any way injure the good name or business of the City. Except as otherwise specifically provided herein, all records, data, specifications and documentation prepared by the Consultant under this Agreement, when delivered to and accepted by the Executive Director or Project Manager shall become the property of the City. The Consultant agrees to allow

the City to review any of the procedures used by it in doing the work under this Agreement and to make available for inspection all notes and other documents used in performing the work. City grants to Licensee, subject to the terms and conditions set forth in this Agreement, a non-exclusive, nontransferable, personal license during the License Term to Use the Denver Logo, and the goodwill appurtenant thereto, in the United States of America (“Territory”) in preliminary or final forms (“Materials.”) The Consultant shall fully coordinate all logo use under the Agreement with the Project Manager. Licensee shall use the Denver Logo in accordance with any and all logo usage guidelines in effect from time-to-time as provided by the City. The right to Use of the Denver Logo is limited to the scope of services set forth in this Agreement. This License is being granted specifically due to the nature of the work performed by the Licensee and this License is therefore non-transferable and non-assignable to anyone other than those acting under the supervision and authority of the Licensee with respect to the creation and distribution of the Materials. Licensee shall ensure that only accurate reproductions of the Denver Logo are utilized and that the size, proportions, colors, elements, and other distinctive characteristics of the Denver Logo are not altered in any manner except as may be permitted herein or as permitted in writing by the City. The Denver Logo may not be used as a feature or design element of any other logo or graphic. The Licensee shall deliver to the City from time to time upon request, orally or in writing, samples of the Materials within seven (7) days of the City’s request in order to confirm that the use of the Denver Logo is consistent with the terms of this Agreement. The City’s Project Manager shall approve or disapprove of said Materials within fourteen (14) days of the date of receipt of the samples. All Materials shall be of the same quality as the approved samples.

32. CONFIDENTIAL INFORMATION: Consultant acknowledges and accepts that, in performance of all work under the terms of this Agreement, Consultant 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. Consultant agrees that all Proprietary Data, confidential information or any other data or information provided or otherwise disclosed by the City to Consultant shall be held in confidence and used only in the performance of its obligations under this Agreement. Consultant shall exercise the same standard of care to protect such Proprietary Data and information as a reasonably prudent consultant 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 Consultant by the City. Such Proprietary Data may be in hardcopy, printed, digital or electronic format.

33. 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.

34. 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.

35. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS: Consultant 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.

36. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: Consultant 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.

Exhibit List

Exhibit A – Scope of Work.

Exhibit B – Fee Structure/Budget.

Exhibit C – Certificate of Insurance.

Exhibit D –Separate Declaration Regarding Independent Status.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

Contract Control Number: DOTI-202264269-00
Contractor Name: James Pilcher Enterprises, Inc. dba DataOne, Inc.

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

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:

DOTI-202264269-00
James Pilcher Enterprises, Inc. dba DataOne, Inc.

DocuSigned by:
James H Pilcher
1E5AC145B5A0493...

By: _____

James H Pilcher

Name: _____
(please print)

Title: President
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



SCOPE OF WORK

Project Description

The WCPMIS/RSS application is a cradle-to-grave software system designed to support the planning, design, construction, and subsequent warranty management of wastewater projects in the City and County of Denver. It also manages human resource assignments within DOTI and maintains and calculates schedule calendars.

Scope of Services and General Deliverables

DataOne's services include all necessary analysis, design, program development, deployment, backup, and support activities to maintain WCPMIS/RSS. This is all handled seamlessly in the cloud.

WCPMIS/RSS general deliverables include maintenance and deployment of the web site(s). Regular code and data backups are a necessary part of a disaster recovery process. Other deliverables include monthly progress reports and occasional special request reports as requested by the DOTI PM and management team.

Known Project Scope/Task Summary

Following is a high-level overview list of anticipated/known project tasks and responsibilities as of August, 2022, adopted from the Statement of Work in the SCS2022-04 RFQ. All of these tasks are easily within the scope of activities that **DataOne** can engage and successfully complete.

DataOne will:

- Respond to any ad hoc DOTI project manager (PM) or leadership request in a timely fashion.
- Proactively identify any software bugs encountered during daily duties and implement immediate solutions. This includes bugs identified through DOTI sources.
- Integrate the two existing web sites and differing login methodologies into a single integrated web site and database. This *significant* effort will necessarily include migration to Microsoft's most recent .NET 6 framework.
- Devise a plan to separate project management tools from the database and web site if / when they are deemed no longer necessary due to adoption of MasterWorks within the City of Denver.
- Provide administrative (dba) support for tasks, features, special requests which are not available through the normal user interface and cannot be fulfilled by DOTI project PMs or management personnel.
- Identify and propose ideas for improvements to existing WCPMIS/RSS features and tools. DataOne may also periodically propose entirely new database features which will enhance the DOTI user experience and support new DOTI business practices.
- Provide quarterly program code and data backups delivered to the DOTI PM for archiving.
- Provide monthly invoices and an accompanying progress report outlining accomplishments and anticipated future assignments.
- **DataOne's** PM will engage in regular meetings with the DOTI PM at intervals no less than weekly unless specified otherwise by DOTI. The **DataOne** PM will also attend regular monthly DOTI Leadership meetings and annual Leadership planning sessions.

EXHIBIT B

**RESOURCES AND RATE SHEET**

The following is a list of human resources that DataOne can provide as needed on the tasks outlined in this RFQ:

Resource Type	Hourly Rate
James Pilcher, data analyst, project designer, database administrator, principal	\$140
Alexander Korolev, Senior .NET web programmer / analyst	\$140
Senior database programmer (as needed)	\$115
Junior .NET web programmer (as needed)	\$95
Junior database programmer (as needed)	\$90
Software tester (as needed)	\$45

Prepared by:

James Pilcher
President, DataOne, Inc.

June 20, 2022



THANK YOU FOR RENEWING YOUR POLICY WITH US

If you're receiving this renewal through the mail directly from The Hartford, please note that we've only attached new, changed or updated documents. These include your new declarations page, which outlines your coverage, as well as any notices and brochures with updated information. We leave out unchanged documents to help cut down on paperwork and mailing costs. You can keep the attached documents filed alongside those from your previous policy if you wish.

If you're receiving this renewal electronically, or it's been mailed by your agent, it may include all of your documents - even ones that haven't changed.

In either case, keep in mind that you can view, download or print any of these documents online. Just register or log into your account <https://business.thehartford.com> and click on "Documents". For added convenience, you can also pay your bill, request a Certificate of Insurance, check claims status, update preferences and more.

POLICY NUMBER: 34 SBM PN5159



IMPORTANT NOTICE TO POLICYHOLDER COLORADO

DISCLOSURE NOTICE

CLAIMS MADE COVERAGE PART

This endorsement modifies insurance provided under the following:

EDUCATOR'S LEGAL LIABILITY
CONDOMINIUM ASSOCIATION DIRECTORS AND OFFICERS LIABILITY
EMPLOYMENT PRACTICES LIABILITY
FAILSAFE® MEGA TECHNOLOGY ERRORS OR OMISSIONS LIABILITY
DATA BREACH COVERAGE – DEFENSE AND LIABILITY

THIS DISCLOSURE FORM IS NOT YOUR POLICY. IT MERELY DESCRIBES SOME OF THE MAJOR FEATURES OF OUR CLAIMS MADE POLICY. READ YOUR POLICY CAREFULLY TO DETERMINE RIGHTS, DUTIES, AND WHAT IS AND IS NOT COVERED, ONLY THE PROVISIONS OF YOUR POLICY DETERMINE THE SCOPE OF YOUR INSURANCE PROTECTION.

You are receiving this notice because your Spectrum policy contains claims made coverage part that applies to the five coverages listed above. Claims made coverage applies only to claims made against you after the inception date and before the end of the policy period involving injury or damage that occurs after the policy Retroactive Date. When claims made coverage is terminated an Extended Reporting Period may be available.

HOW IS OCCURRENCE DIFFERENT FROM CLAIMS MADE?

There is no difference in the kinds of injury and damage covered by either an "occurrence" policy or a "claims made" policy. However, claims for damages may be assigned to different policy periods depending on which coverage (occurrence or claims made) applies.

With "occurrence" coverage, coverage is provided for injury or damage that occurs during the policy period, no matter when the claim is made.

With "claims made" coverage, coverage is provided if the claim for injury or damage is first made during the policy period. The claim must be a demand for damages by a third party but it does not have to be in writing. Usually, a claim is made when it is received and recorded by you or by us. Sometimes, however, a claim may be considered made at an earlier time. This can happen when another claim for the same injury or damage has already been made, or when the claim is received and recorded during an extended reporting period.

PRINCIPAL BENEFITS AND COVERAGE

This policy provides coverage for errors or omissions injury up to the maximum dollar limit specified in the policy.

The principal benefits and coverage are explained in detail in your claims made policy. Please read it carefully and consult your agent about any questions you may have.

EXCEPTIONS, REDUCTIONS AND LIMITATIONS

Your claims made policy contains certain exceptions, reductions and limitations. Please read them carefully and consult your agent about any questions you might have.

RENEWALS, TAILS AND EXTENDED REPORTING PERIODS

Your claims made policy has some unique features regarding renewal, extended reporting periods, and coverage of occurrences which happen over a period of time. These special claims made provisions are described below:

Special "Claims Made" Provisions

Two concepts relating to continuation of coverage under the "claims made" policy are especially important to understand. These are the **Retroactive Date** and the **Extended Reporting Period**.

Retroactive Date

When you have a Retroactive Date shown on the Declarations page, **there is no coverage for injury or damage that occurred before the Retroactive Date, even if the claim is first made during the policy period.** If there is no Retroactive Date entered on the Declarations page, the policy will respond only to claims first made during the policy period for covered injury or damage, no matter when the injury or damage occurred.

If there is no Retroactive Date shown on the Declarations page, the policy will provide coverage only for claims first made during the policy period for a covered injury or damage, no matter when the injury or damage happened.

If you switch from an occurrence policy to a claims-made policy, the retroactive date in your claims-made policy should be no later than the expiration date of the occurrence policy.

When replacing a claims-made policy with a claims-made policy, you should consider the following:

- a. The retroactive date in the replacement policy should extend far enough back in time to cover any events with long periods of liability exposure; or
- b. If the retroactive date in the replacement policy does not extend far enough back in time to cover events with long periods of liability exposure, you should consider purchasing extended reporting period coverage under the old claims-made policy.

Usually, a Retroactive Date **cannot be moved ahead in time, except under certain circumstances** (e.g., you changed insurers; there is a substantial change in your operations that increases your potential for loss; you did not provide us with information you knew about in relation to the nature of your business or premises), and then only with your written consent. It is important to understand how the "claims made" policy's Extended Reporting Period provides continuity of coverage if you are offered a renewal or replacement policy with a Retroactive Date that is later than the one in your current policy.

EXTENDED REPORTING PERIODS OR "TAILS"

WARNING: If a claim is made **after** your claims made policy has terminated, you may not have coverage for that claim unless you purchase an Extended Reporting Period or "tail" endorsement, which must be offered to you with at least the aggregate limits provided for that coverage on your terminated policy, for a least one year, at a premium not to exceed 200% of your terminated policy premium for that coverage.

CAREFULLY REVIEW THE POLICY PROVISIONS REGARDING THE AVAILABLE EXTENDED REPORTING PERIOD, ESPECIALLY THE LENGTH OF COVERAGE, PRICE, AND THE TIME DURING WHICH YOU MUST PURCHASE OR ACCEPT ANY OFFERED EXTENDED REPORTING PERIOD.

AVAILABILITY OF LOSS INFORMATION

Upon your written request and within 30 days thereafter, we will furnish you:

- a. Information on closed claims as respects the date of claim and the amount(s) paid, if any; and
- b. Information on open claims as respects the date of claim and the amount of reserve, if any. Amounts reserved are based on our judgment. They are subject to change and should not be considered as ultimate settlement values.

Thank you for your assistance. Should you have any questions, please contact your Hartford agent, broker or representative.

Insurance Policy Billing Information

Thank you for selecting The Hartford for your business insurance needs.

Shortly, you will receive your first bill from us. You are receiving this Notice so you know what to expect as a valued customer of The Hartford. Should you have any questions after reviewing this information, please contact us at 866-467-8730, and we will be happy to assist you.

- o Your total policy premium will appear on your policy's Declarations Page. You will be billed based on the payment plan you selected.
- o You may pay the "minimum due" as it appears on your insurance bill or pay the policy balance in full.
- o An installment service fee is added to each installment. A late fee will also be applied if the "minimum due" is not **received** by the due date shown on your bill. Service and late payment fees do not apply in all states.
- o If you selected installment billing, any credit or additional premium due as the result of a change made to your policy, will be spread over the remaining billing installments. Additional premium due as a result of an **audit** will be billed in full on your next bill date following the completion of the audit.
- o If you elected Electronic Funds Transfer (EFT), policy changes may result in changes to the amount automatically withdrawn from your bank account. The invoice you receive following a policy change will include future withdrawal amounts. If you need to adjust or stop your next scheduled EFT withdrawal, please contact us **at least 3 days prior** to the scheduled withdrawal date at the telephone number shown below.
- o If you selected installment billing and pay the premiums for your first policy term on time, at renewal, your account may qualify for our "Equal Installment" feature. This means that the percentage due for each installment, including the initial renewal installment, will be the same throughout the policy term – helping you better manage cash flow. Equal installments will continue as long as you pay your premiums on time and no cancellation notices are issued for any policy on your account. If you no longer qualify for Equal Installments, future renewals will be billed based on the payment plan you selected, which includes a higher initial installment amount.
- o If your policy is eligible for renewal, your bill for the upcoming policy term will be sent to you approximately 30 days prior to your policy's renewal date. If your insurance needs change, please contact us at least 60 days prior to your renewal date so we can properly address any adjustments needed.
- o **One bill convenience** -- you have the option of combining all eligible Hartford policies on one single bill allowing you to make one payment for all policies on your account as payments are due.

You're In Control

In addition to selecting a bill plan option that best meets your budget, you have the flexibility to decide **how** your payments are made ...

- o **Repetitive EFT:** Sign up for Repetitive EFT payments and have payments automatically withdrawn from your bank account. This option saves you money by reducing the amount of the installment service fee.
- o **Pay Online:** Register at www.thehartford.com/servicecenter. Online Bill Pay is Quick, Easy and Secure!
- o **Pay by Check:** Send a check with your remittance stub in the envelope provided with your bill.
- o **Pay by Phone:** Call toll-free 1-866-467-8730.

Should you have any questions about your bill, please call Customer Service toll-free number: 1-866-467-8730 - 7AM – 7PM CST. We look forward to being of service to you.



IMPORTANT NOTICE TO POLICYHOLDERS

THE HARTFORD CYBER CENTER WEBSITE ACCESS

Thank you for choosing The Hartford for your business insurance needs.

You are receiving this Notice because you purchased a business owner's policy from The Hartford, (your Policy was issued by The Hartford writing company identified on your policy Declarations page) which includes access to The Hartford Cyber Center. This portal was created because we recognize that businesses face a variety of cyber-related exposures and need help managing the related risks. These exposures include data breaches, computer virus attacks and cyber extortion threats.

Through The Hartford Cyber Center, you have access to:

- o A panel of third party incident response service providers
- o Third party cybersecurity pre-incident service providers and a list of approved services to help protect your business before a cyber-threat occurs
- o Risk management tools, including self-assessments, best practice guides, templates, sample incident response plans, and data breach cost calculators
- o White papers, blogs and webinars from leading privacy and security practitioners
- o Up-to-date cyber-related news and events, including examples of privacy and security related events

Accessing The Hartford Cyber Center is easy

1. Visit www.thehartford.com/cybercenter
2. Enter policyholder information
3. Access code: 952689
4. Login to The Hartford Cyber Center

This Notice does not amend or otherwise affect the provisions of your business owner's policy.

Coverage Options:

The Hartford offers a variety of endorsements to your business owner's policy that can help protect your business from a broad range of cyber-related threats. Please review your coverage with your insurance agent or broker to determine the most appropriate cyber coverages and limits for your business.

Claims Reporting:

If you have a claim, you can report it by calling The Hartford's toll-free claims line at **1-800-327-3636**.

Should you have any questions, please contact your insurance agent, broker or you may contact us directly.

We appreciate your business and look forward to being of continued service to you.

Please be aware that:

- o The Hartford Cyber Center is a proprietary web portal exclusively provided to customers of The Hartford. Please do not share the access code with anyone outside your organization.
- o Registration is required to access the Cyber Center. You may register as many users as necessary.
- o Contacting a service provider about any issue does not constitute providing The Hartford notice of a claim as required under your insurance policy. Read your insurance policy and discuss any questions with your agent or broker.

The Hartford Cyber Center provides third party service provider references and materials for educational purposes only. The Hartford does not specifically endorse any such service provider within The Hartford Cyber Center and hereby disclaims all liability with respect to use of or reliance on such service providers. All service providers are independent contractors and not agents of The Hartford. The Hartford does not warrant the performance of the service providers, even if such services are covered under your Business Owners Policy. We strongly encourage you to conduct your own assessments of the service providers' services and the fitness or adequacy of such services for your particular needs.

Spectrum[®]

Business Owner's Policy





PRODUCER COMPENSATION NOTICE

You can review and obtain information on The Hartford's producer compensation practices at www.TheHartford.com or at 1-800-592-5717.

POLICY NUMBER: 34 SBM PN5159



**THIS ENDORSEMENT IS ATTACHED TO AND MADE PART OF YOUR POLICY IN
RESPONSE TO THE DISCLOSURE REQUIREMENTS OF THE TERRORISM RISK
INSURANCE ACT.**

**DISCLOSURE/CAP ON LOSSES - TERRORISM
RISK INSURANCE ACT**

SCHEDULE

Terrorism Premium:
\$ 6.00

A. Disclosure Of Premium

In accordance with the federal Terrorism Risk Insurance Act, as amended (TRIA), we are required to provide you with a notice disclosing the portion of your premium, if any, attributable to coverage for "certified acts of terrorism" under TRIA. The portion of your premium attributable to terrorism coverage is shown in the above Schedule of this endorsement.

B. The following definition is added with respect to the provisions of this endorsement:

1. A "certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of TRIA, to be an act of terrorism under TRIA. The criteria contained in TRIA for a "certified act of terrorism" include the following:
 - a. The act results in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to TRIA; and
 - b. The act results in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of an United States mission; and
 - c. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the

United States or to influence the policy or affect the conduct of the United States Government by coercion

C. Disclosure Of Federal Share Of Terrorism Losses

The United States Department of the Treasury will reimburse insurers for 80% of insured losses attributable to "certified acts of terrorism" under TRIA that exceeds the applicable insurer deductible.

However, if aggregate industry insured losses attributable to "certified acts of terrorism" under TRIA exceed \$100 billion in a calendar year, the Treasury shall not make any payment for any portion of the amount of such losses that exceeds \$100 billion. The United States government has not charged any premium for their participation in covering terrorism losses.

D. Cap On Insurer Liability for Terrorism Losses

If aggregate industry insured losses attributable to "certified acts of terrorism" under TRIA exceed \$100 billion in a calendar year and we have met, or will meet, our insurer deductible under TRIA, we shall not be liable for the payment of any portion of the amount of such losses that exceed \$100 billion. In such case, your coverage for terrorism losses may be reduced on a pro-rata basis in accordance with procedures established by the Treasury, based on its estimates of aggregate industry losses and our estimate that we will exceed our insurer deductible.

In accordance with the Treasury's procedures, amounts paid for losses may be subject to further adjustments based on differences between actual losses and estimates.

E. Application of Other Exclusions

The terms and limitations of any terrorism exclusion, the inapplicability or omission of a terrorism exclusion, or the inclusion of terrorism coverage, do not serve to create coverage for any loss which

would otherwise be excluded under this Coverage Form, Coverage Part or Policy, such as losses excluded by any pollution, pathogenic, nuclear hazard or war exclusions which may be included on this Policy.

F. All other terms and conditions remain the same



IMPORTANT NOTICE TO POLICYHOLDERS

To help your insurance keep pace with increasing costs, we have increased your amount of insurance . . . giving you better protection in case of either a partial, or total loss to your property.

If you feel the new amount is not the proper one, please contact your agent or broker.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

IMPORTANT NOTICE TO POLICY HOLDERS - TECHNOLOGY ERRORS OR OMISSIONS COVERAGE

This notice is not "your" policy. Please read "your" policy carefully to determine rights, duties and what is and is not covered. Only the provisions of "your" policy determine the scope of "your" insurance protection.

"Your" policy contains coverage provided by the FailSafe MEGA Technology Errors or Omissions Liability Coverage Form. This is "claims" first made and reported in writing coverage. Please read all provisions carefully. "Your" coverage applies only to "claims" when the "glitch" occurs on or after the Retroactive Date and before the end of the "coverage period" indicated in the Declarations and the "claim" is first made against any of "you" and reported in writing to "us" during the "coverage period". "Glitch" is a defined term in "your" policy – please refer to the coverage form for details.

"Your" FailSafe MEGA Technology Errors or Omissions Liability Coverage Form contains a Basic Extended Reporting Period which applies upon termination of coverage. It provides 90 days in which to report "claims" that were first made during the Basic Extended Reporting Period. This Basic Extended Reporting Period is provided at no additional charge. Upon termination of your coverage, an Optional Extended Reporting Period may be available. Availability is subject to specific conditions outlined in the FailSafe MEGA Technology Errors or Omissions Liability Coverage Form – please review this form carefully. If these conditions are fulfilled, options may be selected from a period of 1 year to a maximum of 5 years.

The coverage provided by the FailSafe MEGA Technology Errors or Omissions Liability Coverage Form is subject to a Retention. "Claim expenses" and "damages" within the Retention Amount must be paid by "you" and do not reduce the Limits of Liability. **Covered "claim expenses" and "damages" above the Retention Amount will reduce the Limits of Liability available to pay "claim expenses" and "damages"**.

This coverage is subject to a minimum retained premium. This means that in the event of cancellation of coverage by us, only the pro-rata amount of unearned premium will be refunded. In the event of cancellation by the "first named insured", we will compute the return premium at ninety percent (90%) of the pro-rata unearned premium subject to the minimum retained premium for the "coverage period" indicated in the Declarations.

The minimum retained premium applicable to "your" coverage is indicated in the FailSafe MEGA Technology Errors or Omissions Liability Declarations.

Please review your policy carefully and contact your agent with any questions.

POLICY NUMBER: 34 SBM PN5159



IMPORTANT NOTICE TO POLICYHOLDER COLORADO

DISCLOSURE NOTICE

CLAIMS MADE COVERAGE PART

This endorsement modifies insurance provided under the following:

EDUCATOR'S LEGAL LIABILITY
CONDOMINIUM ASSOCIATION DIRECTORS AND OFFICERS LIABILITY
EMPLOYMENT PRACTICES LIABILITY
FAILSAFE® MEGA TECHNOLOGY ERRORS OR OMISSIONS LIABILITY
DATA BREACH COVERAGE – DEFENSE AND LIABILITY

THIS DISCLOSURE FORM IS NOT YOUR POLICY. IT MERELY DESCRIBES SOME OF THE MAJOR FEATURES OF OUR CLAIMS MADE POLICY. READ YOUR POLICY CAREFULLY TO DETERMINE RIGHTS, DUTIES, AND WHAT IS AND IS NOT COVERED, ONLY THE PROVISIONS OF YOUR POLICY DETERMINE THE SCOPE OF YOUR INSURANCE PROTECTION.

You are receiving this notice because your Spectrum policy contains claims made coverage part that applies to the five coverages listed above. Claims made coverage applies only to claims made against you after the inception date and before the end of the policy period involving injury or damage that occurs after the policy Retroactive Date. When claims made coverage is terminated an Extended Reporting Period may be available.

HOW IS OCCURRENCE DIFFERENT FROM CLAIMS MADE?

There is no difference in the kinds of injury and damage covered by either an "occurrence" policy or a "claims made" policy. However, claims for damages may be assigned to different policy periods depending on which coverage (occurrence or claims made) applies.

With "occurrence" coverage, coverage is provided for injury or damage that occurs during the policy period, no matter when the claim is made.

With "claims made" coverage, coverage is provided if the claim for injury or damage is first made during the policy period. The claim must be a demand for damages by a third party but it does not have to be in writing. Usually, a claim is made when it is received and recorded by you or by us. Sometimes, however, a claim may be considered made at an earlier time. This can happen when another claim for the same injury or damage has already been made, or when the claim is received and recorded during an extended reporting period.

PRINCIPAL BENEFITS AND COVERAGE

This policy provides coverage for errors or omissions injury up to the maximum dollar limit specified in the policy.

The principal benefits and coverage are explained in detail in your claims made policy. Please read it carefully and consult your agent about any questions you may have.

EXCEPTIONS, REDUCTIONS AND LIMITATIONS

Your claims made policy contains certain exceptions, reductions and limitations. Please read them carefully and consult your agent about any questions you might have.

RENEWALS, TAILS AND EXTENDED REPORTING PERIODS

Your claims made policy has some unique features regarding renewal, extended reporting periods, and coverage of occurrences which happen over a period of time. These special claims made provisions are described below:

Special "Claims Made" Provisions

Two concepts relating to continuation of coverage under the "claims made" policy are especially important to understand. These are the **Retroactive Date** and the **Extended Reporting Period**.

Retroactive Date

When you have a Retroactive Date shown on the Declarations page, **there is no coverage for injury or damage that occurred before the Retroactive Date, even if the claim is first made during the policy period.** If there is no Retroactive Date entered on the Declarations page, the policy will respond only to claims first made during the policy period for covered injury or damage, no matter when the injury or damage occurred.

If there is no Retroactive Date shown on the Declarations page, the policy will provide coverage only for claims first made during the policy period for a covered injury or damage, no matter when the injury or damage happened.

If you switch from an occurrence policy to a claims-made policy, the retroactive date in your claims-made policy should be no later than the expiration date of the occurrence policy.

When replacing a claims-made policy with a claims-made policy, you should consider the following:

- a. The retroactive date in the replacement policy should extend far enough back in time to cover any events with long periods of liability exposure; or
- b. If the retroactive date in the replacement policy does not extend far enough back in time to cover events with long periods of liability exposure, you should consider purchasing extended reporting period coverage under the old claims-made policy.

Usually, a Retroactive Date **cannot be moved ahead in time, except under certain circumstances** (e.g., you changed insurers; there is a substantial change in your operations that increases your potential for loss; you did not provide us with information you knew about in relation to the nature of your business or premises), and then only with your written consent. It is important to understand how the "claims made" policy's Extended Reporting Period provides continuity of coverage if you are offered a renewal or replacement policy with a Retroactive Date that is later than the one in your current policy.

EXTENDED REPORTING PERIODS OR "TAILS"

WARNING: If a claim is made **after** your claims made policy has terminated, you may not have coverage for that claim unless you purchase an Extended Reporting Period or "tail" endorsement, which must be offered to you with at least the aggregate limits provided for that coverage on your terminated policy, for a least one year, at a premium not to exceed 200% of your terminated policy premium for that coverage.

CAREFULLY REVIEW THE POLICY PROVISIONS REGARDING THE AVAILABLE EXTENDED REPORTING PERIOD, ESPECIALLY THE LENGTH OF COVERAGE, PRICE, AND THE TIME DURING WHICH YOU MUST PURCHASE OR ACCEPT ANY OFFERED EXTENDED REPORTING PERIOD.

AVAILABILITY OF LOSS INFORMATION

Upon your written request and within 30 days thereafter, we will furnish you:

- a. Information on closed claims as respects the date of claim and the amount(s) paid, if any; and
- b. Information on open claims as respects the date of claim and the amount of reserve, if any. Amounts reserved are based on our judgment. They are subject to change and should not be considered as ultimate settlement values.

Thank you for your assistance. Should you have any questions, please contact your Hartford agent, broker or representative.

59 This **Spectrum Policy** consists of the Declarations, Coverage Forms, Common Policy Conditions and any
51 other Forms and Endorsements issued to be a part of the Policy. This insurance is provided by the stock
PN insurance company of The Hartford Insurance Group shown below.

SBM

INSURER: SENTINEL INSURANCE COMPANY, LIMITED
ONE HARTFORD PLAZA, HARTFORD, CT 06155
COMPANY CODE: A



Policy Number: 34 SBM PN5159 SC

SPECTRUM POLICY DECLARATIONS

Named Insured and Mailing Address: JAMES PILCHER ENTERPRISES INC.
(No., Street, Town, State, Zip Code) DBA DATAONE INC.
533 OLD STONE DRIVE
HIGHLANDS RANCH CO 80126

Policy Period: From 10/23/21 To 10/23/22 1 YEAR
12:01 a.m., Standard time at your mailing address shown above. **Exception:** 12 noon in New Hampshire.

Name of Agent/Broker: DENVER AGENCY COMPANY
Code: 341377

Previous Policy Number: 34 SBM PN5159

Named Insured is: CORPORATION

Audit Period: NON-AUDITABLE

Type of Property Coverage: NONE

Insurance Provided: In return for the payment of the premium and subject to all of the terms of this policy, we agree with you to provide insurance as stated in this policy.

TOTAL ANNUAL PREMIUM IS: \$3,620 MP

Countersigned by *Susan L. Castaneda*
Authorized Representative

07/30/21
Date

SPECTRUM POLICY DECLARATIONS (Continued)

POLICY NUMBER: 34 SBM PN5159

Location(s), Building(s), Business of Named Insured and Schedule of Coverages for Premises as designated by Number below.

Location: 003 **Building:** 001

533 OLD STONE DRIVE
HIGHLANDS RANCH CO 80126

Description of Business:

Technology Consulting, Staffing & Custom Programming

Deductible: NO COVERAGE

BUILDING AND BUSINESS PERSONAL PROPERTY LIMITS OF INSURANCE

BUILDING

NO COVERAGE

BUSINESS PERSONAL PROPERTY

REPLACEMENT COST

NO COVERAGE

PERSONAL PROPERTY OF OTHERS

REPLACEMENT COST

NO COVERAGE

MONEY AND SECURITIES

INSIDE THE PREMISES

NO COVERAGE

OUTSIDE THE PREMISES

NO COVERAGE

SPECTRUM POLICY DECLARATIONS (Continued)

POLICY NUMBER: 34 SBM PN5159

BUSINESS LIABILITY	LIMITS OF INSURANCE
LIABILITY AND MEDICAL EXPENSES	\$2,000,000
MEDICAL EXPENSES - ANY ONE PERSON	\$ 10,000
PERSONAL AND ADVERTISING INJURY	\$2,000,000
DAMAGES TO PREMISES RENTED TO YOU ANY ONE PREMISES	\$1,000,000
AGGREGATE LIMITS	
PRODUCTS-COMPLETED OPERATIONS	\$4,000,000
GENERAL AGGREGATE	\$4,000,000
EMPLOYMENT PRACTICES LIABILITY	
COVERAGE: FORM SS 09 01	
EACH CLAIM LIMIT	\$ 10,000
DEDUCTIBLE - EACH CLAIM LIMIT	
NOT APPLICABLE	
AGGREGATE LIMIT	\$ 10,000
RETROACTIVE DATE: 04192010	

This **Employment Practices Liability Coverage** contains claims made coverage. Except as may be otherwise provided herein, specified coverages of this insurance are limited generally to liability for injuries for which claims are first made against the insured while the insurance is in force. Please read and review the insurance carefully and discuss the coverage with your Hartford Agent or Broker.

The Limits of Insurance stated in this Declarations will be reduced, and may be completely exhausted, by the payment of "defense expense" and, in such event, The Company will not be obligated to pay any further "defense expense" or sums which the insured is or may become legally obligated to pay as "damages".

BUSINESS LIABILITY OPTIONAL
COVERAGES

HIRED/NON-OWNED AUTO LIABILITY \$2,000,000

CYBERFLEX COVERAGE
FORM SS 40 26

SPECTRUM POLICY DECLARATIONS (Continued)

POLICY NUMBER: 34 SBM PN5159

BUSINESS LIABILITY OPTIONAL COVERAGES (Continued)

LIMITS OF INSURANCE

TECHNOLOGY SVCS EXTENSION PLUS
FORM SS 40 58

UNMANNED AIRCRAFT LIABILITY
IS EXCLUDED
SEE FORM: SS 42 06

SPECTRUM POLICY DECLARATIONS (Continued)

POLICY NUMBER: 34 SBM PN5159

Form Numbers of Forms and Endorsements that apply:

SS 00 01 03 14	SS 00 05 10 08	SS 00 08 04 05	SS 00 60 09 15
SS 00 64 09 16	SS 01 33 11 13	SS 42 06 03 17	SS 04 38 09 09
SS 40 26 03 17	SS 40 58 03 16	SS 41 63 06 11	SS 05 47 09 15
SS 09 01 12 14	SS 09 53 10 08	SS 09 67 09 14	SS 09 70 12 14
SS 09 71 12 14	SS 09 73 12 14	SS 02 69 03 14	IH 99 40 04 09
IH 99 41 04 09	SS 83 76 12 20	SS 89 93 07 16	

COMMON POLICY CONDITIONS

QUICK REFERENCE - SPECTRUM POLICY

DECLARATIONS and COMMON POLICY CONDITIONS

I. DECLARATIONS

Named Insured and Mailing Address
Policy Period
Description and Business Location
Coverages and Limits of Insurance

II. COMMON POLICY CONDITIONS

Beginning on Page

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F. Insurance Under Two Or More Coverages	2
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J. Transfer Of Rights Of Recovery Against Others To Us	2
K. Transfer Of Your Rights And Duties Under This Policy	3
L. Premium Audit	3



COMMON POLICY CONDITIONS

All coverages of this policy are subject to the following conditions.

A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
 - a. 5 days before the effective date of cancellation if any one of the following conditions exists at any building that is Covered Property in this policy:
 - (1) The building has been vacant or unoccupied 60 or more consecutive days. This does not apply to:
 - (a) Seasonal unoccupancy; or
 - (b) Buildings in the course of construction, renovation or addition.

Buildings with 65% or more of the rental units or floor area vacant or unoccupied are considered unoccupied under this provision.

- (2) After damage by a Covered Cause of Loss, permanent repairs to the building:
 - (a) Have not started; and
 - (b) Have not been contracted for, within 30 days of initial payment of loss.
- (3) The building has:
 - (a) An outstanding order to vacate;
 - (b) An outstanding demolition order; or
 - (c) Been declared unsafe by governmental authority.
- (4) Fixed and salvageable items have been or are being removed from the building and are not being replaced. This does not apply to such removal that is necessary or incidental to any renovation or remodeling.

(5) Failure to:

- (a) Furnish necessary heat, water, sewer service or electricity for 30 consecutive days or more, except during a period of seasonal unoccupancy; or
 - (b) Pay property taxes that are owing and have been outstanding for more than one year following the date due, except that this provision will not apply where you are in a bona fide dispute with the taxing authority regarding payment of such taxes.
- b. 10 days before the effective date of cancellation if we cancel for nonpayment of premium.
 - c. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
 4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
 5. If this policy is canceled, we will send the first Named Insured any premium refund due. Such refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
 6. If notice is mailed, proof of mailing will be sufficient proof of notice.

B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

COMMON POLICY CONDITIONS**C. Concealment, Misrepresentation Or Fraud**

This policy is void in any case of fraud by you as it relates to this policy at any time. It is also void if you or any other insured, at any time, intentionally conceal or misrepresent a material fact concerning:

1. This policy;
2. The Covered Property;
3. Your interest in the Covered Property; or
4. A claim under this policy.

D. Examination Of Your Books And Records

We may examine and audit your books and records as they relate to the policy at any time during the policy period and up to three years afterward.

E. Inspections And Surveys

1. We have the right but are not obligated to:
 - a. Make inspections and surveys at any time;
 - b. Give you reports on the conditions we find; and
 - c. Recommend changes.
2. Any inspections, surveys, reports or recommendations will relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of any person. We do not represent or warrant that conditions:
 - a. Are safe or healthful; or
 - b. Comply with laws, regulations, codes or standards.
3. This condition applies not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations on our behalf.

F. Insurance Under Two Or More Coverages

If two or more of this policy's coverages apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage.

G. Liberalization

If we adopt any revision that would broaden the coverage under this policy without additional premium within 45 days prior to, or at any time during, the policy period, the broadened coverage will immediately apply to this policy.

H. Other Insurance - Property Coverage

If there is other insurance covering the same loss or damage, we will pay only for the amount of covered loss or damage in excess of the amount

due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance.

I. Premiums

1. The first Named Insured shown in the Declarations:
 - a. Is responsible for the payment of all premiums; and
 - b. Will be the payee for any return premiums we pay.
2. The premium shown in the Declarations was computed based on rates in effect at the time the policy was issued. If applicable, on each renewal, continuation or anniversary of the effective date of this policy, we will compute the premium in accordance with our rates and rules then in effect.
3. With our consent, you may continue this policy in force by paying a continuation premium for each successive one-year period. The premium must be:
 - a. Paid to us prior to the anniversary date; and
 - b. Determined in accordance with Paragraph 2. above.

Our forms then in effect will apply. If you do not pay the continuation premium, this policy will expire on the first anniversary date that we have not received the premium.
4. Changes in exposures or changes in your business operation, acquisition or use of locations that are not shown in the Declarations may occur during the policy period. If so, we may require an additional premium. That premium will be determined in accordance with our rates and rules then in effect.

J. Transfer Of Rights Of Recovery Against Others To Us

Applicable to Property Coverage:

If any person or organization to or for whom we make payment under this policy has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may waive your rights against another party in writing:

1. Prior to a loss to your Covered Property; or
2. After a loss to your Covered Property only if, at time of loss, that party is one of the following:

COMMON POLICY CONDITIONS

- a. Someone insured by this insurance;
- b. A business firm:
 - (1) Owned or controlled by you; or
 - (2) That owns or controls you; or
- c. Your tenant.

You may also accept the usual bills of lading or shipping receipts limiting the liability of carriers.

This will not restrict your insurance.

K. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual Named Insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is

appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

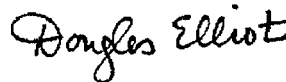
L. Premium Audit

- a. We will compute all premiums for this policy in accordance with our rules and rates.
- b. The premium amount shown in the Declarations is a deposit premium only. At the close of each audit period we will compute the earned premium for that period. Any additional premium found to be due as a result of the audit are due and payable on notice to the first Named Insured. If the deposit premium paid for the policy term is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must maintain all records related to the coverage provided by this policy and necessary to finalize the premium audit, and send us copies of the same upon our request.

Our President and Secretary have signed this policy. Where required by law, the Declarations page has also been countersigned by our duly authorized representative.



Kevin Barnett, Secretary



Douglas Elliot, President

BUSINESS LIABILITY COVERAGE FORM

**QUICK REFERENCE
BUSINESS LIABILITY COVERAGE FORM
READ YOUR POLICY CAREFULLY**

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BUSINESS LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the stock insurance company member of The Hartford providing this insurance.

The word "insured" means any person or organization qualifying as such under Section **C.** - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section **G.** - Liability And Medical Expenses Definitions.

A. COVERAGES

1. BUSINESS LIABILITY COVERAGE (BODILY INJURY, PROPERTY DAMAGE, PERSONAL AND ADVERTISING INJURY)

Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "property damage" or "personal and advertising injury" to which this insurance does not apply.

We may, at our discretion, investigate any "occurrence" or offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section **D.** - Liability And Medical Expenses Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments, settlements or medical expenses to which this insurance applies.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Coverage Extension - Supplementary Payments.

- b. This insurance applies:

- (1) To "bodily injury" and "property damage" only if:

(a) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

(b) The "bodily injury" or "property damage" occurs during the policy period; and

(c) Prior to the policy period, no insured listed under Paragraph 1. of Section **C.** - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

(2) To "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during the policy period.

c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section **C.** - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

(1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

BUSINESS LIABILITY COVERAGE FORM

- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
 - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- d. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

e. Incidental Medical Malpractice

- (1) "Bodily injury" arising out of the rendering of or failure to render professional health care services as a physician, dentist, nurse, emergency medical technician or paramedic shall be deemed to be caused by an "occurrence", but only if:
 - (a) The physician, dentist, nurse, emergency medical technician or paramedic is employed by you to provide such services; and
 - (b) You are not engaged in the business or occupation of providing such services.
- (2) For the purpose of determining the limits of insurance for incidental medical malpractice, any act or omission together with all related acts or omissions in the furnishing of these services to any one person will be considered one "occurrence".

2. MEDICAL EXPENSES**Insuring Agreement**

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
 - (1) On premises you own or rent;
 - (2) On ways next to premises you own or rent; or
 - (3) Because of your operations;
 provided that:
 - (1) The accident takes place in the "coverage territory" and during the policy period;
 - (2) The expenses are incurred and reported to us within three years of the date of the accident; and
 - (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:
 - (1) First aid administered at the time of an accident;
 - (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
 - (3) Necessary ambulance, hospital, professional nursing and funeral services.

3. COVERAGE EXTENSION - SUPPLEMENTARY PAYMENTS

- a. We will pay, with respect to any claim or "suit" we investigate or settle, or any "suit" against an insured we defend:
 - (1) All expenses we incur.
 - (2) Up to \$1,000 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for "bodily injury" applies. We do not have to furnish these bonds.
 - (3) The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
 - (4) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.
 - (5) All costs taxed against the insured in the "suit".
 - (6) Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
 - (7) All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

Any amounts paid under (1) through (7) above will not reduce the limits of insurance.

b. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- (1) The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- (2) This insurance applies to such liability assumed by the insured;
- (3) The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- (4) The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interest of the indemnitee;
- (5) The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- (6) The indemnitee:
 - (a) Agrees in writing to:
 - (i) Cooperate with us in the investigation, settlement or defense of the "suit";
 - (ii) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - (iii) Notify any other insurer whose coverage is available to the indemnitee; and
 - (iv) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
 - (b) Provides us with written authorization to:
 - (i) Obtain records and other information related to the "suit"; and
 - (ii) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments.

Notwithstanding the provisions of Paragraph **1.b.(b)** of Section **B.** – Exclusions, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the Limits of Insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- (1) We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- (2) The conditions set forth above, or the terms of the agreement described in Paragraph **(6)** above, are no longer met.

B. EXCLUSIONS

1. Applicable To Business Liability Coverage

This insurance does not apply to:

a. Expected Or Intended Injury

- (1) "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property; or
- (2) "Personal and advertising injury" arising out of an offense committed by, at the direction of or with the consent or acquiescence of the insured with the expectation of inflicting "personal and advertising injury".

b. Contractual Liability

- (1) "Bodily injury" or "property damage"; or
- (2) "Personal and advertising injury"

for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

This exclusion does not apply to liability for damages because of:

- (a) "Bodily injury", "property damage" or "personal and advertising injury" that the insured would have in the absence of the contract or agreement; or

BUSINESS LIABILITY COVERAGE FORM

(b) "Bodily injury" or "property damage" assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purpose of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage" provided:

- (i)** Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract", and
- (ii)** Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1)** Causing or contributing to the intoxication of any person;
- (2)** The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3)** Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1)** An "employee" of the insured arising out of and in the course of:
 - (a)** Employment by the insured; or

(b) Performing duties related to the conduct of the insured's business, or

- (2)** The spouse, child, parent, brother or sister of that "employee" as a consequence of **(1)** above.

This exclusion applies:

- (1)** Whether the insured may be liable as an employer or in any other capacity; and
- (2)** 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 the insured under an "insured contract".

f. Pollution

(1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to any insured. However, this subparagraph does not apply to:

(i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

(ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
- (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
- (i) Any insured; or
- (ii) Any person or organization for whom you may be legally responsible;
- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
- (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
- (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or
- (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".
- However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

BUSINESS LIABILITY COVERAGE FORM**g. Aircraft, Auto Or Watercraft**

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 51 feet long; and
 - (b) Not being used to carry persons for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;
- (5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in Paragraph **f.(2)** or **f.(3)** of the definition of "mobile equipment"; or
- (6) An aircraft that is not owned by any insured and is hired, chartered or loaned with a paid crew. However, this exception does not apply if the insured has any other insurance for such "bodily injury" or "property damage", whether the other insurance is primary, excess, contingent or on any other basis.

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or

- (2) The use of "mobile equipment" in, or while in practice or preparation for, a prearranged racing, speed or demolition contest or in any stunting activity.

i. War

"Bodily injury", "property damage" or "personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (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 government, 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.

j. Professional Services

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional service. This includes but is not limited to:

- (1) Legal, accounting or advertising services;
- (2) Preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications;
- (3) Supervisory, inspection, architectural or engineering activities;
- (4) Medical, surgical, dental, x-ray or nursing services treatment, advice or instruction;
- (5) Any health or therapeutic service treatment, advice or instruction;
- (6) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming;
- (7) Optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;

BUSINESS LIABILITY COVERAGE FORM

- (8) Optometry or optometric services including but not limited to examination of the eyes and the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products;
- (9) Any:
 - (a) Body piercing (not including ear piercing);
 - (b) Tattooing, including but not limited to the insertion of pigments into or under the skin; and
 - (c) Similar services;
- (10) Services in the practice of pharmacy; and
- (11) Computer consulting, design or programming services, including web site design.

Paragraphs (4) and (5) of this exclusion do not apply to the Incidental Medical Malpractice coverage afforded under Paragraph 1.e. in Section A. - Coverages.

k. Damage To Property

"Property damage" to:

- (1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate Limit of Insurance applies to Damage To Premises Rented To You as described in Section D. - Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3) and (4) of this exclusion do not apply to the use of elevators.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraphs (3) and (4) of this exclusion do not apply to "property damage" to borrowed equipment while not being used to perform operations at a job site.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

l. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

m. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

n. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

BUSINESS LIABILITY COVERAGE FORM**o. Recall Of Products, Work Or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

p. Personal And Advertising Injury

"Personal and advertising injury":

- (1) Arising out of oral, written or electronic publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (2) Arising out of oral, written or electronic publication of material whose first publication took place before the beginning of the policy period;
- (3) Arising out of a criminal act committed by or at the direction of the insured;
- (4) Arising out of any breach of contract, except an implied contract to use another's "advertising idea" in your "advertisement";
- (5) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
- (6) Arising out of the wrong description of the price of goods, products or services;
- (7) Arising out of any violation of any intellectual property rights such as copyright, patent, trademark, trade name, trade secret, service mark or other designation of origin or authenticity.

However, this exclusion does not apply to infringement, in your "advertisement", of

- (a) Copyright;
- (b) Slogan, unless the slogan is also a trademark, trade name, service mark or other designation of origin or authenticity; or

(c) Title of any literary or artistic work;

- (8) Arising out of an offense committed by an insured whose business is:
 - (a) Advertising, broadcasting, publishing or telecasting;
 - (b) Designing or determining content of web sites for others; or
 - (c) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs **a.**, **b.** and **c.** under the definition of "personal and advertising injury" in Section **G.** – Liability And Medical Expenses Definitions.

For the purposes of this exclusion, placing an "advertisement" for or linking to others on your web site, by itself, is not considered the business of advertising, broadcasting, publishing or telecasting;

- (9) Arising out of an electronic chat room or bulletin board the insured hosts, owns, or over which the insured exercises control;
- (10) Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatags, or any other similar tactics to mislead another's potential customers;
- (11) Arising out of the violation of a person's right of privacy created by any state or federal act.

However, this exclusion does not apply to liability for damages that the insured would have in the absence of such state or federal act;

- (12) Arising out of:
 - (a) An "advertisement" for others on your web site;
 - (b) Placing a link to a web site of others on your web site;
 - (c) Content from a web site of others displayed within a frame or border on your web site. Content includes information, code, sounds, text, graphics or images; or
 - (d) Computer code, software or programming used to enable:
 - (i) Your web site; or
 - (ii) The presentation or functionality of an "advertisement" or other content on your web site;

- (13) Arising out of a violation of any anti-trust law;
- (14) Arising out of the fluctuation in price or value of any stocks, bonds or other securities; or
- (15) Arising out of discrimination or humiliation committed by or at the direction of any "executive officer", director, stockholder, partner or member of the insured.

q. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

r. Employment-Related Practices

"Bodily injury" or "personal and advertising injury" to:

- (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or
 - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" or "personal and advertising injury" to the person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

s. Asbestos

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the "asbestos hazard".
- (2) Any damages, judgments, settlements, loss, costs or expenses that:

- (a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";
- (b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or
- (c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

t. Violation Of Statutes That Govern E-Mails, Fax, Phone Calls Or Other Methods Of Sending Material Or Information

"Bodily injury", "property damage", or "personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

Damage To Premises Rented To You – Exception For Damage By Fire, Lightning Or Explosion

Exclusions **c.** through **h.** and **k.** through **o.** do not apply to damage by fire, lightning or explosion to premises rented to you or temporarily occupied by you with permission of the owner. A separate Limit of Insurance applies to this coverage as described in Section **D.** - Liability And Medical Expenses Limits Of Insurance.

BUSINESS LIABILITY COVERAGE FORM**2. Applicable To Medical Expenses Coverage**

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers' Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests.

f. Products-Completed Operations Hazard

Included with the "products-completed operations hazard".

g. Business Liability Exclusions

Excluded under Business Liability Coverage.

C. WHO IS AN INSURED**1. If you are designated in the Declarations as:**

- a.** An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b.** A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c.** A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d.** An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

- e.** A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:**a. Employees And Volunteer Workers**

Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

However, none of these "employees" or "volunteer workers" are insureds for:

- (1)** "Bodily injury" or "personal and advertising injury":
 - (a)** To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
 - (b)** To the spouse, child, parent, brother or sister of that co-"employee" or that "volunteer worker" as a consequence of Paragraph **(1)(a)** above;
 - (c)** For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs **(1)(a)** or **(b)** above; or
 - (d)** Arising out of his or her providing or failing to provide professional health care services.

If you are not in the business of providing professional health care services, Paragraph **(d)** does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.
- (2)** "Property damage" to property:
 - (a)** Owned, occupied or used by,

(b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Real Estate Manager

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Temporary Custodians Of Your Property

Any person or organization having proper temporary custody of your property if you die, but only:

- (1) With respect to liability arising out of the maintenance or use of that property; and
- (2) Until your legal representative has been appointed.

d. Legal Representative If You Die

Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this insurance.

e. Unnamed Subsidiary

Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this Coverage Part.

The insurance afforded herein for any subsidiary not shown in the Declarations as a named insured does not apply to injury or damage with respect to which an insured under this insurance is also an insured under another policy or would be an insured under such policy but for its termination or upon the exhaustion of its limits of insurance.

3. Newly Acquired Or Formed Organization

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

b. Coverage under this provision does not apply to:

- (1) "Bodily injury" or "property damage" that occurred; or
- (2) "Personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

4. Operator Of Mobile Equipment

With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

5. Operator of Nonowned Watercraft

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

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

- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit

The person(s) or organization(s) identified in Paragraphs a. through f. below are additional insureds when you have agreed, in a written

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contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit.

A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

However, no such person or organization is an additional insured under this provision if such person or organization is included as an additional insured by an endorsement issued by us and made a part of this Coverage Part, including all persons or organizations added as additional insureds under the specific additional insured coverage grants in Section F. – Optional Additional Insured Coverages.

a. Vendors

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- (1) The insurance afforded to the vendor is subject to the following additional exclusions:

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (i) The exceptions contained in Subparagraphs (d) or (f); or

- (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

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

b. Lessors Of Equipment

- (1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

c. Lessors Of Land Or Premises

- (1) Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
- (a) Any "occurrence" which takes place after you cease to lease that land or be a tenant in that premises; or
- (b) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

d. Architects, Engineers Or Surveyors

- (1) Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
- (a) In connection with your premises; or
- (b) In the performance of your ongoing operations performed by you or on your behalf.
- (2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:
- This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:
- (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (b) Supervisory, inspection, architectural or engineering activities.

e. Permits Issued By State Or Political Subdivisions

- (1) Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
- (a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

f. Any Other Party

- (1) Any other person or organization who is not an insured under Paragraphs **a.** through **e.** above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
- (a) In the performance of your ongoing operations;
- (b) In connection with your premises owned by or rented to you; or
- (c) In connection with "your work" and included within the "products-completed operations hazard", but only if
- (i) The written contract or written agreement requires you to provide such coverage to such additional insured; and
- (ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
- "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

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- (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (b) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds are described in Section **D. – Limits Of Insurance**.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section **E. – Liability And Medical Expenses General Conditions**.

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

D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE

1. The Most We Will Pay

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

2. Aggregate Limits

The most we will pay for:

- a. Damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" is the Products-Completed Operations Aggregate Limit shown in the Declarations.
- b. Damages because of all other "bodily injury", "property damage" or "personal and advertising injury", including medical expenses, is the General Aggregate Limit shown in the Declarations.

This General Aggregate Limit applies separately to each of your "locations" owned by or rented to you.

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

This General Aggregate limit does not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of fire, lightning or explosion.

3. Each Occurrence Limit

Subject to **2.a.** or **2.b.** above, whichever applies, the most we will pay for the sum of all damages because of all "bodily injury", "property damage" and medical expenses arising out of any one "occurrence" is the Liability and Medical Expenses Limit shown in the Declarations.

The most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses Limit shown in the Declarations.

4. Personal And Advertising Injury Limit

Subject to **2.b.** above, the most we will pay for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization is the Personal and Advertising Injury Limit shown in the Declarations.

5. Damage To Premises Rented To You Limit

The Damage To Premises Rented To You Limit is the most we will pay under Business Liability Coverage for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

6. How Limits Apply To Additional Insureds

The most we will pay on behalf of a person or organization who is an additional insured under this Coverage Part is the lesser of:

- a. The limits of insurance specified in a written contract, written agreement or permit issued by a state or political subdivision; or
- b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to the Limits of Insurance shown in the Declarations and described in this Section.

If more than one limit of insurance under this policy and any endorsements attached thereto applies to any claim or "suit", the most we will pay under this policy and the endorsements is the single highest limit of liability of all coverages applicable to such claim or "suit". However, this paragraph does not apply to the Medical Expenses limit set forth in Paragraph 3. above.

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

E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. Notice Of Occurrence Or Offense

You or any additional insured must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. Notice Of Claim

If a claim is made or "suit" is brought against any insured, you or any additional insured must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You or any additional insured must see to it that we receive a written notice of the claim or "suit" as soon as practicable.

c. Assistance And Cooperation Of The Insured

You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation, settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.

d. Obligations At The Insured's Own Cost

No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

e. Additional Insured's Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance.

f. Knowledge Of An Occurrence, Offense, Claim Or Suit

Paragraphs **a.** and **b.** apply to you or to any additional insured only when such "occurrence", offense, claim or "suit" is known to:

- (1) You or any additional insured that is an individual;
- (2) Any partner, if you or an additional insured is a partnership;
- (3) Any manager, if you or an additional insured is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or an additional insured is a corporation;
- (5) Any trustee, if you or an additional insured is a trust; or
- (6) Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

BUSINESS LIABILITY COVERAGE FORM

This Paragraph **f.** applies separately to you and any additional insured.

3. Financial Responsibility Laws

- a.** When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, the insurance provided by the policy for "bodily injury" liability and "property damage" liability will comply with the provisions of the law to the extent of the coverage and limits of insurance required by that law.
- b.** With respect to "mobile equipment" to which this insurance applies, we will provide any liability, uninsured motorists, underinsured motorists, no-fault or other coverage required by any motor vehicle law. We will provide the required limits for those coverages.

4. Legal Action Against Us

No person or organization has a right under this Coverage Form:

- a.** To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b.** To sue us on this Coverage Form unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this insurance or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

5. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

- a.** As if each Named Insured were the only Named Insured; and
- b.** Separately to each insured against whom a claim is made or "suit" is brought.

6. Representations**a. When You Accept This Policy**

By accepting this policy, you agree:

- (1)** The statements in the Declarations are accurate and complete;
- (2)** Those statements are based upon representations you made to us; and

- (3)** We have issued this policy in reliance upon your representations.

b. Unintentional Failure To Disclose Hazards

If unintentionally you should fail to disclose all hazards relating to the conduct of your business at the inception date of this Coverage Part, we shall not deny any coverage under this Coverage Part because of such failure.

7. Other Insurance

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

a. Primary Insurance

This insurance is primary except when **b.** below applies. If other insurance is also primary, we will share with all that other insurance by the method described in **c.** below.

b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

(1) Your Work

That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(2) Premises Rented To You

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(3) Tenant Liability

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

(4) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section **A.** – Coverages.

(5) Property Damage To Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion **k.** of Section **A.** – Coverages.

(6) When You Are Added As An Additional Insured To Other Insurance

That is other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

(7) When You Add Others As An Additional Insured To This Insurance

That is other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

(a) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in **c.** below.

(b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs **(a)** and **(b)** do not apply to other insurance to which the additional insured has been added as an additional insured.

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

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

- (1)** The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2)** The total of all deductible and self-insured amounts under all that other insurance.

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

c. Method Of Sharing

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

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

8. Transfer Of Rights Of Recovery Against Others To Us**a. Transfer Of Rights Of Recovery**

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

BUSINESS LIABILITY COVERAGE FORM**F. OPTIONAL ADDITIONAL INSURED COVERAGES**

If listed or shown as applicable in the Declarations, one or more of the following Optional Additional Insured Coverages also apply. When any of these Optional Additional Insured Coverages apply, Paragraph 6. (Additional Insureds When Required by Written Contract, Written Agreement or Permit) of Section C., Who Is An Insured, does not apply to the person or organization shown in the Declarations. These coverages are subject to the terms and conditions applicable to Business Liability Coverage in this policy, except as provided below:

1. Additional Insured - Designated Person Or Organization

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations; or
- b. In connection with your premises owned by or rented to you.

2. Additional Insured - Managers Or Lessors Of Premises

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Designated Person Or Organization; but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Declarations.
- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

3. Additional Insured - Grantor Of Franchise

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Grantor Of Franchise, but only with respect to their liability as grantor of franchise to you.

4. Additional Insured - Lessor Of Leased Equipment

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Lessor of Leased Equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).
- b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

5. Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Owners Or Other Interests From Whom Land Has Been Leased, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you and shown in the Declarations.
- b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1) Any "occurrence" that takes place after you cease to lease that land; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

6. Additional Insured - State Or Political Subdivision – Permits

- a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the state or political subdivision shown in the Declarations as an Additional

Insured – State Or Political Subdivision - Permits, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

- b.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (1)** "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (2)** "Bodily injury" or "property damage" included in the "product-completed operations" hazard.

7. Additional Insured – Vendors

- a.** WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or organization(s) (referred to below as vendor) shown in the Declarations as an Additional Insured - Vendor, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- b.** The insurance afforded to the vendor is subject to the following additional exclusions:

- (1)** This insurance does not apply to:
 - (a)** "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
 - (b)** Any express warranty unauthorized by you;
 - (c)** Any physical or chemical change in the product made intentionally by the vendor;
 - (d)** Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- (e)** Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

- (f)** Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (g)** Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

- (h)** "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - (i)** The exceptions contained in Subparagraphs **(d)** or **(f)**; or
 - (ii)** Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

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

8. Additional Insured – Controlling Interest

WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Controlling Interest, but only with respect to their liability arising out of:

- a.** Their financial control of you; or
- b.** Premises they own, maintain or control while you lease or occupy these premises.

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This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

9. Additional Insured – Owners, Lessees Or Contractors – Scheduled Person Or Organization

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Owner, Lessees Or Contractors, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (1) In the performance of your ongoing operations for the additional insured(s); or
- (2) In connection with "your work" performed for that additional insured and included within the "products-completed operations hazard", but only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to "bodily injury", "property damage" or "personal an advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (1) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (2) Supervisory, inspection, architectural or engineering activities.

10. Additional Insured – Co-Owner Of Insured Premises

WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or Organization(s) shown in the Declarations as an Additional Insured – Co-Owner Of Insured Premises, but only with respect to their liability as co-owner of the premises shown in the Declarations.

The limits of insurance that apply to additional insureds are described in Section D. – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. – Liability And Medical Expenses General Conditions.

G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS

1. "Advertisement" means the widespread public dissemination of information or images that has the purpose of inducing the sale of goods, products or services through:

- a. (1) Radio;
- (2) Television;
- (3) Billboard;
- (4) Magazine;
- (5) Newspaper;

b. The Internet, but only that part of a web site that is about goods, products or services for the purposes of inducing the sale of goods, products or services; or

c. Any other publication that is given widespread public distribution.

However, "advertisement" does not include:

a. The design, printed material, information or images contained in, on or upon the packaging or labeling of any goods or products; or

b. An interactive conversation between or among persons through a computer network.

2. "Advertising idea" means any idea for an "advertisement".

3. "Asbestos hazard" means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.

4. "Auto" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".

5. "Bodily injury" means physical:

- a. Injury;
- b. Sickness; or
- c. Disease

sustained by a person and, if arising out of the above, mental anguish or death at any time.

6. "Coverage territory" means:

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- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in **a.** above;
- c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in **a.** above;
 - (2) The activities of a person whose home is in the territory described in **a.** above, but is away for a short time on your business; or
 - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

provided the insured's responsibility to pay damages is determined in the United States of America (including its territories and possessions), Puerto Rico or Canada, in a "suit" on the merits according to the substantive law in such territory, or in a settlement we agree to.

- 7. "Electronic data" means information, facts or programs:
 - a. Stored as or on;
 - b. Created or used on; or
 - c. Transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
- 8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- 9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
- 10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
- 11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
 - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or

- b. You have 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 "your product" or "your work"; or
- b. Your fulfilling the terms of the contract or agreement.

12. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is subject to the Damage To Premises Rented To You limit described in Section **D. – Liability and Medical Expenses Limits of Insurance.**
- b. A sidetrack agreement;
- c. Any easement or license agreement, including an easement or license agreement in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. Any obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement; or
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph **f.** includes that part of any contract or agreement 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, road-beds, tunnel, underpass or crossing.

However, Paragraph **f.** does not include that part of any contract or agreement:

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- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
- (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (2) 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 (1) above and supervisory, inspection, architectural or engineering activities.
13. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
14. "Loading or unloading" means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 - b. While it is in or on an aircraft, watercraft or "auto"; or
 - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
15. "Mobile equipment" 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 solely on or next to premises you own or rent;
 - c. Vehicles that travel on crawler treads;
 - d. Vehicles, whether self-propelled or not, on which are 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 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;
- f. Vehicles not described in a., b., c., or d. above maintained primarily for purposes other than the transportation of persons or cargo.
- However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
- (1) Equipment, of at least 1,000 pounds gross vehicle weight, designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
 - (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
16. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
17. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
- a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;

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- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that the person occupies, committed by or on behalf of its owner, landlord or lessor;
 - d. Oral, written or electronic publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - e. Oral, written or electronic publication of material that violates a person's right of privacy;
 - f. Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement";
 - g. Infringement of copyright, slogan, or title of any literary or artistic work, in your "advertisement"; or
 - h. Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.
- 18.** "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- 19.** "Products-completed operations hazard";
- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
 - (1) Products that are still in your physical possession; or
 - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed to be completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done 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 treated as completed.
- The "bodily injury" or "property damage" must occur away from premises you own or rent, unless your business includes the selling, handling or distribution of "your product" for consumption on premises you own or rent.
- b. Does not include "bodily injury" or "property damage" arising out of:
 - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials.
- 20.** "Property damage" means:
- a. Physical injury to tangible property, including all 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
 - b. 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 "occurrence" that caused it.
- As used in this definition, "electronic data" is not tangible property.
- 21.** "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:
- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
- 22.** "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
- 23.** "Volunteer worker" means a person who:
- a. Is not your "employee";

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- b. Donates his or her work;
- c. Acts at the direction of and within the scope of duties determined by you; and
- d. Is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

24. "Your product":

a. Means:

(1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

- (a)** You;
- (b)** Others trading under your name; or
- (c)** A person or organization whose business or assets you have acquired; and

(2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

(2) The providing of or failure to provide warnings or instructions.

c. Does not include vending machines or other property rented to or located for the use of others but not sold.

25. "Your work":

a. Means:

(1) Work or operations performed by you or on your behalf; and

(2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and

(2) The providing of or failure to provide warnings or instructions.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESS LIABILITY COVERAGE FORM AMENDATORY ENDORSEMENT

This endorsement modifies insurance provided under the following:

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A. Sub-subparagraphs 1.p. (7), (8), (15) of Paragraph 2., of Section B. **Exclusions** are deleted and replaced with the following:

p. Personal and Advertising Injury:

(7) (a) Arising out of any actual or alleged infringement or violation of any intellectual property right, such as copyright, patent, trademark, trade name, trade secret, service mark or other designation of origin or authenticity; or

(b) Any injury or damage alleged in any claim or "suit" that also alleges an infringement or violation of any intellectual property right, whether such allegation of infringement or violation is made by you or by any other party involved in the claim or "suit", regardless of whether this insurance would otherwise apply.

However, this exclusion does not apply if the only allegation in the claim or "suit" involving any intellectual property right is limited to:

(1) Infringement, in your "advertisement", of:

(a) Copyright;

(b) Slogan; or

(c) Title of any literary or artistic work; or

(2) Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement".

(8) Arising out of an offense committed by an insured whose business is:

(a) Advertising, broadcasting, publishing or telecasting;

(b) Designing or determining content of web sites for others; or

(c) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs a., b. and c. of the definition of "personal and advertising injury" under the Definitions Section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

(15) Arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information. This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of any access to or disclosure of any person's or organization's confidential or personal information.

B. Subparagraph 1.r. of Section B. **Exclusions** is deleted and replaced with the following:

r. Employment-Related Practices

"Personal and advertising injury" to:

(1) A person arising out of any "employment-related practices"; or

- (2) The spouse, child, parent, brother or sister of that person as a consequence of "personal and advertising injury" to that person at whom any "employment-related practices" are directed.

This exclusion applies:

- (a) Whether the injury-causing event described in the definition of "employment-related practices" occurs before employment, during employment or after employment of that person;
- (b) Whether the insured may be liable as an employer or in any other capacity; and
- (c) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

- C. Subparagraph 1.q. "Electronic Data" of Section B. **Exclusions** is deleted and replaced with the following:

- q. **Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability**

- (1) Damages, other than damages because of "personal and advertising injury", arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- (2) Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraph (1) or (2) above.

However, unless Paragraph (1) above applies, this exclusion does not apply to damages because of "bodily injury".

As used in this exclusion, electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data.

- D. Sub-subparagraph 7.b.(1) Other Insurance of Section E. **Liability and Medical Expenses General Conditions** is deleted and replaced with the following:

- b. **Excess Insurance**

- (1) **Your Work**

That is Fire, Extended Coverage, Builder's Risk, Installation Risk, Owner Controlled Insurance Program or OCIP, Wrap Up Insurance or similar coverage for "your work".

- E. Subparagraph 17. c. "Personal and Advertising Injury" of Section G, **Liability and Medical Expenses Definitions** is deleted and replaced with the following:

"Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person or organization occupies, committed by or on behalf of its owner, landlord or lessor;

- F. Subparagraph 17.h. of Section G, **Liability and Medical Expenses Definitions** deleted.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**BUSINESS LIABILITY COVERAGE FORM
AMENDATORY ENDORSEMENT-
SUPPLEMENTARY PAYMENTS**

This endorsement modifies insurance provided under the following:

BUSINESS LIABILITY COVERAGE FORM

- A.** Sub-subparagraph 3.a.(5) of Paragraph 3., Section A. **Coverages** is deleted and replaced with the following:
 - 3. Coverage Extension - Supplementary Payments:**
 - a. (5)** All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COLORADO CHANGES

This endorsement modifies insurance provided under the following:

COMMON POLICY CONDITIONS BUSINESS LIABILITY COVERAGE FORM

A. The following changes apply to the Common Policy Conditions Form.

1. Cancellation

Paragraph **A.2. Cancellation** is deleted and replaced by the following:

2. If this policy has been in effect for less than 60 days, we may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:

- a)** 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
- b)** 30 days before the effective date of cancellation if we cancel for any other reason.

2. The following is added to Paragraph **A. Cancellation:**

8. Cancellation of Policies in Effect for 60 Days or More

a. If this policy has been in effect for 60 days or more, or is a renewal of a policy we issued, we may cancel this policy by mailing through first-class mail to the first Named Insured written notice of cancellation:

- (1)** Including the actual reason, at least 10 days before the effective date of cancellation, if we cancel for nonpayment of premium; or
- (2)** At least 45 days before the effective date of cancellation if we cancel for any other reason.

b. We may only cancel this policy based on one or more of the following reasons:

- (1)** Nonpayment of premium;
- (2)** A false statement knowingly made by the insured on the application for insurance; or
- (3)** A substantial change in the exposure or risk other than that indicated in the application and underwritten as of the effective date of the policy unless the first Named Insured has notified us of the change and we accept such change.

3. Paragraph C., Concealment, Misrepresentation Or Fraud is replaced by the following:

We will not pay for any loss or damage in any case of:

- 1.** Concealment or misrepresentation of a material fact; or
- 2.** Fraud committed by you or any other insured at anytime and relating to coverage under this policy.

4. The following is added and supersedes any other provision to the contrary:

Nonrenewal

If we decide not to renew this policy, we will mail through first-class mail to the first Named Insured shown in the Declarations written notice of the nonrenewal at least 45 days before the expiration date, or its anniversary date if it is a policy written for a term of more than one year or with no fixed expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

5. The following Condition is added:

Increase In Premium Or Decrease In Coverage

We will not increase the premium unilaterally or decrease the coverage benefits on renewal of this policy unless we mail through first-class mail written notice of our intention, including the actual reason, to the first Named Insured's last mailing address known to us, at least 45 days before the effective date.

Any decrease in coverage during the policy term must be based on one or more of the following reasons;

1. Nonpayment of premium;
2. A false statement knowingly made by the insured on the application for insurance; or
3. A substantial change in the exposure or risk other than that indicated in the application and underwritten as of the effective date of the policy unless the first Named Insured has notified us of the change and we accept such change.

If notice is mailed, proof of mailing will be sufficient proof of notice.

- B. The following changes apply to the **Business Liability Coverage Form**.

1. The term "spouse" is replaced by the following:
Spouse or party to a civil union recognized under Colorado law.

POLICY NUMBER: 34 SBM PN5159



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

UNMANNED AIRCRAFT - LIABILITY ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS LIABILITY COVERAGE FORM

SCHEDULE

<input type="checkbox"/>	Option 1: If an "X" is shown in this box, Bodily Injury and Property Damage coverage for Unmanned Aircraft applies and the Unmanned Aircraft Exclusion in Paragraph A.1.g.(1) of this endorsement does not apply.
<input type="checkbox"/>	Option 2: If an "X" is shown in this box, Personal And Advertising Injury coverage for Unmanned Aircraft applies and the Unmanned Aircraft - Personal And Advertising Injury Exclusion in Paragraph A.2. of this endorsement does not apply.

Except as otherwise stated in this endorsement or the schedule above, the terms and conditions of the policy apply to the insurance stated below.

A. The following changes are made to Section **B.1.**,
EXCLUSIONS:

1. Paragraph **g.**, **Aircraft, Auto or Watercraft**, is deleted and replaced with the following:

g. Aircraft, Auto or Watercraft

(1) Unmanned Aircraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft". Use includes operation and "loading or unloading".

This Paragraph **g.(1)** applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft".

(2) Aircraft (Other Than Unmanned Aircraft), Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft (other than "unmanned aircraft"), "auto" or watercraft

owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This Paragraph **g.(2)** applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft (other than "unmanned aircraft"), "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

Paragraph **g. (2)** does not apply to:

- (a)** A watercraft while ashore on premises you own or rent;
- (b)** A watercraft you do not own that is:
 - (i)** Less than 51 feet long; and
 - (ii)** Not being used to carry persons for a charge;
- (c)** Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (d)** Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;

- (e) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in Section G Liability and Medical Expenses Definitions, Paragraph 15 f. (2) or f. (3) of the definition of "mobile equipment"; or
- (f) An aircraft (other than unmanned aircraft) that is not owned by any insured and is hired, chartered or loaned with a paid crew. However, this exception does not apply if the insured has any other insurance for such "bodily injury" or "property damage", whether the other insurance is primary, excess, contingent or on any other basis.

2. The following is added to Section **B. EXCLUSIONS** Paragraph p., **Personal and Advertising Injury**:

Unmanned Aircraft - Personal and Advertising Injury

Arising out of the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft". Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the offense which caused the "personal and advertising injury" involved the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft".

However, this exclusion does not apply if the only allegation in the claim or "suit" involves an intellectual property right which is limited to:

- (a) Infringement, in your "advertisement", of:
 - (i) Copyright;
 - (ii) Slogan; or
 - (iii) Title of any literary or artistic work; or
- (b) Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement".

B. The following changes apply to Section G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS:

1. The following definition is added:

"Unmanned aircraft" means an aircraft that is not:

- a. Designed;
- b. Manufactured; or
- c. Modified after manufacture

to be controlled directly by a person from within or on the aircraft.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

HIRED AUTO AND NON-OWNED AUTO

This endorsement modifies insurance provided under the following:

BUSINESS LIABILITY COVERAGE FORM

This coverage is subject to all provisions in the **BUSINESS LIABILITY COVERAGE FORM** not expressly modified herein:

A. Amended Coverage:

Coverage is extended to "bodily injury" and "property damage" arising out of the use of a "hired auto" and "non-owned auto".

B. Paragraph B. EXCLUSIONS is amended as follows:

1. Exclusion **g. Aircraft, Auto or Watercraft** does not apply to a "hired auto" or a "non-owned auto".
2. Exclusion **e. Employers Liability** does not apply to "bodily injury" to domestic "employees" not entitled to workers' compensation benefits or to liability assumed by the "insured" under an "insured contract".
3. Exclusion **f. Pollution** is replaced by the following:

"Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- a.** That are, or that are contained in any property that is:
 - (1) Being transported or towed by, handled, or handled for movement into, onto or from, the covered "auto";
 - (2) Otherwise in the course of transit by or on behalf of the "insured"; or
 - (3) Being stored, disposed of, treated or processed in or upon the covered "auto".
- b.** Before the "pollutants" or any property in which the "pollutants" are contained are

moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or

- c.** After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph **a.** above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts, if:

- (1) The "pollutants" escape, seep, migrate, or are discharged or released directly from an "auto" part designed by its manufacturer to hold, store, receive, or dispose of such "pollutants"; and
- (2) The "bodily injury" and "property damage" does not arise out of the operation of any equipment listed in paragraphs **15.b.** and **15.c.** of the definition of "mobile equipment".

Paragraphs **b.** and **c.** above do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

- (1) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and

(2) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage as a result of the maintenance or use of a covered "auto".

4. With respect to this coverage, the following additional exclusions apply:

a. Fellow employee

Coverage does not apply to "bodily injury" to any fellow "employee" of the "insured" arising out of the operation of an "auto" owned by the "insured" in the course of the fellow "employee's" employment.

b. Care, custody or control

Coverage does not apply to "property damage" involving property owned or transported by the "insured" or in the "insured's" care, custody or control.

C. With respect to "hired auto" and "non-owned auto" coverage, Paragraph C. **WHO IS AN INSURED** is deleted and replaced by the following:

The following are "insureds":

a. You.

b. Your "employee" while using with your permission:

- (1) An "auto" you hire or borrow; or
- (2) An "auto" you don't own, hire or borrow in your business or personal affairs; or
- (3) An "auto" hired or rented by your "employee" on your behalf and at your direction.

c. Anyone else while using a "hired auto" or "non-owned auto" with your permission except:

- (1) The owner or anyone else from whom you hire or borrow an "auto".
- (2) Someone using an auto while he or she is working in a business of selling, servicing, repairing, parking or storing "autos" unless that business is yours.
- (3) Anyone other than your "employees", partners (if you are a partnership), members (if you are a limited liability company), or a lessee or borrower or any of their "employees", while moving property to or from an "auto".
- (4) A partner (if you are a partnership), or a member (if you are a limited liability

company) for an "auto" owned by him or her or a member of his or her household.

d. Anyone liable for the conduct of an "insured" described above but only to the extent of that liability.

D. With respect to the operation of a "hired auto" and "non-owned auto", the following additional conditions apply:

1. OTHER INSURANCE

a. Except for any liability assumed under an "insured contract" the insurance provided by this Coverage Form is excess over any other collectible insurance.

However, if your business is the selling, servicing, repairing, parking or storage of "autos", the insurance provided by this endorsement is primary when covered "bodily injury" or "property damage" arises out of the operation of a customer's "auto" by you or your "employee".

b. When this Coverage Form and any other Coverage Form or policy covers on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the Limit of Insurance of our Coverage Form bears to the total of the limits of all the Coverage Forms and policies covering on the same basis.

2. TWO OR MORE COVERAGE FORMS OR POLICIES ISSUED BY US

If the Coverage Form and any other Coverage Form or policy issued to you by us or any company affiliated with us apply to the same "accident", the aggregate maximum Limit of Insurance under all the Coverage Forms or policies shall not exceed the highest applicable Limit of Insurance under any one Coverage Form or policy. This condition does not apply to any Coverage Form or policy issued by us or an affiliated company specifically to apply as excess insurance over this Coverage Form.

E. The following definitions are added:

G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS:

1. "Hired auto" means any "auto" you lease, hire, rent or borrow. This does not include any auto you lease, hire, rent or borrow from any of your "employees", your partners (if you are a partnership), members (if you are a limited liability company),

or your "executive officers" or members of their households.

This does not include a long-term leased "auto" that you insure as an owned "auto" under any other auto liability insurance policy or a temporary substitute for an "auto" you own that is out of service because of its breakdown, repair, servicing or destruction.

2. "Non-owned auto " means any "auto" you do not own, lease, hire, rent or borrow which is used in connection with your business. This includes:
 - a. "Autos" owned by your "employees" your partners (if you are a partnership), members (if you are a limited liability company), or your "executive officers", or members of their households, but only while used in your business or your personal affairs.
 - b. Customer's "auto" that is in your care, custody or control for service.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CYBERFLEX COVERAGE

This endorsement modifies insurance provided under the following:

BUSINESS LIABILITY COVERAGE FORM

This endorsement modifies coverage under the Business Liability Coverage Form for your web site or internet related activities.

A. Exclusion 1.p. "Personal and Advertising Injury"
(Section **B. - EXCLUSIONS**) is modified as follows:

1. Paragraphs **(4)**, **(5)** and **(7)** are deleted and replaced by the following:

(4) Arising out of any breach of contract, except an implied contract to use another's "advertising idea" in your "advertisement" or on "your web site";

(5) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement" or on "your web site";

(7) (a) Arising out of any actual or alleged infringement or violation of any intellectual property rights, such as copyright, patent, trademark, trade name, trade secret, service mark or other designation of origin or authenticity; or

(b) Any injury or damage alleged in any claim or "suit" that also alleges an infringement or violation of any intellectual property right, whether such allegation of infringement or violation is made against you or any other party involved in the claim or "suit", regardless of whether this insurance would otherwise apply.

However, this exclusion does not apply if the only allegation in the claim or "suit" involving any intellectual property right is limited to:

(1) Infringement in your "advertisement", of:

(a) Copyright;

(b) Slogan; or

(c) Title of any literary or artistic work; or

(2) Copying in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement".

2. Paragraph **(9)** does not apply.

3. Subparagraphs **(a)**, **(b)** and **(c)** of Paragraph **(12)** do not apply.

B. Section G. - LIABILITY AND MEDICAL EXPENSES DEFINITIONS is amended as follows:

1. Paragraph **b.** of definition 1. "advertisement" is deleted and replaced by:

"Advertisement" means the widespread public dissemination of information or images that has the purpose of inducing the sale of goods, products or services through:

b. The Internet;

2. Paragraphs **f.** and **g.** of the definition of "personal and advertising injury" are deleted and replaced by the following:

"Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

f. Copying, in your "advertisement" or on "your web site", a person's or organization's "advertising idea" or style of "advertisement";

g. Infringement of copyright, slogan, or title of any literary or artistic work, in your "advertisement" or on "your web site"; or

3. The following is added to the definition of "personal and advertising injury":

As used in this definition, oral, written or electronic publication includes publication of material in your care, custody or control by someone not authorized to access or distribute that material.

4. The following definition is added:

"Your web site" means a web page or set of interconnected web pages prepared and maintained by you, or by others on your behalf, for the purposes of promoting your goods or services, that is accessible over a computer network.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TECHNOLOGY SERVICES EXTENSION PLUS

This endorsement modifies insurance provided under the following:

BUSINESS LIABILITY COVERAGE FORM

Except as otherwise stated in this endorsement, the terms and conditions of the policy apply to the insurance stated below.

A. AMENDMENT OF EXCLUSIONS

The following changes are made to Section **B.**, **EXCLUSIONS**, of the Business Liability Coverage Form:

1. The following is added to Exclusion **B.1.j.**, **Professional Services**:
This exclusion does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the insured's "technology services".
2. With respect to the coverage provided by this endorsement only, Paragraphs **(4)** and **(5)** of Exclusion **B.1.k.**, **Damage to Property**, are deleted.
3. With respect to the coverage provided by this endorsement only, Paragraphs **(8)(b)** and **(8)(c)** of Exclusion **B.1.p.**, **Personal And Advertising Injury**, are deleted.

B. EXCLUSIONS

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering or failure to render "technology services" involved with or related to:

1. Emergency response systems or services;
2. Medical diagnostic services or processes;
3. Aviation, aerospace, or military applications or operations, including weapons systems;
4. Pollution or environmental control, testing, monitoring or remediation; or
5. Physical security including but not limited to fire, sprinkler, smoke, burglar alarm or monitoring systems or access control.

C. CLARIFICATION AS RESPECTS THE LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE

The limits of coverage provided by this endorsement are within, and not in addition to, the otherwise applicable Limits of Insurance for "bodily injury", "property damage" or "personal and advertising injury" as provided by Section **D.**, **LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE**, of the Business Liability Coverage Form.

Any damages we pay on your behalf as covered by this endorsement will erode the General Aggregate limit available to make payments for any other claim covered by the Business Liability Coverage Form. Similarly, any payment made on your behalf for covered losses under the Business Liability Coverage Form will also erode the General Aggregate limit available to pay for losses covered under this endorsement.

D. ADDITIONAL DEFINITION

With respect to the coverage provided by this endorsement only, the following definition is added to Section **G.**, **LIABILITY AND MEDICAL EXPENSE DEFINITIONS**, of the Business Liability Coverage Form:

"Technology services" means any of the following services performed for others:

- a. Consulting, analysis, design, installation, training, maintenance, support and repair of or on: software, wireless applications, firmware, shareware, networks, systems hardware, devices or components;
- b. Integration of systems;
- c. Processing of, management of, mining or warehousing of data;

- d.** Administration, management, operation or hosting of another party's systems, technology or computer facilities;
- e.** Website development or website hosting;
- f.** Internet access services; intranet, extranet or electronic information connectivity services; software application connectivity services;
- g.** Manufacture, sale, licensing, distribution or marketing of: software, wireless applications, firmware, shareware, networks, systems, hardware, devices or components;
- h.** Design and development of: code, software or programming; and
- i.** Providing software application services, rental or leasing.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT - DEFINITION OF INSURED CONTRACT

This endorsement modifies insurance provided under the following:

BUSINESS LIABILITY COVERAGE FORM

Paragraph f. of the definition of "insured contract" in the **Liability And Medical Expenses Definitions** Section is replaced by the following:

- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. includes that part of any contract or agreement 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, road-beds, tunnel, underpass or crossing.

However, Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports surveys, field orders, change orders, designs or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (2) 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 (1) above and supervisory, inspection, architectural or engineering activities.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - NUCLEAR ENERGY LIABILITY

1. This insurance does not apply:
 - a. To any injury or damage:
 - (1) With respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
 - (2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which:
 - (a) Any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof; or
 - (b) The insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
 - b. Under any Medical Payments or Medical Expenses Coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization.
 - c. To any injury or damage resulting from the "hazardous properties" of "nuclear material"; if:
 - (1) The "nuclear material":
 - (a) Is at any "nuclear facility" owned by, or operated by or on behalf of, an insured; or
 - (b) Has been discharged or dispersed therefrom;
 - (2) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
 - (3) The injury or damage arises out of the furnishing by any insured of any "technology services" in connection with the planning, construction, maintenance, operation or use of any "nuclear facility"; or
 - (4) The injury or damage arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility"; but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (4) applies only to "property damage" to such "nuclear facility" and any property thereat.
2. As used in this exclusion:
 - a. "Byproduct material", "source material" and "special nuclear material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.
 - b. "Computer system and network" means:
 - (1) Leased or owned computer hardware including mobile, networked, and data storage computing equipment;
 - (2) Owned or licensed software;
 - (3) Owned websites;
 - (4) Leased or owned wireless input and output devices; and
 - (5) Electronic backup facilities and data storage repositories employed in conjunction with items 1 through 4 above.
 - c. "Hazardous properties" include radioactive, toxic or explosive properties.
 - d. "Nuclear facility" means:
 - (1) Any "nuclear reactor";
 - (2) Any equipment or device designed or used for:
 - (a) Separating the isotopes of uranium or plutonium;
 - (b) Processing or utilizing "spent fuel"; or
 - (c) Handling, processing or packaging "waste",

(3) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

(4) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

- e. "Nuclear material" means "byproduct material", "source material" or "special nuclear material".
- f. "Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.
- g. Injury or damage and "property damage" include all forms of radioactive contamination of property.
- h. "Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".
- i. "Technology services" means:
 - 1. the following services performed for others:
 - a. Consulting, analysis, design, installation, training, maintenance, support and repair of or on: software, wireless applications, firmware, shareware, networks, systems, hardware, devices or components;

- b. Integration of systems;
 - c. Processing of, management of, mining or warehousing of data;
 - d. Administration, management, operation or hosting of: another party's systems, technology or computer facilities;
 - e. Website development; website hosting;
 - f. Internet access services; intranet, extranet or electronic information connectivity services; software application connectivity services;
 - g. Manufacture, sale, licensing, distribution, or marketing of: software, wireless applications, firmware, shareware, networks, systems, hardware, devices or components;
 - h. Design and development of: code, software or programming;
 - i. Providing software application: services, rental or leasing;
 - j. Screening, selection, recruitment or placement of candidates for temporary or permanent employment by others as information technology professionals;
 - k. "Telecommunication services"; and
 - l. "Telecommunication products".
- 2. web-related software and connectivity services performed for others; and
 - 3. activities on the "named insured's" "computer system and network".



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

WAGE AND HOUR CLAIMS EXPENSES - EMPLOYMENT PRACTICES LIABILITY

This endorsement modifies insurance provided under the following:

EMPLOYMENT PRACTICES LIABILITY COVERAGE FORM

Exclusion **B.** in **SECTION III - EXCLUSIONS** is deleted and replaced by the following:

B. We shall not pay "loss" in connection with any "claim" based upon, arising from, or in any way related to:

1. any claims for unpaid wages (including overtime pay), workers' compensation benefits, unemployment compensation, disability benefits, or social security benefits;
2. any actual or alleged violation of the Worker Adjustment and Retraining Notification Act, the National Labor Relations Act, the Occupational Safety and Health Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, "ERISA", or any similar law; or
3. any "wage and hour violation".

Provided, however, that this Exclusion B. shall not apply to that portion of "loss" that represents:

- a. a specific amount the "insureds" become legally obligated to pay solely for a "wrongful act" of "retaliation"; or
- b. "Claims expenses" incurred to defend a "wage and hour violation" referenced in sub-paragraph **3.** above subject to a Sub-Limit of Liability of \$ 0010000 that is part of, and not in addition to, the Limits of Liability applicable to this Coverage Part (the Wage and Hour Defense Costs Sub-Limit). Moreover:

1. SECTION VIII.I.2. of this Coverage Part notwithstanding, 100% of the "insured's" "claims expenses" covered pursuant to this sub-paragraph b. shall be allocated to covered "loss" until the Wage and Hour Defense Costs Sub-Limit is exhausted. Once the Wage and Hour Defense Costs Sub-Limit is exhausted, allocation shall continue in accordance with SECTION VIII.I.2.;
2. the Wage and Hour Defense Costs Sub-Limit is available notwithstanding the fact that a "wage and hour violation" is not an "employment practices wrongful act"; and
3. the Wage and Hour Defense Costs Sub-Limit is only available for "claim expenses" incurred to defend a "wage and hour violation" that occurred on or after the "retroactive date" and before the end of the "policy period", regardless of whether any such "claim" for a "wage and hour violation" is made during the "policy period" or the Extended Reporting Period, if applicable.

All other terms and conditions of this Coverage Part remain unchanged.

**EMPLOYMENT PRACTICES LIABILITY COVERAGE FORM
(CLAIMS MADE)**

QUICK REFERENCE

EMPLOYMENT PRACTICES LIABILITY COVERAGE FORM (CLAIMS MADE)

READ YOUR POLICY CAREFULLY

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EMPLOYMENT PRACTICES LIABILITY COVERAGE FORM

**EMPLOYMENT PRACTICES LIABILITY COVERAGE FORM
(CLAIMS MADE)**

NOTICE: COVERAGE PROVIDED BY THIS COVERAGE PART IS CLAIMS MADE COVERAGE. EXCEPT AS OTHERWISE SPECIFIED HEREIN: COVERAGE APPLIES ONLY TO A CLAIM FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND WHICH HAS BEEN REPORTED TO US IN ACCORDANCE WITH THE APPLICABLE NOTICE PROVISIONS. COVERAGE IS SUBJECT TO THE INSURED'S PAYMENT OF THE APPLICABLE DEDUCTIBLE. PAYMENTS OF CLAIM EXPENSES ARE SUBJECT TO, AND REDUCE, THE AVAILABLE LIMITS OF LIABILITY. PLEASE READ THE COVERAGE PART CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER. UPON TERMINATION OF THIS COVERAGE PART, EXTENDED REPORTING PERIOD COVERAGE IS AVAILABLE.

Various provisions in this policy restrict coverage. Please read the entire policy carefully to determine your rights, duties and what is and is not covered.

Throughout this Coverage Part the words you and your refer to the "Named Insured" in the Declarations. The words we, us and our refer to the stock insurance company member of THE HARTFORD shown on the Declarations Page.

Words and phrases that appear in quotation marks are defined in **SECTION II - DEFINITIONS** of this Coverage Part.

In consideration of, and subject to, the payment of the premium by you and in reliance upon the accuracy and completeness of the "application", including but not limited to the statements, attachments and exhibits contained in and submitted with the "application", we agree with you, subject to all terms, exclusions and conditions of this Coverage Part, as follows:

SECTION I - INSURING AGREEMENT

Employment Practices Liability

We shall pay "loss" on behalf of the "insureds" resulting from an "employment practices claim" first made against the "Insureds" during the "policy period" or Extended Reporting Period, if applicable, for an "employment practices wrongful act" by the "insureds".

SECTION II - DEFINITIONS

- A.** "Application" means the application for this Coverage Part, including any materials or information submitted therewith or made available to us during the underwriting process, which application shall be on file with us. Such "application" shall be deemed a part of this Coverage Part and attached hereto. In addition, "application" includes any warranty, representation or other statement provided to us within the past three years in connection with any policy or coverage part of which this Coverage Part is a renewal or replacement.
- B.** "Benefits" means perquisites, fringe benefits, deferred compensation, severance pay and any other form of compensation (other than

salaries, wages, or bonuses as a component of a front or back pay award).

- C.** "Claim" means any "employment practices claim".
- D.** "Claims expenses" means:
1. reasonable and necessary legal fees and expenses, including, but not limited to, e-discovery expenses, incurred in the defense or appeal of a "claim";
 2. "Extradition costs"; or
 3. the costs of appeal, attachment or similar bonds, provided that we shall have no obligation to furnish such bonds.

However, "claim expenses" shall not include:

- a. salaries, wages, remuneration, overhead or benefit expenses associated with any "insureds";
- b. any fees, expenses or costs which are incurred by or on behalf of a party which is not a covered "insured"; or
- c. any fees, expenses or costs which were incurred prior to the date on

EMPLOYMENT PRACTICES LIABILITY COVERAGE FORM

which we received written notice of the "claim" from the "insured".

- E.** "Controlled partnership" means a limited partnership in which and so long as the "named insured" owns or controls, directly or indirectly, more than 50% of the limited partnership interest and an "insured entity" is the sole general partner.
- F.** "Damages" means the amounts, other than "claim expenses", that the "insureds" are legally liable to pay solely as a result of a "claim" covered by this Coverage Part, including:
1. compensatory damages, including front pay and back pay;
 2. settlement amounts;
 3. pre- and post-judgment interest;
 4. costs awarded pursuant to judgments;
 5. punitive and exemplary damages;
 6. the multiple portion of any multiplied damage award; or
 7. liquidated damages under the Age Discrimination in Employment Act and the Family and Medical Leave Act.

However, "damages" shall not include:

- a. taxes, fines or penalties imposed by law;
 - b. non-monetary relief;
 - c. "Benefits";
 - d. future compensation for any person hired, promoted, or reinstated pursuant to a judgment, settlement, order or other resolution of a "claim";
 - e. "Stock benefits";
 - f. costs associated with providing any accommodations required by the Americans with Disabilities Act or any similar law; or
 - g. any other matters uninsurable pursuant to any applicable law; provided, however, that with respect to punitive and exemplary damages, or the multiple portion of any multiplied damage award, the insurability of such damages shall be governed by the internal laws of any applicable jurisdiction that most favors coverage of such damages.
- G.** "Debtor in possession" means a "debtor in possession" as such term is defined in Chapter 11 of the United States Bankruptcy Code as well as any equivalent status under any similar law.

- H.** "Domestic partner" means any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law or any domestic partner relationship arrangement recognized outside of the United States and under the Human Resource policy of the "insured entity".
- I.** "Employee" means any natural person who was, is or shall become a(n):
1. employee of an "insured entity" including any part time, seasonal, temporary, leased, or loaned employee; or
 2. volunteer or intern with an "insured entity".
- J.** "Employee data privacy wrongful act" means:
1. the failure to prevent any unauthorized access to or use of data containing "Private Employment Information" of any "Employee" or applicant for employment with the "Insured Entity" including any such failure that directly results in a violation with respect to the privacy of such "Employee's" or applicant's medical information under the Health Insurance Portability and Accountability Act (HIPAA) or credit information under the Fair Credit Reporting Act (FCRA); or
 2. the failure to notify any "employee" or applicant for employment with the "insured entity" of any actual or potential unauthorized access to or use of "private employment information" of any "employee" or applicant for employment with the "insured entity", if such notice was required by state or federal regulation or statute.
- K.** "Employment practices claim" means any:
1. written demand for monetary damages or other civil non-monetary relief commenced by the receipt of such demand, including, without limitation, a written demand for employment reinstatement;
 2. civil proceeding, including an arbitration or other alternative dispute resolution proceeding, commenced by the service of a complaint, filing of a demand for arbitration, or similar pleading; or
 3. formal administrative or regulatory proceeding, including, without limitation, a proceeding before the Equal Employment Opportunity Commission or similar governmental agency, commenced by the filing of a notice of charges, formal investigative order or similar document;
- by or on behalf of an "employee", an applicant for employment with an "insured entity", or an "independent contractor".

EMPLOYMENT PRACTICES LIABILITY COVERAGE FORM

"Employment practices claim" also means the receipt of a notice of violation, order to show cause, or a written demand for monetary or injunctive relief that is the result of an audit conducted by the United States Office of Federal Contract Compliance Programs.

"Employment practices claim" also means a written request to the "insureds" to toll or waive a statute of limitations regarding a potential "Employment practices claim" as described above. Such "claim" shall be commenced by the receipt of such request.

However, "employment practices claim" shall not include any labor or grievance proceeding or arbitration that is subject to a collective bargaining agreement.

- L. "Employment practices wrongful act" means:**
1. wrongful dismissal, discharge, or termination of employment (including constructive dismissal, discharge, or termination), wrongful failure or refusal to employ or promote, wrongful discipline or demotion, failure to grant tenure, negligent employment evaluation, or wrongful deprivation of career opportunity;
 2. sexual or other workplace harassment, including bullying in the workplace, quid pro quo and hostile work environment;
 3. employment discrimination, including discrimination based upon age, gender, race, color, creed, marital status, sexual orientation or preference, gender identity or expression, genetic makeup, or refusal to submit to genetic makeup testing, pregnancy, disability, HIV or other health status, Vietnam Era Veteran or other military status, or other protected status established under federal, state, or local law;
 4. "Retaliation";
 5. breach of any oral, written, or implied employment contract, including, without limitation, any obligation arising from a personnel manual, employee handbook, or policy statement; or
 6. violation of the Family and Medical Leave Act.

"Employment practices wrongful act" also means the following, but only when alleged in addition to or as part of any "employment practices wrongful act" described above:

- a. employment-related wrongful infliction of mental anguish or emotional distress;

- b. failure to create, provide for or enforce adequate or consistent employment-related policies and procedures;
- c. negligent retention, supervision, hiring or training;
- d. employment-related invasion of privacy, defamation, or misrepresentation; or
- e. an "employee data privacy wrongful act".

- M. "ERISA" means the Employee Retirement Income Security Act of 1974.**
- N. "Extradition costs" means reasonable and necessary fees and expenses directly resulting from a "claim" in which an "insured person" lawfully opposes, challenges, resists or defends against any request for the extradition of such "insured person" from his or her current country of employ and domicile to any other country for trial or otherwise to answer any criminal accusation, including the appeal of any order or other grant of extradition of such "insured person".**
- O. "Financial insolvency" means the status of an "insured entity" as a result of:**
1. the appointment of any conservator, liquidator, receiver, rehabilitator, trustee, or similar official to control, supervise, manage or liquidate such "insured entity"; or
 2. such "insured entity" becoming a "debtor in possession".
- P. "Independent contractor" means any natural person working in the capacity of an independent contractor pursuant to an "independent contractor agreement".**
- Q. "Independent contractor agreement" means any express contract or agreement between an "independent contractor" and an "insured entity" specifying the terms of the "insured entity's" engagement of such "independent contractor".**
- R. "Insured entity" means:**
1. the "named insured"; or
 2. any "subsidiary".
- "Insured entity" shall include any such entity as a "debtor in possession".
- "Insured entity" shall also include any such entity in its capacity as a general partner of a "controlled partnership".
- S. "Insured person" means any:**
1. "Employee";
 2. "Manager"; or

EMPLOYMENT PRACTICES LIABILITY COVERAGE FORM

3. regarding the Employment Practices Liability Insuring Agreement, an "independent contractor" provided that within 30 days of an "employment practices claim" having been made against such "independent contractor" that the "insured entity" agrees in writing to indemnify such "independent contractor" for any "loss" arising out of such "claim".
- T.** "Insureds" means any:
1. "Insured entity"; or
 2. "Insured person".
- U.** "Interrelated wrongful acts" means "wrongful acts" that have as a common nexus any fact, circumstance, situation, event, transaction, goal, motive, methodology, or cause or series of causally connected facts, circumstances, situations, events, transactions, goals, motives, methodologies or causes.
- V.** "Loss" means "claim expenses" and "damages".
- W.** "Manager" means any natural person who was, is or shall become a(n):
1. duly elected or appointed director, advisory director, board observer, advisory board member, officer, member of the board of managers or management committee member of an "insured entity";
 2. "Employee" in his/her capacity as legal counsel to an "insured entity"; or
 3. executive of an "insured entity" created outside the United States to the extent that such executive holds a position equivalent to those described in 1. or 2. above.
- X.** "Named insured" means the individuals, partnerships or corporations designated in the Declarations.
- Y.** "Notice manager" means the natural persons in the offices of the chief executive officer, chief financial officer, general counsel, risk manager, human resources manager or any equivalent position to the foregoing, of an "Insured Entity".
- Z.** "Policy period" means the period from the Effective Date to the Expiration Date set forth in the Declarations or any earlier cancellation date.
- AA.** "Private employment information" means any information regarding an "employee" or applicant for employment with the "insured entity", which is collected or stored by an "insured" for the purposes of establishing, maintaining or terminating an employment relationship.
- BB.** "Retaliation" means adverse treatment of an "employee" or "independent contractor" based upon such person:
1. exercising any rights under law, including, without limitation, rights under any workers compensation laws, the Family and Medical Leave Act, "ERISA", or the Americans with Disabilities Act;
 2. refusing to violate any law;
 3. assisting, testifying, or cooperating with a proceeding or investigation regarding alleged violations of law by any "insured";
 4. disclosing or threatening to disclose alleged violations of law to a superior or to any governmental agency; or
 5. filing any *whistle blower* claim against any "insured" under the federal False Claims Act, the Sarbanes-Oxley Act of 2002, or any similar law.
- CC.** "Stock benefits" means any offering, plan or agreement between an "insured entity" and any "employee" that grants stock, stock options or stock appreciation rights in the "insured entity" to such person, including, without limitation, restricted stock or any other stock grant. "Stock benefits" shall not include employee stock ownership plans or employee stock purchase plans.
- DD.** "Subsidiary" means any:
1. corporation in which and so long as the "named insured" owns or controls, directly or indirectly, more than 50% of the outstanding securities representing the right to vote for the election of the board of directors of such corporation;
 2. limited liability company in which and so long as the "named insured" owns or controls, directly or indirectly, the right to elect, appoint or designate more than 50% of such entity's managing members;
 3. a "controlled partnership";
 4. corporation operated as a joint venture in which and so long as the "named insured" owns or controls, directly or indirectly, exactly 50% of the issued and outstanding voting stock and which, pursuant to a written agreement with the owner(s) of the remaining issued and outstanding voting stock of such corporation, the "named insured" solely controls the management and operation of such corporation; or
 5. foundation, charitable trust or political action committee in which and so long as such entity or organization is controlled by the "named insured" or any "subsidiary" as defined in 1. through 4. above.

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EE. "Wage and hour violation" means any actual or alleged violation of the duties and responsibilities that are imposed upon an "insured" by any federal, state or local law or regulation anywhere in the world, including but not limited to the Fair Labor Standards Act or any similar law (except the Equal Pay Act), which govern wage, hour and payroll practices. Such practices include but are not limited to:

1. the calculation and payment of wages, overtime wages, minimum wages and prevailing wage rates;
2. the calculation and payments of benefits;
3. the classification of any person or organization for wage and hour purposes;
4. reimbursing business expenses;
5. the use of child labor; or
6. garnishments, withholdings and other deductions from wages.

FF. "Wrongful act" means any actual or alleged "employment practices wrongful act".

SECTION III - EXCLUSIONS

A. We shall not pay "Loss":

1. for bodily injury, sickness, disease, death, false arrest or imprisonment, abuse of process, malicious prosecution, trespass, nuisance or wrongful entry or eviction, or for injury to or destruction of any tangible property including loss of use or diminution of value thereof; provided, however, that this exclusion shall not apply to that portion of "loss" that directly results from mental anguish or emotional distress when alleged in connection with an otherwise covered "employment practices wrongful act";
2. for any actual or alleged "wrongful act" by "insured persons" of any "subsidiary" in their capacities as such, or by any "subsidiary", if such "wrongful act" actually or allegedly occurred when such entity was not a "subsidiary";
3. in connection with any "claim" based upon, arising from, or in any way related to any:
 - a. prior or pending demand, suit, or proceeding against any "insured" as of, or
 - b. audit initiated by the United States Office of Federal Contract Compliance Programs before,

the effective date of the first Employment Practices Liability Coverage Part issued and continuously renewed by us, or the same or substantially similar fact, circumstance, or situation underlying or alleged in such demand, suit, proceeding, or audit;

4. in connection with any "claim" based upon, arising from, or in any way related to any fact, circumstance, or situation that, before the Effective Date in the Declarations, was the subject of any notice given under any other employment practices liability policy, management liability policy or other insurance policy which insures "wrongful acts" covered under this Coverage Part;
5. in connection with any "claim" based upon, arising from, or in any way related to the liability of others assumed by an "insured" under any contract or agreement; provided, however, this exclusion shall not apply to liability that would have been incurred in the absence of such contract or agreement;
6. for breach of any "independent contractor agreement"; or
7. for a lockout, strike, picket line, hiring of replacement workers or similar action in connection with any labor dispute, labor negotiation or collective bargaining agreement.

B. We shall not pay "loss" in connection with any "claim" based upon, arising from, or in any way related to:

1. any claims for unpaid wages (including overtime pay), workers' compensation benefits, unemployment compensation, disability benefits, or social security benefits;
2. any actual or alleged violation of the Worker Adjustment and Retraining Notification Act, the National Labor Relations Act, the Occupational Safety and Health Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, "ERISA", or any similar law; or
3. any "wage and hour Violation"

Provided, however, that this exclusion **B.** shall not apply to that portion of "loss" that represents a specific amount the "insureds" become legally obligated to pay solely for a "wrongful act" of "retaliation".

C. We shall not pay "loss" in connection with any "claim" based upon, arising from, or in any way related to liability incurred for breach of any oral, written, or implied employment contract; provided, however, that this exclusion shall not apply to liability that would have been incurred in the absence of such contract nor shall it apply to the portion of "loss" representing "claim expenses" incurred to defend against such liability.

EMPLOYMENT PRACTICES LIABILITY COVERAGE FORM**SECTION IV - DISCOVERY CLAUSE**

If, during the "policy period", the "insureds" become aware of a "wrongful act" that may reasonably be expected to give rise to a "claim", and, if written notice of such "wrongful act" is given to us during the "policy period", including the reasons for anticipating such a "claim", the nature and date of the "wrongful act", the identity of the "insureds" allegedly involved, the alleged injuries or damages sustained, the names of potential claimants, and the manner in which the "insureds" first became aware of the "wrongful act", then any "claim" subsequently arising from such "wrongful act" shall be deemed to be a "claim" first made during the "policy period" on the date that we receive the above notice.

SECTION V - EXTENDED REPORTING PERIOD

Subject to provisions **A.** through **G.** below, if this Coverage Part is canceled or non-renewed other than for non-payment of premium, you shall have the right to purchase an extended period to report "claims" under this Coverage Part for any "claim" first made during the period of time set forth in the Supplemental Extended Reporting Period Endorsement, and following the effective date of such cancellation or nonrenewal and reported in writing during such period or within sixty (60) days thereafter, but only with respect to any "wrongful act" which takes place prior to the effective date of such cancellation or nonrenewal.

- A.** The Extended Reporting Period shall be effective only upon the payment of an additional premium. The additional premium will be 200% of the annual advance premium for this coverage. At the commencement of the Extended Reporting Period, the entire premium thereof shall be deemed fully earned and non-refundable.
- B.** The quotation of a different premium or deductible or limit of liability for renewal is not a cancellation or refusal to renew for the purposes of this provision.
- C.** You shall have no right to purchase the Extended Reporting Period, unless you have satisfied all conditions of the Coverage Part and all premiums and deductibles outstanding have been paid.
- D.** Your 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 given to us no later than sixty (60) days following the effective date of cancellation or nonrenewal.
- E.** The fact that the period of time to report "claims" is extended by virtue of the Extended Reporting Period shall not increase or reinstate the Limit of Liability stated in the Declarations.

- F.** Extended Reporting Periods do not extend the "policy period" or change the scope of coverage provided. They apply only to "wrongful acts" that occur before the end of the "policy period".

"Claims" for such injury which are first received within sixty (60) days after the "policy period", or during the Extended Reporting Period if in effect, will be deemed to have been made on the last date of the "policy period".

- G.** Once in effect, Extended Reporting Periods may not be canceled by us.

SECTION VI - COVERAGE TERRITORY

Coverage under this Coverage Part applies worldwide, provided that the "claim" is made and any legal action is pursued within the United States, its territories, possessions or commonwealths, or Canada.

SECTION VII - LIMITS OF LIABILITY AND DEDUCTIBLE

- A.** The maximum we will pay for each "claim" under this Coverage Part is the Each Claim Limit of Liability stated in the Declarations, subject to the Annual Aggregate Limit of Liability stated in the Declarations.

The maximum we will pay for all "claims" under this Coverage Part is the Annual Aggregate Limit of Liability stated in the Declarations, regardless of the number of "claims".

If the applicable Limit of Liability for this Coverage Part is exhausted, the premium for this Coverage Part shall be deemed fully earned. "Claim expenses" shall be part of, and not in addition to, the Limits of Liability. Payment of "claim expenses" by us shall reduce each Limit of Liability.

- B.** We shall pay "loss" in excess of the Deductible applicable to each "claim" as specified on the Declarations.
- C.** All Deductibles shall be borne by the "insureds" at their own risk; they shall not be insured.
- D.** The Deductible shall apply to "claim expenses" covered hereunder. If, any "claim expenses" are incurred by us prior to the "insured's" complete payment of the Deductible, then the "insureds" shall reimburse us therefor upon our request.
- E.** No Deductible shall apply to "loss" incurred by any "insured person" that an "insured entity" is not permitted by common or statutory law to indemnify, or is permitted or required to indemnify, but is not able to do so by reason of "financial insolvency".

EMPLOYMENT PRACTICES LIABILITY COVERAGE FORM

- F.** If an "insured entity" is permitted or required by common or statutory law to indemnify an "insured person" for any "loss", or to advance "claim expenses" on their behalf, and does not do so other than because of "financial insolvency", then such "insured entity" and the "named insured" shall reimburse and hold us harmless for our payment or advancement of such "loss" up to the amount of the Deductible that would have applied if such indemnification had been made.
- G.** If a "subsidiary" is unable to indemnify an "insured person" for any "loss", or to advance "claim expenses" on their behalf, because of "financial insolvency", then the "named insured" shall reimburse and hold us harmless for our payment or advancement of such "loss" up to the amount of the applicable Deductible that would have applied if such indemnification had been made.

The Limit of Liability for this Coverage Part applies separately to each consecutive annual period and to any remaining period of less than twelve (12) months starting with the beginning of the "policy period" shown in the Declarations, unless the "policy period" is extended after issuance for an additional period of less than twelve (12) months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limit of Liability.

SECTION VIII - DUTIES IN THE EVENT OF CLAIM; DEFENSE AND SETTLEMENT

- A.** We shall have the right and duty to defend "claims" covered under this Coverage Part, even if such "claim" is groundless, false or fraudulent, provided that:
1. the "insureds" give notice to us in accordance with the applicable notice provisions; and
 2. such "claim" does not involve allegations, in whole or in part, of a "wage and hour violation".

For any "claim" involving allegations, in whole or in part, of a "wage and hour violation", it shall be the duty of the "insureds", and not our duty, to defend such "claim".

- B.** If we have the duty to defend a "claim", our duty to defend such "claim" shall cease upon exhaustion of any applicable Limit of Liability.
- C.** The "insureds" shall not admit or assume any liability, make any settlement offer or enter into any settlement agreement, stipulate to any judgment, or incur any "claim expenses" regarding any "claim" without our prior written consent, such consent not to be unreasonably withheld. We shall not be liable for any

admission, assumption, settlement offer or agreement, stipulation, or "claim expenses" to which we have not consented.

- D.** We shall have the right to associate ourself in the defense and settlement of any "claim" that appears reasonably likely to involve this Coverage Part. We may make any investigation we deem appropriate in connection with any "claim". We may, with the written consent of the "insureds", settle any "claim" for a monetary amount that we deem reasonable.
- E.** The "insureds" shall give to us all information and cooperation as we may reasonably request. However, if we are, in our sole discretion, able to determine coverage for cooperating "insureds", the failure of one "insured person" to cooperate with us shall not impact coverage provided to cooperating "insureds".
- F.** With respect to a covered "claim" for which we do not have the duty to defend, we shall advance "claim expenses" in accordance with Section VIII I. that we believe to be covered under this Coverage Part until a different allocation is negotiated, arbitrated or judicially determined.

G. Required Notice to Us

As a condition precedent to coverage under this Coverage Part, the "insureds" shall give us written notice of any "claim" as soon as practicable after a "notice manager" becomes aware of such "claim", but in no event later than:

1. if this Coverage Part expires or is otherwise terminated without being renewed with us, ninety (90) days after the effective date of said expiration or termination; or
2. subject to **SECTION V**, the expiration of the Extended Reporting Period, if applicable;

provided, however, that if the Coverage Part is cancelled for non-payment of premium, the "insured" will give us written notice of such "claim", prior to the effective date of cancellation.

However, with regard to any "employment practices claim" which is brought as a formal administrative or regulatory proceeding, including, without limitation, a proceeding before the Equal Employment Opportunity Commission or similar governmental agency, commenced by the filing of a notice of charges, formal investigative order or similar document, as a condition precedent to coverage under this Coverage Part the

EMPLOYMENT PRACTICES LIABILITY COVERAGE FORM

"insureds" shall give us written notice of any "claim" as soon as practicable after a "notice manager" becomes aware of such "claim", but in no event later than:

3. if this Coverage Part is renewed, no more than 180 days after a "notice manager" becomes aware of such "claim"; or
4. if this Coverage Part expires or is otherwise terminated without being renewed with us, ninety (90) days after the effective date of said expiration or termination; or
5. subject to **SECTION V**, the expiration of the Extended Reporting Period, if applicable;

provided, if the Coverage Part is cancelled for non-payment of premium, the "insured" will give us written notice of such "claim", prior to the effective date of cancellation.

H. Subrogation

1. We shall be subrogated to all of the "insureds" rights of recovery regarding any payment of "loss" by us under this Coverage Part. The "insureds" shall execute all papers required and do everything necessary to secure and preserve such rights, including the execution of any documents necessary to enable us to effectively bring suit in the name of the "insureds". The "insureds" shall do nothing to prejudice our position or any potential or actual rights of recovery.
2. We shall not exercise our rights of subrogation against an "insured person" under this Coverage Part unless such "insured person" has:
 - a. obtained any personal profit, remuneration or advantage to which such "insured person" was not legally entitled, or
 - b. committed a criminal or deliberately fraudulent act or omission or any willful violation of law,

if a judgment or other final adjudication establishes such personal profit, remuneration, advantage, act, omission, or violation.

I. Allocation

Where "insureds" who are afforded coverage for a "claim" incur an amount consisting of both "loss" that is covered by this Coverage Part and also loss that is not covered by this Coverage Part, because such "claim" includes both covered and uncovered matters, then coverage shall apply as follows:

1. with respect to a covered "claim" for which we have the duty to defend:
 - a. 100% of the "insured's" "claim expenses" shall be allocated to covered "loss"; and
 - b. All other "loss" shall be allocated between covered "loss" and non-covered loss based upon the relative legal exposure of all parties to such matters.
2. with respect to a covered "claim" for which we do not have the duty to defend, all "loss" shall be allocated between covered "loss" and non-covered loss based upon the relative legal exposure of all parties to such matters.

SECTION IX - CONDITIONS**A. Coverage Part Priority; Headings**

If any provision in this Coverage Part is inconsistent or in conflict with the terms and conditions of any provisions in this Policy, the terms and conditions of this Coverage Part shall control only for purposes of determining coverage hereunder. The headings of the various sections of this Coverage Part are intended for reference only and shall not be part of the terms and conditions of coverage.

B. Notice Addresses

1. All notices to the "insureds" shall be sent to the first "named insured" at the address specified in the Declarations.
2. All notices to us shall be sent to the address specified in the Declarations. Any such notice shall be effective upon receipt by us at such address.

C. Spousal/Domestic Partner Liability Coverage

Coverage shall apply to the lawful spouse or "domestic partner" of an "insured person" for a "claim" made against such spouse or "domestic partner", provided that:

1. such "claim" arises solely out of:
 - a. such person's status as the spouse or "domestic partner" of an "insured person"; or
 - b. such spouse or "domestic partner's" ownership of property sought as recovery for a "wrongful act";
2. the "insured person" is named in such "claim" together with the spouse or "domestic partner"; and
3. coverage of the spouse or "domestic partner" shall be on the same terms and conditions, including any applicable

EMPLOYMENT PRACTICES LIABILITY COVERAGE FORM

Deductible, that applies to coverage of the "insured person" for such "claim".

No coverage shall apply to any "claim" for a "wrongful act" of such spouse or "domestic partner".

D. Estates and Legal Representatives

In the event of the death, incapacity or bankruptcy of an "insured person", any "claim" made against the estate, heirs, legal representatives or assigns of such "insured person" for a "wrongful act" of such "insured person" shall be deemed to be a "claim" made against such "insured person". No coverage shall apply to any "claim" for a "wrongful act" of such estate, heirs, legal representatives or assigns.

E. Minimum Standards

In the event that there is an inconsistency between:

1. the terms and conditions that are required to meet minimum standards of a state's law (pursuant to a state amendatory endorsement attached to this Coverage Part), and
2. any other term or condition of this Coverage Part,

it is understood and agreed that, where permitted by law, we shall apply those terms and conditions of 1. or 2. above that are more favorable to the "insured".

F. Other Insurance

1. The coverage provided under this Coverage Part for any "employment practices claim" shall be primary.
2. Notwithstanding the above, the coverage provided under this Coverage Part for any "employment practices claim" made against a temporary, leased or loaned "employee" or an "independent contractor" shall be excess of the amount of any deductible, retention and limits of liability under any other policy or policies applicable to such "claim", whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written specifically excess of this Policy by reference in such other policy or policies to this Policy's Policy Number.

G. Interrelationship of Claims

All "claims" based upon, arising from or in any way related to the same "wrongful act" or "interrelated wrongful acts" shall be deemed to be a single "claim" for all purposes under this Coverage Part first made on the earliest date that:

1. any of such "claims" was first made, regardless of whether such date is before or during the "policy period";
2. notice of any "wrongful act" described above was given to us under this Coverage Part pursuant to Sections IV or VIII; or
3. notice of any "wrongful act" described above was given under any prior insurance policy.

H. Deductible Waiver

Regarding a "claim" that is a class action civil proceeding, no Deductible shall apply to "claim expenses" incurred in connection with such "claim", and we shall reimburse the "insureds" for any covered "claim expenses" paid by the "insureds" within the Deductible otherwise applicable to such "claim", if a:

1. final adjudication with prejudice pursuant to a trial, motion to dismiss or motion for summary judgment; or
2. complete and final settlement with prejudice;

establishes that none of the "insureds" in such "claim" are liable for any "loss".

I. Application

1. The "insureds" represent that the Declarations and statements contained in the "application" are true, accurate and complete. This Coverage Part is issued in reliance upon the "application".
2. If the "application" contains intentional misrepresentations or misrepresentations that materially affect the acceptance of the risk by us no coverage shall be afforded under this Coverage Part for any "insureds" who knew on the Effective Date of this Coverage Part of the facts that were so misrepresented, provided that:
 - a. knowledge possessed by any "insured person" shall not be imputed to any other "insured person"; and
 - b. knowledge possessed by any of your chief executive officer, general counsel, chief financial officer, human resources director or any position equivalent to the foregoing of the "named insured", or anyone signing the "application", shall be imputed to all "insured entities". No other person's knowledge shall be imputed to an "insured entity".

EMPLOYMENT PRACTICES LIABILITY COVERAGE FORM**J. Changes in Exposure****1. Acquisitions or Created Subsidiaries**

If, before or during the "policy period", any "insured entity" acquires or creates a "subsidiary", then such acquired or created entity and its subsidiaries, and any natural persons that would qualify as "insured persons" thereof, shall be "insureds" to the extent such entities and persons would otherwise qualify as "insureds" under this Coverage Part, but only for "wrongful acts" occurring after such acquisition or creation. No coverage shall be available for any "wrongful act" of such "insureds" occurring before such acquisition or creation, or for any "interrelated wrongful acts" thereto.

However, if the fair value of the assets of any such acquired or created entity exceed 25% of the total assets of the "named insured" as reflected in its most recent consolidated financial statements prior to such acquisition or creation, then, as a condition precedent to coverage hereunder, the "insureds" shall give us written notice and full, written details of the acquisition or creation as soon as practicable (but, in all cases, within ninety (90) days of such acquisition or creation). There shall be no coverage under any renewal or replacement of this Coverage Part for any such new "subsidiary" and its subsidiaries, and any natural persons that would qualify as "insured persons" thereof, unless the "insureds" comply with the terms of this provision.

2. Mergers

If, before or during the "policy period", any "insured entity" merges with another entity such that the "insured entity" is the surviving entity, then such merged entity and its subsidiaries, and any natural persons that would qualify as "insured persons" thereof, shall be "insureds" to the extent such entities and persons would otherwise qualify as "insureds" under this Coverage Part, but only for "wrongful acts" occurring after such merger. No coverage shall be available for any "wrongful act" of such "insureds" occurring before such merger or for any "interrelated wrongful acts" thereto.

However, if the fair value of the assets of any newly merged entity exceed 25% of the total assets of the "named insured" as reflected in its most recent consolidated financial statements prior to such merger,

then, as a condition precedent to coverage hereunder, the "insureds" shall give us written notice and full, written details of the merger as soon as practicable (but, in all cases, within ninety (90) days of such merger). There shall be no coverage under any renewal or replacement of this Coverage Part for any newly merged entity or any of its subsidiaries, and any natural persons that would qualify as "insured persons" thereof, unless the "insureds" comply with the terms of this provision.

3. Takeover of Named Insured

If, before or during the "policy period":

- a. the "named insured" merges into or consolidates with another entity such that the "named insured" is not the surviving entity; or
- b. more than 50% of the securities representing the right to vote for the "named insured's" board of directors or managers is acquired by another person or entity, group of persons or entities, or persons and entities acting in concert,

then coverage shall continue under this Coverage Part, but only for "wrongful acts" occurring before any such transaction. No coverage shall be available for any "wrongful act" occurring after such transaction. Upon such transaction, this Coverage Part shall not be cancelled and the entire premium for this Coverage Part shall be deemed fully earned. The "insured" shall give us written notice and full, written details of such transaction as soon as practicable (but, in all cases, within ninety (90) days of such transaction). If any transaction described herein occurs, then we will not be obligated to offer any renewal or replacement of this Coverage Part.

4. Loss of Subsidiary Status

If, before or during the "policy period", any entity ceases to be a "subsidiary", then coverage shall be available under this Coverage Part for such "subsidiary" and its "insured persons", but only for a "wrongful act" of such "insureds" occurring before such transaction. No coverage shall be available for any "wrongful act" of such "insureds" occurring after such transaction.

K. References To Laws

1. Wherever this Coverage Part mentions any law, including, without limitation, any statute, Act or Code of the United States,

EMPLOYMENT PRACTICES LIABILITY COVERAGE FORM

such mention shall be deemed to include all amendments of, and all rules or regulations promulgated under, such law.

2. Wherever this Coverage Part mentions any law or laws, including, without limitation, any statute, Act or Code of the United States, and such mention is followed by the phrase "or any similar law", such phrase shall be deemed to include all similar laws of all jurisdictions throughout the world, including, without limitation, statutes and any rules or regulations promulgated under such statutes as well as common law.

L. Action Against Us

1. No action shall be taken against us unless there shall have been full compliance with all the terms and conditions of this Coverage Part.
2. No person or organization shall have any right under this Coverage Part to join us as a party to any "claim" against the "insureds" nor shall we be impleaded by the "insureds" in any such "claim".

M. Entire Agreement

This Coverage Part, the "application" and any written endorsements attached hereto, along with the Declarations constitute the entire agreement between you and us relating to this Coverage Part's insurance.

N. Bankruptcy or Insolvency

Bankruptcy or insolvency of any "insureds" shall not relieve us of any of our obligations under this Coverage Part.

O. Authorization of First Named Insured

The first "named insured" shall act on behalf of all "Insureds" with respect to all matters under this Coverage Part, including, without limitation, giving and receiving of notices regarding "claims", cancellation, election of the Extended Reporting Period, payment of premiums, receipt of any return premiums, and acceptance of any endorsements to this Coverage Part.

P. When We Do Not Renew

1. If we decide not to renew this Coverage Part, we will mail or deliver to the first "named insured" shown in the Declarations written notice of the nonrenewal not less than thirty (30) days before the expiration date.
2. If notice is mailed, proof of mailing will be sufficient proof of notice.
3. Any state amendatory endorsement changing Nonrenewal Conditions for any part of this policy shall also apply to this Coverage Part.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COLORADO CHANGES - EMPLOYMENT PRACTICES LIABILITY

This endorsement modifies insurance provided under the following:

EMPLOYMENT PRACTICES LIABILITY COVERAGE FORM

- I. The first paragraph of **SECTION V – EXTENDED REPORTING PERIOD** is deleted and replaced by the following:
- Subject to provision **A.** through **G.** below, if this Coverage Part is canceled or non-renewed, you shall have the right to purchase an extended period to report "claims" under this Coverage Part for any "claim" first made during the period of time set forth in the Supplemental Extended Reporting Period Endorsement, and following the effective date of such cancellation or nonrenewal and reported in writing during such period or within sixty (60) days thereafter, but only with respect to any "wrongful act" which takes place prior to the effective date of such cancellation or nonrenewal.
- II. **SECTION IX – CONDITIONS** is amended to add the following Condition:
- The Insured's Right to Claim and Wrongful Act Information**
1. We will provide the "named insured", upon request and within thirty (30) days thereafter, sufficient information about closed or paid "claims", "claims" for which we have established reserves, and "claims" for which we have received notices of "wrongful acts" that could give rise to "claims". This will allow the "insured" to determine how much coverage is available under this Coverage Part.
 2. We compile "claim" and "wrongful act" information for our own business purposes and exercise reasonable care in doing so. In providing this information to the "named insured", we make no representations or warranties to "insureds", insurers or others to whom this information is furnished by or on behalf of the "insured". Cancellation or nonrenewal will be effective even if we provide inaccurate information or fail to provide the information.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

THIRD PARTY LIABILITY ENDORSEMENT - EMPLOYMENT PRACTICES LIABILITY

This endorsement modifies insurance provided under the following:

EMPLOYMENT PRACTICES LIABILITY COVERAGE FORM

I. SECTION I - INSURING AGREEMENT of this Coverage Part is amended to include the following:

Third Party Liability

We shall pay "loss" on behalf of the "insureds" resulting from a "third party claim" first made against the "insureds" during the "policy period" or the Extended Reporting Period, if applicable, for a "third party wrongful act" by the "insureds."

II. SECTION II - DEFINITIONS of this Coverage Part is amended in the following manner:

A. The definition of "claim" is amended to include the following:

"Claim" also means any "third party claim."

B. The definition of "wrongful act" is amended to include the following:

"Wrongful act" also means any actual or alleged "third party wrongful act".

C. The following definitions are added:

"Third party" means any natural person who is a customer, vendor, service provider or other business invitee of an "insured entity". "Third party" shall not include "employees".

"Third party claim" means any:

1. written demand for monetary damages or other civil non-monetary relief commenced by the receipt of such demand;
2. civil proceeding, including an arbitration or other alternative dispute resolution proceeding, commenced by the service of a complaint, filing of a demand for arbitration, or similar pleading; or

3. formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document;

by or on behalf of a "third party".

"Third party claim" also means a written request to the "insureds" to toll or waive a statute of limitations regarding a potential "third party claim" as described above. Such "claim" shall be commenced by the receipt of such request.

"Third party wrongful act" means:

1. discrimination against a "third party" based upon age, gender, race, color, national origin, religion, creed, marital status, sexual orientation or preference, pregnancy, disability, HIV or other health status, Vietnam Era Veteran or other military status, or other protected status established under federal, state or local law; or
2. sexual harassment or other harassment of a "third party", including unwelcome sexual advances, requests for sexual favors or other conduct of a sexual nature.

III. The following exclusion is added to **SECTION III - EXCLUSIONS:**

We shall not pay "loss" in connection with any "third party claim" based upon, arising from or in any way related to any price discrimination or violation of any anti-trust law or any similar law designed to protect competition or prevent unfair trade practices.

All other terms and conditions of this Coverage Part remain unchanged.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

RETROACTIVE DATE ENDORSEMENT - EMPLOYMENT PRACTICES LIABILITY

This endorsement modifies insurance provided under the following:

EMPLOYMENT PRACTICES LIABILITY COVERAGE FORM

- I. SECTION I - INSURING AGREEMENT** of this Coverage Part is amended to include the following:
This Coverage Part applies only to "claims" for "wrongful acts" that occurred on or after the "retroactive date" set forth in the Declarations and before the end of the "policy period", regardless of whether such "claim" is made during the "policy period" or the Extended Reporting Period, if applicable.
- II.** The following definition is added to **SECTION II - DEFINITIONS** of this Coverage Part:
"Retroactive date" means the date specified in the Declarations. If no date is specified, the "retroactive date" will be the same as the Effective Date of this Coverage Part.

All other terms and conditions of this Coverage Part remain unchanged.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COLORADO CHANGES - EMPLOYMENT PRACTICES LIABILITY

Wherever "insured" or "named insured" is defined in the Coverage Part to include a spouse or any other term that denotes the spousal relationship of the "insured" or "named insured", it is amended to include a partner in a civil union or party to a civil union.

All other terms and conditions remain unchanged.



Insurer: SENTINEL INSURANCE COMPANY, LIMITED
ONE HARTFORD PLAZA, HARTFORD, CT 06155

This Declarations Page, with Common Policy Conditions, FailSafe® MEGA Technology Errors or Omissions Liability Coverage Form and Endorsements, if any, issued to form a part thereof, shall together constitute this Technology Errors or Omissions Liability "Coverage Part", which in turn forms a part of the Policy Number shown below.

The Common Policy Conditions and Nuclear Energy Liability Exclusion of the policy to which this "coverage part" is attached also apply to this "coverage part". But if there is any conflict between those provisions and this "coverage part", then this "coverage part" will govern. None of the other provisions of the policy apply to this "coverage part".

Wherever the word "policy" appears in this form or in endorsements attached to or made a part of this "coverage part", it means "coverage part".

POLICY NUMBER: 34 SBM PN5159

FAILSAFE MEGA® TECHNOLOGY ERRORS OR OMISSIONS LIABILITY DECLARATIONS
THIS IS "CLAIMS" FIRST MADE INSURANCE. PLEASE READ "YOUR" "COVERAGE PART". "CLAIM EXPENSES" ARE PAYABLE WITHIN THE LIMITS OF LIABILITY.

Named Insured and Mailing Address: JAMES PILCHER ENTERPRISES INC.
DBA DATAONE INC.
533 OLD STONE DRIVE
HIGHLANDS RANCH CO 80126

Coverage Period **Effective Date:** 10/23/21 **Expiration Date:** 10/23/22
12:01 A.M., Standard time at the address of the named insured as stated herein.

Premium:	\$	3,042	
Minimum Premium:	\$	860	Type of Minimum Premium: Retained
Limits Of Liability:	\$	1,000,000	Each "Glitch" Limit
	\$	2,000,000	Aggregate Limit
Retroactive Date:		10/23/12	If no date is entered, the Retroactive Date is the same as the effective date of this "Coverage Part".
Retention:	\$	2,500	Each "Glitch" Retention

Form Numbers Of Forms and Endorsements that apply: Common Policy Conditions: Form SS 00 05, Exclusion – Nuclear Energy Liability: SS 05 47

SS02710314 SS20090314 SS20370611

Countersigned by Suean S. Castaneda 07/30/21
(where required by law) Authorized Representative Date

**FAILSAFE® MEGA TECHNOLOGY ERRORS OR
OMISSIONS LIABILITY COVERAGE FORM**

QUICK REFERENCE

**FAILSAFE® MEGA TECHNOLOGY ERRORS OR OMISSIONS LIABILITY
COVERAGE FORM - CLAIMS FIRST MADE**

READ YOUR POLICY CAREFULLY

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FAILSAFE® MEGA TECHNOLOGY ERRORS OR OMISSIONS LIABILITY COVERAGE FORM (CLAIMS FIRST MADE)

THIS IS "CLAIMS" FIRST MADE COVERAGE. PLEASE READ ALL PROVISIONS CAREFULLY, AND CONTACT "YOUR" AGENT OR BROKER IF "YOU" HAVE ANY QUESTIONS. "YOUR" COVERAGE APPLIES ONLY TO "CLAIMS" WHEN:

THE "GLITCH" OCCURS ON OR AFTER THE RETROACTIVE DATE AND BEFORE THE END OF THE "COVERAGE PERIOD", AND

THE "CLAIM" IS FIRST MADE AGAINST ANY OF "YOU" DURING THE "COVERAGE PERIOD" AND "YOU" USE "YOUR" BEST EFFORTS TO REPORT SUCH A CLAIM TO US IN WRITING AS SOON AS PRACTICABLE IN ACCORDANCE WITH THE TERMS OF THIS "COVERAGE PART". UPON TERMINATION OF "YOUR" "COVERAGE PART", AN OPTIONAL EXTENDED REPORTING PERIOD MAY BE AVAILABLE.

COVERED "CLAIM EXPENSES" AND "DAMAGES" WITHIN THE RETENTION AMOUNT MUST BE PAID BY "YOU" AND DO NOT REDUCE THE LIMITS OF LIABILITY. COVERED "CLAIM EXPENSES" AND "DAMAGES" ABOVE THE RETENTION AMOUNT ARE PAYABLE UNDER THIS "COVERAGE PART" AND REDUCE THE LIMITS OF LIABILITY.

SOME PROVISIONS IN THIS "COVERAGE PART" RESTRICT COVERAGE. READ THE ENTIRE "COVERAGE PART" CAREFULLY TO DETERMINE RIGHTS, DUTIES AND WHAT IS AND WHAT IS NOT COVERED.

The words "we", "us" and "our" refer to the stock insurance company member of THE HARTFORD shown on the Declarations Page of this "coverage part".

The words "you" and "your" mean any person or entity described under the definition of "you or your" in **Section II – Definitions**.

The words "glitch" and "technology services" are defined in **Section I – Coverage**.

Except for the definitions mentioned above and captions, all other words and phrases that appear in quotes are defined in **Section II – Definitions**.

In return for payment of the premium, and subject to all of the terms and conditions of this "coverage part", including those changed, added or deleted by endorsements that "we" issue forming a part of this "coverage part", "we" agree with "you" as follows:

SECTION I – COVERAGE

A. Insuring Agreement

1. "We" will pay on "your" behalf money in excess of the Retention that "you" become legally required to pay as "damages" and "claim expenses" because of a "claim" caused by a "glitch" in "your" performance of "technology services".
2. "Glitch" means the following when actually or allegedly committed by "you" or on "your" behalf:
 - a. Negligent: act, error or omission;
 - b. Failure of "your" "technology services" to perform the function or serve the purpose intended;
 - c. Breach of warranties or representations about the fitness, quality, suitability, performance or use of "your" "technology services"; and
 - d. Failure to prevent:
 1. Denial of service;
 2. Disruption of service;
 3. Unauthorized access to, unauthorized use of, repudiation of access to, tampering with or introduction of malicious code into: firmware, data, software, systems or networks;
 4. Identity theft or disclosure of "nonpublic personal information"; or
 5. disclosure of third party nonpublic corporate information.

"Glitch" includes an "interrelated glitch".

"Glitch" includes any of the foregoing when caused by the acts of a negligently supervised "rogue employee".

3. "Technology services" means:
 - a. the following services performed for others:
 1. Consulting, analysis, design, installation, training, maintenance, support and repair of or on: software, wireless applications, firmware, shareware, networks, systems, hardware, devices or components;
 2. Integration of systems;

3. Processing of, management of, mining or warehousing of data;
 4. Administration, management, operation or hosting of: another party's systems, technology or computer facilities;
 5. Website development; website hosting;
 6. Internet access services; intranet, extranet or electronic information connectivity services; software application connectivity services;
 7. Manufacture, sale, licensing, distribution, or marketing of: software, wireless applications, firmware, shareware, networks, systems, hardware, devices or components;
 8. Design and development of: code, software or programming;
 9. Providing software application: services, rental or leasing;
 10. Screening, selection, recruitment or placement of candidates for temporary or permanent employment by others as information technology professionals;
 11. "Telecommunication services"; and
 12. "Telecommunication products".
- b. web-related software and connectivity services performed for others; and
 - c. activities on the "named insured's" "computer system and network".

B. Defense

1. For all covered "claims" made in the United States of America, its territories and possessions, Puerto Rico or Canada, "we" have the right and duty to defend "you". "We" have the right to appoint counsel. "We" may investigate any "claim" as "we" deem appropriate.
2. For all covered "claims" made outside the United States of America, Puerto Rico or Canada, "we" have the right but not the duty to defend "you", appoint counsel and investigate.

If "we" choose not to defend, appoint counsel and investigate such a "claim", the "first named insured" under "our" supervision will arrange for investigation and defense of the "claim" as reasonably appropriate. Subject to the Limits of Liability, "we" will reimburse the "first named insured" for paying "damages" or "claim expenses" for covered "claims".

3. The following terms apply to all covered "claims", wherever they are made:

a. "You" will not settle any "claim" without "our" prior written consent, even if the "claim" is less than the amount of the Retention. "We" have the right to settle all "claims", wherever made, unless "we" receive a written objection from the "first named insured" before "we" agree to a settlement. The "first named insured" will be notified before "we" agree to a settlement. If the "first named insured" objects to a settlement recommended by "us" and acceptable to the claimant, then "our" duty to pay will be limited to:

1. The amount of "damages" for which the "claim" could have been settled; plus
2. All "claim expenses" incurred and paid or payable by "us" or the "first named insured" at the time "we" made "our" recommendation; plus
3. fifty percent (50%) of all covered "damages" and "claim expenses" incurred and paid or payable by "us" or the "first named insured" after the time "we" made "our" recommendation.

If the total of those amounts falls within "your" Retention, "we" will have no duty to pay "damages" and "claim expenses" on that "claim".

In no event will "we" be obligated to pay more than the remaining applicable Limit of Liability determined under **Section IV – Limits of Liability and Retention**.

In "claims" where the "first named insured" has objected to a settlement recommended by "us", "we" have the right to stop defending and paying "claim expenses" upon tendering control of the defense to "you".

- b. "We" have the right to exercise all of "your" rights in choosing arbitrators and in conducting all arbitrations.
- c. "Our" right and duty to defend "claims" and to pay or reimburse for "claim expenses" will end when "we" have used up the applicable Limit of Liability by paying "damages" and/or "claim expenses".

C. When We Insure

1. This "coverage part" applies to a "glitch" only if all the terms in a. through c. below are met:

- a. The "glitch" was committed on or after the Retroactive Date shown in the Declarations and before the end of the "coverage period";
- b. Before the effective date of this "coverage part" shown in the Declarations, no "specified insured" knew of or should have reasonably known of a "glitch"; or any fact(s) or circumstance(s) which could reasonably be expected to result in a "claim"; and
- c. The "claim" because of the "glitch" is:

1. First made against any of "you" during the "coverage period"; and
2. Reported to "us" in writing by "you" using "your" best efforts to notify "us" as soon as practicable after any "specified insured" becomes aware of it.

2. All "claims" arising from the same "glitch", as defined in **Section I – Coverage**, are considered to be one "claim".

3. A "claim" is deemed first made when the earliest of the following occurs:

- a. Any of "you" receive written notice of such "claim"; or
- b. Subject to **Section VI – Conditions, Duties in the Event of "Glitch" or "Claim"**, "we" receive from "you" or "your" agent written notice of the "glitch", which later results in a "claim".

4. A "claim" is deemed reported to "us" when "we" first receive it in writing.

SECTION II – DEFINITIONS

A. "Asbestos hazard" means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.

- B.** "Bodily injury" means physical injury, sickness, disease or death sustained by a person; or mental anguish, emotional distress, mental injury, fright and shock when they result in or from physical injury, sickness, disease or death.
- C.** "Claim" means a written demand received by any of "you" for "damages" or injunctive relief. This includes a suit, arbitration or other type of alternative dispute resolution proceeding against any of "you".
- D.** "Claim expenses" means reasonable expenses incurred by "us", or by "you" with "our" prior written consent, in the investigation and defense of a "claim".
- 1.** "Claim expenses" also include:
 - a.** The cost of bonds to release attachments, but only for bond amounts within the remaining applicable Limit of Liability. "We" do not have to furnish these bonds;
 - b.** Costs taxed against "you" in the suit;
 - c.** Interest on the full amount of any judgment that accrues before or after entry of the judgment and before "we" have paid, offered to pay or deposited in court the part of the judgment that is within the remaining applicable Limit of Liability; and
 - d.** Actual loss of earnings up to \$1,000 per day for each of "you" that "you" personally incur because of time off from work at "our" request to help "us" investigate or defend a "claim".
 - 2.** "Claim expenses" do not include any "first party expenses" or salaries, wages, remuneration, compensation, benefits, overhead, or similar expenses of any of "you".
- E.** "Computer system and network" means:
- 1.** Leased or owned computer hardware including mobile, networked, and data storage computing equipment;
 - 2.** Owned or licensed software;
 - 3.** Owned websites;
 - 4.** Leased or owned wireless input and output devices; and
 - 5.** Electronic backup facilities and data storage repositories employed in conjunction with items 1 through 4 above.
- F.** "Contract worker agreement" means a signed agreement between the "named insured" and an individual person who is an agent or independent contractor when the agreement provides that:
- 1.** The agent or independent contractor will provide specific "technology services" on behalf of the "named insured";
 - 2.** The "named insured" will indemnify the agent or independent contractor for those "technology services"; and
 - 3.** The agreement is made before any "glitch" that may give rise to a "claim".
- G.** "Coverage part" means the FailSafe MEGA Technology Errors or Omissions Liability coverage form.
- H.** "Coverage period" means the time beginning with the effective date shown in the Declarations and ending with the earlier of:
- 1.** The date of termination or cancellation; or
 - 2.** The expiration date shown in the Declarations.
- I.** "Crisis management expenses" means reasonable and necessary fees and expenses:
- 1.** Charged by a "crisis management firm" in the performance of "crisis management services"; and
 - 2.** For printing, advertising, mailing of materials, or travel by an "executive officer", partner, owner, employee, agent of the "named insured", or the "crisis management firm" as a direct response to a "data privacy wrongful act".
- J.** "Crisis management firm" means any public relations or law firm hired or appointed by "us" or by "you" with "our" prior written consent, to perform "crisis management services" in connection with a "data privacy wrongful act".
- K.** "Crisis management services" means those services performed by a "crisis management firm" to minimize potential harm to the "named insured" arising from a "data privacy wrongful act", including:
- 1.** Maintaining and restoring public confidence in the "named insured"; and
 - 2.** Providing advice to the "named insured" in connection with such "data privacy wrongful act".

- L.** "Cyber extortion expenses" means those reasonable and necessary expenses incurred by the "named insured" as a result of a "cyber extortion threat" including "cyber extortion payments".
- M.** "Cyber extortion payments" means necessary monetary amounts paid by the "named insured", with "our" consent, to a party who is not insured under this policy and whom the "named insured" believes to be responsible for the "cyber extortion threat".
- N.** "Cyber extortion threat" means a threat or series of threats communicated to the "named insured" by a person or group, who is not insured under this policy, to cause an actual and measurable interruption, suspension in service or the failure of the "named insured's" "computer system and network" (including failure to prevent unauthorized access or unauthorized use of the "named insured's" "computer system and network") unless "cyber extortion payments" are surrendered by the "named insured" to such person or group.

All "cyber extortion threats" made by the same person or group within ninety (90) days of one another will be deemed one "cyber extortion threat" and the date of the commission of the first such "cyber extortion threat" will be deemed the date of commission of all such related "cyber extortion threats."

- O.** "Cyber investigation expenses" means those reasonable and necessary expenses incurred by the "named insured" to conduct an investigation of the "named insured's" "computer system and network" by a third party to determine the source or cause of a "data privacy wrongful act".
- P.** "Damages" means a money award, judgment or settlement that "you" become legally required to pay, including punitive, exemplary and multiplied damages where insurable by law.

"Damages" does not include:

1. Any kind of: refund, rebate, redemption coupon, offset, return or credit that has been paid to or by any of "you", or that is owed to or by any of "you"; examples include but are not limited to any of the following: any licensing fee or other fee, royalty, subscription or access charge, or other charge;

2. Disgorgement of profits or any money or credits that represent any gain, profit or advantage to which any of "you" are not legally entitled;
3. "Your" cost to comply with any non-money or injunctive relief;
4. Cost or expense to recall, upgrade, replace, repair, correct, complete or re-perform "technology services", in whole or part, by:
 - a. Any of "you"; or
 - b. Another party if any of "you" had the opportunity to recall, upgrade, replace, repair, correct, complete or re-perform "technology services";
5. Any criminal: fine or penalty;
6. Any payment any of "you" make without "our" prior written consent;
7. The purchase or contract price for "your" "technology services"; or
8. any "first party expenses" or salaries, wages, remuneration, compensation, benefits, overhead, or similar expenses of any of "you".

In accordance with the foregoing, insurable punitive, exemplary and multiplied damages will be covered based upon the law of the most favorable of the following jurisdictions to "you":

- a. Where the punitive, exemplary or multiplied damages are imposed or awarded;
 - b. Where the "claim" resulting in punitive, exemplary, or multiplied damages occurred;
 - c. Where the "glitch" giving rise to a "claim" that resulted in punitive, exemplary, or multiplied damages occurred;
 - d. Where the "named insured" against whom punitive, exemplary, or multiplied damages are imposed or awarded is incorporated, resides or has their principal place of business; or
 - e. Where "we" are incorporated or have our principal place of business.
- Q.** "Data privacy laws" means any United States or Canadian federal, state and local statutes and regulations governing confidentiality, control and use of "nonpublic personal information" including but not limited to:
1. Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191) (HIPAA);

2. Health Insurance Technology for Economic and Clinical Health Act of 2009 (HITECH);
 3. Gramm-Leach-Bliley Act of 1999, also known as, the Financial Services Modernization Act of 1999;
 4. State privacy protection laws;
 5. Federal and state consumer credit reporting laws, including but not limited to, the Federal Fair Credit Reporting Act (FCRA) and the California Consumer Credit Reporting Agencies Act (CCCRAA); or
 6. The Fair and Accurate Credit Transaction Act of 2003 (FACTA).
- R.** "Data privacy regulatory and credit monitoring expenses" means:
1. Reasonable and necessary costs incurred by the "named insured" to provide credit monitoring services in the "named insured's" compliance with "data privacy laws";
 2. Reasonable and necessary costs incurred by the "named insured" to provide courtesy credit monitoring when such credit monitoring is necessary to preserve the reputation and good name of the "named insured" and to mitigate the potential for a future "claim(s)";
 3. Reasonable and necessary legal fees and expenses incurred by the "named insured" in the defense of a "data privacy regulation proceeding"; and
 4. Fines or penalties assessed in connection with a "data privacy regulation proceeding".
- S.** "Data privacy regulation proceeding" means a civil, administrative or regulatory proceeding against a "named insured" by a federal, state or foreign governmental authority alleging violation of any "data privacy law". A "data privacy regulation proceeding" is not a "claim".
- T.** "Data privacy wrongful act" means any act, error or omission that results in:
1. The improper dissemination of "nonpublic personal information"; or
 2. Any breach or violation by the "named insured" of any "data privacy laws".
- "Data privacy wrongful act" also means an "interrelated data privacy wrongful act".
- U.** "Enhanced telephone services" means call conferencing, call forwarding, call identification, call return, call waiting, calling card,
- directory assistance, repeat dialing, speed dial, toll free, video conferencing, voice messaging services,
- V.** "Executive officer" means a director or officer in a position created by "your" charter, constitution, by-laws or any other similar governing document.
- W.** "First named insured" means the "named insured" first listed in the Declarations.
- X.** "First party expenses" means the following expenses incurred by the "named insured":
1. "Crisis management expenses";
 2. "Cyber investigation expenses";
 3. "Data privacy regulatory and credit monitoring expenses";
 4. "Notification expenses"; and
 5. "Cyber extortion expenses".
- "First party expenses" do not include salaries, wages, remuneration, compensation, benefits, overhead, or similar expenses of any of "you".
- Y.** "Interrelated glitch" means multiple "glitches" that are logically or causally connected by common facts, circumstances, situations, events, transactions and/or decisions. "Interrelated glitches" that occur before the end of the last technology errors and omissions/liability policy issued by an insurance company member of The Hartford are considered one "glitch" occurring on the date the earliest such "glitch" is committed. An "interrelated glitch" is subject to the Each "Glitch" Limit.
- Z.** "Interrelated data privacy wrongful act" means multiple "data privacy wrongful acts" that are logically or causally connected by common facts, circumstances, situations, events, transactions and/or decisions. "Interrelated data privacy wrongful acts" that occur before the end of the last technology errors or omissions/liability policy issued by an insurance company member of The Hartford are considered one "data privacy wrongful act" occurring on the date the earliest such "data privacy wrongful act" is committed.
- AA.** "Named insured" means:
1. The persons or entities listed in the Declarations for this "coverage part"; and
 2. Any "subsidiary".
- BB.** "Nonpublic personal information" means a natural person's first name and last name in combination with one or more of the following items specific to that natural person:

1. social security number;
 2. medical or healthcare information or data;
 3. drivers license number or state identification number; or
 4. financial account information that would permit access to that individual's financial account.
- CC.** "Notification expenses" means the reasonable and necessary expenses incurred to comply with "notification laws", as well as, courtesy notifications to individuals when such notifications are not mandated by "notification laws" but are reasonably necessary to preserve the reputation and good name of the "named insured" and to mitigate the potential for a future "claim(s)".
- DD.** "Notification laws" means any statute or regulation that requires the "named insured" storing "nonpublic personal information" on the "named insured's" "computer system and network" to provide notice to specified individuals of any actual or potential "data privacy wrongful act" with respect to such "nonpublic personal information".
- EE.** "Personal injury" means:
1. Any form of defamation or disparagement causing harm to the character, reputation or feelings of any person, entity, product or service, including but not limited to libel, slander, product or service disparagement, trade libel, infliction of emotional distress, outrage or outrageous conduct;
 2. Any form of invasion, infringement or interference with rights of publicity or privacy, including but not limited to false light, public disclosure of private facts, intrusion and commercial appropriation of name or likeness; or
 3. Wrongful entry or eviction, trespass, eavesdropping or other invasion of the right of private occupancy; or malicious prosecution or false: arrest, detention or imprisonment.
- FF.** "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- GG.** "Property damage" means physical damage to or physical loss of tangible property and any resulting loss, corruption or destruction of data or information, including all resulting loss of use of that property, data or information.
- "Property damage" does not mean the loss, corruption or destruction of data or information when the tangible property on which the data or information is or was kept is not physically damaged or physically lost.
- HH.** "Rogue employee" means any past or present employee of any "named insured" who acts or acted outside the scope of his or her employment to intentionally cause a "glitch" or a "data privacy wrongful act". "Rogue employee" does not include any "specified insured".
- II.** "Specified insured" means:
1. Any "named insured" including the spouse and/or domestic partner of a "named insured" that is an individual;
 2. Any past or present partner, "executive officer", or any individual in an equivalent position of a "named insured", including but not limited to individuals that hold management positions similar to an "executive officer" for any "named insured" that does not have a charter, constitution, by-laws or any other similar governing document;
 3. Any individual responsible for the insurance, legal, or financial matters of the "named insured" including but not limited to General Counsel, Risk Manager, or Insurance Manager of the "named insured";
 4. Any member of the "named insured" that could be afforded coverage under this "coverage part"; or
 5. The executors, administrators, or legal representatives of **1, 2, 3** or **4** listed above in the event of a death, incapacitation or bankruptcy of **1, 2, 3** or **4** listed above; but this only applies while performing their duties as such.
- However, "specified insured" does not include any "rogue employee".
- JJ.** "Subsidiary" means any corporation of which the "first named insured" owns, directly or indirectly, more than fifty percent (50%) of the issued and outstanding voting stock. The stock must be owned by the "first named insured" on the effective date of the "coverage period" shown in the Declarations.
1. "Subsidiary" also includes any corporation which becomes a "subsidiary" during the "coverage period", provided that as soon as practical, but no later than within ninety (90) days of its becoming a "subsidiary", "you" have:

- a. Provided "us" with full details of the new "subsidiary" including a completed and signed "subsidiary" application and any other underwriting information "we" may require;
 - b. Agreed to and paid any additional premium related to the "subsidiary"; and
 - c. Agreed to any change in the terms and conditions of this "coverage part" required by "us" relating to the new "subsidiary".
2. This "coverage part" does not apply to any "claim" arising from or involving a "subsidiary" for any "glitch" that was committed when the "first named insured" did not own directly or indirectly more than 50% of the issued and outstanding voting stock of the "subsidiary".

KK. "Telecommunication products" means computer hardware, firmware and/or software products, electronic equipment or devices manufactured, sold, handled, distributed or disposed of by "you" which are specifically designed or intended for use in telecommunication systems or "your" "telecommunication services".

LL. "Telecommunication services" means the following services performed for others:

1. Telephone services including competitive access provider, dial tone access, digital subscriber line (DSL), incumbent/local exchange carrier, facsimile, integrated services digital network (ISDN), interconnection, local, long distance, reseller, switching, and 911 emergency services;
2. "Enhanced telephone services";
3. Cellular and wireless communication services including paging and ground based satellite communication services;
4. Provision of cable television services; and
5. Telecommunication consulting services.

MM. "Temporary worker" means a person who is provided to "you" by a third party for a specific time period to support or increase "your" work force in special situations. Such situations may include employee absences, temporary skill shortages and seasonal workloads. A temporary worker is not an employee of "yours".

NN. "You" or "your" mean, individually and collectively:

1. Any "named insured";

2. Any past or present partner, "executive officer", or any individual in an equivalent position of a "named insured", including but not limited to individuals that hold management positions similar to an "executive officer" for any "named insured" that does not have a charter, constitution, by-laws or any other similar governing document, but only while performing their duties as such;
3. Any past or present employee of the "named insured" but only while performing their duties as such; employee does not include a "temporary worker";
4. Any individual person who is an agent or independent contractor but only while acting within the scope of his or her "contract worker agreement" with the "named insured";
5. A client that the "named insured" is required, in a written contract to perform "technology services", to add as an additional insured under this "coverage part". But the client is insured under this "coverage part" only if:
 - a. The "glitches" were committed by the "named insured" in the "named insured's" performance of "technology services";
 - b. The written contract is entered before the "glitch" giving rise to the "claim" is committed; and
 - c. There are no allegations of independent misconduct by the client;
6. Any member or stockholder of the "named insured"; but this only applies with respect to their liability as a member or stockholder; or
7. The executors, administrators or legal representatives of each of "you" listed in items 1. through 6. above in the event of "your" death, incapacity or bankruptcy; but this only applies while performing their duties as such.

SECTION III – EXCLUSIONS

- A.** "We" will not pay "damages" or "claim expenses" or defend any of "you" for any "glitch" or "claim" arising out of or in any way related to any actual or alleged:
1. "Bodily injury", "property damage", or "personal injury";
 2. Obligation which any of "you" may have to pay under any workers' compensation act, employer's liability law, unemployment compensation law, disability benefits law, or any similar law or any foreign equivalent;

3. Gradual deterioration of, wear and tear of or inherent vice in tangible property;
4. Disruption of, surge in, fluctuation in or loss of: power, connectivity or communications. However, this exclusion will not apply to any of the foregoing when directly caused by a "glitch" committed by any of "you";
5. Withdrawal or recall of all or part of "technology services" from the marketplace. However this exclusion will not apply to "claims" by third parties for the loss of use resulting from withdrawal or recall of "technology services" due to a "glitch" committed by any of "you";
6. Delay in or failure to complete "technology services". However, this exclusion will not apply if the delay or failure to complete "technology services" is the result of a "glitch" committed by any of "you";
7. Cost: overruns, guarantees, estimates or estimates being exceeded;
8. Discontinuance or cessation by any of "you" of the provision, support or maintenance of any "technology services";
9. False, deceptive, fraudulent, intentionally misleading or misrepresenting statements in advertising;
10. Sweepstakes, lotteries or other games of chance; or contests;
11. Price fixing, or any other violation of: any securities, antitrust, restraint of trade, unfair or deceptive business practices, unfair competition or consumer protection laws, the Racketeer Influenced and Corrupt Organizations Act; any similar law; or any foreign equivalent;
12. Violation or misuse of any intellectual property right, including but not limited to:
 - a. Infringement or dilution of: title, slogan, trademark, trade name, trade dress, service mark or service name;
 - b. Infringement of copyright, plagiarism or misappropriation of ideas;
 - c. Piracy;
 - d. Patent infringement or patent misuse; or
 - e. Misuse, misappropriation or theft of trade secrets;
13. Tortious interference with the contractual relationships of others;
14. Bankruptcy or insolvency of any of "you";
15. Discrimination, harassment or misconduct by any of "you" because of or relating to: race, creed, color, age, gender, sex, sexual preference or orientation, national origin, religion, disability, handicap, health condition, marital status, or any other class protected under federal, state, local or other law; or any similar law in a jurisdiction outside the United States of America;
16. Acts or omissions by any of "you" regarding:
 - a. Refusal to employ;
 - b. Termination of a person's employment; or
 - c. Employment-related practices, policies, acts or omissions; these include but are not limited to coercion, demotion, evaluation, re-assignment, discipline, defamation, harassment, humiliation or discrimination.
 - d. Breach of fiduciary duty or other responsibility in connection with any employee benefit or pension plan; this includes but is not limited to violation of the duty or responsibility imposed on fiduciaries by the Employee Retirement Income Security Act of 1974 (ERISA) or any changes to that law; any similar law; or any foreign equivalent;
17. Or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" or any loss, cost or expense arising out of any:
 - a. Request, demand, order or statutory or regulatory requirement that any of "you" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of "pollutants"; or
 - b. "Claim" or suit by or on behalf of a governmental authority for "damages" because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of "pollutants";
18. Electromagnetic radiation, including but not limited to magnetic energy, waves, fields or forces; or
19. "Asbestos hazard" including any:

- a. threatened loss, injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard"; or
 - b. request, demand or order to test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or
 - c. Testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".
- B.** "We" will not pay "damages" or "claim expenses" or defend any of "you" for any "claim" made by or on behalf of:
- 1. Any of "you"; however, this exclusion will not apply to "claims" made:
 - a. by any of "you" described in items **3.**, **4.** or **5.** of the definition of "you" when the "claim" is made in their capacity as a client as a result of "technology services" performed by the "named insured" on their behalf; or
 - b. against the "named insured" by any of "you" described in items **3.** or **4.** of the definition of "you" when the "claim" is the result of a "glitch" described in **Section I, Subsection A, Item 2.d.4.** of the definition of "glitch".
 - 2. Any entity which is a parent, affiliate, "subsidiary", joint venturer, co-venturer or other entity in which any of "you" "owns" an interest or is a partner, director, officer, sole proprietor, trustee or employee;
 - 3. Any entity affiliated with any of "you" through any common "ownership or control";
 - 4. Any entity directly or indirectly "controlled", operated or managed by any of "you"; or
 - 5. Any federal, state or local government body, subdivision or agency; any regulatory or licensing agency or bureau; or any foreign equivalent. However, this exclusion will not apply when the "claim" is made in their capacity as a client as a result of "technology services" performed by the "named insured" on their behalf.

For the purposes of exclusions **B.2.** through **4.** above, the words "owns," "ownership or control" and "controlled" mean ten percent (10%) or more ownership of a publicly-held corporation or thirty percent (30%) or more ownership of a privately-held corporation, or ten percent (10%) or more of any other type of entity.

- C.** "We" will not pay "damages" or "claim expenses" for any "glitch" or "claim" arising out of or in any way related to any:
 - 1. Dishonest, fraudulent, criminal or intentional wrongful act or omission by any of "you"; or
 - 2. Material defect or bug known by any of "you" that could reasonably be expected to cause harm;

when such act or knowledge is established by "your" admission or final adjudication by a jury, court or arbitrator.

However, exclusions **C.1.** and **2.** above do not apply to any of "you" who did not commit, acquiesce in, or remain passive after learning of the actions giving rise to the "claim".

For purposes of this exclusion, the knowledge, action or inaction of any "executive officer", partner or any individual in an equivalent position of a "named insured", including any individual that holds a management position similar to an "executive officer" for "named insureds" that do not have a charter, constitution, by-laws or any other similar governing document, will be imputed to the applicable "named insured".

- D.** "We" will not pay "damages" or "claim expenses" or defend any of "you" for any "claim" arising out of or in any way related to any actual or alleged "glitch" or "claim" that has been reported under any other policy, issued by any entity, when the inception date of that other policy preceded the effective date of this "coverage period".

SECTION IV – LIMITS OF LIABILITY AND RETENTION

A. Limits of Liability

1. Each "Glitch" Limit

Subject to **A.2.** below, the Each "Glitch" Limit stated in the Declarations is the most "we" will pay for any combination of "claim expenses" and "damages" for the total of all "claims" made during the "coverage period", including any applicable Extended Reporting Period, arising from one "glitch", regardless of the number of:

- a. "You" this "coverage part" insures;
- b. "Claims" that are made; or
- c. Persons or entities making "claims".

The Each "Glitch" Limit is not reduced by the Retention.

An "interrelated glitch" is subject to the Each "Glitch" Limit.

2. Aggregate Limit

The Aggregate Limit stated in the Declarations is the most "we" will pay for any combination of "claim expenses" and "damages" for the total of all "claims" made during the "coverage period", including any applicable Extended Reporting Period, regardless of the number of:

- a. "You" this "coverage part" insures;
- b. "Claims" that are made;
- c. Persons or entities making "claims"; or
- d. "Glitches" that are committed.

The Aggregate Limit is not reduced by the Retention.

B. Retention for Each "Glitch"

1. The Retention stated in the Declarations is the amount of money "you" must pay for covered "damages" and/or "claim expenses" for each "glitch" before this insurance will begin to pay. "You" may not insure the Retention.
2. The Retention will not be reduced by the payment of any deductible amount or any amount retained by any of "you" under any other policy of insurance; and the Retention will not be reduced by any payment made on "your" behalf by another person or entity.
3. The Retention will not reduce the Limits of Liability.
4. "You" will pay the full amount of the Retention for each "glitch" to appropriate parties as directed by "us". If "we" advance any such payments, "you" will reimburse "us" within thirty (30) days of "our" written demand. If "you" fail to make direct payments or to reimburse "us" as described above, all of "you" against whom the "claim" has been made and the "named insured" are individually and collectively responsible for paying "us" back for any advance payments "we" have made and for interest, attorney's fees and costs associated with "our" collection of the money.

SECTION V – EXTENDED REPORTING PERIODS

A. Terms Applicable to Both Types of Extended Reporting Period

An Extended Reporting Period changes the time within which a "claim" may be made against "you" and still be reported by "you", and considered by "us", for coverage in accordance with the terms of this "coverage part".

This "coverage part" has two types of Extended Reporting Periods: The Basic Extended Reporting Period and the Optional Extended Reporting Period. Both the Basic Extended Reporting Period and the Optional Extended Reporting Period:

1. Provide coverage for "claims" that are first made against "you" during such applicable Extended Reporting Period, but:
 - a. "We" will not pay "damages" or "claims expenses" or defend any of "you" for any "glitch" or "claim" arising out of or in any way related to any actual or alleged "glitch" that is committed during an Extended Reporting Period; and
 - b. Only if, there is no other insurance for the "claim";
2. Do not extend the "coverage period" or add to the scope of coverage provided as of the end of the "coverage period";
3. Do not reinstate or increase the Limits of Liability. The Limits of Liability for any Extended Reporting Period will be a part of, and not in addition to, the Limits of Liability listed in the Declarations for the "coverage period";
4. Run concurrently if the Optional Extended Reporting Period is purchased; and
5. Are not renewable.

All other "coverage part" terms and conditions remain the same.

B. Basic Extended Reporting Period

"We" will automatically provide a Basic Extended Reporting Period if this "coverage part" is:

1. Cancelled;
2. Non-renewed; or
3. Renewed by "us" with insurance that does not apply on a claims made or claims made and reported basis.

The Basic Extended Reporting Period begins with the end of the "coverage period" and lasts for ninety (90) days. The Basic Extended Reporting Period is provided at no charge.

C. Optional Extended Reporting Period

1. For an additional premium, "we" will offer an Optional Extended Reporting Period endorsement, unless this "coverage part" is cancelled for non-payment of premium, non-payment of Retention or for "your" failure to comply with "coverage part" provisions.
2. If the Optional Extended Reporting Period endorsement is purchased, the Optional Extended Reporting Period begins with the end of the "coverage period" and lasts for the period of time stated in the endorsement.
3. Optional Extended Reporting Period coverage is available only if:
 - a. The "first named insured" has paid all premiums and Retentions due for this "coverage part" at the time the "first named insured" requests an Optional Extended Reporting Period endorsement;
 - b. "We" receive the "first named insured's" written request for it within thirty (30) days after the end of the "coverage period";
 - c. The "first named insured" gives "us" written acceptance of "our" offer within fifteen (15) days of the day that "we" make "our" offer; and
 - d. "We" receive payment in full for the Optional Extended Reporting Period within thirty (30) days of the "first named insured's" acceptance of "our" offer.
4. Upon receipt of the "first named insured's" written request made in accordance with provision **3.b.** above, "we" will provide the "first named insured" an offer for the Optional Extended Reporting Period, for a period no greater than five years and for an additional premium no greater than 200% of the annual premium.
5. Once in effect, the Optional Extended Reporting Period cannot be cancelled. We need not return any part of the premium paid for any reason whatsoever.
6. Premium for the Optional Extended Reporting Period will be determined by taking into account the following:

- a. The exposures insured;
- b. Previous types and amounts of insurance;
- c. Limits of Liability available under this "coverage part" for future payment of "glitches" and "claim expenses"; and
- d. Other related factors.

SECTION VI – CONDITIONS

Solely as pertains to the coverage provided by this "coverage part", if any of the conditions in **Section VI – CONDITIONS** conflict with conditions found in the Common Policy conditions, the conditions in this **SECTION VI - CONDITIONS** govern; provided however, that if the Common Policy conditions result in a cancellation, nonrenewal, or any other termination of this policy, this "coverage part" shall also be cancelled, nonrenewed or otherwise terminated.

A. Territory

This "coverage part" applies to "glitches" committed anywhere in the universe; except this "coverage part" does not apply when the "claim" is made in a country against which the United States government has imposed trade sanctions, embargoes, or any similar regulations that prohibit the transaction of business with or within such countries at the time the "claim" is made.

B. Currency

The currency of this "coverage part" is United States of America dollars. If "damages" or "claim expenses" are paid in a currency other than United States dollars, payment will be considered to have been made in United States dollars at the rate of exchange that was used for the payment. If no actual currency exchange was made, then the rate of exchange will be the rate published in The Wall Street Journal on the day following the date that payment was made.

C. Bankruptcy

Bankruptcy or insolvency of "you" or of "your" estate will not relieve "us" of "our" obligations under this "coverage part"

D. Cancellation

1. The "first named insured" may cancel this "coverage part" by mailing or delivering to "us" advance written notice of cancellation.
2. "We" may cancel this "coverage part" by mailing or delivering to the "first named insured" written notice of cancellation at least:
 - a. Ten (10) days before the cancellation is effective, if "we" cancel for non-payment of any premium when due; or

- b. Thirty (30) days before the cancellation is effective, if "we" cancel for any other reason.
- 3. "We" will mail or deliver "our" notice to the last mailing address known to "us" for the "first named insured".
- 4. Notice of cancellation by "us" will state when the cancellation is effective. The "coverage period" will end on that date.
- 5. If this "coverage part" is cancelled, "we" will send the "first named insured" any premium refund due. If "we" cancel, the refund will be the pro-rata unearned premium.

If the "first named insured" cancels, "we" will compute the return premium at ninety percent (90%) of the pro-rata unearned premium; however, "we" will retain no less than the minimum premium for this "coverage period" indicated in the Declarations.

- 6. Proof of mailing will be sufficient proof of notice.
- 7. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective. But payment or tender of unearned premium is not a condition of cancellation.

E. When We Do Not Renew

- 1. If "we" decide not to renew this coverage part, "we" will mail written notice of non-renewal to the "first named insured". "We" will mail the notice at least sixty (60) days before the "coverage period" ends.
- 2. "We" will mail it to the last mailing address known to "us" for the "first named insured". Proof of mailing will be sufficient proof of notice.
- 3. If "we" offer to renew this "coverage part" on the same or different terms and the "first named insured" does not accept "our" offer during the current "coverage period", this "coverage part" will expire at the end of the "coverage period".

F. Duties in the Event of "Glitch" or "Claim"

- 1. The "named insured" must notify "us" in writing as soon as practicable of a "glitch" or circumstance that may result in a "claim" under this "coverage part". This requirement applies only when the "glitch" is known to:
 - a. Any person who is a "named insured";

- b. Any partner, "executive officer", or any individual in an equivalent position of a "named insured", including but not limited to individuals that hold management positions similar to an "executive officer" for any "named insured" that does not have a charter, constitution, by-laws or any other similar governing document;
 - c. Any individual responsible for the insurance, legal, or financial matters of the "named insured" including but not limited to General Counsel, Risk Manager, or Insurance manager of the "named insured".
- 2. If during the "coverage period" any of "you" first become aware of a "glitch" to which this "coverage part" applies which may result in a "claim" under this "coverage part" and give "us" written notice within the "coverage period" of:
 - a. The specific "glitch", the date of the "glitch" and the name of the potential claimant;
 - b. The "damages" which have or may result from the "glitch"; and
 - c. The circumstances by which "you" first became aware of the "glitch";
 then any "claim" first made arising out of the "glitch" will be deemed to have been made on the date "we" received written notice.
 - 3. If a "claim" is made against any of "you", as soon as any "specified insured" knows of such a "claim", "you" must:
 - a. Immediately record the specifics of the "claim" and the date received;
 - b. Immediately send "us" copies of all demands, notices, summonses and legal papers received in connection with the "claim";
 - c. Authorize "us" to obtain records and other information;
 - d. Cooperate with "us" in the investigation, settlement, and defense of the "claim"; and
 - e. Assist "us", upon "our" request, in enforcing any right against any person or entity that may be liable to "you" or the claimant because of "damages" to which this "coverage part" may also apply.
 - 4. None of "you" will, except at "your" own cost, make a payment, assume any obligation, or incur any cost without "our" prior written consent.

G. Legal Action Against Us

1. No person or entity has a right under this "coverage part":
 - a. To join "us" as a party or bring "us" into a suit asking for "damages" from "you"; or
 - b. To sue "us" under this "coverage part"

unless all of its terms and conditions have been fully complied with.

2. A person or entity may sue "us" to recover on an agreed settlement or on a final judgment against "you" obtained after an actual trial or other binding adjudication. But "we" will not be liable for "claim expenses" or "damages" that are not payable under the terms and conditions of this "coverage part" or that are more than the applicable Limit of Liability.

An agreed settlement means a settlement that "we" agree to in writing.

H. Mergers, Consolidations or Acquisitions

1. If, after the effective date of this "coverage part" shown in the Declarations, the "named insured":
 - a. Merges or consolidates with another entity; or
 - b. Acquires more than fifty percent (50%) of the assets of another entity,

and the "named insured" is the surviving entity, the entity merged or consolidated with, or acquired by the "named insured" will be afforded coverage under this "coverage part" for a period of ninety (90) days or until the expiration of this "coverage part", whichever is less.

2. "We" may endorse this "coverage part" to provide coverage beyond the period of time indicated in 1. above if, within ninety (90) days of the merger, consolidation or acquisition transaction, "you" have:
 - a. Provided "us" with full details of the transaction and any other additional underwriting information that "we" may require;
 - b. Agreed to any amendment of the terms and conditions of this "coverage part" by endorsement issued by "us" relating to such transaction; and
 - c. Agreed to and paid any additional premium for the endorsement related to such transaction.

3. This "coverage part" does not apply to any "claim" arising from or involving an entity that is merged or consolidated with, or acquired by the "named insured" for any "glitch" that was committed when the "first named insured" did not own directly or indirectly more than fifty percent (50%) of the issued and outstanding voting stock of the entity.

4. The retroactive date for an entity that was merged or consolidated with, or acquired by the "named insured" will be the date of the merger, consolidation or acquisition by the "named insured".

"We" may endorse this "coverage part" to provide a different retroactive date for such entity, if applicable information is provided to demonstrate similar coverage has been continuously maintained by the entity.

5. If after the Start Date of this "coverage part" shown in the Declarations for this "coverage part":
 - a. The "first named insured" merges into or consolidates with another entity and the "named insured" is not the surviving entity; or
 - b. More than 50% of the securities representing the right to vote for the "first named insured's" board of directors or managers is acquired by another person or entity, group of persons or entities, or persons and entities acting in concert;

Then coverage shall continue under this "coverage part" and any renewal or replacement hereof but only for "glitches" occurring prior to any such transaction. The "first named insured" shall give us written notice and full, written details of such transaction as soon as practicable (but in all cases, within ninety (90) days of such transaction). If any transaction described herein occurs, then "we" will not be obligated to offer any renewal or replacement of this "coverage part".

I. Other Insurance and Payments Available to "You"

The insurance under this "coverage part" will apply only in excess of all other:

1. Insurance, except for other insurance that is written specifically to apply in excess over this "coverage part";
2. Bonds, self-insured retentions, deductibles, indemnifications; or

3. Similar agreements or payment options available to "you".

whether they are stated to be primary, pro rata, contributory, contingent or otherwise.

J. Payment of Premiums and Retention

The "first named insured" must pay all premiums and Retentions when due. "We" will pay any return premiums to the "first named insured".

K. Transfer of Rights of Recovery Against Others to Us

"You" must do nothing to impair "your" rights to recover all or any part of any payment "we" have made under this "coverage part", and those rights are transferred to "us". At "our" request "you" will bring suit or transfer those rights to "us" and help "us" enforce them. Any recoveries will be paid first to reimburse the person or entity that paid the subrogation costs, then to "us" for the amount "we" have paid for "claim expenses" and "damages". Any amount that may remain will be paid to the "first named insured".

L. Transfer of "Your" Rights and Duties Under This Coverage Part

"Your" rights and duties under this "coverage part" may not be transferred without "our" written consent except in the case of death or bankruptcy.

If "you" die or become bankrupt, "your" rights and duties will be transferred to "your" legal representative but only while acting within the scope of duties as "your" legal representative.

Until "your" legal representative is appointed, anyone having proper temporary custody of "your" property will have "your" rights and duties but only with respect to that property.

M. Representations and Statements

By accepting this "coverage part", "you" agree to all of the following:

1. The representations and statements contained in the application for coverage and other information submitted to "us" in applying for this "coverage part" are accurate and complete; they were made to induce "our" reliance upon them;
2. The representations and statements made to "us" in the application and other information submitted to "us" were made by or for the "named insured" on behalf of all of "you"; they are material to "our" decision to provide coverage; they are considered as incorporated in and constituting part of this "coverage part";

3. "We" have issued this "coverage part" in reliance upon those representations and statements;
4. In the event the application or other information submitted to "us" contains misrepresentations or fails to state facts which affect "our" acceptance of the risk, the hazard assumed by "us", the terms or conditions of the "coverage part" "we" offered or the premium "we" charged for this "coverage part", "we" will not pay for any "claim expenses" or "damages" relating to a "glitch" or "claim" under this "coverage part"; and
5. If "you" report any "glitch" or "claim" knowing it, or any of the representations and statements regarding the "glitch" or "claim", to be false or fraudulent, this "coverage part" will not make payments for the "glitch" or "claim".



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COLORADO CHANGES - FAILSAFE® MEGA TECHNOLOGY ERRORS OR OMISSIONS LIABILITY

This endorsement modifies insurance provided under the following:

FAILSAFE MEGA® TECHNOLOGY ERRORS OR OMISSIONS LIABILITY COVERAGE FORM

- I. SECTION V – EXTENDED REPORTING PERIODS**, items **1.**, **3.** and **4.** of the subsection entitled **Optional Extended Reporting Period** are deleted and replaced by the following:
- 1.** For an additional premium, "we" will offer an Optional Extended Reporting Period endorsement.
 - 3.** Optional Extended Reporting Period coverage is available only if:
 - a.** Where premium is due for coverage under this "coverage part", any monies received as payment for the Optional Extended Reporting Period coverage shall first be applied to such premium owing for this "coverage part". The Optional Extended Reporting Period coverage will not take effect until the premium owing for this "coverage part" is paid in full and unless the premium owing for the Optional Extended Reporting Period coverage is paid promptly when due;
 - b.** "We" receive the "first named insured's" written request for it within sixty (60) days after the end of the "coverage period";
 - c.** The "first named insured" gives "us" written acceptance of "our" offer within fifteen (15) days of the day that "we" make "our" offer; and
 - d.** "We" receive payment in full for the Optional Extended Reporting Period within thirty (30) days of the "first named insured's" acceptance of "our" offer.
 - 4.** Upon receipt of the "first named insured's" written request made in accordance with provision **3.b.** above, "we" will provide the "first named insured" an offer for the Optional Extended Reporting Period, for a period of no less than one year and no greater than five years. The Optional Extended Reporting Period will be offered for an additional premium no greater than 200% of the annual premium.
- II. SECTION VI – CONDITIONS**, items **2.** and **3.** of the subsection entitled **Cancellation** are deleted and replaced by the following:
- 2.** If this "coverage part" has been in effect for sixty (60) days, "we" may cancel this "coverage part" by mailing through first-class mail or delivering to the last mailing address known to "us" for the "first named insured" advance written notice of cancellation, stating the reasons for cancellation, at least:
 - a.** Ten (10) days before the effective date of cancellation if "we" cancel for nonpayment of premium; or
 - b.** Thirty (30) days before the effective date of cancellation if "we" cancel for any other reason.
 - 3.** If this "coverage part" has been in effect for sixty (60) days or more, or is a renewal of a "coverage part" "we" issued, "we" may cancel this "coverage part" by mailing through first-class mail to the "first named insured" written notice of cancellation:
 - a.** Including the actual reason, at least ten (10) days before the effective date of cancellation, if "we" cancel for nonpayment of premium; or
 - b.** At least forty-five (45) days before the effective date of cancellation if "we" cancel for any other reason.

"We" may only cancel this "coverage part" based on one or more of the following reasons:

- a. Nonpayment of premium;
- b. A false statement knowingly made by the insured on the application for insurance; or
- c. A substantial change in the exposure or risk other than that indicated in the application and underwritten as of the effective date of the "coverage part" unless the "first named insured" has notified "us" of the change and "we" accept such change.

III. SECTION VI – CONDITIONS is revised to add the following:

Your Right to "Claim" and "Glitch" Information

1. "We" will provide the "first named insured", upon request and within thirty (30) days thereafter, sufficient information about closed or paid "claims", "claims" for which "we" have established reserves, and "claims" for which "we" have received notices of "glitches" which could give rise to "claims", to allow "you" to determine how much coverage remains available under the "coverage part".
2. "We" compile "claim" and "glitch" information for "our" own business purposes and exercise reasonable care in doing so. In providing this information to the "first named insured", "we" make no representations or warranties to any of "you" or to any others to whom this information is furnished by or on behalf of any of "you". Cancellation or nonrenewal will be effective even if "we" fail to provide this information or inadvertently provide inaccurate information.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION - UNSOLICITED SENDING OF INFORMATION
(FAILSAFE® MEGA TECHNOLOGY ERRORS OR OMISSIONS
LIABILITY)**

This endorsement modifies insurance provided under the following:

FAILSAFE MEGA® TECHNOLOGY ERRORS OR OMISSIONS LIABILITY COVERAGE FORM

SECTION III - EXCLUSIONS is amended to add the following exclusion:

"We" will not pay "damages" or "claim expenses" or defend any of "you" for any "glitch" or "claim" arising out of or in any way related to any actual or alleged:

Sending of information by fax, electronic mail (e-mail), text message (Short Message Service messaging) or via any other means, where prohibited by law.



U.S. DEPARTMENT OF THE TREASURY, OFFICE OF FOREIGN ASSETS CONTROL ("OFAC") ADVISORY NOTICE TO POLICYHOLDERS

No coverage is provided by this Policyholder Notice nor can it be construed to replace any provisions of your policy. You should read your policy and review your Declarations page for complete information on the coverages you are provided.

This Notice provides information concerning possible impact on your insurance coverage due to directives issued by the United States. **Please read this Notice carefully.**

The Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States. OFAC acts under Presidential national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and freeze assets under U.S. jurisdiction. OFAC publishes a list of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries. It also lists individuals, groups, and entities, such as terrorists and narcotics traffickers designated under programs that are not country-specific. Collectively, such individuals and companies are called "Specially Designated Nationals and Blocked Persons" or "SDNs". Their assets are blocked and U.S. persons are generally prohibited from dealing with them. This list can be located on OFAC's web site at – <http://www.treas.gov/ofac>.

In accordance with OFAC regulations, if it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated U.S. sanctions law or is an SDN, as identified by OFAC, the policy is a blocked contract and all dealings with it must involve OFAC. When an insurance policy is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC.



Named Insured: JAMES PILCHER ENTERPRISES INC.

Policy Number: 34 SBM PN5159

Effective Date: 10/23/21

Expiration Date: 10/23/22

Company Name: SENTINEL INSURANCE COMPANY, LIMITED

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TRADE OR ECONOMIC SANCTIONS ENDORSEMENT

This insurance does not apply to the extent that trade or economic sanctions or other laws or regulations prohibit us from providing insurance, including, but not limited to, the payment of claims.

All other terms and conditions remain unchanged.

EXHIBIT D

Separate Declaration Regarding Independent Status

The CITY AND COUNTY OF DENVER ("City") and James Pilcher Enterprises, Inc. dba DataOne, Inc. ("Consultant"), agree that the status of the Consultant shall be that of an independent consultant and of a person retained on a contractual basis to perform professional or technical services for limited periods of time as described in Section 9.1.1(E)(x) of the Charter of the City and it is not intended, nor shall it be construed, that the Consultant or any employee or subcontractor is an employee, officer, or agent of the City under Chapter 18 of the Denver Revised Municipal Code ("DRMC") for purposes of unemployment compensation, workers' compensation, or for any purpose whatsoever.

Without limiting the foregoing, the Parties hereby specifically acknowledge that the Consultant is not entitled to unemployment insurance benefits unless unemployment compensation coverage is provided by the Consultant or some other entity besides the City, that the Consultant is not entitled to workers' compensation benefits from the City, and that the Consultant is obligated to pay federal and state income taxes on any monies earned pursuant to this Agreement.

The Parties agree that the Consultant is engaged in an independent occupation and profession and is free from control and direction in the performance of the services contracted for herein consistent with that mandated by C.R.S. 8-40-202(2)(a). The Parties agree that the City does not: (a) require the Consultant to work exclusively for the City, provided that the Consultant may have elected to work for exclusively for the City for the period of time specified in the term of this Agreement; (b) establish a quality standard for the Consultant, provided that the Parties agree that while the City may provide plans regarding its expectancy of the work to be performed by the Consultant, the City will not oversee the actual work of the Consultant or instruct the Consultant as to how the work will be performed; (c) pay a salary or hourly wage to the Consultant instead of the fixed contract rate stated herein; (d) terminate the work of the Consultant for cause unless the Consultant violates the terms of this Agreement or fails to produce a work product or result that meets the specific terms provided in the Agreement; (e) provide any training for the Consultant other than minimal orientation to the site or other parameters of the Consultant activity; (f) provide tools or benefits to the Consultant; (g) dictate the time of performance; except that the Agreement completion date together with the range of negotiated and mutually agreeable work hours has been established herein; (h) pay the Consultant personally instead of making City warrants payable to the professional name of the Consultant, except that in this Agreement the Consultant is an individual and sole proprietor; and (i) combine the regular operations of the City in any way with the professional or business operations of the Consultant instead of maintaining office operations separately and distinctly.

By: James H Pilcher
Title: **Consultant**

STATE OF Colorado)
) ss
COUNTY OF Arapahoe)

Subscribed and sworn to before me this 28 day of July, 2022, by James Howard Sr Pilcher, as Consultant of James Pilcher Enterprises, Inc. dba DataOne, Inc.

Witness my hand and official seal.

My commission expires: 03/21/2026



Dylan Sidebottom-Robb
Notary Public
1103 S. Broadway Ste B
Address Littleton, CO 80122

EXECUTIVE DIRECTOR, DOTI

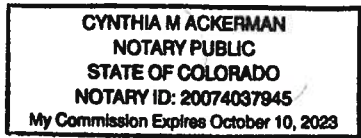
By: Adam Phipps
Adam Phipps, Executive Director, Department of Transportation and Infrastructure

STATE OF Colorado)
CITY AND) ss
COUNTY OF Denver)

Subscribed and sworn to before me this 3rd day of August, 2022, by Adam Phipps as Executive Director of the Department of Transportation and Infrastructure.

Witness my hand and official seal.

My commission expires: 10/10/2023



Cynthia M Ackerman
Notary Public
201 W Colfax AVE
Address Denver CO 80202