

CLERK'S CONTRACT and AGREEMENT COVER PAGE

Legistar File ID#: 2020-0487

Innoprise Contract #: C20-0138

Year: 2020-2025

Amount:

Department: EP&S - Khurshid Hoda

Contract Type: Master Agreement Professional Engineering Services

Contractors Name: Thomas Engineering Group, LLC

Contract Description: Professional Engineering Services (projects are attached as Exhibit B)
Exhibit B - Traffic Study for 143rd Street at Wedgewood Glen Drive for a not-to-exceed amount of \$4,580.00.

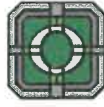
MAYOR

Keith Pekau

VILLAGE CLERK

Patrick R. O'Sullivan

14700 S. Ravinia Avenue
Orland Park, IL 60462
708.403.6100
orlandpark.org



**ORLAND
PARK**

VILLAGE HALL

TRUSTEES

William R. Healy
Cynthia Nelson Katsenes
Michael R. Milani
Sean Kampas
Brian J. Riordan
Joni J. Radaszewski

October 11, 2022

Thomas Gill, P.E., President
Thomas Engineering Group, LLC
238 South Kenilworth Avenue, Suite 100
Oak Park, IL 60302

NOTICE TO PROCEED - Traffic Study for 143rd Street at Wedgwood Glen Drive
Exhibit B to Master Service Agreement No. C20-0138

Dear Thomas:

This notification is to inform you that the Village of Orland Park approved the proposal dated September 21, 2022 for the Traffic Study for 143rd Street at Wedgwood Glen Drive for an amount not-to-exceed \$4,580.00.

The proposal for the project referenced above will be attached to the Professional Engineering Services Master Agreement between the Village of Orland Park and Thomas Engineering Group, LLC as Exhibit B. The terms and conditions of the Master Service Agreement dated October 1, 2020 shall apply to this project.

For your records, I have enclosed an executed Master Service Agreement dated October 1, 2020 for Professional Engineering Services along with Exhibit B dated October 11, 2022.

Each proposal to the Professional Engineering Services Master Agreement will have a separate Purchase Order assigned, which will be emailed to your company. It is imperative that this number be noted on all invoices, correspondence, etc. pertaining to the project referenced above. All invoices should be emailed to dporcelli@orlandpark.org and accountspayable@orlandpark.org. Also, your final invoice for this contract/service should state that it is the final invoice pertaining to that Purchase Number.

Please contact me at (708) 403-6128 or khoda@orlandpark.org to arrange the commencement of the work.

Sincerely,

S. Khurshid Hoda, CPP
Director of Engineering Programs and Services

Enclosures: Professional Engineering Services Master Agreement
Exhibit B - Traffic Study Proposal for 143rd Street at Wedgwood Glen Drive

cc: Curtis Cornwell, P.E., PTOE, Transportation Department Head

143RD STREET AT WEDGWOOD GLEN DRIVE – EASTBOUND LEFT TURN ANALYSIS

PROJECT OBJECTIVES

TEG proposes to provide Traffic Engineering Services to analyze the potential addition of an eastbound left turn lane for the intersection of 143rd Street at Wedgwood Glen Drive. The objective of the study is to determine the impacts to safety and capacity on 143rd Street by converting the existing painted median to a left turn lane.

PROJECT SCOPE

The approach will follow a proven method that TEG has found successful on similar traffic study projects. Included within each of the individual tasks described below, TEG will provide QA/QC Reviews, Project Management and Administrative Services, as appropriate. The scope is divided into two parts; Primary Study and Optional Tasks.

I Primary Study

The Primary Study consists of the traffic and safety analysis for the addition of the eastbound left turn lane at 143rd St and Wedgwood Glen Dr.

A Project Preparation

- 1 Collect & review existing data from Village, if available
 - i Background materials
 - ii Previous studies
 - iii Traffic counts
 - iv Crash data
- 2 Field reconnaissance to observe operations and characteristics
 - i Observe traffic patterns
 - ii Observe pedestrian and bicycle activities
 - iii Record roadway information (lane widths, storage lengths of turn bays, etc.)
 - iv Other items as appropriate

B Traffic Data Collection *(This task includes data collection services that will be a direct cost.)*

- 1 All-movement traffic counts will be conducted using Miovision video traffic counting systems. Counts will provide classification of vehicles (passenger, single-unit, and multi-unit) as well as pedestrian and bicycles. Counts will be conducted for the peak traffic hours (7-9AM & 4-6PM) at the following location:
 - i 143rd St & Wedgwood Glen Dr
- 2 Review and assemble traffic data
 - i Determine where existing left turners turn from (within painted median or through lane)
 - ii Create tabular layout of traffic data
 - iii Create map based exhibits of traffic data



143RD STREET AT WEDGWOOD GLEN DRIVE – EASTBOUND LEFT TURN ANALYSIS

C Traffic Analysis

- 1 Prepare base model utilizing Synchro software to incorporate:
 - i Vehicular traffic data
 - ii Pedestrian and bicycle count data
 - iii Study area traffic information (parking locations, turn restrictions, stop and signal control, etc.)
- 2 Evaluate existing conditions
 - i Analyze existing traffic (AM and PM peak) with existing geometry and existing conditions
 - ii Determine queues/delays related to lack of EB left turn lane at Wedgwood Glen Dr
- 3 Evaluate proposed condition
 - i Analyze existing traffic (AM and PM peak) with proposed EB left turn striping
 - ii Determine any benefits/detriments to queues, delays and level of service

D Safety Analysis

- 1 Perform Safety Assessment (vehicular, pedestrian and bicycle)
 - i Review crash data for:
 - ◆ intersection of Wedgwood Glen Dr
 - ◆ east leg approach to Wedgwood Glen Dr
 - ◆ west leg approach to Wedgwood Glen Dr
 - ii Prepare summary table & crash diagram
 - iii Determine crashes related to lack of striped eastbound left turn lane

E Technical Memorandum

- 1 Prepare Technical Memorandum summarizing the above study items
- 2 Provide recommendations regarding the eastbound left turn lane for the intersection of 143rd Street at Wedgwood Glen Drive

PROJECT FEE

TEG's estimated fee to provide the Traffic Engineering Services as described above is:

Total Fee: \$ 4,580.00



PAYROLL ESCALATION TABLE FIXED RAISES

FIRM NAME
PRIME/SUPPLEMENT
Prepared By

Thomas Engineering Group
Prime
J Yuratovac

DATE 09/21/22

Project Name 143rd St & Wedgwood Glen Dr
Services Traffic Study

CONTRACT TERM	MONTHS	OVERHEAD RATE
2	2	125.45%
START DATE	COMPLEXITY FACTOR	0
8/16/2022		
RAISE DATE	% OF RAISE	2%

END DATE 10/15/2022

ESCALATION PER YEAR

year	First date	Last date	Months	% of Contract
0	8/16/2022			

The total escalation = 0.00%

AVERAGE HOURLY PROJECT RATES

FIRM NAME
Thomas Engineering Group
Project Name / Services
143rd St & Wedgwood Glen Dr / Traffic Study
PRIME/SUPPLEMENT
Prime

DATE 09/21/22

SHEET 1 OF 1

PAYROLL CLASSIFICATION	AVG HOURLY RATES		TOTAL PROJ. RATES			Project Preparation			Traffic Data Collection			Traffic Analysis			Safety Analysis			Technical Memorandum		
	Hours	% Part.	Hours	Wgt'd Avg	% Part.	Hours	% Part.	Wgt'd Avg	Hours	% Part.	Wgt'd Avg	Hours	% Part.	Wgt'd Avg	Hours	% Part.	Wgt'd Avg	Hours	% Part.	Wgt'd Avg
Project Manager	14.0	21.88%	14.27	14.27	100%	1	10.00%	6.52	2	25.00%	16.31	2	26.67%	17.39	1.5	25.00%	16.31	1	16.67%	10.87
Engineer - 15+ yrs exp	4.0	6.25%	4.08	4.08	100%	0			0			0.5	8.33%	3.93	0.5	8.33%	4.79	1	16.67%	9.57
Engineer - 10-15 yrs exp	4.0	6.25%	4.08	4.08	100%	4	40.00%	17.74	0			0			0			0		
Engineer - 5-10 yrs exp	0.0					0			0			0			0			0		
Engineer - 0-5 yrs exp	42.0	65.63%	42.81	42.81	100%	5	50.00%	14.20	6	75.00%	21.30	5	66.67%	18.93	4	66.67%	18.93	4	66.67%	18.93
						0			0			0			0			0		
TOTALS	64.0	100%	\$65.23			10.0	100%	\$38.46	8.0	100%	\$37.61	7.5	100%	\$40.16	6.0	100%	\$40.03	6.0	100%	\$39.38

DIRECT COST DETAIL

Task 1						
Travel	Trips	People	Mileage	Rate		
					\$	-
1 field visits with 2 people	1	2	45	\$ 0.63	\$	56.25
Exhibits	Meetings	Exhibits	Size (sf)	Rate		
Task 1 Subtotal					\$	56.25
Task 2						
Travel	Trips	People	Mileage	Rate		
					\$	-
Counts	Locations	Hours		Rate		
Wedgwood	1	4		\$ 186.00	\$	744.00
Task 2 Subtotal					\$	744.00
TEG Direct Costs Total					\$	800.25

Approved and Accepted by:



 S. Khurshid Hoda, CPP
 Director of Engineering Programs and Services

 October 11, 2022
 Date



ORLAND PARK

INSURANCE REQUIREMENTS

Please provide a policy Specimen Certificate of Insurance showing current coverage's along with this form.

WORKERS' COMPENSATION & EMPLOYER LIABILITY

Full Statutory Limits - Employers Liability
\$500,000 – Each Accident \$500,000 – Each Employee
\$500,000 – Policy Limit
Blanket Waiver of Subrogation in favor of the Village of Orland Park

AUTOMOBILE LIABILITY (ISO Form CA 0001)

\$1,000,000 – Combined Single Limit Per Occurrence
Bodily Injury & Property Damage

GENERAL LIABILITY (Occurrence basis) (ISO Form CG 0001)

\$1,000,000 – Combined Single Limit Per Occurrence
Bodily Injury & Property Damage
\$2,000,000 – General Aggregate Limit
\$1,000,000 – Personal & Advertising Injury
\$2,000,000 – Products/Completed Operations Aggregate
Additional Insured Endorsements: *(not applicable for Goods Only)*
ISO CG 20 10 or CG 20 26

and

CG 20 01 Primary & Non-Contributory
Blanket Waiver of Subrogation in favor of the Village of Orland Park

CG 20 37 Additional Insured – Completed Operations *(provide if box is checked)*

Please provide the following coverage, if box is checked.



GENERAL LIABILITY UMBRELLA (Follow Form Policy)

\$1,000,000 – Each Occurrence \$1,000,000 – Aggregate

\$2,000,000 – Each Occurrence \$2,000,000 – Aggregate

Other: \$1,000,000 – Each Occurrence \$2,000,000 – Aggregate

EXCESS MUST COVER: General Liability, Automobile Liability, Employers' Liability



PROFESSIONAL LIABILITY

\$1,000,000 Limit - Claims Made Form, Indicate Retroactive Date

\$2,000,000 Limit - Claims Made Form, Indicate Retroactive Date

Other: _____

Deductible not-to-exceed \$50,000 without prior written approval



BUILDERS RISK

Completed Property Full Replacement Cost Limits -
Structures under construction



ENVIRONMENTAL IMPAIRMENT/POLLUTION LIABILITY

\$1,000,000 Limit for bodily injury, property damage and remediation costs
resulting from a pollution incident at, on or mitigating beyond the job site



CYBER LIABILITY

\$1,000,000 Limit per Data Breach for liability, and notification, response
and credit monitoring service costs

Any insurance policies providing the coverages required of the Consultant, excluding Professional Liability, shall be specifically endorsed to identify **"The Village of Orland Park, and their respective officers, trustees, directors, officials, employees, volunteers and agents as Additional Insureds on a primary/non-contributory basis with respect to all claims arising out of operations by or on behalf of the named insured."** The required Additional Insured coverage shall be provided on the Insurance Service Office (ISO) CG 20 10 or CG 20 26 endorsements or an endorsement at least as broad as the above noted endorsements as determined by the Village of Orland Park. Any Village of Orland Park insurance coverage shall be deemed to be on an excess or contingent basis as confirmed by the required (ISO) CG 20 01 Additional Insured Primary & Non-Contributory Endorsement. The policies shall also contain a Waiver of Subrogation in favor of the Additional Insureds in regard to General Liability and Workers' Compensation coverage. The certificate of insurance shall also state this information on its face. Any insurance company providing coverage must hold an A-, VII rating according to Best's Key Rating Guide. Each insurance policy required shall have the Village of Orland Park expressly endorsed onto the policy as a Cancellation Notice Recipient. Should any of the policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. Permitting the contractor, or any subcontractor, to proceed with any work prior to our receipt of the foregoing certificate and endorsements shall not be a waiver of the contractor's obligation to provide all the above insurance.

Consultant agrees that prior to any commencement of work to furnish evidence of Insurance coverage providing for at minimum the coverages, endorsements and limits described above directly to the Village of Orland Park, Nicole Merced, Finance Management Analyst, 14700 S. Ravinia Avenue, Orland Park, IL 60462. Failure to provide this evidence in the time frame specified and prior to beginning of work may result in the termination of the Village's relationship with the contractor.

ACCEPTED & AGREED THIS 10th DAY OF October, 2022

Signature



Thomas E. Gill, President

Printed Name & Title

Authorized to execute agreements for:

Thomas Engineering Group, LLC

Name of Company

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER USI Ins Svcs LLC Euclid-Prof 2021 Spring Road, Suite 100 Oak Brook, IL 60523 312 442-7200	CONTACT NAME: Laurie Cloninger
	PHONE (A/C No, Ext): 630 625-5219 FAX (A/C, No): 610 537-4939 E-MAIL ADDRESS: laurie.cloninger@usi.com
INSURED Thomas Engineering Group, LLC 2625 Butterfield Rd Ste 209W Oak Brook, IL 60523	INSURER(S) AFFORDING COVERAGE INSURER A : Travelers Indemnity Co of America NAIC # 25666
	INSURER B : Travelers Property Cas. Co. of America 25674
	INSURER C : Travelers Casualty Ins Co of America 19046
	INSURER D : Argonaut Insurance Company 19801
	INSURER E :
	INSURER F :


COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR		6802J652203	03/01/2022	03/01/2023	EACH OCCURRENCE \$ 1,000,000
						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000
						MED EXP (Any one person) \$ 10,000
						PERSONAL & ADV INJURY \$ 1,000,000
						GENERAL AGGREGATE \$ 2,000,000
						PRODUCTS - COMP/OP AGG \$ 2,000,000
						\$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY					COMBINED SINGLE LIMIT (Ea accident) \$
						BODILY INJURY (Per person) \$
						BODILY INJURY (Per accident) \$
						PROPERTY DAMAGE (Per accident) \$
						\$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE		CUP2T843614	03/01/2022	03/01/2023	EACH OCCURRENCE \$ 3,000,000
						AGGREGATE \$ 3,000,000
						\$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		UB2J654000	03/01/2022	03/01/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER
						E.L. EACH ACCIDENT \$ 1,000,000
						E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
						E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Professional Liability		121AE000363003	03/01/2022	03/01/2023	\$ 2,000,000 each claim / \$ 2,000,000 annual aggr.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Professional Liability is written on a 'claims made' policy form.

RE: 143rd St & Wedgwood Glen Dr.
 The Village of Orland Park, and their respective officers, trustees, directors, officials, employees,
 (See Attached Descriptions)

CERTIFICATE HOLDER Village of Orland Park 14700 S Ravinia Ave Orland Park, IL 60462	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

DESCRIPTIONS (Continued from Page 1)

Volunteers and agents are included as additional insureds with respect to General Liability and Excess Liability, on a primary/non-contributory basis, and with waiver of subrogation, as per the attached endorsements.

Waiver of Subrogation rights are waived in favor of the Village of Orland Park, and their respective officers, trustees, directors, officials, employees, volunteers and agents, by the General Liability, Excess Liability and Workers Compensation policies, as per the attached endorsements.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Names of Additional Insured Person(s) or Organization(s):

Village of Orland Park and their respective officers, trustees, directors, officials, employees, volunteers and agents
(14700 S Ravinia Ave, Orland Park, IL 60462)

Location of Covered Operations:

Transportation and traffic engineering services, including traffic study reviews, traffic counts, intersection layouts, parking studies, parking layouts and traffic engineering studies, for locations throughout the Village of Orland Park, Illinois.

(Information required to complete this Schedule, if not shown above, will be shown in the Declarations.)

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" caused, in whole or in part, by:

- 1. Your acts or omissions; or
- 2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

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

This insurance does not apply to "bodily injury" or "property damage" occurring, or "personal injury" or "advertising injury" arising out of an offense committed, after:

- 1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- 2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):

Village of Orland Park and their respective officers, trustees,
directors, officials, employees, volunteers and agents
(14700 S Ravinia Ave, Orland Park, IL 60462)

Location And Description Of Completed Operations:

Transportation and traffic engineering services, including traffic study reviews, traffic counts,
intersection layouts, parking studies, parking layouts and traffic engineering studies, for locations
throughout the Village of Orland Park, Illinois.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(Λ) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the

location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

CG 20 37 07 04

CG T8 05 03 22

DATE OF ISSUE: 08/05/2022

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Page 1 of 1

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**OTHER INSURANCE – DESIGNATED ADDITIONAL
INSUREDS – PRIMARY WITH RESPECT TO CERTAIN
OTHER INSURANCE**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE OF DESIGNATED ADDITIONAL INSUREDS

Village of Orland Park and their respective officers, trustees, directors, officials, employees, volunteers and agents (14700 S Ravinia Ave, Orland Park, IL 60462)

Description and location of ongoing and completed operations:

Transportation and traffic engineering services, including traffic study reviews, traffic counts, intersection layouts, parking studies, parking layouts and traffic engineering studies, for locations throughout the Village of Orland Park, Illinois.

PROVISIONS

The following is added to Paragraph 4.a., **Primary Insurance**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

The insurance afforded under this Coverage Part to any additional insured shown in the Schedule Of

Designated Additional Insureds is primary to any of the other insurance, whether primary, excess, contingent or on any other basis, that is available to such additional insured which covers such additional insured as a named insured, and we will not share with that other insurance.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

XTEND ENDORSEMENT FOR ARCHITECTS, ENGINEERS AND SURVEYORS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

GENERAL DESCRIPTION OF COVERAGE – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to this Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- | | |
|---|---|
| <ul style="list-style-type: none"> A. Non-Owned Watercraft – 75 Feet Long Or Less B. Who Is An Insured – Unnamed Subsidiaries C. Who Is An Insured – Retired Partners, Members, Directors And Employees D. Who Is An Insured – Employees And Volunteer Workers – Bodily Injury To Co-Employees, Co-Volunteer Workers And Retired Partners, Members, Directors And Employees E. Who Is An Insured – Newly Acquired Or Formed Limited Liability Companies F. Blanket Additional Insured – Controlling Interest G. Blanket Additional Insured – Mortgagees, Assignees, Successors Or Receivers | <ul style="list-style-type: none"> H. Blanket Additional Insured – Governmental Entities – Permits Or Authorizations Relating To Premises I. Blanket Additional Insured – Governmental Entities – Permits Or Authorizations Relating To Operations J. Incidental Medical Malpractice K. Medical Payments – Increased Limit L. Amendment Of Excess Insurance Condition – Professional Liability M. Blanket Waiver Of Subrogation – When Required By Written Contract Or Agreement N. Contractual Liability – Railroads |
|---|---|

PROVISIONS

A. NON-OWNED WATERCRAFT – 75 FEET LONG OR LESS

1. The following replaces Paragraph (2) of Exclusion g., **Aircraft, Auto Or Watercraft**, in Paragraph 2. of **SECTION I – COVERAGES – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

(2) A watercraft you do not own that is:

- (a) 75 feet long or less; and
- (b) Not being used to carry any person or property for a charge;

2. The following replaces Paragraph 2.e. of **SECTION II – WHO IS AN INSURED**:

e. Any person or organization that, with your express or implied consent, either

uses or is responsible for the use of a watercraft that you do not own that is:

- (1) 75 feet long or less; and
- (2) Not being used to carry any person or property for a charge;

B. WHO IS AN INSURED – UNNAMED SUBSIDIARIES

The following is added to **SECTION II – WHO IS AN INSURED**:

Any of your subsidiaries, other than a partnership or joint venture, that is not shown as a Named Insured in the Declarations is a Named Insured if:

- a. You are the sole owner of, or maintain an ownership interest of more than 50% in, such subsidiary on the first day of the policy period; and

COMMERCIAL GENERAL LIABILITY

- b. Such subsidiary is not an insured under similar other insurance.

No such subsidiary is an insured for "bodily injury" or "property damage" that occurred, or "personal and advertising injury" caused by an offense committed:

- a. Before you maintained an ownership interest of more than 50% in such subsidiary; or
- b. After the date, if any, during the policy period that you no longer maintain an ownership interest of more than 50% in such subsidiary.

For purposes of Paragraph 1. of Section II – Who Is An Insured, each such subsidiary will be deemed to be designated in the Declarations as:

- a. A limited liability company;
 - b. An organization other than a partnership, joint venture or limited liability company; or
 - c. A trust;
- as indicated in its name or the documents that govern its structure.

C. WHO IS AN INSURED – RETIRED PARTNERS, MEMBERS, DIRECTORS AND EMPLOYEES

The following is added to Paragraph 2. of SECTION II – WHO IS AN INSURED:

Any person who is your retired partner, member, director or "employee" that is performing services for you under your direct supervision, but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, no such retired partner, member, director or "employee" is an insured for:

(1) "Bodily injury":

- (a) To you, to your current partners or members (if you are a partnership or joint venture), to your current members (if you are a limited liability company) or to your current directors;
- (b) To the spouse, child, parent, brother or sister of that current partner, member or director 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 Paragraph (1)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

Unless you are in the business or occupation of providing professional health care services, Paragraphs (1)(a), (b), (c) and (d) above do not apply to "bodily injury" arising out of providing or failing to provide first aid or "Good Samaritan services" by any of your retired partners, members, directors or "employees", other than a doctor. Any such retired partners, members, directors or "employees" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

(2) "Personal injury":

- (a) To you, to your current or retired partners or members (if you are a partnership or joint venture), to your current or retired members (if you are a limited liability company), to your other current or retired directors or "employees" 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 current or retired partner, member, director, "employee" or "volunteer worker" as a consequence of Paragraph (2)(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 Paragraph (2)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

(3) "Property damage" to property:

- (a) Owned, occupied or used by; or
- (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 retired partners, members or directors, your current or retired "employees" or "volunteer workers", any current partner or member (if you are a partnership or joint venture), or any current member (if you are a limited liability company) or current director.

D. WHO IS AN INSURED – EMPLOYEES AND VOLUNTEER WORKERS – BODILY INJURY TO CO-EMPLOYEES, CO-VOLUNTEER WORKERS AND RETIRED PARTNERS, MEMBERS, DIRECTORS AND EMPLOYEES

The following is added to Paragraph 2.a.(1) of SECTION II – WHO IS AN INSURED:

Paragraphs (1)(a), (b) and (c) above do not apply to "bodily injury" to a current or retired co-"employee" while in the course of the co-"employee's" employment by you or performing duties related to the conduct of your business, or to "bodily injury" to your other "volunteer workers" or retired partners, members or directors while performing duties related to the conduct of your business.

E. WHO IS AN INSURED – NEWLY ACQUIRED OR FORMED LIMITED LIABILITY COMPANIES

The following replaces Paragraph 3. of SECTION II – WHO IS AN INSURED:

3. Any organization you newly acquire or form, other than a partnership or joint venture, and of which you are the sole owner or in which you maintain an ownership interest of more than 50%, 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:

(1) Until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier, if you do not report such organization in writing to us within 180 days after you acquire or form it; or

(2) Until the end of the policy period, when that date is later than 180 days after you acquire or form such organization, if you report such organization in writing to us within 180 days after you acquire or form it;

b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

For the purposes of Paragraph 1. of Section II – Who Is An Insured, each such

organization will be deemed to be designated in the Declarations as:

- a. A limited liability company;
 - b. An organization other than a partnership, joint venture or limited liability company; or
 - c. A trust;
- as indicated in its name or the documents that govern its structure.

F. BLANKET ADDITIONAL INSURED – CONTROLLING INTEREST

1. The following is added to SECTION II – WHO IS AN INSURED:

Any person or organization that has financial control of you is an insured with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" that arises out of:

- a. Such financial control; or
- b. Such person's or organization's ownership, maintenance or use of premises leased to or occupied by you.

The insurance provided to such person or organization does not apply to structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

2. The following is added to Paragraph 4. of SECTION II – WHO IS AN INSURED:

This paragraph does not apply to any premises owner, manager or lessor that has financial control of you.

G. BLANKET ADDITIONAL INSURED – MORTGAGEES, ASSIGNEES, SUCCESSORS OR RECEIVERS

The following is added to SECTION II – WHO IS AN INSURED:

Any person or organization that is a mortgagee, assignee, successor or receiver and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to its liability as mortgagee, assignee, successor or receiver for "bodily injury", "property damage" or "personal and advertising injury" that:

- a. Is "bodily injury" or "property damage" that occurs, or is "personal and advertising injury" caused by an offense that is committed,

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subsequent to the signing of that contract or agreement; and

- b. Arises out of the ownership, maintenance or use of the premises for which that mortgagee, assignee, successor or receiver is required under that contract or agreement to be included as an additional insured on this Coverage Part.

The insurance provided to such mortgagee, assignee, successor or receiver is subject to the following provisions:

- a. The limits of insurance provided to such mortgagee, assignee, successor or receiver will be the minimum limits that you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.
- b. The insurance provided to such person or organization does not apply to:
 - (1) Any "bodily injury" or "property damage" that occurs, or any "personal and advertising injury" caused by an offense that is committed, after such contract or agreement is no longer in effect; or
 - (2) Any "bodily injury", "property damage" or "personal and advertising injury" arising out of any structural alterations, new construction or demolition operations performed by or on behalf of such mortgagee, assignee, successor or receiver.

H. BLANKET ADDITIONAL INSURED – GOVERNMENTAL ENTITIES – PERMITS OR AUTHORIZATIONS RELATING TO PREMISES

The following is added to **SECTION II – WHO IS AN INSURED**:

Any governmental entity that has issued a permit or authorization with respect to premises owned or occupied by, or rented or loaned to, you and that you are required by any ordinance, law, building code or written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of the existence, ownership, use, maintenance, repair, construction, erection or removal of any of the following for which that governmental entity has issued such permit or authorization: advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away

openings, sidewalk vaults, elevators, street banners or decorations.

I. BLANKET ADDITIONAL INSURED – GOVERNMENTAL ENTITIES – PERMITS OR AUTHORIZATIONS RELATING TO OPERATIONS

The following is added to **SECTION II – WHO IS AN INSURED**:

Any governmental entity that has issued a permit or authorization with respect to operations performed by you or on your behalf and that you are required by any ordinance, law, building code or written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of such operations.

The insurance provided to such governmental entity does not apply to:

- a. Any "bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the governmental entity; or
- b. Any "bodily injury" or "property damage" included in the "products-completed operations hazard".

J. INCIDENTAL MEDICAL MALPRACTICE

1. The following replaces Paragraph **b.** of the definition of "occurrence" in the **DEFINITIONS** Section:

- b. An act or omission committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to a person, unless you are in the business or occupation of providing professional health care services.

2. The following replaces the last paragraph of Paragraph **2.a.(1)** of **SECTION II – WHO IS AN INSURED**:

Unless you are in the business or occupation of providing professional health care services, Paragraphs **(1)(a)**, **(b)**, **(c)** and **(d)** above do not apply to "bodily injury" arising out of providing or failing to provide:

- (a) "Incidental medical services" by any of your "employees" who is a nurse, nurse assistant, emergency medical technician, paramedic, athletic trainer, audiologist, dietician, nutritionist,

occupational therapist or occupational therapy assistant, physical therapist or speech-language pathologist; or

(b) First aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any such "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

3. The following replaces the last sentence of Paragraph 5. of **SECTION III – LIMITS OF INSURANCE:**

For the purposes of determining the applicable Each Occurrence Limit, all related acts or omissions committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".

4. The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I – COVERAGES – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY:**

Sale Of Pharmaceuticals

"Bodily injury" or "property damage" arising out of the violation of a penal statute or ordinance relating to the sale of pharmaceuticals committed by, or with the knowledge or consent of the insured.

5. The following is added to the **DEFINITIONS** Section:

"Incidental medical services" means:

- a. Medical, surgical, dental, laboratory, x-ray or nursing service or treatment, advice or instruction, or the related furnishing of food or beverages; or
- b. The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances.

6. The following is added to Paragraph 4.b., **Excess Insurance**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

This insurance is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis,

that is available to any of your "employees" for "bodily injury" that arises out of providing or failing to provide "incidental medical services" to any person to the extent not subject to Paragraph 2.a.(1) of Section II – Who Is An Insured.

K. MEDICAL PAYMENTS – INCREASED LIMIT

The following replaces Paragraph 7. of **SECTION III – LIMITS OF INSURANCE:**

7. Subject to Paragraph 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person, and will be the higher of:

- a. \$10,000; or
- b. The amount shown in the Declarations of this Coverage Part for Medical Expense Limit.

L. AMENDMENT OF EXCESS INSURANCE CONDITION – PROFESSIONAL LIABILITY

The following is added to Paragraph 4.b., **Excess Insurance**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis, that is Professional Liability or similar coverage, to the extent the loss is not subject to the professional services exclusion of Coverage A or Coverage B.

M. BLANKET WAIVER OF SUBROGATION – WHEN REQUIRED BY WRITTEN CONTRACT OR AGREEMENT

The following is added to Paragraph 8., **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

If the insured has agreed in a written contract or agreement to waive that insured's right of recovery against any person or organization, we waive our right of recovery against such person or organization, but only for payments we make because of:

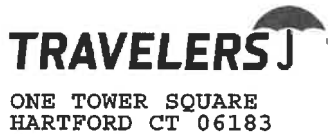
- a. "Bodily injury" or "property damage" that occurs; or
- b. "Personal and advertising injury" caused by an offense that is committed;

subsequent to the signing of that contract or agreement.

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N. CONTRACTUAL LIABILITY – RAILROADS

1. The following replaces Paragraph **c.** of the definition of "insured contract" in the **DEFINITIONS** Section:
 - c.** Any easement or license agreement;
2. Paragraph **f.(1)** of the definition of "insured contract" in the **DEFINITIONS** Section is deleted.



**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY**

ENDORSEMENT WC 00 03 13 (00) - 001

POLICY NUMBER: UB-2J654000-22-47-G

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit any one not named in the Schedule.

SCHEDULE

DESIGNATED PERSON:

DESIGNATED ORGANIZATION:

ANY PERSON OR ORGANIZATION FOR WHICH THE INSURED HAS AGREED
BY WRITTEN CONTRACT EXECUTED PRIOR TO LOSS TO FURNISH THIS
WAIVER.

EXCESS FOLLOW-FORM AND UMBRELLA LIABILITY INSURANCE

THIS POLICY, IN PART, PROVIDES FOLLOW-FORM LIABILITY COVERAGE. COVERAGE WILL APPLY ON A CLAIMS-MADE BASIS WHEN FOLLOWING CLAIMS-MADE UNDERLYING INSURANCE.

COVERAGE WILL APPLY ON A DEFENSE-WITHIN-LIMITS BASIS WHEN FOLLOWING UNDERLYING INSURANCE UNDER WHICH DEFENSE EXPENSES ARE PAYABLE WITHIN, AND NOT IN ADDITION TO, THE LIMITS OF INSURANCE. WHEN FOLLOWING SUCH UNDERLYING INSURANCE, PAYMENT OF DEFENSE EXPENSES UNDER THIS POLICY WILL REDUCE, AND MAY EXHAUST, THE LIMITS OF INSURANCE OF THIS POLICY.

PLEASE READ THE ENTIRE POLICY CAREFULLY.

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 and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under **SECTION II – WHO IS AN INSURED**.

Other words and phrases that appear in quotation marks have special meaning. Refer to **SECTION VI – DEFINITIONS**.

SECTION I – COVERAGES

A. COVERAGE A – EXCESS FOLLOW-FORM LIABILITY

1. We will pay on behalf of the insured those sums, in excess of the "applicable underlying limit", that the insured becomes legally obligated to pay as damages to which Coverage A of this insurance applies, provided that the "underlying insurance" would apply to such damages but for the exhaustion of its applicable limits of insurance. If a sublimit is specified in any "underlying insurance", Coverage A of this insurance applies to damages that are in excess of that sublimit only if such sublimit is shown for that "underlying insurance" in the Schedule Of Underlying Insurance.
2. Coverage A of this insurance is subject to the same terms, conditions, agreements, exclusions and definitions as the "underlying insurance", except with respect to any

provisions to the contrary contained in this insurance.

3. The amount we will pay for damages is limited as described in **SECTION III – LIMITS OF INSURANCE**.
4. For the purposes of Paragraph 1. above:
 - a. The applicable limit of insurance stated for the policies of "underlying insurance" in the Schedule Of Underlying Insurance will be considered to be reduced or exhausted only by the following payments:
 - (1) Payments of judgments or settlements for damages that are covered by that "underlying insurance". However, if such "underlying insurance" has a policy period which differs from the policy period of this Excess Follow-Form And Umbrella Liability Insurance, any such payments for damages that would not be covered by this Excess Follow-Form And Umbrella Liability

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Insurance because of its different policy period will not reduce or exhaust the applicable limit of insurance stated for such "underlying insurance";

- (2) Payments of "medical expenses" that are covered by that "underlying insurance" and are incurred for "bodily injury" caused by an accident that takes place during the policy period of this Excess Follow-Form And Umbrella Liability Insurance; or
- (3) Payments of defense expenses that are covered by that "underlying insurance", only if such "underlying insurance" includes such payments within the limits of insurance. However, if such "underlying insurance" has a policy period which differs from the policy period of this Excess Follow-Form And Umbrella Liability Insurance, any such payments for defense expenses that would not be covered by this Excess Follow-Form And Umbrella Liability Insurance because of its different policy period will not reduce or exhaust the applicable limit of insurance stated for such "underlying insurance".

If the applicable limit of insurance stated for the policies of "underlying insurance" in the Schedule Of Underlying Insurance is actually reduced or exhausted by other payments, Coverage A of this insurance is not invalidated. However, in the event of a loss, we will pay only to the extent that we would have paid had such limit not been actually reduced or exhausted by such other payments.

- b. If any "underlying insurance" has a limit of insurance greater than the amount shown for that insurance in the Schedule of Underlying Insurance, this insurance will apply in excess of that greater amount. If any "underlying insurance" has a limit of insurance, prior to any reduction or exhaustion by payment of damages, "medical expenses" or defense expenses described in Paragraph a. above, that is less than the amount shown for that insurance in the Schedule Of Underlying Insurance, this insurance will apply in excess of the amount shown for such insurance in the Schedule Of Underlying Insurance.
5. When the "underlying insurance" applies on a claims-made basis and includes a retroactive

date provision, the retroactive date for Coverage A of this insurance is the same as the retroactive date of that "underlying insurance".

B. COVERAGE B – UMBRELLA LIABILITY

1. We will pay on behalf of the insured those sums in excess of the "self-insured retention" that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage", "personal injury" or "advertising injury" to which Coverage B of this insurance applies.
2. Coverage B of this insurance applies to "bodily injury" or "property damage" only if:
 - a. The "bodily injury" or "property damage" is caused by an "occurrence" that takes place anywhere in the world;
 - 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. in Paragraph B., **COVERAGE B – UMBRELLA LIABILITY**, of **SECTION II – 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, in whole or in part, 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.
3. Coverage B of this insurance applies to "personal injury" or "advertising injury" caused by an offense arising out of your business, but only if the offense was committed during the policy period anywhere in the world.
4. The amount we will pay for damages is limited as described in **SECTION III – LIMITS OF INSURANCE**.
5. "Bodily injury" or "property damage":
 - a. Which occurs during the policy period; and
 - b. Which was not prior to, but was during, the policy period known to have occurred by any insured listed under Paragraph 1. in Paragraph B., **COVERAGE B – UMBRELLA LIABILITY** of **SECTION II – WHO IS AN INSURED**, or any "employee" authorized by you to give notice of an "occurrence" or claim;

includes any continuation, change or resumption of the "bodily injury" or "property damage" after the end of the policy period.

6. "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. in Paragraph B., **COVERAGE B – UMBRELLA LIABILITY**, of **SECTION II – WHO IS AN INSURED** or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:
 - a. Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
 - b. Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
 - c. Becomes aware by any other means that the "bodily injury" or "property damage" has occurred or has begun to occur.
7. 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".
8. Coverage B of this insurance does not apply to damages covered by any "underlying insurance" or that would have been covered by any "underlying insurance" but for the exhaustion of its applicable limit of insurance.

C. COVERAGE C – CRISIS MANAGEMENT SERVICE EXPENSES

1. We will reimburse the insured, or pay on the insured's behalf, "crisis management service expenses" to which Coverage C applies.
2. Coverage C of this insurance applies to "crisis management service expenses" that:
 - a. Arise out of a "crisis management event" that first commences during the policy period;
 - b. Are incurred by the insured, after a "crisis management event" first commences and before such event ends; and
 - c. Are submitted to us within 180 days after the "crisis management advisor" advises you that the "crisis management event" no longer exists.
3. A "crisis management event" will be deemed to:
 - a. First commence at the time when any "executive officer" first becomes aware of an "event" or "occurrence" that leads to that "crisis management event"; and
 - b. End when we decide that the crisis no longer exists or when the Crisis

Management Service Expenses Limit has been exhausted, whichever occurs first.

4. The amount we will pay for "crisis management service expenses" is limited as described in **SECTION III – LIMITS OF INSURANCE**.
5. A "self-insured retention" does not apply to "crisis management service expenses".
6. Any payment of "crisis management service expenses" that we make will not be determinative of our obligations under this insurance with respect to any claim or "suit" or create any duty to defend or indemnify any insured for any claim or "suit".

D. DEFENSE AND SUPPLEMENTARY PAYMENTS

1. We will have the right and duty to defend the insured:
 - a. Under Coverage A, against a "suit" seeking damages to which such coverage applies, if:
 - (1) The "applicable underlying limit" is the applicable limit of insurance stated for a policy of "underlying insurance" in the Schedule Of Underlying Insurance and such limit has been exhausted solely due to payments as permitted in Paragraphs 4.a.(1), (2) and (3) of **COVERAGE A – EXCESS FOLLOW-FORM LIABILITY** of **SECTION I – COVERAGES**; or
 - (2) The "applicable underlying limit" is the applicable limit of any "other insurance" and such limit has been exhausted by payments of judgments, settlements or medical expenses, or related costs or expenses (if such costs or expenses reduce such limits).

For any "suit" for which we have the right and duty to defend the insured under Coverage A, defense expenses will be within the limits of insurance of this policy when such expenses are within the limits of insurance of the applicable "underlying insurance"; or
 - b. Under Coverage B, against a "suit" seeking damages to which such coverage applies.
2. We have no duty to defend any insured against any "suit":
 - a. Seeking damages to which this insurance does not apply; or
 - b. If any other insurer has a duty to defend.

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3. When we have the duty to defend, we may, at our discretion, investigate and settle any claim or "suit". In all other cases, we may, at our discretion, participate in the investigation, defense and settlement of any claim or "suit" for damages to which this insurance may apply. If we exercise such right to participate, all expenses we incur in doing so will not reduce the applicable limits of insurance.
4. Our duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements, or defense expenses if such expenses are within the limits of insurance of this policy.
5. We will pay, with respect to a claim we investigate or settle, or "suit" against an insured we defend:
 - a. All expenses we incur.
 - b. The cost of:
 - (1) Bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which this insurance applies; or
 - (2) Appeal bonds and bonds to release attachments;
but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
 - c. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of such claim or "suit", including actual loss of earnings up to \$1,000 a day because of time off from work.
 - d. 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.
 - e. 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.
 - f. All interest that accrues on the full amount of any judgment 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. If we do not pay part of the judgment for any reason other than it is more than the applicable limit of insurance, we will not pay any interest that accrues on that portion of the judgment.

With respect to a claim we investigate or settle, or "suit" against an insured we defend under **COVERAGE A – EXCESS FOLLOW-FORM LIABILITY**, these payments will not reduce the applicable limits of insurance, but only if the applicable "underlying insurance" provides for such payments in addition to its limits of insurance. With respect to a claim we investigate or settle, or "suit" against an insured we defend under **COVERAGE B – UMBRELLA LIABILITY**, these payments will not reduce the applicable limits of insurance.

SECTION II – WHO IS AN INSURED

A. COVERAGE A – EXCESS FOLLOW-FORM LIABILITY

With respect to Coverage A, the following persons and organizations qualify as insureds:

1. The Named Insured shown in the Declarations; and
2. Any other person or organization qualifying as an insured in the "underlying insurance". If you have agreed to provide insurance for that person or organization in a written contract or agreement:
 - a. The limits of insurance afforded to such person or organization will be:
 - (1) The amount by which the minimum limits of insurance you agreed to provide such person or organization in that written contract or agreement exceed the total limits of insurance of all applicable "underlying insurance"; or
 - (2) The limits of insurance of this policy; whichever is less; and
 - b. Coverage under this policy does not apply to such person or organization if the minimum limits of insurance you agreed to provide such person or organization in that written contract or agreement are wholly within the total limits of insurance of all available applicable "underlying insurance".

B. COVERAGE B – UMBRELLA LIABILITY

With respect to Coverage B:

1. The Named Insured shown in the Declarations is an insured.
2. If you are:
 - a. An individual, your spouse is also an insured, but only with respect to the conduct of a business of which you are the sole owner.

- b. A partnership or joint venture, 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, your members are also insureds, but only with respect to the conduct of your business. Your managers are also insureds, but only with respect to their duties as your managers.
 - d. An organization other than a partnership, joint venture or limited liability company, your "officers" and directors are also 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, your trustees are also insureds, but only with respect to their duties as trustees.
3. Each of the following is also an insured:
- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "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 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), 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 "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 Paragraph (1)(a) or (b) above; or

- (d) Arising out of his or her providing or failing to provide professional health care services.

Unless you are in the business or occupation of providing professional health care services, Paragraphs (1)(a), (b), (c) and (d) above do not apply to "bodily injury" arising out of providing or failing to provide first aid or "Good Samaritan services" by any of your "employees" or "volunteer workers" other than an employed or volunteer doctor. Any such "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

- (2) "Property damage" to property:

- (a) Owned, occupied or used by; or
- (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" or "volunteer workers", any of your partners or members (if you are a partnership or joint venture), or any of your members (if you are a limited liability company).

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

- 4. Any organization, other than a partnership, joint venture or limited liability company, of which you are the sole owner, or in which you

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maintain an ownership interest of more than 50%, on the first day of the policy period is an insured and will qualify as a Named Insured. No such organization is an insured or will qualify as a Named Insured for "bodily injury" or "property damage" that occurred, or "personal injury" or "advertising injury" caused by an offense committed after the date, if any, during the policy period, that you no longer maintain an ownership interest of more than 50% in such organization.

5. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and of which you are the sole owner, or in which you maintain an ownership interest of more than 50%, is an insured and 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 for such organization does not apply to:

- (1) "Bodily injury" or "property damage" that occurred; or

- (2) "Personal injury" or "advertising injury" arising out of an offense committed;

before you acquired or formed the organization.

No person or organization is an insured or will qualify as a Named 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. This paragraph does not apply to any such partnership, joint venture or limited liability company that otherwise qualifies as an insured under Paragraph B. of SECTION II – WHO IS AN INSURED.

C. COVERAGE C – CRISIS MANAGEMENT SERVICE EXPENSES

With respect to Coverage C, the following persons and organizations are insureds and will qualify as Named Insureds:

1. The Named Insured shown in the Declarations.
2. Any organization, other than a partnership, joint venture or limited liability company, of which you are the sole owner, or in which you maintain an ownership interest of more than 50%, on the first day of the policy period. No such organization is an insured or will qualify as a Named Insured for "crisis management service expenses" arising out of a "crisis management event" that first commences after

the date, if any, during the policy period, that you no longer maintain an ownership interest of more than 50% in such organization.

3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and of which you are the sole owner, or in which you maintain an ownership interest of more than 50%, 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 for such organization does not apply to "crisis management service expenses" arising out of a "crisis management event" that occurred before you acquired or formed the organization, even if an "executive officer" only first becomes aware of an "event" or "occurrence" that leads to such "crisis management event" after the date you acquired or formed the organization.

No person or organization is an insured or will qualify as a Named 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.

SECTION III – LIMITS OF INSURANCE

A. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay for the amounts described below to which this insurance applies regardless of the number of:

1. Insureds;
2. Claims made or "suits" brought;
3. Number of vehicles involved;
4. Persons or organizations making claims or bringing "suits"; or
5. Coverages provided under this insurance.

As indicated in Paragraph D.1. of SECTION I – COVERAGES, for any "suit" for which we have the right and duty to defend the insured under Coverage A, defense expenses will be within the limits of insurance of this policy when such expenses are within the limits of insurance of the applicable "underlying insurance".

B. The General Aggregate Limit is the most we will pay for the sum of all:

1. Damages; and
2. Defense expenses if such expenses are within the limits of insurance of this policy;

except:

1. Damages and defense expenses because of "bodily injury" or "property damage" included in the "auto hazard";
 2. Damages and defense expenses because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; or
 3. Damages and defense expenses for which insurance is provided under any Aircraft Liability coverage included as "underlying insurance" to which no aggregate limit applies.
- C. The Products-Completed Operations Aggregate Limit is the most we will pay for the sum of all:
1. Damages; and
 2. Defense expenses if such expenses are within the limits of insurance of this policy; because of "bodily injury" or "property damage" included in the "products-completed operations hazard".
- D. Subject to Paragraph B. or C. above, whichever applies, the Occurrence Limit is the most we will pay for the sum of all:
1. Damages, and defense expenses if such expenses are within the limits of insurance of this policy, under Coverage A arising out of any one "event" to which the "underlying insurance" applies a limit of insurance that is separate from any aggregate limit of insurance; and
 2. Damages under Coverage B because of all "bodily injury", "property damage", "personal injury" or "advertising injury" arising out of any one "occurrence".
- For the purposes of determining the applicable Occurrence Limit, all related acts or omissions committed in the providing or failing to provide first aid or "Good Samaritan services" to any one person will be considered one "occurrence".
- E. The Crisis Management Service Expenses Limit is the most we will pay for the sum of all "crisis management service expenses" arising out of all "crisis management events". Payment of such "crisis management service expenses" is in addition to, and will not reduce, any other limit of insurance of this policy.
- F. The limits of insurance of this policy 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. If the policy period is extended after issuance for an additional period of less than 12 months, the additional period will be deemed part of the last preceding period for purposes of determining the limits of insurance.

SECTION IV – EXCLUSIONS

This insurance does not apply to:

- A. With respect to Coverage A and Coverage B:

1. Asbestos

- a. Damages arising out of the actual or alleged presence or actual, alleged or threatened dispersal of asbestos, asbestos fibers or products containing asbestos, provided that the damages are caused or contributed to by the hazardous properties of asbestos.
- b. Damages arising out of the actual or alleged presence or actual, alleged or threatened dispersal of any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, chemicals and waste, and that are part of any claim or "suit" which also alleges any damages described in Paragraph a. above.
- c. Any loss, cost or expense arising out of any:
 - (1) 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, asbestos, asbestos fibers or products containing asbestos; or
 - (2) Claim or "suit" by or on behalf of any governmental authority or any other person or organization because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, asbestos, asbestos fibers or products containing asbestos.

2. Employment-Related Practices

Damages because of injury to:

- a. A person arising out of any:
 - (1) Refusal to employ that person;
 - (2) Termination of that person's employment; or
 - (3) Employment-related practice, policy, act or omission, such as coercion, demotion, evaluation, reassignment, discipline, failure to promote or advance, harassment, humiliation, discrimination, libel, slander, violation of the person's right of privacy, malicious prosecution or false arrest, detention or imprisonment, applied to or directed at that person, regardless of whether such practice, policy, act or omission occurs, is applied or is

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committed before, during or after the time of that person's employment; or

- b. The spouse, child, parent, brother or sister of that person as a consequence of injury to that person as described in Paragraphs a.(1), (2) or (3) above.

This exclusion applies:

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

3. ERISA, COBRA And Similar Laws

Any obligation of the insured under:

- a. The Employees Retirement Income Security Act Of 1974 (ERISA) or any of its amendments;
- b. The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) or any of its amendments; or
- c. Any similar common or statutory law of any jurisdiction.

4. Medical Expenses Or Payments

Any obligation of the insured under any "medical expenses" or medical payments coverage.

5. Nuclear Material

Damages arising out of:

- a. The actual, alleged or threatened exposure of any person or property to; or
- b. The "hazardous properties" of; any "nuclear material".

As used in this exclusion:

- a. "Hazardous properties" includes radioactive, toxic or explosive properties;
- b. "Nuclear material" means "source material", "special nuclear material" or "by-product material"; and
- c. "Source material", "special nuclear material" and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or any of its amendments.

6. Uninsured or Underinsured Motorists, No-Fault And Similar Laws

Any liability imposed on the insured, or the insured's insurer, under any of the following laws:

- a. Uninsured motorists;
- b. Underinsured motorists;

- c. Auto no-fault or other first-party personal injury protection (PIP);
- d. Supplementary uninsured/underinsured motorists (New York); or
- e. Medical expense benefits and income loss benefits (Virginia).

7. War

Damages arising out of:

- a. War, including undeclared or civil war; or
- b. 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
- c. Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

8. Workers Compensation And Similar Laws

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

B. With respect to Coverage B:

1. Expected Or Intended Bodily Injury Or Property Damage

"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.

2. Contractual Liability

"Bodily injury", "property damage", "personal injury" or "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 that the insured would have in the absence of the contract or agreement.

3. Liquor Liability

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

- a. Causing or contributing to the intoxication of any person, including causing or contributing to the intoxication of any person because alcoholic beverages were permitted to be brought on your premises for consumption on your premises;

- b. The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- c. Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

4. Employers Liability

"Bodily injury" to:

- a. An "employee" of the insured arising out of and in the course of:
 - (1) Employment by the insured; or
 - (2) Performing duties related to the conduct of the insured's business; or
- b. The spouse, child, parent, brother or sister of that "employee" as a consequence of "bodily injury" described in Paragraph a. above.

This exclusion applies:

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

5. Pollution

- a. "Bodily injury", "property damage", "personal injury" or "advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants".
- b. Any loss, cost or expense arising out of any:
 - (1) Request, demand, order or statutory or regulatory requirement that any insured or any other person or organization test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - (2) Claim or "suit" by or on behalf of any governmental authority or any other person or organization 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".

6. Aircraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft 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 that is owned or operated by or rented or loaned to any insured.

7. Auto

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any "auto". 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 "auto".

This exclusion does not apply to "bodily injury" or "property damage" caused by an "occurrence" that takes place outside of the United States of America (including its territories and possessions), Puerto Rico and Canada.

8. Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any 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 watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to a watercraft:

- a. While ashore on premises owned by or rented to any insured; or
- b. That is 50-feet long or less and that:
 - (1) You own; or

(2) You do not own and is not being used to carry any person or property for a charge.

9. Electronic Data

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

10. Damage To Property, Products Or Work

"Property damage" to:

- a. Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person or organization, 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;
- b. Premises you sell, give away or abandon if the "property damage" arises out of any part of those premises;
- c. Property loaned to you;
- d. Personal property in the care, custody or control of the insured;
- e. 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;
- f. That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it;
- g. "Your product" arising out of "your product" or any part of it; or
- h. "Your work" arising out of "your work" or any part of it and included in the "products-completed operations hazard".

11. 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:

- a. A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- b. A delay or failure by you, or anyone acting on your behalf, to fulfill the terms of a contract or agreement.

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.

12. 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:

- a. "Your product";
- b. "Your work"; or
- c. "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.

13. Violation Of Consumer Financial Protection Laws

"Bodily injury", "property damage", "personal injury" or "advertising injury" arising out of any actual or alleged violation of a "consumer financial protection law", or any other "bodily injury", "property damage", "personal injury" or "advertising injury" alleged in any claim or "suit" that also alleges any such violation.

14. Unsolicited Communication

"Bodily injury", "property damage", "personal injury" or "advertising injury" arising out of any actual or alleged violation of any law that restricts or prohibits the sending, transmitting or distributing of "unsolicited communication".

15. Access Or Disclosure Of Confidential Or Personal Information

"Bodily injury", "property damage", "personal injury" or "advertising injury" arising out of any access to or disclosure of any person's or organization's confidential or personal information.

16. Knowing Violation Of Rights Of Another

"Personal injury" or "advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal injury" or "advertising injury".

17. Material Published With Knowledge Of Falsity

"Personal injury" or "advertising injury" arising out of oral or written publication, including publication by electronic means, of material, if done by or at the direction of the insured with knowledge of its falsity.

18. Material Published Or Used Prior To Policy Period

- a. "Personal injury" or "advertising injury" arising out of oral or written publication, including publication by electronic means, of material whose first publication took place before the beginning of the policy period; or
- b. "Advertising injury" arising out of infringement of copyright, "title" or "slogan" in your "advertisement" whose first infringement in your "advertisement" was committed before the beginning of the policy period.

19. Criminal Acts

"Personal injury" or "advertising injury" arising out of a criminal act committed by or at the direction of the insured.

20. Breach Of Contract

"Personal injury" or "advertising injury" arising out of a breach of contract.

21. Quality Or Performance Of Goods – Failure To Conform To Statements

"Advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

22. Wrong Description Of Prices

"Advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

23. Intellectual Property

"Personal injury" or "advertising injury" arising out of any actual or alleged infringement or violation of any of the following rights or laws, or any other "personal injury" or "advertising injury" alleged in any claim or "suit" that also alleges any such infringement or violation:

- a. Copyright;
- b. Patent;
- c. Trade dress;
- d. Trade name;
- e. Trademark;
- f. Trade secret; or
- g. Other intellectual property rights or laws.

This exclusion does not apply to:

- a. "Advertising injury" arising out of any actual or alleged infringement or violation of another's copyright, "title" or "slogan" in your "advertisement"; or

- b. Any other "personal injury" or "advertising injury" alleged in any claim or "suit" that also alleges any such infringement or violation of another's copyright, "title" or "slogan" in your "advertisement".

24. Insureds In Media And Internet Type Business

"Personal injury" or "advertising injury" arising out of an offense committed by an insured whose business is:

- a. Advertising, "broadcasting" or publishing;
- b. Designing or determining content of web-sites for others; or
- c. An Internet search, access, content or service provider.

This exclusion does not apply to Paragraphs a.(1), (2) and (3) of the definition of "personal injury".

For the purposes of this exclusion:

- a. Creating and producing correspondence written in the conduct of your business, bulletins, financial or annual reports, or newsletters about your goods, products or services will not be considered the business of publishing; and
- b. The placing of frames, borders or links, or advertising, for you or others anywhere on the Internet will not, by itself, be considered the business of advertising, "broadcasting" or publishing.

25. Electronic Chatrooms Or Bulletin Boards

"Personal injury" or "advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns or over which the insured exercises control.

26. Unauthorized Use Of Another's Name Or Product

"Personal injury" or "advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

C. With respect to Coverage C:

Newly Acquired, Controlled Or Formed Entities

"Crisis management service expenses" arising out of a "crisis management event" that involves any organization you newly acquire or form and that occurred prior to the date you acquired or formed that organization, even if an "executive officer" only first becomes aware of an "event" or "occurrence" that leads to such "crisis

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management event" after the date you acquired or formed such organization.

SECTION V – CONDITIONS

A. APPEALS

1. If the insured or the insured's "underlying insurer" elects not to appeal a judgment which exceeds the "applicable underlying limit" or "self-insured retention", we may do so.
2. If we appeal such a judgment, we will pay all costs of the appeal. These payments will not reduce the applicable limits of insurance. In no event will our liability exceed the applicable limit of insurance.

B. BANKRUPTCY

1. Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this insurance.
2. In the event of bankruptcy or insolvency of any "underlying insurer", this insurance will not replace such bankrupt or insolvent "underlying insurer's" policy, and this insurance will apply as if such "underlying insurer" had not become bankrupt or insolvent.

C. CANCELLATION

1. The first Named Insured shown in the Declarations may cancel this insurance by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this insurance by mailing or delivering to such 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. 60 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to such 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 insurance is cancelled, we will send such first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If such 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.

D. CHANGES

This policy contains all the agreements between you and us concerning the insurance afforded. No change can be made in the terms of this insurance except with our consent. The terms of this insurance can be amended or waived only by endorsement issued by us and made a part of this policy.

E. CURRENCY

Payments for damages or expenses described in Paragraph 5. of Paragraph D., **DEFENSE AND SUPPLEMENTARY PAYMENTS**, of **SECTION I – COVERAGES** will be in the currency of the United States of America. At our sole option, we may make these payments in a different currency. Any necessary currency conversion for such payments will be calculated based on the rate of exchange published in the Wall Street Journal immediately preceding the date the payment is processed.

F. DUTIES REGARDING AN EVENT, OCCURRENCE, CLAIM OR SUIT

1. You must see to it that we are notified as soon as practicable of an "event" or "occurrence" which may result in a claim under this insurance. To the extent possible, notice should include:
 - a. How, when and where the "event" or "occurrence" took place;
 - b. The names and addresses of any persons or organizations sustaining injury, damage or loss, and the names and addresses of any witnesses; and
 - c. The nature and location of any injury or damage arising out of the "event" or "occurrence".
2. If a claim is made or "suit" is brought against any insured which may result in a claim under this insurance, you must see to it that we receive written notice of the claim or "suit" as soon as practicable.
3. With respect to Coverage A, the insured must:
 - a. Cooperate with us in the investigation, settlement or defense of any claim or "suit";
 - b. Comply with the terms of the "underlying insurance"; and
 - c. Pursue all rights of contribution or indemnity against any person or organization who may be liable to the insured because of the injury, damage or loss for which insurance is provided under

this policy or any policy of "underlying insurance".

4. With respect to Coverage B, the insured must:
 - a. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
 - b. Authorize us to obtain necessary records and other information;
 - c. Cooperate with us in the investigation, settlement or defense of any claim or "suit"; and
 - d. Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which Coverage B may apply.
5. No insured will, except at that insured's own expense, voluntarily make a payment, assume any obligation, make any admission or incur any expense, other than for first aid for "bodily injury" covered by this insurance, without our consent.
6. Knowledge of an "event", "occurrence", claim or "suit" by your agent, servant or "employee" will not constitute knowledge by you, unless your insurance or risk manager, or anyone working in the capacity as your insurance or risk manager, or anyone you designate with the responsibility of reporting an "event", "occurrence", claim or "suit":
 - a. Has received notice of such "event", "occurrence", claim or "suit" from such agent, servant or "employee"; or
 - b. Otherwise has knowledge of such "event", "occurrence", claim or "suit".

G. DUTIES REGARDING A CRISIS MANAGEMENT EVENT

You must:

1. Notify us within 30 days of a "crisis management event" that may result in "crisis management service expenses".
2. Provide written notice of the "crisis management event" as soon as practicable. To the extent possible, notice should include:
 - a. How, when and where that "crisis management event" took place;
 - b. The names and addresses of any persons or organizations sustaining injury, damage or loss, and the named and addresses of any witnesses;

- c. The nature and location of any injury or damage arising out of that "crisis management event"; and
- d. The reason that "crisis management event" is likely to involve damages covered by this insurance in excess of the "applicable underlying limit" or "self-insured retention" and involve regional or national media coverage.

H. EXAMINATION OF YOUR BOOKS AND RECORDS

We may examine and audit your books and records as they relate to this insurance:

1. At any time during the policy period;
2. Up to three years after the end of the policy period; and
3. Within one year after final settlement of all claims under this insurance.

I. EXTENDED REPORTING PERIOD OPTION

1. When the "underlying insurance" applies on a claims-made basis, any automatic or basic "extended reporting period" in such "underlying insurance" will apply to this insurance.
2. When the "underlying insurance" applies on a claims-made basis and you elect to purchase an optional or supplemental "extended reporting period" in such "underlying insurance," that "extended reporting period" will apply to this insurance only if:
 - a. A written request to purchase an Extended Reporting Period endorsement for this insurance is made by you and received by us within 90 days after the end of the policy period;
 - b. You have paid all premiums due for this policy at the time you make such request;
 - c. You promptly pay the additional premium we charge for the Extended Reporting Period endorsement for this insurance when due. We will determine that additional premium after we have received your request for the Extended Reporting Period endorsement for this insurance. That additional premium is not subject to any limitation stated in the "underlying insurance" on the amount or percentage of additional premium that may be charged for the "extended reporting period" in such "underlying insurance"; and

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- d. That Extended Reporting Period endorsement is issued by us and made a part of this policy.
3. Any Extended Reporting Period endorsement for this insurance will not reinstate or increase the Limits of Insurance or extend the policy period.
4. Except with respect to any provisions to the contrary contained in Paragraphs 1., 2. or 3. above, all provisions of any option to purchase an "extended reporting period" granted to you in the "underlying insurance" apply to this insurance.

J. 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 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 workers or the public. We do not warrant that conditions:
 - a. Are safe or healthful; or
 - b. Comply with laws, regulations, codes or standards.

K. LEGAL ACTION AGAINST US

1. No person or organization has a right under this insurance:
 - 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 insurance unless all of its terms have been fully complied with.
2. A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured. We will not be liable for damages that:
 - a. Are not payable under the terms of this insurance; or
 - b. 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.

L. MAINTENANCE OF UNDERLYING INSURANCE

1. The insurance afforded by each policy of "underlying insurance" will be maintained for

the full policy period of this Excess Follow-Form And Umbrella Liability Insurance. This provision does not apply to the reduction or exhaustion of the aggregate limit or limits of such "underlying insurance" solely by payments as permitted in Paragraphs 4.a.(1), (2) and (3) of **COVERAGE A – EXCESS FOLLOW-FORM LIABILITY of SECTION I – COVERAGES**. As such policies expire, you will renew them at limits and with coverage at least equal to the expiring limits of insurance. If you fail to comply with the above requirements, Coverage A is not invalidated. However, in the event of a loss, we will pay only to the extent that we would have paid had you complied with the above requirements.

2. The first Named Insured shown in the Declarations must give us written notice of any change in the "underlying insurance" as respects:
 - a. Coverage;
 - b. Limits of insurance;
 - c. Termination of any coverage; or
 - d. Exhaustion of aggregate limits.
3. If you are unable to recover from any "underlying insurer" because you fail to comply with any term or condition of the "underlying insurance", Coverage A is not invalidated. However, we will pay for any loss only to the extent that we would have paid had you complied with that term or condition in that "underlying insurance".

M. OTHER INSURANCE

This insurance is excess over any valid and collectible "other insurance" whether such "other insurance" is stated to be primary, contributing, excess, contingent or otherwise. This provision does not apply to a policy bought specifically to apply as excess of this insurance.

However, if you specifically agree in a written contract or agreement that the insurance provided to any person or organization that qualifies as an insured under this insurance must apply on a primary basis, or a primary and non-contributory basis, then insurance provided under Coverage A is subject to the following provisions:

1. This insurance will apply before any "other insurance" that is available to such additional insured which covers that person or organization as a named insured, and we will not share with that "other insurance", provided that the injury or damage for which coverage is sought is caused by an "event" that takes place or is committed subsequent to the signing of that contract or agreement by you.
2. This insurance is still excess over any valid and collectible "other insurance", whether primary, excess, contingent or otherwise, which covers that person or organization as an additional insured or as any other insured that does not qualify as a named insured.

N. PREMIUM

1. The first Named Insured shown in the Declarations is responsible for the payment of all premiums and will be the payee for any return premiums.
2. If the premium is a flat charge, it is not subject to adjustment except as provided in Paragraph 4. below.
3. If the premium is other than a flat charge, it is an advance premium only. The earned premium will be computed at the end of the policy period, or at the end of each year of the policy period if the policy period is two years or longer, at the rate shown in the Declarations, subject to the Minimum Premium.
4. Additional premium may become payable when coverage is provided for additional insureds under the provisions of **SECTION II – WHO IS AN INSURED.**

O. PREMIUM AUDIT

The premium for this policy is the amount stated in Item 5. of the Declarations. The premium is a flat charge unless it is specified in the Declarations as adjustable.

P. PROHIBITED COVERAGE – UNLICENSED INSURANCE

1. With respect to loss sustained by any insured in a country or jurisdiction in which we are not licensed to provide this insurance, this insurance does not apply to the extent that insuring such loss would violate the laws or regulations of such country or jurisdiction.
2. We do not assume responsibility for:
 - a. The payment of any fine, fee, penalty or other charge that may be imposed on any person or organization in any country or jurisdiction because we are not licensed to

provide insurance in such country or jurisdiction; or

- b. The furnishing of certificates or other evidence of insurance in any country or jurisdiction in which we are not licensed to provide insurance.

Q. PROHIBITED COVERAGE – TRADE OR ECONOMIC SANCTIONS

We will provide coverage for any loss, or otherwise will provide any benefit, only to the extent that providing such coverage or benefit does not expose us or any of our affiliated or parent companies to:

1. Any trade or economic sanction under any law or regulation of the United States of America; or
2. Any other applicable trade or economic sanction, prohibition or restriction.

R. REPRESENTATIONS

By accepting this insurance, you agree:

1. The statements in the Declarations and any subsequent notice relating to "underlying insurance" are accurate and complete;
2. Those statements are based upon representations you made to us; and
3. We have issued this insurance in reliance upon your representations.

S. 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 shown in the Declarations, this insurance applies:

1. As if each Named Insured were the only Named Insured; and
2. Separately to each insured against whom claim is made or "suit" is brought.

T. WAIVER OR TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

1. If the insured has rights to recover all or part of any payment we have made under this insurance, those rights are transferred to us and 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, and with respect to Coverage A, the "underlying insurer", enforce them.

If the insured has agreed in a contract or agreement to waive that insured's right of recovery against any person or organization, we waive our right of recovery against that person or organization, but only for payments we make because of an "event" that takes place or is committed subsequent to the

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execution of that contract or agreement by such insured.

2. Reimbursement of any amount recovered will be made in the following order:
 - a. First, to any person or organization (including us or the insured) who has paid any amount in excess of the applicable limit of insurance;
 - b. Next, to us; and
 - c. Then, to any person or organization (including the insured and with respect to Coverage A, the "underlying insurer") that is entitled to claim the remainder, if any.
3. Expenses incurred in the process of recovery will be divided among all persons or organizations receiving amounts recovered according to the ratio of their respective recoveries.

U. TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS INSURANCE

1. Your rights and duties under this insurance may not be transferred without our written consent except in the case of death of an individual Named Insured.
2. 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.

V. UNINTENTIONAL OMISSION OR ERROR

The unintentional omission of, or unintentional error in, any information provided by you which we relied upon in issuing this policy will not prejudice your rights under this insurance. However, this provision does not affect our right to collect additional premium or to exercise our rights of cancellation or nonrenewal in accordance with applicable insurance laws or regulations.

W. WHEN LOSS IS PAYABLE

If we are liable under this insurance, we will pay for injury, damage or loss after:

1. The insured's liability is established by:
 - a. A court decision; or
 - b. A written agreement between the claimant, the insured, any "underlying insurer" and us; and
2. The amount of the "applicable underlying limit" or "self-insured retention" is paid by or on behalf of the insured.

SECTION VI – DEFINITIONS

A. With respect to all coverages of this insurance:

1. "Applicable underlying limit" means the sum of:
 - a. The applicable limit of insurance stated for the policies of "underlying insurance" in the Schedule Of Underlying Insurance subject to the provisions in Paragraphs 4.a.(1), (2) and (3) of **COVERAGE A – EXCESS FOLLOW-FORM LIABILITY OF SECTION I – COVERAGES**; and
 - b. The applicable limit of insurance of any "other insurance" that applies.

The limits of insurance in any policy of "underlying insurance" will apply even if:

- a. The "underlying insurer" claims the insured failed to comply with any term or condition of the policy; or
 - b. The "underlying insurer" becomes bankrupt or insolvent.
2. "Auto hazard" means all "bodily injury" and "property damage" to which liability insurance afforded under an auto policy of "underlying insurance" would apply but for the exhaustion of its applicable limits of insurance.
 3. "Electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
 4. "Event" means an "occurrence", offense, accident, act, error, omission, wrongful act or loss.
 5. "Extended reporting period" means any period of time, starting with the end of the policy period of your claims-made insurance, during which claims or "suits" may be first made, brought or reported for that insurance.
 6. "Medical expenses" means expenses to which any Medical Payments section of any policy of Commercial General Liability "underlying insurance" applies.
 7. "Other insurance" means insurance, or the funding of losses, that is provided by, through or on behalf of:
 - a. Another insurance company;
 - b. Us or any of our affiliated insurance companies;
 - c. Any risk retention group;

- d. Any self-insurance method or program, in which case the insured will be deemed to be the provider of such insurance; or
- e. Any similar risk transfer or risk management method.

"Other insurance" does not include:

- a. Any "underlying insurance"; or
- b. Any policy of insurance specifically purchased to be excess of the limits of insurance of this policy shown in the Declarations.

8. "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 completed at the earliest of the following times:
 - (a) When all the work called for in your contract has been completed;
 - (b) When all the work to be done at the job site has been completed if your contract calls for work at more than one job site; or
 - (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.

- 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;
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
 - (3) Products or operations for which the classification listed in a policy of

Commercial General Liability "underlying insurance" states that products-completed operations are subject to the General Aggregate Limit.

9. "Suit" means a civil proceeding which alleges damages. "Suit" includes:

- a. An arbitration proceeding in which damages are claimed and to which the insured must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding to which the insured submits with our consent.

10. "Underlying insurance":

- a. Means the policy or policies of insurance listed in the Schedule Of Underlying Insurance.
- b. Includes any renewal or replacement of such policies if such renewal or replacement is during the policy period of this Excess Follow-Form And Umbrella Liability Insurance.
- c. Does not include any part of the policy period of any of the policies described in Paragraphs a. or b. above that began before, or that continues after, the policy period of this Excess Follow-Form And Umbrella Liability Insurance.

11. "Underlying insurer" means any insurer which provides a policy of insurance listed in the Schedule Of Underlying Insurance.

B. With respect to Coverage B and, to the extent that the following terms are not defined in the "underlying insurance", to Coverage A:

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:

- a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
- b. Regarding web sites, only that part of a web site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

2. "Advertising injury":

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- a. Means injury, other than "personal injury", caused by one or more of the following offenses:
 - (1) Oral or written publication, including publication by electronic means, of material in your "advertisement" that slanders or libels a person or organization or disparages a person's or organization's goods, products or services, provided that the claim is made or the "suit" is brought by a person or organization that claims to have been slandered or libeled, or that claims to have had its goods, products or services disparaged;
 - (2) Oral or written publication, including publication by electronic means, of material in your "advertisement" that:
 - (a) Appropriates a person's name, voice, photograph or likeness; or
 - (b) Unreasonably places a person in a false light; or
 - (3) Infringement of copyright, "title" or "slogan" in your "advertisement", provided that the claim is made or the "suit" is brought by a person or organization that claims ownership of such copyright, "title" or "slogan".
 - b. Includes "bodily injury" caused by one or more of the offenses described in Paragraph a. above.
3. "Auto" means:
- a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
 - b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.
- However, "auto" does not include "mobile equipment".
4. "Bodily injury" means:
- a. Physical harm, including sickness or disease, sustained by a person; or
 - b. Mental anguish, injury or illness, or emotional distress, resulting at any time from such physical harm, sickness or disease.
5. "Broadcasting" means transmitting any audio or visual material for any purpose:
- a. By radio or television; or
 - b. In, by or with any other electronic means of communication, such as the Internet, if that material is part of:
 - (1) Radio or television programming being transmitted;
 - (2) Other entertainment, educational, instructional, music or news programming being transmitted; or
 - (3) Advertising transmitted with any such programming.
6. "Consumer financial identity information" means any of the following information for a person that is used or collected for the purpose of serving as a factor in establishing such person's eligibility for personal credit, insurance or employment or for the purpose of conducting a business transaction:
- a. Part or all of the account number, the expiration date or the balance of any credit, debit, bank or other financial account;
 - b. Information bearing on a person's credit worthiness, credit standing or credit capacity;
 - c. Social security number;
 - d. Driver's license number; or
 - e. Birth date.
7. "Consumer financial protection law" means:
- a. The Fair Credit Reporting Act (FCRA) and any of its amendments, including the Fair and Accurate Credit Transactions Act (FACTA);
 - b. California's Song-Beverly Credit Card Act and any of its amendments; or
 - c. Any other law or regulation that restricts or prohibits the collection, dissemination, transmission, distribution or use of "consumer financial identity information".
8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
9. "Good Samaritan services" means any emergency medical services for which no compensation is demanded or received.
10. "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 the repair, replacement, adjustment or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.

- 11. "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".
- 12. "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".
- 13. "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, maintained primarily to provide mobility to permanently mounted:
 - (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers.
 - e. Vehicles not described in Paragraph 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 Paragraph 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 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.

However, "mobile equipment" does not include any land vehicle that is subject to a compulsory or financial responsibility law, or other motor vehicle insurance law, where it is licensed or principally garaged. Such land vehicles are considered "autos".

- 14. "Occurrence" means:
 - a. With respect to "bodily injury" or "property damage":
 - (1) An accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results in "bodily injury" or "property damage". All "bodily injury" or "property damage" caused by such exposure to substantially the same general harmful conditions will be deemed to be caused by one "occurrence"; or
 - (2) An act or omission committed in providing or failing to provide first aid or "Good Samaritan services" to a person by any of your "employees" or "volunteer workers" other than an employed or volunteer doctor, unless you are in the business or occupation of providing professional health care services;

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- b. With respect to "personal injury", an offense arising out of your business that results in "personal injury". All "personal injury" caused by the same or related injurious material, act or offense will be deemed to be caused by one "occurrence", regardless of the frequency or repetition thereof, the number and kind of media used or the number of persons or organizations making claims or bringing "suits"; and
 - c. With respect to "advertising injury", an offense committed in the course of advertising your goods, products and services that results in "advertising injury". All "advertising injury" caused by the same or related injurious material, act or offense will be deemed to be caused by one "occurrence", regardless of the frequency or repetition thereof, the number and kind of media used or the number of persons or organizations making claims or bringing "suits".
15. "Officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.
16. "Personal injury":
- a. Means injury, other than "advertising injury", caused by one or more of the following offenses:
 - (1) False arrest, detention or imprisonment;
 - (2) Malicious prosecution;
 - (3) The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, provided that the wrongful eviction, wrongful entry or invasion of the right of private occupancy is committed by or on behalf of the owner, landlord or lessor of that room, dwelling or premises;
 - (4) Oral or written publication, including publication by electronic means, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services, provided that the claim is made or the "suit" is brought by a person or organization that claims to have been slandered or libeled, or that claims to have had its goods, products or services disparaged; or
 - (5) Oral or written publication, including publication by electronic means, of material that:
 - (a) Appropriates a person's name, voice, photograph or likeness; or
 - (b) Unreasonably places a person in a false light.
 - b. Includes "bodily injury" caused by one or more of the offenses described in Paragraph a. above.
17. "Pollutants" mean 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.
18. "Property damage" means:
- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use will 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 will be deemed to occur at the time of the "occurrence" that caused it.
- For the purposes of this insurance, "electronic data" is not tangible property.
19. "Self-insured retention" is the greater of:
- a. The amount shown in the Declarations which the insured must first pay under Coverage B for damages because of all "bodily injury", "property damage", "personal injury" or "advertising injury" arising out of any one "occurrence"; or
 - b. The applicable limit of insurance of any "other insurance" that applies.
20. "Slogan":
- a. Means a phrase that others use for the purpose of attracting attention in their advertising.
 - b. Does not include a phrase used as, or in, the name of:
 - (1) Any person or organization other than you; or
 - (2) Any business, or any of the premises, goods, products, services or work, of any person or organization other than you.

21. "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.
 22. "Title" means the name of a literary or artistic work.
 23. "Unsolicited communication" means any communication, in any form, that the recipient of such communication did not specifically request to receive.
 24. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed by you.
 25. "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.
 26. "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.
- C. With respect to Coverage C:
1. "Crisis management advisor" means any public relations firm or crisis management firm approved by us that is hired by you to perform "crisis management services" in connection with a "crisis management event".
 2. "Crisis management event" means an "event" or "occurrence" that your "executive officer" reasonably determines has resulted, or may result, in:
 - a. Damages covered by this Coverage A or Coverage B that are in excess of the total applicable limits of the "underlying insurance" or "self-insured retention"; and
 - b. Significant adverse regional or national media coverage.
 3. "Crisis management service expenses" means amounts incurred by you, after a "crisis management event" first commences and before such event ends:
 - a. For the reasonable and necessary:
 - (1) Fees and expenses of a "crisis management advisor" in the performance for you of "crisis management services" solely for a "crisis management event"; and
 - (2) Costs for printing, advertising, mailing of materials or travel by your directors, officers, employees or agents or a "crisis management advisor" solely for a "crisis management event"; and
 - b. For the following expenses resulting from such "crisis management event", provided that such expenses have been approved by us:
 - (1) Medical expenses;
 - (2) Funeral expenses;
 - (3) Psychological counseling;
 - (4) Travel expenses;
 - (5) Temporary living expenses;
 - (6) Expenses to secure the scene of a "crisis management event"; or
 - (7) Any other expenses pre-approved by us.

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4. "Crisis management services" means those services performed by a "crisis management advisor" in advising you or minimizing potential harm to you from a "crisis management event" by maintaining or restoring public confidence in you.
5. "Executive officer" means your:
 - a. Chief Executive Officer;
 - b. Chief Operating Officer;
 - c. Chief Financial Officer;
 - d. President;
 - e. General Counsel;
 - f. General partner (if you are a partnership); or
 - g. Sole proprietor (if you are a sole proprietorship);or any person acting in the same capacity as any individual listed above.



DATE (MM/DD/YYYY)
09/22/2022

CERTIFICATE OF LIABILITY INSURANCE Acct#: 2919838

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER LOCKTON AFFINITY, LLC P.O. BOX 879610 KANSAS CITY, MO 64187-9610	CONTACT NAME: LOCKTON AFFINITY, LLC PHONE (A/C, No, Ext): _____ FAX (A/C, No): 913-652-7599 E-MAIL ADDRESS: _____ <table border="1" style="width:100%;"> <tr> <th style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> <tr> <td>INSURER A : Old Republic Insurance Company</td> <td>24147</td> </tr> <tr> <td>INSURER B :</td> <td></td> </tr> <tr> <td>INSURER C :</td> <td></td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Old Republic Insurance Company	24147	INSURER B :		INSURER C :		INSURER D :		INSURER E :		INSURER F :	
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INSURER D :															
INSURER E :															
INSURER F :															
INSURED Thomas Engineering Group, LLC 2625 Butterfield Road Suite 209W Oak Brook, IL 60523															

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS								
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS- <input type="checkbox"/> OCCUR <hr/> GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO- <input type="checkbox"/> LOC IFCT OTHER: _____						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$								
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input checked="checked" type="checkbox"/> OWNED AUTOS ONLY <input checked="checked" type="checkbox"/> HIRED AUTOS ONLY <input checked="checked" type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY	X	X	L547399-22	03/01/2022	03/01/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$								
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED _____ RETENTION \$ _____						EACH OCCURRENCE \$ AGGREGATE \$ \$								
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY <input type="checkbox"/> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				<table border="1" style="width:100%;"> <tr> <th style="text-align: center;">PER STATUTE</th> <th style="text-align: center;">OTH-ER</th> </tr> <tr> <td>E.L. EACH ACCIDENT</td> <td>\$</td> </tr> <tr> <td>E.L. DISEASE - EA EMPLOYEE</td> <td>\$</td> </tr> <tr> <td>E.L. DISEASE - POLICY LIMIT</td> <td>\$</td> </tr> </table>	PER STATUTE	OTH-ER	E.L. EACH ACCIDENT	\$	E.L. DISEASE - EA EMPLOYEE	\$	E.L. DISEASE - POLICY LIMIT	\$
PER STATUTE	OTH-ER														
E.L. EACH ACCIDENT	\$														
E.L. DISEASE - EA EMPLOYEE	\$														
E.L. DISEASE - POLICY LIMIT	\$														

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) GPBR:
 POLICY PROVIDES PROTECTION FOR ANY AND ALL OPERATIONS/JOBS PERFORMED BY THE NAMED INSURED WHERE REQUIRED BY WRITTEN CONTRACT. CERTIFICATE HOLDER IS AN ADDITIONAL INSURED WHERE REQUIRED BY WRITTEN CONTRACT. WAIVER OF SUBROGATION INCLUDED BY WRITTEN CONTRACT. INSURANCE IS PRIMARY AND NON-CONTRIBUTORY.
 Project: Primary Study for 143rd Street at Wedgwood Glen Drive

CERTIFICATE HOLDER

CANCELLATION

Village of Orland Park 14700 Ravinia Avenue Orland Park, IL 60462	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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Cyber and Data Risk Solution

DECLARATIONS

NOTICE: YOUR POLICY CONTAINS CLAIMS-MADE LIABILITY COVERAGE. CLAIMS-MADE COVERAGE APPLIES ONLY TO CLAIMS THAT ARE FIRST MADE DURING THE POLICY PERIOD OR DISCOVERY PERIOD, IF PURCHASED, AND REPORTED IN ACCORDANCE WITH THE TERMS OF THE POLICY.

THE LIMIT OF LIABILITY AVAILABLE TO PAY DAMAGES WILL BE REDUCED AND MAY BE EXHAUSTED BY CLAIM EXPENSES. FURTHERMORE, CLAIM EXPENSES WILL BE APPLIED AGAINST THE RETENTION.

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

PLEASE READ YOUR POLICY CAREFULLY AND CONSULT YOUR INSURANCE ADVISOR ABOUT ANY QUESTIONS YOU MIGHT HAVE.

- Broker no: Kelly Parks
Policy no.: HCXCYP-P-5007387
Renewal of: N/A
1. Named insured: Thomas Engineering Group, LLC
Address: 2625 Butterfield Rd Ste 209W Oak Brook, Illinois, 60523-3401
Email address: sujatab@thomas-engineering.com
2. Policy period: Inception Date: January 31, 2022 Expiration Date: January 31, 2023
3. General terms and conditions wording: PLP P0001 CW (07/19) General Terms and Conditions
4. Policy limits: Cyber (CYE) \$1,000,000 each claim and/or event \$1,000,000 aggregate
5. Endorsements: See Schedule



HISCOX INSURANCE COMPANY INC. (A Stock Company)

104 South Michigan Avenue, Suite 600, Chicago, Illinois, 60603
(914) 273-7400

6. Notification of claims to: Hiscox Claims
520 Madison Avenue, 32nd Floor
New York, NY 10022
Fax: 212-922-9652
Email: hiscoxclaims@hiscox.com

OR

Phone: 1-866-424-8508
Email: reportclaim@hiscox.com
Mail: Attn : Direct Claims Hiscox
520 Madison Avenue, 32nd floor
New York, NY 10022

Please inform us immediately if you have a claim or loss to report.

Notification of cyber claims and events:

Hiscox Cyber Claims
520 Madison Avenue, 32nd Floor
New York, NY 10022
Fax: 212-922-9652
Email: cyberclaimsUSA@Hiscox.com

If you experience a cyber **event**, please also contact the Breach Coach® at 1-855-HISCO-BR (1-855-447-2627).

Provide your company name and any other companies/individuals involved.

7. Policy Premium: \$3,814
Premium Allocated to TRIA: \$34
State Surcharge: \$0.00

RPS Service Fee \$100.00

8. Optional extension period: 12/24/36 months at 75/150/225% of the annual premium, for eligible coverage parts.

9. Valued added services: Your CyberClear policy includes a **comprehensive panel of breach response resources**, featuring eRisk Hub® Breach Response Resource and Information Web Portal, powered by NetDiligence®, the industry standard of response and protection. Plus, public relations support, legal services, credit monitoring, extortion protection and more. These resources will help you comply with regulations and protect your reputation, should a breach occur.

For more information, visit <https://www.hiscox.com/risk-management-cyber>.



HISCOX INSURANCE COMPANY INC. (A Stock Company)

104 South Michigan Avenue, Suite 600, Chicago, Illinois, 60603
(914) 273-7400

Cyber Coverage Part: CYBCL-CYB P0001A CW (10/19)

Cyber (CYE):	\$1,000,000 each claim and/or event \$1,000,000 aggregate Retention: \$2,500 Retroactive Date: Full Prior Acts Period of Restoration: 120 days
Bricking:	\$1,000,000 aggregate (Shared) Retention: \$2,500
Cyber Crime: (Funds Transfer Fraud, Social Engineering, and Reverse Social Engineering)	\$250,000 aggregate (Shared) Retention: \$2,500
Dependent Business Interruption:	\$1,000,000 (Shared) Retention: \$2,500 Waiting Period: 10 hours
Dependent System Failure:	\$1,000,000 aggregate (Shared) Retention: \$2,500 Waiting Period: 10 hours
Enhanced Privacy Regulation:	\$1,000,000 aggregate (Shared) Retention: \$2,500
Reputational Harm:	\$1,000,000 aggregate (Shared) Retention: \$2,500
System Failure:	\$1,000,000 aggregate (Shared) Retention: \$2,500 Waiting Period: 10 hours
Utility Fraud:	\$250,000 aggregate (Shared) Retention: \$2,500
Ransomware Event:	\$1,000,000
Endorsements: CYBCL-CYB E2013 CW (04/19) Blanket Additional Insured Endorsement (Written Contract) E6149.4 Amend Insured vs. Insured Endorsement (Additional Insureds Carveback) CYBCL-CYB E2053 CW (04/19) War and Civil War Exclusion Endorsement (Cyber Terrorism Carveback) CYBCL-CYB E2066 CW (06/20) BYOD Endorsement (Amend Definition of Computer System) CYBCL-CYB E9112 IL (04/19) Illinois Amendatory Endorsement	
<i>All limits designated as "shared" are a part of, and not in addition to, the Cyber Limit.</i>	



HISCOX INSURANCE COMPANY INC. (A Stock Company)

104 South Michigan Avenue, Suite 600, Chicago, Illinois, 60603
(914) 273-7400

Digital Media Liability Coverage Part: CYBCL-MED P0001S CW (04/19)

Digital Media (MED):	\$1,000,000 each claim and/or event \$1,000,000 aggregate Retention: \$2,500 Retroactive Date: Full Prior Acts
Endorsements: CYBCL-MED E9211 IL (04/19) Illinois Amendatory Endorsement	

Schedule of Endorsements

<u>NUMBER</u>	<u>TITLE</u>
CYBCL E1001 CW (04/19)	Difference In Conditions Endorsement (cyber)
CYBCL-CYB E2013 CW (04/19)	Blanket Additional Insured Endorsement (Written Contract)
E6149.4	Amend Insured vs. Insured Endorsement (Additional Insureds Carveback)
CYBCL-CYB E2053 CW (04/19)	War and Civil War Exlcusion Endorsement (Cyber Terrorism Carveback)
WCL E6017 CW (04/19)	Nuclear Incident Exclusion
WCL E6018 CW (07/13)	Applicable Law
WCL E6016 CW (05/13)	Service of Suit Endorsement
INT E9999 CW (01/15)	Cap on Losses from Certified Acts of Terrorism Endorsement
CYBCL-CYB E2066 CW (06/20)	BYOD Endorsement (Amend Definition of Computer System)
CYBCL-CYB E2070 CW (03/21)	Ransomware Event Coinsurance Responsibility Endorsement
CYBCL-CYB E2063 CW (04/19)	Amend Cyber Crime Coverage Endorsement
PLP E9011 IL (04/19)	Illinois Amendatory Endorsement
CYBCL-CYB E9112 IL (04/19)	Illinois Amendatory Endorsement
CYBCL-MED E9211 IL (04/19)	Illinois Amendatory Endorsement
INT E9997 CW (01/15)	Policyholder Disclosure Notice of Terrorism Insurance Coverage



President



Secretary



Authorized
Representative

General Terms and Conditions

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- I. Our promise to you** In consideration of the premium charged, and in reliance on the statements made and information provided to **us**, **we** will pay **covered amounts** as defined in this policy, provided **you** properly notify **us** of **claims**, **breaches**, **events**, or **occurrences**, and meet **your** obligations to **us** in accordance with the terms of this policy.
-
- II. Limits of liability** Regardless of the number of Coverage Parts **you** have purchased, the maximum **we** will pay for all **covered amounts** will be as follows:
- A. Coverage part limit** Each Coverage Part purchased will be subject to a **coverage part limit** (if one is stated in the Declarations), which is the maximum amount **we** will pay for all **covered amounts** under that Coverage Part, other than coverage enhancements or other items **we** have expressly agreed to pay in addition to the limit. The **coverage part limit** will be in excess of any applicable **retention**.
- B. Each claim limit** The Each Claim Limit identified in the Declarations is the maximum amount **we** will pay for all **covered amounts** for each covered **claim**, unless a lower sublimit is specified, in which case the sublimit is the maximum amount **we** will pay for the type of covered **claim** to which the sublimit applies. The Each Claim Limit, or any sublimit, will be in excess of any applicable **retention** and will be a part of, and not in addition to, any applicable **coverage part limit**.
- C. Each breach limit** The Each Breach Limit identified in the Declarations (if **you** have purchased a relevant Coverage Part) is the maximum amount **we** will pay for all **covered amounts** for each covered **breach**, unless a lower sublimit is specified, in which case the sublimit is the maximum amount **we** will pay for the type of covered **breach** or costs to which the sublimit applies. The Each Breach Limit, or any sublimit, will be in excess of any applicable **retention** and will be a part of, and not in addition to, any applicable **coverage part limit**.
- D. Each occurrence limit** The Each Occurrence Limit identified in the Declarations (if **you** have purchased a relevant Coverage Part) is the maximum amount **we** will pay for all **covered amounts** for each covered **occurrence**, unless a lower sublimit is specified, in which case the sublimit is the maximum amount **we** will pay for the type of covered **occurrence** to which the sublimit applies. The Each Occurrence Limit, or any sublimit, will be in excess of any applicable **retention** and will be a part of, and not in addition to, any applicable **coverage part limit**.
- E. General liability coverage part limits** If **you** have purchased a General Liability Coverage Part, additional rules for applying limits are contained in Section IV. Limits of liability, of that Coverage Part.
- F. Related claims** All **related claims**, regardless of when made, will be treated as one **claim**, and all subsequent **related claims** will be deemed to have been made against **you** on the date the first such **claim** was made. If, by operation of this provision, the **claim** is deemed to have been made during any period when **we** insured **you**, it will be subject to only one **retention** and one Each Claim Limit regardless of the number of claimants, **insureds**, or **claims** involved.
- G. Shared limits** If **you** have purchased more than one of the following Coverage Parts:
1. Cyber Coverage Part;
 2. Technology Professional Liability Coverage Part; or
 3. Digital Media Liability Coverage Part,
- then the **coverage part limits** applicable to those Coverage Parts will be shared, and any payments **we** make under one Coverage Part, other than coverage enhancements or other items **we** have expressly agreed to pay in addition to the limit, will reduce the **coverage part limits** for all Coverage Parts.
- If the applicable **coverage part limits** are different, the maximum amount **we** will pay for **covered amounts** under all Coverage Parts combined, other than coverage enhancements or other items **we** have expressly agreed to pay in addition to the limits, will be the highest available **coverage part limit**.
-

General Terms and Conditions

III. Your obligations to us

- A. Named insured responsibilities
- It will be the responsibility of the **named insured** (or, if there is more than one **named insured**, the first one listed on the Declarations) to act on behalf of all **insureds** with respect to the following:
1. timely giving and receiving notice of cancellation or non-renewal;
 2. timely payment of premium;
 3. receipt of return premiums;
 4. timely acceptance of changes to this policy; and
 5. timely payment of **retentions**.
- B. Your duty to cooperate
- You** must cooperate with **us** in the defense, investigation, and settlement of any **claim, potential claim, breach, event, occurrence**, or other matter notified to **us**, including but not limited to:
1. notifying **us** immediately if **you** receive any settlement demands or offers, and sending **us** copies of any demands, notices, summonses, or legal papers;
 2. submitting to examination and interrogation under oath by **our** representative and giving **us** a signed statement of **your** answers;
 3. attending hearings, depositions, and trials as **we** request;
 4. assisting in securing and giving evidence and obtaining the attendance of witnesses;
 5. providing written statements to **our** representative and meeting with such representative for the purpose of investigation and/or defense;
 6. providing all documents and information **we** may reasonably request, including authorizing **us** to obtain records; and
 7. pursuing **your** right of recovery from others.
- C. Your obligation not to incur any expense or admit liability
- You** must not make any payment, incur any expense, admit any liability, assume any obligation, or enter into any settlement negotiations or agreements without **our** prior consent. If **you** do so, it will be at **your** own cost and expense.
- D. Your representations
- You** warrant that all representations made and all materials submitted by **you** or on **your** behalf in connection with the **application** for this policy are true, accurate, and not misleading, and agree they were relied on by **us** and were material to **our** decision to issue this policy to **you**. If **we** learn any of the representations or materials were untrue, inaccurate, or misleading in any material respect, **we** are entitled to treat this policy as if it had never existed.

IV. Optional extension period

1. If **we** or the **named insured** cancel or non-renew this policy, then the **named insured** will have the right to purchase an optional extension period for the duration and at the percentage of the expiring premium stated in Item 5 of the Declarations. The optional extension period, if purchased, will start on the effective date of cancellation or non-renewal. However, the right to purchase an optional extension period will not apply if:
 - a. this policy is canceled by **us** for nonpayment of premium; or
 - b. the total premium for this policy has not been fully paid.
2. The optional extension period will apply only to **claims** that:
 - a. are first made against **you** and reported to **us** during the optional extension period; and
 - b. arise from **your professional services** performed, or a **breach, data breach, offense, or occurrence** that takes place, on or after the **retroactive date** but prior to the effective date of cancellation or non-renewal of this policy.
3. The additional premium will be fully earned at the inception of the optional extension period.

General Terms and Conditions

4. Notice of election and full payment of the additional premium for the optional extension period must be received by **us** within 30 days after the effective date of cancellation or non-renewal, otherwise any right to purchase the optional extension period will lapse.

The limits of liability applicable during any purchased optional extension period will be the remaining available **coverage part limit**. There will be no separate or additional limit of liability available for any purchased optional extension period.

The right to purchase an optional extension period will apply only to Coverage Parts **you** have purchased that include coverage written on a claims-made or loss occurring and discovered basis, and not to any Coverage Parts written on an occurrence basis.

V. Other provisions affecting coverage

The following provisions apply to all Coverage Parts **you** have purchased. If there is a conflict between any of the provisions here and a provision contained in a Coverage Part, then the provision in the Coverage Part will govern the coverage provided under that Coverage Part.

- | | |
|--|---|
| A. Alteration and assignment | No change in, modification of, or assignment of interest under this policy will be effective unless made by written endorsement to this policy signed by our authorized representative. |
| B. Bankruptcy or insolvency | Your bankruptcy or insolvency will not relieve us of any of our obligations under this policy. |
| C. Cancellation | <ol style="list-style-type: none"> 1. This policy may be canceled by the named insured by giving written notice, which must include the date the cancellation will be effective, to us at the address stated in the Declarations. 2. This policy may be canceled by us by mailing to the named insured by registered, certified, or other first class-mail (or by email where allowed by applicable law), at the named insured's address (or email address) stated in Item 1 of the Declarations, written notice which must include the date the cancellation will be effective. The effective date of the cancellation will be no less than 60 days after the date of the notice of cancellation, or ten days if the cancellation is due to nonpayment of premium. 3. The mailing (or emailing) of the notice will be sufficient proof of notice, and this policy will terminate at the date and hour specified in the notice. 4. If this policy is canceled by the named insured, we will retain the customary short rate proportion of the premium. 5. If this policy is canceled by us, we will return a pro rata proportion of the premium. 6. Payment or tender of any unearned premium by us will not be a condition precedent to the cancellation, but such payment will be made as soon as possible. |
| D. Change in control | <p>If, during the policy period identified in Item 2 of the Declarations, the named insured consolidates with, merges into, or sells all or substantially all of its assets to any other person or entity, or any other person or entity acquires ownership or control of the named insured, then the named insured will provide us written notice no later than 30 days after the effective date of such change in control, together with any other information we may require.</p> <p>We will not cancel this policy solely because of a change in control, but unless you and we agree in writing otherwise, after the effective date of any change in control, this policy will cover only claims arising from professional services performed, or breaches, data breaches, offenses, or occurrences that took place, prior to the change in control.</p> |
| E. Coverage territory | This policy will apply to your professional services performed, and breaches , offenses, events , or occurrences that take place, anywhere in the world, provided that any action, arbitration, or other proceeding (if you have purchased a relevant Coverage Part) is brought within the United States, its territories or possessions, or Canada. |
| F. Estates, heirs, legal representatives, spouses, and domestic partners | <p>In the event of an employee's death or disability, this policy will also apply to claims brought against the employee's:</p> <ol style="list-style-type: none"> 1. heirs, executors, administrators, trustees in bankruptcy, assignees, and legal |

General Terms and Conditions

- representatives; or
2. lawful spouse or lawful domestic partner;
- but only:
- a. for a covered **claim** arising from the scope of the **employee's** work for **you**; or
 - b. in connection with their ownership interest in property which the claimant seeks as recovery in a covered **claim** arising from the scope of the **employee's** work for **you**.
- G. False or fraudulent claims If any **insured** commits fraud in connection with any **claim, potential claim, breach, offense, event, or occurrence**, whether regarding the amount or otherwise, this insurance will become void as to that **insured** from the date the fraud is committed.
- H. Other insurance Any payment due under this policy is specifically excess of and will not contribute with any other valid and collectible insurance, unless such other insurance is written specifically as excess insurance over this policy. However, if **you** have purchased a General Liability Coverage Part, rules for how that Coverage Part will be treated when there is other valid and collectible insurance are contained in Section V. Other provisions affecting coverage, D. Other insurance, of that Coverage Part.
- If the same **claim or related claims, breach, event or related events, or occurrence** is covered under more than one Coverage Part, **we** will pay only under one Coverage Part, which will be the Coverage Part that provides the most favorable coverage.
- I. Subrogation In the event of any payment by **us** under this policy, **we** will be subrogated to all of **your** rights of recovery to that payment.
- You** will do everything necessary to secure and preserve **our** subrogation rights, including but not limited to the execution of any documents necessary to allow **us** to bring suit in **your** name.
- You** will do nothing to prejudice **our** subrogation rights without **our** prior written consent.
- Any recovery first will be paid to **you** up to the amount of any **retention you** have paid, and then to **us** up to the amount of any **covered amounts we** have paid.
- J. Titles Titles of sections of and endorsements to this policy are inserted solely for convenience of reference and will not be deemed to limit, expand, or otherwise affect the provisions to which they relate.

VI. Definitions applicable to all Coverage Parts

The following definitions apply to all Coverage Parts **you** have purchased. If the same term is defined here and in a Coverage Part, then the definition in the Coverage Part will govern the coverage provided under that Coverage Part.

- Application** means the signed application for the policy and any attachments and materials submitted with that application. If this policy is a renewal or replacement of a previous policy issued by **us**, **application** also includes all previous signed applications, attachments, and materials.
- Coverage part limit** means the amount stated in the Declarations as the aggregate limit applicable to each Coverage Part **you** have purchased which is subject to an aggregate limit.
- Covered amounts** means any amounts **we** have expressly agreed to pay under any Coverage Part **you** have purchased.
- Employee** means any past, present, or future:
1. employee (including any part-time, seasonal, leased, or temporary employee or any volunteer);
 2. partner, director, officer, or board member (or equivalent position); or
 3. independent contractor;
- of a **named insured**, but only while in the course of their performance of work or services on

General Terms and Conditions

behalf of or at the direction of the **named insured**.

Named insured

means the individual, corporation, partnership, limited liability company, limited partnership, or other entity identified in Item 1 of the Declarations.

Policy period

means the period of time identified in Item 2 of the Declarations, and any optional extension period, if purchased.

Professional services

means those services identified as Covered Professional Services under any Coverage Part on the Declarations containing such a description.

Related claims

means all **claims** that are based upon, arise out of, or allege:

1. a common fact, circumstance, situation, event, service, transaction, cause, or origin;
2. a series of related facts, circumstances, situations, events, services, transactions, sources, causes, or origins;
3. a continuous or repeated act, error, or omission in the performance of **your professional services**; or
4. the same **breach, event, occurrence**, or offense.

The determination of whether a **claim** is related to another **claim** or **claims** will not be affected by the number of claimants or **insureds** involved, causes of action asserted, or duties involved.

Retention

means the amount or time identified as such in the Declarations.

Retroactive date

means the date identified as such in the Declarations.

We, us, or our

means the Company identified on the Declarations as issuing this policy.

You, your, or insured

means any individual or entity expressly described as an **insured** in any Coverage Part **you** have purchased.

Cyber Coverage Part

I. Insuring agreement - What is covered

We will pay up to the **coverage part limit** for **loss** incurred by **you** in excess of the **retention** resulting from a **data breach, security failure, or extortion threat** that first occurs on or after the **retroactive date** and is discovered by **you** during the **policy period**.

Loss means:

1. **breach costs**;
2. **claim expenses, damages, and PCI fines and assessments** because of a **claim** made against **you**;
3. **claim expenses and penalties** because of a **regulatory proceeding** initiated against **you**;
4. **cyber extortion costs**;
5. **business interruption costs**; and
6. **data recovery costs**.

II. Coverage enhancements and sublimits

We will also make the following payments, provided **you** report such matters to **us** in accordance with Section V. Your obligations:

Bricking costs

- A. We will pay up to the limit stated in the Declarations for **bricking costs** resulting from the total or partial loss of hardware caused by the unauthorized reprogramming of software (including but not limited to firmware) that first occurs on or after the **retroactive date** and is discovered by **you** during the **policy period**.

Any payment **we** make under this subsection A is subject to the **retention** stated in the Declarations, and such payments will be a part of, and not in addition to, the **coverage part limit**.

Cyber crime coverage

- B. We will pay up to the limit stated in the Declarations for **your** loss:

1. resulting directly from **funds transfer fraud**;
2. of **money or securities** transferred, paid, or delivered as a result of **social engineering**; or
3. of **money** resulting directly from **reverse social engineering**,

provided the **funds transfer fraud, social engineering, or reverse social engineering** first occurs and is first discovered by **you** during the **policy period**.

However, **our** obligation to make any payment under this subsection B is:

- a. specifically excess of and will not contribute with any other valid and collectible crime insurance available to **you**, whether or not such other insurance is written specifically as excess over this policy; and
- b. in excess of any retention or deductible applicable to such other insurance, which **you** must pay before **we** will be obligated to make any payment under this policy.

Any payment **we** make under this subsection B is subject to the **retention** stated in the Declarations, and such payments will be a part of, and not in addition to, the **coverage part limit**.

Dependent business interruption

- C. We will pay up to the limit stated in the Declarations for **business interruption costs** you incur resulting from a **dependent business event** experienced by any **dependent business** that first occurs on or after the **retroactive date** and is discovered by **you** during the **policy period**.

Any payment **we** make under this subsection C is subject to the **retention** stated in the Declarations, and such payments will be a part of, and not in addition to, the **coverage part limit**.

Cyber Coverage Part

- | | |
|--------------------------------------|---|
| Dependent system failure | <p>D. We will pay up to the limit stated in the Declarations for business interruption costs you incur resulting from a dependent system failure experienced by any dependent business that first occurs on or after the retroactive date and is discovered by you during the policy period.</p> <p>Any payment we make under this subsection D is subject to the retention stated in the Declarations, and such payments will be a part of, and not in addition to, the coverage part limit.</p> |
| Enhanced privacy regulation coverage | <p>E. We will pay up to the limit stated in the Declarations for damages, claim expenses, and penalties for any regulatory proceeding for a consumer privacy violation, provided the regulatory proceeding is first brought against you during the policy period and it results from the performance of your business operations by you or anyone on your behalf (including your subcontractors or outsourcers) on or after the retroactive date.</p> <p>Any payment we make under this subsection E is subject to the retention stated in the Declarations, and such payments will be a part of, and not in addition to, the coverage part limit.</p> |
| Reputational harm | <p>F. We will pay up to the limit stated in the Declarations for reputational harm the insured organization sustains resulting from the publication of an otherwise covered event that first occurs during the policy period, provided the publication of such event occurs no later than: (i) the end of the policy period; or (ii) 90 days after the end of the policy period for events first discovered by you in the last 90 days of the policy period.</p> <p>Any payment we make under this subsection F is subject to the retention stated in the Declarations, and such payments will be a part of, and not in addition to, the coverage part limit.</p> |
| Supplemental payments | <p>G. We will pay reasonable expenses, including loss of wages and a \$250 travel per diem, incurred by you if we require you to attend depositions, arbitration proceedings, or trials in connection with the defense of a covered claim, but we will not pay more than an aggregate of \$10,000 per claim for such expenses, regardless of the number of insureds.</p> <p>No retention will apply to amounts we pay under this subsection G, and such amounts will be in addition to, and not part of, the coverage part limit.</p> |
| System failure | <p>H. We will pay up to the limit stated in the Declarations for business interruption costs you incur resulting from a system failure that first occurs on or after the retroactive date and is discovered by you during the policy period.</p> <p>Any payment we make under this subsection H is subject to the retention stated in the Declarations, and such payments will be a part of, and not in addition to, the coverage part limit.</p> |
| Utility fraud | <p>I. We will pay up to the limit stated in the Declarations for utility overages you incur resulting from a utility fraud that first occurs and is discovered by you during the policy period.</p> <p>However, if you incur utility overages for a period exceeding 90 days from the date on which the utility overages are first incurred, then we will only be obligated to pay such utility overages that are incurred during the first 90 days.</p> <p>Any payment we make under this subsection I is subject to the retention stated in the Declarations, and such payments will be a part of, and not in addition to, the coverage part limit.</p> |

III. Who is an insured

For purposes of this Coverage Part, **you, your, or insured** means a **named insured, subsidiary, employee, executive, independent contractor, or acquired entity**, as defined below:

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Named insured	means the individual, corporation, partnership, limited liability company, limited partnership, or other entity identified in Item 1 of the Declarations.
Subsidiary	means any entity of which the named insured has majority ownership before or as of the inception of the policy period .
Employee	means any past, present, or future person employed by the insured organization as a permanent, part-time, seasonal, leased, or temporary employee, or any volunteer, but only while in the course of their performance of business operations on behalf of or at the direction of such insured organization .
Executive	means any past, present, or future partner, director, officer, or board member (or the equivalent positions) of the insured organization , but only while in the course of their performance of business operations on behalf of such insured organization .
Independent contractor	means any person or entity contracted by the named insured to perform the same business operations as the named insured , but only while in the course of their performance of such business operations on behalf of or at the direction of the named insured .
Acquired entity	<p>means any entity:</p> <ol style="list-style-type: none"> 1. in which the named insured: <ol style="list-style-type: none"> a. acquires substantially all of the assets; b. acquires the majority of its voting securities, as a result of which it becomes a subsidiary; or c. merges and leaves the named insured as the surviving entity; or 2. that the named insured creates as a subsidiary, <p>during the policy period.</p> <p>With respect to an acquired entity whose revenues exceed 20% of the named insured's revenues (as reported in your most recent fiscal year-end financial statements prior to inception of this policy) at the time of its acquisition, any coverage under this policy will expire 90 days after the effective date of its acquisition unless, within such 90 day period:</p> <ol style="list-style-type: none"> a. the named insured provides us with written notice of such acquisition; b. the named insured provides us with information related to such acquisition as we may reasonably require; c. the named insured accepts any special terms, conditions, exclusions, or additional premium charge as we may reasonably require; and d. we agree by written endorsement to provide such coverage. <p>This policy will apply to an acquired entity only with respect to your business operations performed after the acquisition, merger, or creation.</p>

IV. Defense and settlement of claims

Defense	<p>We have the right and duty to defend any covered claim or regulatory proceeding, even if such claim or regulatory proceeding is groundless, false, or fraudulent.</p> <p>We have the right to select and appoint counsel to defend you against a covered claim. You may request in writing that we appoint defense counsel of your own choice, but whether to grant or deny such a request will be at our sole discretion.</p>
Settlement	<p>We have the right to solicit and negotiate settlement of any claim but will not enter into a settlement without your consent, which you agree not to withhold unreasonably. You must notify us immediately of any settlement demands or offers. We agree that you may settle any claim</p>

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where the total **loss, claim expenses, and damages** does not exceed the **retention**, provided the entire **claim** is resolved and **you** obtain a full release on behalf of all **insureds**.

If **you** withhold consent to a settlement recommended by **us** and acceptable to the party who made the **claim**, the most **we** will pay for that **claim** is the sum of:

1. the amount of **our** recommended settlement;
2. **claim expenses** incurred up to the date of **our** recommendation;
3. 70% of all **claim expenses** incurred after **our** recommendation; and
4. 70% of all **damages, PCI fines and assessments, and penalties** in excess of the settlement amount recommended by **us**.

V. Your obligations

Notifying us of claims and coverage enhancements

You must give written notice to **us** of any **claim**, or any other matter covered under Section II. Coverage enhancements and sublimits, as soon as possible once such **claim** or other matter is known to an **executive**, but in any event, no later than 60 days after the end of the **policy period**.

All such notifications must be in writing and include a copy of the **claim** or other covered matter, and must be submitted to **us** via the designated email address or mailing address identified in Item 6 of the Declarations.

Notifying us of potential claims

You have the option of notifying **us** of **potential claims** that may lead to a covered **claim** against **you**.

In order to do so, **you** must give written notice to **us** as soon as possible and within the **policy period**, and the notice must, to the greatest extent possible, identify the details of the **potential claim**, including identifying the potential claimant(s), the likely basis for liability, the likely demand for relief, and any additional information about the **potential claim** **we** may reasonably request.

The benefit to **you** of notifying **us** of a **potential claim** is that if an actual **claim** arises from the same circumstances as the properly notified **potential claim**, then **we** will treat that **claim** as if it had first been made against **you** on the date **you** properly notified **us** of it as a **potential claim**, even if that **claim** is first made against **you** after the **policy period** has expired.

All **potential claim** notifications must be in writing and submitted to **us** via the designated email address or mailing address identified in Item 6 of the Declarations.

Notifying us of events

You must give written notice to **us** of any **event** as soon as possible once such **event** is first discovered by **you**, but in any event no later than: (i) the end of the **policy period**; or (ii) 30 days after the end of the **policy period** for an **event** first discovered by **you** in the last 30 days of the **policy period**.

All such notifications must be in writing and include a description of the **event**, and must be submitted to **us** via the designated email address or mailing address identified in Item 6 of the Declarations.

In addition, **you** must also inform, or allow **us** to inform, the appropriate law enforcement authorities for any **event** requiring such notification.

Retention

Our obligation to pay any **covered amounts** under this Coverage Part is in excess of the **retention**, which **you** must pay in connection with each covered **claim, event, or other matter** covered under Section II. Coverage enhancements and sublimits. With respect to **business interruption costs**, the **retention** will be the greater of: (i) the amount of **business interruption costs** incurred during the **waiting period**; or (ii) the **retention** amount stated in the Declarations.

If any matters covered under Section II. Coverage enhancements and sublimits arise from the same circumstances as a covered **claim or event**, **you** will have to pay only one **retention**, which will be the highest applicable **retention** triggered, and the Each Claim and/or Event Limit and limits applicable to each triggered Coverage enhancement or sublimit will apply, up to the **coverage part limit**.

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We may at our sole discretion advance payment of **claim expenses, damages, or loss** within the **retention** amount on **your** behalf, but **you** will reimburse **us** for any such amounts as soon as **we** request such reimbursement.

VI. Exclusions – What is not covered

A. Exclusions applicable to the entire Coverage Part

We will have no obligation to pay any sums under this Coverage Part, including any **loss, damages, claim expenses, or other covered amounts**:

Antitrust/deceptive trade practices

1. based upon or arising out of any actual or alleged:
 - a. false, deceptive, or unfair trade practices;
 - b. unfair competition, impairment of competition, restraint of trade, or antitrust violations;
 - c. violation of the Sherman Anti-Trust Act, the Clayton Act, the Robinson-Patman Act, all including as may be amended, or any similar foreign, federal, state, or local statutes, rules, or regulations; or
 - d. deceptive or misleading advertising.

However, this exclusion will not apply to a **claim** or **regulatory proceeding** resulting from a **data breach, security failure, or consumer privacy violation**.

Bodily injury

2. based upon or arising out of any actual or alleged physical injury, sickness, disease, or death, including but not limited to any mental anguish or emotional distress resulting from such physical injury, sickness, disease, or death; however, this exclusion will not apply to any emotional distress or mental anguish arising out of an actual or alleged **event** or **consumer privacy violation**.

COPPA

3. based upon or arising out of any actual or alleged violation of the Children's Online Privacy Protection Act (COPPA), or any similar federal, state, local, or foreign law.

Criminal proceedings

4. based upon or arising out of any **claim** brought in the form of a criminal proceeding, including but not limited to a criminal investigation, grand jury proceeding, or criminal action.

Employer liability and third party discrimination

5. based upon or arising out of any actual or alleged:
 - a. obligation under any workers' compensation, unemployment compensation, employers' liability, fair labor standards, labor relations, wage and hour, or disability benefit law, including any similar provisions of any foreign, federal, state, or local statutory or common law;
 - b. liability or breach of any **duty** or obligation owed by **you** as an employer or prospective employer; or
 - c. harassment, wrongful termination, retaliation, or discrimination, including but not limited to adverse or disparate impact.

However, this exclusion will not apply to any otherwise covered **claim** brought by an **employee** or **executive** resulting from a **data breach** or **security failure**.

Excluded statutory violations

6. based upon or arising out of any actual or alleged violation of the following laws:
 - a. the Securities Act of 1933;
 - b. the Securities Exchange Act of 1934;
 - c. any state blue sky or securities laws;
 - d. the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.*;

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- e. the Fair Debt Collection Practices Act; or
- f. the Fair Credit Reporting Act,

all including as may be amended, or any similar provisions of any foreign, federal, state, or local statutory or common law and any rules or regulations promulgated under such laws.

Parts a and b of this exclusion will not apply to an otherwise covered **regulatory proceeding** resulting from a **data breach** or **security failure**.

Parts e and f of this exclusion will not apply to any **regulatory proceeding** for a **consumer privacy violation** covered under Section II. Coverage enhancements and sublimits, E. Enhanced privacy regulation coverage.

- | | |
|-----------------------------|---|
| Funds transfer | <p>7. for any actual or alleged loss, theft, or transfer of:</p> <ul style="list-style-type: none"> a. your funds, monies, or securities; b. the funds, monies, or securities of others in your care, custody, or control; or c. the funds, monies, or securities in the care, custody, or control of any third party, <p>including but not limited to the value of any funds, monies, or securities transferred by you or others on your behalf; however, this exclusion will not apply to loss otherwise covered under Section II. Coverage enhancements and sublimits, B. Cyber crime coverage.</p> |
| Infrastructure interruption | <p>8. based upon or arising out of any actual or alleged failure or interruption of service provided by an internet service provider, telecommunications provider, utility provider, including but not limited to any water, gas, electric, or other utility provider, or other infrastructure provider; however, this exclusion will not apply to a data breach involving electronic data that was stored in the cloud, on remote servers, or at a co-location or data hosting service.</p> |
| Insured vs. insured | <p>9. based upon or arising out of any claim brought by or on behalf of one insured against another insured; however, this exclusion will not apply to an otherwise covered claim brought by an employee, executive, or independent contractor alleging injury resulting from a data breach.</p> |
| Intellectual property | <p>10. based upon or arising out of any actual or alleged infringement, use, or disclosure of any intellectual property, including but not limited to copyright, trademark, trade dress, patent, service mark, service name, title, or slogan, or any publicity rights violations, cyber squatting violations, moral rights violations, any act of passing-off, or any misappropriation of trade secret; however, this exclusion will not apply to loss resulting from a:</p> <ul style="list-style-type: none"> a. data breach committed by a third party; or b. security failure. |
| Intentional acts | <p>11. based upon or arising out of any actual or alleged fraud, dishonesty, criminal conduct, or any knowingly wrongful, malicious, or intentional acts or omissions, except that we will pay claim expenses until there is a final adjudication establishing such conduct.</p> <p>This exclusion will apply to the named insured only if the conduct was committed or allegedly committed by any:</p> <ul style="list-style-type: none"> a. executive; or b. employee of the named insured if any executive knew or had reason to know of such conduct by the employee. <p>This exclusion will apply separately to each insured and will not apply to any insured who did not commit, participate in, acquiesce to, or ratify such conduct committed by another insured.</p> |

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- Pollution/environmental 12. based upon or arising out of any actual, alleged, or threatened discharge, dispersal, release, or escape of **pollutants**, including any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize **pollutants**.
- Prior acts/notice/knowledge 13. based upon or arising out of any:
 - claim, potential claim, or event** that was the subject of any notice given under any other policy of which this policy is a renewal or replacement;
 - claim, potential claim, or event** that was the subject of, or is related to, any prior or pending litigation, **claim**, written demand, arbitration, administrative or **regulatory proceeding** or investigation, or licensing proceeding that was filed or commenced against **you** and of which **you** had notice prior to the **policy period**; or
 - other matter **you** had knowledge of prior to the **policy period**, and **you** had a reasonable basis to believe could result in a **claim, loss, or covered amounts**.

However, if this policy is a renewal or replacement of a previous policy **we** issued that provided materially identical coverage, and is part of an unbroken chain of successive policies issued by **us**, the **policy period** referred to in paragraphs b and c, above, will be the policy period of the first such policy **we** issued.
- Property damage 14. based upon or arising out of any actual or alleged **property damage**; however, this exclusion will not apply to:
 - damage to electronic data or destruction or loss of use of electronic data;
 - a **data breach** or **security failure** resulting from damage to or destruction of tangible property; or
 - bricking costs** covered under Section II. Coverage enhancements and sublimits, A. Bricking costs.
- Related or continuing event 15. based upon or arising out of any related or continuing acts, errors, incidents, or **events** where the first act, error, incident, or **event** first occurred prior to the **retroactive date**.
- Repair/replace/recall 16. based upon or arising out of any actual or alleged repair, upgrade, correction, recall, replacement, withdrawal, removal, or disposal costs incurred by **you** or others; however, this exclusion will not apply to:
 - extra expense**;
 - bricking costs** covered under Section II. Coverage enhancements and sublimits, A. Bricking costs; or
 - data recovery costs** incurred to replace, restore, or repair a **data asset** from back-ups, originals, or other sources.
- Subsidiary outside control of named insured 17. based upon or arising out of any acts, errors, **events**, or incidents which occurred or were experienced by a past or present **subsidiary** or **acquired entity** while the **named insured** does not have majority ownership or management control of it.
- Unsolicited telemarketing 18. based upon or arising out of any actual or alleged violation of any federal, state, local, or foreign statutes, ordinances, or regulations relating to unsolicited telemarketing, solicitations, emails, faxes, text messages, or any other communications of any type or nature, including but not limited to the Telephone Consumer Protection Act, CAN-SPAM Act, or any "anti-spam" or "do-not-call" statutes, ordinances, or regulations.
- B. Exclusions applicable only to business interruption costs and data recovery costs**
- Excluded business interruption costs and data recovery costs 19. with respect to **business interruptions costs** and **data recovery costs** only, based upon or arising out of:
 - any seizure, confiscation, nationalization, destruction, or loss of use of **computer**

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systems or data assets due to any action by a governmental authority or entity;

- b. the bankruptcy, financial impairment, or insolvency of the **insured organization** or other person or entity;
- c. ordinary wear and tear or gradual deterioration of the physical components of a **computer system**;
- d. any physical cause or natural peril, including but not limited to fire, wind, water, flood, subsidence, earthquake, or act of God;
- e. any liability to third parties or contractual penalties; or
- f. any **data breach** involving information that is not under the **insured organization's** direct control, or any **security failure** impacting or **extortion threat** against an entity that is not an **insured**; however, this exclusion will not apply to an otherwise covered **dependent business event**.

Systems under the control of third parties

- 20. with respect to **business interruption costs** resulting from a **system failure** only, based upon or arising out of any total or partial interruption of a computer system owned or leased by any person or entity that is not an **insured**.

C. Exclusions applicable only to cyber crime

- 21. with respect to any **covered amounts** under Section II. Coverage enhancements and sublimits, B. Cyber crime coverage only, based upon or arising out of:
 - a. the use or purported use of credit, debit, charge, access, convenience, identification, stored-value, or other cards or the information contained on such cards;
 - b. an indirect result of an occurrence, **event**, or matter covered by Section II. Coverage enhancements and sublimits, B. Cyber crime coverage, including but not limited to loss resulting from:
 - i. **your** inability to realize income that you would have realized had there been no **funds transfer fraud, social engineering, or reverse social engineering**;
 - ii. payment of **damages** of any type for which **you** are legally liable; or
 - iii. payment of costs, fees, or other expenses **you** incur in establishing the existence or the amount of **funds transfer fraud, social engineering, or reverse social engineering**;
 - c. legal costs or expenses incurred by **you** which are related to any legal action resulting from loss covered under this Coverage Part;
 - d. the seizure or destruction of property by order of governmental authority or entity;
 - e. any dishonest act committed by **you**, if the **named insured** is an individual, or by any **employee or executive**;
 - f. any actual or alleged unauthorized acquisition, access, use, or disclosure of **personally identifiable information** or confidential corporate information that is held or transmitted in any form; however, this exclusion will not apply to a **funds transfer fraud, social engineering, or reverse social engineering** directly resulting from the use of such **personally identifiable information** or confidential corporate information; or
 - g. any **reverse social engineering** resulting from the use of **your computer system** by a person who is authorized to access such **computer system**; however, this exclusion will not apply to **reverse social engineering** resulting from the unauthorized use of such **computer system** by a person otherwise authorized to access it.

D. Exclusions applicable only to utility fraud

- 22. with respect to any **covered amounts** under Section II. Coverage enhancements and sublimits, I. Utility fraud only, based upon or arising out of any:
 - a. legal costs or expenses incurred by **you** which are related to any legal action resulting from a **utility fraud**;
 - b. **utility fraud** resulting from any dishonest act committed by:

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- i. **you**, if the **named insured** is an individual;
- ii. any **executive**; or
- iii. any **employee** if any **executive** had knowledge of such dishonest act;
- c. **business interruption costs** resulting from lost productivity, including the throttling or capping of bandwidth by any internet or mobile data service provider, due to a third party's unauthorized access to or use of **your computer system**; or
- d. **utility fraud** resulting from any actual or alleged unauthorized acquisition, access, use, or disclosure of **personally identifiable information** or confidential corporate information that is held or transmitted in any form; however, this exclusion will not apply to a **utility fraud** directly resulting from the use of such **personally identifiable information** or confidential corporate information.

VII. Definitions

The following definitions apply to this Coverage Part. Additional definitions are contained in Section III. Who is an insured, and in the General Terms and Conditions, Section VI. Definitions applicable to all Coverage Parts.

Breach costs

means the following costs **you** incur in response to an actual or suspected **data breach**:

1. legal costs:
reasonable and necessary costs for an attorney to provide advice to the **insured organization** in connection with its investigation of a **data breach**, to assist with the preparation of notifications to the regulators and affected individuals, and to determine and pursue **your** indemnification rights under a written agreement with a third party;
2. computer forensic costs:
reasonable and necessary costs for a computer forensic analysis conducted by outside forensic experts to:
 - a. investigate the cause of a **data breach** and determine the information impacted; and
 - b. stop or contain a **data breach**, provided all costs under this paragraph 2. b. will be limited to fees for time incurred by such outside forensic expert;
3. notification costs:
reasonable and necessary costs to notify individuals, regulators, or others as required by law, and to voluntarily notify individuals affected by a **data breach**;
4. call center costs:
reasonable and necessary costs to operate a call center to answer questions from affected individuals;
5. identity protection services:
reasonable costs to provide affected individuals with one year (or more as required by law) of services to monitor, restore, and/or protect an individual's credit or identity; and
6. crisis management and public relations costs:
reasonable costs:
 - a. for a public relations or crisis management consultant to assist the **insured organization** in reestablishing its **reputation** and to respond to media reports regarding a **data breach**;
 - b. for an attorney to advise the **insured organization** on reducing the likelihood of or costs of any **claim** otherwise covered by this Coverage Part; and
 - c. to issue statements via email or the **insured organization's** website regarding a **data breach** to individuals whose information was not impacted by such **data breach**.

All **breach costs** must be provided by a firm or vendor on **our** breach response providers list, and **we** will only be responsible to pay for **breach costs** provided by a firm or vendor on **our** breach response providers list. All **breach costs** require **our** prior written consent; however, **you**

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may incur legal costs under paragraph 1 provided by a firm on **our** breach response providers list without **our** prior written consent.

If **you** request in writing the right to retain privacy counsel that is not on the breach response providers list prior to a **data breach**, the decision to grant such request will be at **our** sole discretion.

Breach costs will not mean, and **we** will have no obligation to pay, any of **your** own costs, salaries, or overhead expenses.

Bricking costs

means the reasonable and necessary expenses incurred by **you** with **our** prior written consent to rebuild, repair, or replace any hardware on which any **data asset** is stored due to the total or partial damage of hardware caused by the unauthorized reprogramming of software (including firmware), provided:

1. such hardware, or any component of the hardware, can no longer be used for any or all of its purposes, and either:
 - a. the hardware or component cannot be restored to functionality after reasonable efforts have been made; or
 - b. it is reasonably estimated:
 - i. to cost less to replace the hardware or component than it would to restore the hardware or component's functionality; or
 - ii. that the cost to replace the hardware or component will be less than the additional **loss** that will be incurred if the hardware or component is not replaced; and
2. replacement of such hardware or component is reasonable and necessary to reduce or mitigate any amounts otherwise covered under this Coverage Part.

Bricking costs will not mean costs to rebuild, repair, or replace the hardware or component to a level beyond which existed prior to the bricking event, unless:

- i. the hardware or component can only be reasonably replaced with an upgraded or enhanced hardware or component; and
- ii. the updated or enhanced hardware or component is necessary to repair, rebuild, or replace the hardware or component.

Business interruption costs

means **income loss** and **extra expense** actually sustained during the **period of restoration** directly due to the total or partial interruption of **your** business, including an interruption due to the voluntary shutdown with **our** prior consent of **your computer system**, programs, or electronic data deemed necessary in order to minimize or avoid a threatened **event**, for a period greater than the **waiting period**.

Business interruption costs does not mean:

1. legal costs or expenses;
2. costs to update, repair, upgrade, enhance, or replace any **computer system** or program to a level beyond that which existed prior to the **event**;
3. any amounts due to any:
 - i. failure or act committed by;
 - ii. incident, breach, or physical cause or natural peril (including but not limited to fire, wind, water, flood, subsidence, earthquake, or act of God) impacting; or
 - iii. outage of,
a supply chain provider;
4. any amounts due to unfavorable business conditions; or
5. costs to identify or remove software program errors or vulnerabilities.

Claim

means:

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1. a written assertion of liability or any written demand for financial compensation or injunctive relief;
2. a **regulatory proceeding**;
3. unintentional breach of a written contract asserted by a **client**;
4. **contractual indemnity - breach costs**; or
5. **contractual indemnity - third-party**.

Claim expenses

means the following that are incurred by **us** or by **you** with **our** prior written consent:

1. all reasonable and necessary fees, costs, and expenses (including the fees of attorneys and forensic or other experts) incurred in the investigation, defense, and appeal of a **claim**; and
2. premiums on appeal bonds, attachment bonds, or similar bond. However, **we** will have no obligation to apply for or furnish any such bonds.

Claim expenses will not mean and **we** will not be obligated to pay:

- a. overhead costs, general business expenses, salaries, or wages incurred by **you**; or
- b. the defense of any criminal investigation, criminal grand jury proceeding, or criminal action.

Client

means any person or entity with whom **you** have entered into a written contract to provide services or deliverables.

Computer system

means all interconnected electronic or wireless computers and their components, including but not limited to:

1. operating systems and hardware;
2. software;
3. associated input and output devices, data storage devices, and back up facilities;
4. mobile devices used by **insureds** and authorized by the **insured organization** to access its networks; and
5. related peripheral components, including Internet of things (IoT) devices, provided they are:
 - a. under the control of or owned or leased by the **insured organization**; or
 - b. operated by a third party service provider, including but not limited to a cloud computing provider, pursuant to a written contract with the **insured organization**.

Consumer privacy violation

means:

1. the improper collection or retention of **personally identifiable information** by **you** or others on **your** behalf without the knowledge or permission of the individual to whom the **personally identifiable information** relates;
2. **your** misuse of **personally identifiable information**;
3. **your** failure to:
 - a. properly inform individuals of the collection of;
 - b. give access to;
 - c. rectify errors or inaccuracies in;
 - d. erase;
 - e. restrict processing of;
 - f. ensure portability of;
 - g. give notice regarding the rectification, erasure, or restriction of processing of;
 - h. allow individuals to opt in or out of **your** collection of;

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- i. advise individuals of their rights regarding **your** collection of; or
 - j. maintain or disseminate a written policy regarding **your** collection of, **personally identifiable information** as required by any consumer privacy law; or
4. any other actual or alleged violation of any foreign, federal, state, or local consumer privacy law or consumer data protection law, including and any rules or regulations promulgated under such laws.

Contractual indemnity - breach costs

means any actual or alleged triggering of **your** obligations under a written contract to indemnify **your client**, a merchant bank, or a payment processor for **breach costs** that would be covered if **you** had incurred them, but only to the same extent as though **you** had incurred them.

Contractual indemnity -third party

means any actual or alleged triggering of **your** obligations under a contractual agreement to indemnify **your client**, a merchant bank, or a payment processor for **damages, penalties, PCI fines and assessments**, or **claim expenses** that would be covered if they arose from a **claim** against **you**, resulting from **your** actual or alleged:

1. violation of any consumer privacy law or consumer data protection law protecting against disclosure of **personally identifiable information** or confidential corporate information;
2. breach of common law duty relating to **personally identifiable information** or confidential corporate information; or
3. unintentional breach of a written contract or public facing privacy policy relating to **personally identifiable information** or confidential corporate information,

but only to the same extent as though they arose from a **claim** against **you**.

Cryptojacking

means the unauthorized use of or access to the **insured organization's computer system** by a third party to mine cryptocurrency or any other digital or electronic currency.

Cyber extortion costs

means the following costs incurred with **our** prior written consent in response to an **extortion threat**:

1. the ransom paid or, if the demand is for goods or services, the fair market value of such goods or services at the time of surrender; and
2. reasonable and necessary fees and expenses incurred by a representative appointed by **us** to provide **you** with assistance.

If the ransom demanded consists of Bitcoin or any other digital, crypto, or electronic currency, **cyber extortion costs** will also include reasonable and necessary costs incurred by **you** with **our** prior written consent to obtain such currency. In that event, **we** will use the United States dollar equivalent determined by the rate of exchange published by the exchange in which **you** obtain the Bitcoin or other crypto or electronic currency on the date **you** obtain it in order to determine the value of the ransom paid.

Damages

means a monetary judgment or monetary award that **you** are legally obligated to pay (including pre- or post-judgment interest and claimant's attorney fees) or a monetary settlement agreed to by **you** and **us**.

Damages will not mean:

1. fines, civil or criminal penalties, taxes, or sanctions;
2. **penalties**;
3. **PCI fines and assessments**;
4. any punitive, exemplary, or multiple damages; however, **we** will pay punitive or exemplary damages to the extent insurable in any applicable jurisdiction that most favors coverage;
5. the return or reduction of fees, commissions, profits, or charges for goods provided or services rendered;
6. restitution, disgorgement of profits, or unjust enrichment;
7. the cost of complying with injunctive relief;

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8. amounts **you** agree to indemnify; however, **we** will pay such amounts to the extent they are explicitly covered under this Coverage Part;
9. any coupons, discounts, prizes, or other incentives, unless agreed in advance by **us** in our discretion; provided any such amounts will not include any profits to **you**;
10. any liquidated damages, but only to the extent such damages exceed the amount for which **you** would have been liable in the absence of the liquidated damages agreement; or
11. any service credits.

Data asset

means any electronic data or software of the **insured organization**.

Data breach

means the acquisition, access, or disclosure of **personally identifiable information** or confidential corporate information by a person or entity, or in a manner, that is unauthorized by the **insured organization**.

Data recovery costs

means reasonable and necessary expenses incurred by **you** with **our** prior written consent to:

1. regain access to a **data asset**; or
2. replace, restore, or repair a **data asset** from back-ups, originals, or other sources.

If a **data asset** cannot reasonably be accessed, replaced, restored, or repaired, then **data recovery costs** will not exceed the reasonable and necessary expenses incurred by the **named insured** or **subsidiary** to reach that determination.

Data recovery costs will not mean:

- a. amounts to identify or remediate software program errors or vulnerabilities;
- b. the economic value of any **data asset**, including but not limited to trade secrets;
- c. costs to restore, repair, update, or replace any **data asset** to a level beyond which existed prior to the **event**; or
- d. costs to research or develop any **data asset**.

Dependent business

means an entity that:

1. is not owned, operated, or controlled by the **insured organization**; and
2. provides **outsourced business processes** or **information technology services** for the **insured organization** pursuant to a written contract.

Dependent business does not include a supply chain provider.

Dependent business event

means:

1. the acquisition, access, or disclosure of **personally identifiable information** or confidential corporate information by a person or entity, or in a manner, that is unauthorized by the **dependent business**;
2. a threat from a third party to commit an intentional attack against the **dependent business**' website or computer system or publicly disclose confidential corporate information or **personally identifiable information** misappropriated from the **dependent business** if **money**, **securities**, or **other property** is not paid; or
3. any failure by the **dependent business** or by others on the **dependent business**' behalf (including the **dependent business**' subcontractors, outsourcers, or independent contractors) in securing the **dependent business**' computer system.

Dependent system failure

means any unintentional and unplanned total or partial outage of a **dependent business**' computer system that is not caused by a **dependent business event**.

Event

means a **data breach**, **extortion threat**, or **security failure**.

Extortion threat

means a threat from a third party (including acts of an employee acting outside of the scope of their duties and without the authorization of the **insured organization**) to commit or continue an intentional attack against the **insured organization's computer systems** or publicly disclose

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confidential corporate information or **personally identifiable information** misappropriated from the **insured organization** if **money**, **securities**, or **other property** of value is not paid.

Extra expense

means reasonable and necessary costs incurred by the **insured organization** to minimize the interruption of its business that are over and above the cost that the **insured organization** ordinarily would have incurred to conduct its business had no **event** occurred.

Financial institution

means:

1. a bank, savings bank, savings and loan association, trust company, credit union, or similar thrift depository institution;
2. an insurance company; or
3. a stock brokerage firm, mutual fund, liquid assets fund, or similar investment company.

Financial institution does not include any cryptocurrency exchange or wallet.

Funds transfer fraud

means a:

1. telefacsimile, telephone, or other electronic instruction directing a **financial institution** to debit a **transfer account** and to transfer, pay, or deliver **money** or **securities** from that **transfer account**, which instruction purports to have been transmitted by **you**, but was in fact fraudulently transmitted by someone else without **your** knowledge or consent; or
2. written instruction issued to a **financial institution** directing such institution to debit a **transfer account** and to transfer, pay, or deliver **money** or **securities** from that **transfer account**, through an electronic funds transfer system at specified times or under specified conditions, which instruction purports to have been issued by **you**, but was in fact issued, forged, or altered by someone else without **your** knowledge or consent.

Funds transfer fraud does not include any:

- a. instruction which directly or indirectly involves **you** or others acting on **your** behalf (including any **employees** or **executives**, but not the **financial institution**); or
- b. transfer, payment, or delivery of **money** or **securities** which required **you** or others on **your** behalf (including any **employees** or **executives**, but not the **financial institution**) to take any action in order to complete the transfer, payment, or delivery of such **money** or **securities**.

Income loss

means the sum of the following:

1. Net Income (Net Profit or Loss before income taxes) that would have been earned; and
2. continuing normal operating expenses incurred, including payroll.

Information technology services

means computer and electronic technology services, including cloud computing and other hosted computer resources.

Insured organization

means the **named insured** or any **subsidiary** or **acquired entity**.

Merchant services agreement

means any agreement between the **insured organization** and a credit or debit card company, credit or debit card processor, financial institution, or independent sales organization allowing the **insured organization** to accept payment by credit card, debit card, or prepaid card.

Money

means:

1. currency, including Bitcoin or any other digital currency, cryptocurrency, or electronic currency, coins, and bank notes in current use anywhere in the world and having a face value; or
2. traveler's checks, register checks, and money orders held for sale to the public.

Other property

means any tangible property other than **money** that has intrinsic value. **Other property** does not include software, electronic data, or any other intangible property.

Outsourced business processes

means services supporting the operation of **your** business, including human resources, call center, and fulfillment.

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PCI fines and assessments means all amounts **you** are legally obligated to pay under a **merchant services agreement** following a **data breach** or **security failure** impacting credit, debit, or prepaid card information, including:

1. contractual fines or penalties for non-compliance with the PCI Data Security Standards ("PCI DSS");
2. monetary assessments (including for operational expenses, card reissuance fees, and fraud recoveries) and case management fees; and
3. fees for a mandatory audit following a **data breach** to show that **you** are PCI DSS compliant.

Penalties

means any monetary amounts:

1. payable to a governmental entity; and
2. which **you** are legally obligated to deposit into a fund (i.e., a Consumer Redress Fund) as equitable relief to pay consumer claims,

imposed in a **regulatory proceeding** to the extent insurable under the law of any applicable jurisdiction that most favors coverage, including but not limited to such amounts imposed under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the EU General Data Protection Regulation (2016/679), the California Consumer Privacy Act of 2018 (CCPA), all as may be amended, or any other similar foreign, federal, state, or local statute, rule, or regulation. However, **penalties** will not mean any: costs to comply with injunctive relief; costs to establish or improve security or privacy practices; or audit, reporting, or compliance costs.

Period of restoration

means the period of time stated on the Declarations that:

1. begins on the date and time that the interruption of **your** business first occurred; and
2. ends on the earlier of the date and time that the interruption of **your** business: (i) ends; or (ii) could have ended had **you** acted with due diligence and dispatch.

Personally identifiable information

means the following, in any form, that is in **your** care, custody, or control, or in the care, custody, or control of any third party for whom **you** are legally liable:

1. non-public personal information as defined in any foreign, federal, state, or local statute, rule, or regulation, including but not limited to:
 - a. protected health information as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA),
 - b. personal data, as defined by the EU General Data Protection Regulation (2016/679);
 - c. nonpublic personal information, as defined by the Gramm-Leach-Bliley Act of 1999; or
 - d. personal information, as defined by Massachusetts 201 CMR 17.00, or any similar state breach notification or consumer protection law,all as may be amended, and any rule or regulation promulgated under such statute, rule, or regulation;
2. any:
 - a. social security number or individual taxpayer identification number;
 - b. driver's license number or state identification number;
 - c. passport number;
 - d. credit card number; or
 - e. financial account number or debit card number in combination with any required security code; or
3. any information that can be used alone or in combination with other information to identify, contact, or locate a person, or to identify a person in context, including but not limited to zip codes, internet protocol addresses, or geospatial data.

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However, solely for purposes of the coverage provided under this Coverage Part for any **dependent business event** or **dependent system failure**, **personally identifiable information** will mean the information described above that is in the **dependent business'** care, custody, or control, or in the care, custody, or control of any third party for whom the **dependent business** is legally liable.

Personally identifiable information does not include any information described above that is lawfully obtained from publicly available information, or from foreign, federal, state, or local government records lawfully made available to the general public.

Pollutants	means any solid, liquid, gaseous, biological, radiological, or thermal irritant or contaminant, including smoke, vapor, asbestos, silica, dust, nanoparticles, fibers, soot, fumes, acids, alkalis, chemicals, nuclear materials, germs, and waste. Waste includes, but is not limited to, materials to be recycled, reconditioned, or reclaimed.
Potential claim	means any acts, errors, or omissions of an insured or other circumstances reasonably likely to lead to a claim covered under this policy.
Property damage	means physical loss of, physical damage to, or destruction of any tangible property, including the resulting loss of use of that property.
Publication	means any: <ol style="list-style-type: none"> 1. report or communication that has been publicized to the general public through any media channel, including but not limited to television, print media, radio or electronic networks, the internet, or electronic mail; or 2. notice to individuals affected by an event.
Regulatory proceeding	means a request for information, an investigation, a civil regulatory action, or an assertion of liability, by a governmental authority or entity in its official capacity.
Related events	means events that are based upon, arise out of, or allege: <ol style="list-style-type: none"> 1. a common fact, circumstance, situation, event, service, transaction, cause, or origin; or 2. a series of related facts, circumstances, situations, events, services, transactions, sources, causes, or origins.
Reputation	means trust that your customers or clients have in doing business with you or in purchasing your products or services.
Reputational harm	means income loss the insured organization sustains for a period not to exceed six months due to the insured organization's loss of clients , customers, or sales resulting from damage to the insured organization's reputation or brand. Reputational harm does not include any: <ol style="list-style-type: none"> 1. costs to rehabilitate the insured organization's reputation or brand, including legal costs or expenses; 2. breach costs; 3. business interruption costs; or 4. costs caused by a publication of any occurrence other than a covered event.
Retention	means: <ol style="list-style-type: none"> 1. with respect to all claims, loss, and other matters covered under Section II. Coverage enhancements and sublimits other than business interruption costs, the amount(s) stated under the Cyber Coverage Part section of the Declarations. 2. with respect to business interruption costs, the greater of: (i) the amount of business interruption costs incurred during the waiting period; or (ii) the retention amount stated under the Cyber Coverage Part section of the Declarations.

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Retroactive date	means the date stated as such in the Declarations; provided, for any acquired entity acquired or created during the policy period , the retroactive date for such acquired entity will be the date the named insured created, merged with, or acquired effective control of the entity.
Reverse social engineering	means the intentional use of your computer system to mislead or deceive your client or vendor and which results in your client or vendor transferring money intended for you to another person or entity (i.e. invoice manipulation).
Securities	means negotiable or nonnegotiable instruments or contracts representing either money or property and includes: <ol style="list-style-type: none"> 1. tokens, tickets, revenue, and other stamps (whether represented by actual stamps or unused value in a meter) in current use; 2. casino chips issued by you; or 3. evidences of debt issued in connection with credit or charge cards, which cards are not issued by you, but does not include money .
Security failure	means any failure by you or by others on your behalf (including your subcontractors, outsourcers, or independent contractors) in securing the insured organization's computer system , including but not limited to any failure resulting in any of the following: <ol style="list-style-type: none"> 1. transmission of malicious software such as a computer virus, worm, logic bomb, or Trojan horse; 2. a denial of service attack against a third party; 3. the unauthorized acquisition, access, use, or disclosure of personally identifiable information or confidential corporate information that is held or transmitted in any form; 4. prevention of authorized electronic access to any computer system, personally identifiable information, or confidential corporate information; or 5. damage to any third party digital asset.
Social engineering	means the intentional misleading or deception of an employee or executive by a person falsely purporting to be your client , vendor , employee , or executive through pretexting, phishing, spear phishing, whaling, a business email compromise, or any other confidence trick communicated by email, text, instant message, telephone, or other electronic means, which results in your transfer, payment, or delivery of money or securities .
System failure	means any unintentional and unplanned total or partial outage of the insured organization's computer system that is not caused by an event , dependent business event , or dependent system failure .
Telephone toll fraud	means the fraudulent use or fraudulent manipulation of an account code or system password required to gain access into the insured organization's voice computer system which results in long distance telephone charges incurred by you .
Transfer account	means an account maintained at a financial institution from which one can initiate the transfer, payment, or delivery of money or securities by means of: <ol style="list-style-type: none"> 1. a telefacsimile, telephone, or other electronic instruction; or 2. written instructions establishing the conditions under which transfers are to be initiated by such financial institution through an electronic funds transfer system.
Utility fraud	means the unauthorized use of or access to the insured organization's computer system by a third party, including but not limited to cryptojacking or a telephone toll fraud , that results in a utility overage .
Utility overage	means an increase in expenses incurred by you resulting from the unauthorized use of any of the following services or resources: <ol style="list-style-type: none"> 1. electricity;

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2. water;
3. natural gas;
4. oil;
5. internet access, including mobile data;
6. telephone;
7. cable or satellite television; or
8. sewage,

provided such expenses:

- a. are charged to **you** in a periodic billing statement by the provider of such service or resource pursuant to a written contract or agreement between **you** and the provider that was executed before a **utility fraud** occurred; and
- b. are not charged at a flat fee that does not scale with the rate of use of such service or resource.

Vendor	means any person or entity with whom the insured organization has entered into a written contract to provide services to the insured organization and is not owned, operated, or controlled by the insured organization .
Voice computer system	means a computer system which provides a capability used for the direction or routing of telephone calls in a voice communications network.
Waiting period	means the number of hours stated as such in the Declarations.
You/your/insured	means a named insured, subsidiary, employee, executive, independent contractor, or acquired entity , as defined in Section III. Who is an insured.

VIII. Other provisions affecting coverage

Appraisal	<p>A. If we and the named insured do not agree on the amount of business interruption costs or reputational harm, either party may make a written demand for an appraisal of the business interruption costs or reputational harm. If such demand is made, each party will select a competent and impartial appraiser. The appraisers will then jointly select an umpire. If the appraisers cannot agree on an umpire, they may request that such selection be made by a judge of a court having jurisdiction. Each appraiser will separately state the amount of business interruption costs or reputational harm. If the appraisers do not agree on the amount of the business interruption costs or reputational harm, they will submit their differences to the umpire. Agreement by the umpire and at least one of the appraisers regarding the amount of the business interruption costs or reputational harm will be binding on you and us. Each party will pay their respective chosen appraiser and will equally share the costs of the umpire.</p>
Conditions applicable to business interruption costs and reputational harm	<p>B. The following are conditions precedent to the payment by us of any business interruption costs or reputational harm under this Coverage Part:</p> <ol style="list-style-type: none"> 1. You must complete and sign a written, detailed, and affirmed proof of loss within 90 days after your discovery of the publication of an event or the interruption of your business (unless such period has been extended by us in writing) which will include, at a minimum, the following information: <ol style="list-style-type: none"> a. a full description of the circumstances surrounding the business interruption costs or reputational harm, including, without limitation, the time, place, and cause of the loss;

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- b. a detailed calculation of any **business interruption costs** or **reputational harm**; and
 - c. all underlying documents and materials that reasonably relate to or form part of the basis of the proof of such **business interruption costs** or **reputational harm**.
2. Any costs incurred by **you** in connection with establishing or proving **business interruption costs** or **reputational harm**, including but not limited to preparing a proof of loss, will be **your** obligation and are not covered under this policy.

Conditions applicable to cyber extortion costs

- C. The following are conditions precedent to the payment by **us** of any **cyber extortion costs** under this Coverage Part:
- 1. **you** must inform, or allow **us** to inform, the appropriate law enforcement authorities where the illegal threat and ransom demand was made;
 - 2. **you** must keep **us** fully informed of all developments concerning the **extortion threat** and must obtain **our** agreement regarding the timing and manner of any ransom payment prior to making any ransom payment;
 - 3. **you** must demonstrate to **us** that the ransom has been surrendered under duress and that before agreeing to its payment **you** have taken all reasonable efforts to determine that the threat is genuine and not a hoax; and
 - 4. at least one **executive** must agree to the ransom payment.

Conditions applicable to cyber crime coverage

- D. The following are conditions precedent to the payment by **us** of any amounts under Section II. Coverage enhancements and sublimits, B. Cyber crime coverage:
- 1. **we** have the right to examine and audit **your** books and records as they relate to the coverage provided by this Coverage Part at any time during the **policy period** and up to three years afterward;
 - 2. **you** must inform, or allow **us** to inform, the appropriate law enforcement authorities if **you** have reason to believe any loss involves a violation of law; and
 - 3. within 90 days of notification to **us** of a **funds transfer fraud, social engineering, or reverse social engineering** (unless such period has been extended by **us** in writing), **you** must complete and sign a written, detailed, and affirmed proof of loss which will include, at a minimum, the following information:
 - a. a full description of the circumstances surrounding the **funds transfer fraud, social engineering, or reverse social engineering**, including, without limitation, the time, place, and cause;
 - b. a detailed calculation of any lost **money** or **securities**; and
 - c. all underlying documents and materials that reasonably relate to or form part of the basis of the proof of such lost **money** or **securities**.

Any costs incurred by **you** in connection with establishing or proving the **funds transfer fraud, social engineering, or reverse social engineering**, including but not limited to preparing a proof of loss, will be **your** obligation, and are not covered under this policy.

Coverage territory

- E. This Coverage Part will apply to **events** or other covered matters that take place anywhere in the world. However, with respect to **claims** or **regulatory proceedings** brought outside the United States, its territories or possessions, or Canada, this Coverage Part will not apply:
- 1. to any **claim** or **regulatory proceeding** brought in any country in which the United States (or any of its departments, agencies, or subdivisions) administers or enforces economic or trade sanction laws; or
 - 2. if it would otherwise be in violation of the laws of the United States.

Related claims/events/matters

- F. For purposes of this Coverage Part:

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1. all **related events** will be considered a single **event** first discovered on the date the first such **event** was discovered by **you**;
2. all matters covered under Section II. Coverage enhancements and sublimits that are based upon, arise out of, or allege: (i) a common fact, circumstance, situation, event, service, transaction, cause, or origin; or (ii) a series of related facts, circumstances, situations, events, services, transactions, sources, causes, or origins, will be considered a single, related matter first discovered on the date the first such matter was discovered by **you**; and
3. all **related claims** will be considered a single **claim** first made on the date the first such **claim** was made against **you**.

Digital Media Liability Coverage Part

I. Insuring agreement – What is covered

We will pay up to the **coverage part limit** for **damages** and **claim expenses** in excess of the **retention** for covered **claims** against **you** for any actual or alleged:

1. copyright infringement, trademark infringement, trademark dilution, trade dress infringement, publicity rights violations, or any misappropriation of content, formats, characters, trade names, character names, titles, voices, slogans, graphic material, or artwork;
2. invasion of privacy, intrusion upon seclusion, publication of private facts, false light, or misappropriation of name or likeness;
3. defamation, libel, slander, trade libel, product disparagement, or injurious falsehood;
4. unintentional infliction of emotional distress or outrage based on harm to the character or reputation of any person;
5. **unfair practices**, but only when asserted in conjunction with and based on the same allegations as a **claim** under part 1 above; or
6. negligence in connection with **your media activities** or **your advertising of your professional services**,

provided the **claim**:

- a. directly results from **your media activities** or **your advertising of your professional services** performed on or after the **retroactive date**;
- b. is first made against **you** during the **policy period**; and
- c. is reported to **us** in accordance with Section V. Your obligations.

II. Coverage enhancements

We will also make the following payments:

Declaratory relief

- A. We will pay reasonable attorney's fees **you** incur in excess of the **retention** to prosecute a declaratory relief action, but only if:
1. a claimant has advised **you**, in writing, that **you** are committing copyright or trademark infringement;
 2. directly in response to that written assertion, **you** file a declaratory relief action and the claimant files a counterclaim against **you** alleging copyright or trademark infringement; and
 3. the counterclaim is covered under this policy and pending against **you** while **you** are prosecuting **your** declaratory relief action.

Any amounts **we** pay under this subsection A will be a part of, and not in addition to, the applicable Each Claim limit of liability and the **coverage part limit**.

Supplemental payments

- B. We will pay reasonable expenses, including loss of wages and a \$250 travel per diem, incurred by **you** if **we** require **you** to attend depositions, arbitration proceedings, or trials in connection with the defense of a covered **claim**, but **we** will not pay more than an aggregate of \$10,000 per **claim** for such expenses, regardless of the number of **insureds**.

No **retention** will apply to amounts **we** pay under this subsection B, and such amounts will be in addition to, and not part of, the **coverage part limit**.

III. Who is an insured

For purposes of this Coverage Part, **you**, **your**, or **insured** means a **named insured**, **subsidiary**, **employee**, or **acquired entity**, as defined below:

Digital Media Liability Coverage Part

Named insured	means the individual, corporation, partnership, limited liability company, limited partnership, or other entity identified in Item 1 of the Declarations.
Subsidiary	means any entity of which the named insured has majority ownership before or as of the inception of the policy period .
Employee	means any past, present, or future: <ol style="list-style-type: none">1. person employed by the named insured or subsidiary as a permanent, part-time, seasonal, leased, or temporary employee, or any volunteer; or2. partner, director, officer, or board member (or equivalent positions) of the named insured or subsidiary, but only while in the course of their performance of media activities or advertising of professional services on behalf of or at the direction of such named insured or subsidiary .
Acquired entity	means any entity: <ol style="list-style-type: none">1. in which the named insured:<ol style="list-style-type: none">a. acquires substantially all of the assets;b. acquires the majority of its voting securities, as a result of which it becomes a subsidiary; orc. merges and leaves the named insured as the surviving entity; or2. that the named insured creates and either owns substantially all of the assets or acquires the majority of its voting securities, as a result of which it becomes a subsidiary, during the policy period . <p>With respect to an acquired entity whose revenues exceed 20% of the annual revenues of the named insured at the time of its creation or acquisition, any coverage under this policy will expire 90 days after the effective date of its creation or acquisition unless, within such 90 day period:</p> <ol style="list-style-type: none">1. the named insured provides us with written notice of such creation or acquisition;2. the named insured provides us with information related to such creation or acquisition as we may reasonably require;3. the named insured accepts any special terms, conditions, exclusions, or additional premium charge as we may reasonably require; and4. we agree by written endorsement to provide such coverage. This policy will apply to an acquired entity only with respect to your media activities or your advertising of your professional services performed after the acquisition, merger, or creation.

IV. Defense and settlement of claims

Defense	<p>We have the right and duty to defend any covered claim, even if such claim is groundless, false, or fraudulent.</p> <p>We have the right to select and appoint counsel to defend you against a covered claim. You may request in writing that we appoint defense counsel of your own choice, but whether to grant or deny such a request will be at our sole discretion.</p>
Settlement	<p>We have the right to solicit and negotiate settlement of any claim but will not enter into a settlement without your consent, which you agree not to withhold unreasonably.</p>

Digital Media Liability Coverage Part

If **you** withhold consent to a settlement recommended by **us** and acceptable to the party who made the **claim**, the most **we** will pay for that **claim** is the sum of:

1. the amount of **our** recommended settlement;
2. **claim expenses** incurred up to the date of **our** recommendation;
3. 70% of all **claim expenses** incurred after **our** recommendation; and
4. 70% of all **damages** in excess of the settlement amount recommended by **us**.

V. Your obligations

Notifying us of claims

You must give written notice to **us** of any **claim** as soon as possible once such **claim** is known to a partner, director, officer, or board member (or equivalent position) of the **named insured** or **subsidiary**, but in any event, no later than 60 days after the end of the **policy period**.

All such notifications must be in writing and include a copy of the **claim**, and must be submitted to **us** via the designated email address or mailing address identified in Item 6 of the Declarations.

Notifying us of potential claims

You have the option of notifying **us** of **potential claims** that may lead to a covered **claim** against **you**.

In order to do so, **you** must give written notice to **us** as soon as possible and within the **policy period**, and the notice must, to the greatest extent possible, identify the details of the **potential claim**, including identifying the potential claimant(s), the likely basis for liability, the likely demand for relief, and any additional information about the **potential claim** **we** may reasonably request.

The benefit to **you** of notifying **us** of a **potential claim** is that if an actual **claim** arises from the same circumstances as the properly notified **potential claim**, then **we** will treat that **claim** as if it had first been made against **you** on the date **you** properly notified **us** of it as a **potential claim**, even if that **claim** is first made against **you** after the **policy period** has expired.

All **potential claim** notifications must be in writing and submitted to **us** via the designated email address or mailing address identified in Item 6 of the Declarations.

Retention

Our obligation to pay **damages** and **claim expenses** under this Coverage Part is in excess of the **retention**, which **you** must pay in connection with each covered **claim**.

VI. Exclusions – What is not covered

We will have no obligation to pay any sums under this Coverage Part, including any **damages** or **claim expenses**, for any **claim**:

Antitrust/deceptive trade practices

1. based upon or arising out of any actual or alleged:
 - a. false, deceptive, or unfair trade practices;
 - b. unfair competition, impairment of competition, restraint of trade, or antitrust violations;
 - c. violation of the Sherman Anti-Trust Act, the Clayton Act, the Robinson-Patman Act, all including as may be amended, or any similar foreign, federal, state, or local statutes, rules, or regulations; or
 - d. deceptive or misleading advertising.

However, this exclusion will not apply to an otherwise covered **claim** under part 5 of Section I. What is covered.

Bodily injury

2. based upon or arising out of any actual or alleged **bodily injury**; however, this exclusion will not apply to a **claim** for emotional distress or outrage covered under part 4 of Section I. What is covered.

Digital Media Liability Coverage Part

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| Breach of contract | 3. | based upon or arising out of any actual or alleged breach of any contract or agreement, or any liability of others that you assume under any contract or agreement; however, this exclusion will not apply to: <ul style="list-style-type: none">a. any liability you would have in the absence of the contract or agreement; orb. any claim arising from your written agreement to indemnify your client against any liability directly resulting from content supplied to them by you, but only if you entered into the agreement before the liability was incurred. |
| Breach of warranty/
guarantee | 4. | based upon or arising out of any: <ul style="list-style-type: none">a. actual or alleged breach of express warranties or guarantees; however, this exclusion will not apply to any liability you would have in the absence of the warranties or guarantees; orb. written, oral, express, or implied statement, promise, warranty, or guarantee in connection with any goods or products you sell, including but not limited to any warranties or representations regarding the authenticity, merchantability, or fitness of such goods or products. |
| Client content | 5. | based upon or arising out of any content provided to you by your client; however, we will pay claim expenses for any claims against you based upon or arising out of such content. |
| Collection of data without
knowledge | 6. | based upon or arising out of any actual or alleged: <ul style="list-style-type: none">a. collection of personally identifiable information by you (or others on your behalf) without the knowledge or permission of the person to whom the personally identifiable information relates; orb. use of personally identifiable information by you (or others on your behalf) in violation of applicable law. |
| Commercial dispute | 7. | based upon or arising out of any actual or alleged commercial dispute with your business partner or business associate, including but not limited to any reseller, distributor, original equipment manufacturer, third-party sales agent, systems integrator, or joint venturer, but only to the extent such a claim is based upon: <ul style="list-style-type: none">a. a commission or royalty, or any other term upon which such partner or associate is to be compensated in connection with doing business with you, or any compensation or remuneration promised or owed by you pursuant to those terms; orb. your decision to cease doing business with such a partner or associate. |
| Cramming/slamming | 8. | based upon or arising out of: <ul style="list-style-type: none">a. the imposition of charges for services or content in relation to telephone, cell phone, wireless data, cable television, internet, voice over internet protocol (VoIP) or other similar telecommunications services, which charges have not been adequately disclosed or which services or content have not been requested by the consumer; orb. the unauthorized switching of telecommunications carriers, including providers of telephone, cell phone, wireless data, cable television, internet, voice over internet protocol (VoIP) or other similar services. |
| Criminal proceedings | 9. | brought in the form of a criminal proceeding, including but not limited to a criminal investigation, grand jury proceeding, or criminal action. |
| Employer liability and third
party discrimination | 10. | based upon or arising out of any actual or alleged: <ul style="list-style-type: none">a. obligation under any workers' compensation, unemployment compensation, employers' liability, fair labor standards, labor relations, wage and hour, or disability benefit law, including any similar provisions of any foreign, federal, state, or local statutory or common law; |

Digital Media Liability Coverage Part

- b. liability or breach of any duty or obligation owed by **you** as an employer or prospective employer; or
 - c. harassment, wrongful termination, retaliation, or discrimination, including but not limited to adverse or disparate impact.
- Excluded costs and damages
11. to the extent it seeks or includes:
- a. fines, penalties, taxes, or sanctions against **you**;
 - b. overhead costs, general business expenses, salaries, or wages incurred by **you**, including the costs of recalling, producing, reproducing, or reprinting any **media content** or the costs of any services incurred in connection with such activities;
 - c. the return, reduction, or restitution of fees, commissions, profits, or charges for goods provided or services rendered;
 - d. liquidated or multiple damages;
 - e. restitution, disgorgement of profits, any advantage to which **you** were not legally entitled, or unjust enrichment; or
 - f. the cost of complying with injunctive relief.
- Excluded statutory violations
12. based upon or arising out of any actual or alleged violation of the following laws:
- a. the Securities Act of 1933;
 - b. the Securities Exchange Act of 1934;
 - c. any state blue sky or securities laws;
 - d. the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.*; or
 - e. the Employee Retirement Income Security Act of 1974,
- all including as may be amended, or any similar provisions of any foreign, federal, state, or local statutory or common law and any rules or regulations promulgated under such laws.
- Failure to maintain insurance or bonds
13. based upon or arising out of any actual or alleged failure to procure or maintain adequate insurance or bonds.
- False or misleading advertising
14. based upon or arising out of any actual or alleged false or misleading advertisement or any inaccurate, inadequate, or incomplete description of any goods, products, or services, including but not limited to with respect to the design, manufacture, sale, installation, marketing, development, processing, distribution, packaging, labeling, solicitation, performance, or quality of any good or product; however, this exclusion will not apply to any otherwise covered **claim** for trademark infringement based on **your** alleged unauthorized use of another's trademark in **your media activities** or **your advertising of your professional services**.
- Government or licensing organization investigation/enforcement
15. based upon or arising out of any actual or alleged governmental investigation or enforcement of any state or federal rules or regulations, including but not limited to any rule or regulation promulgated by the Federal Trade Commission, Federal Communications Commission, or the Securities and Exchange Commission, or any enforcement investigation or proceeding by or on behalf of ASCAP, BMI, SESAC, or other similar licensing organization.
- Insured vs. insured
16. brought by or on behalf of one **insured** or **affiliate** against another **insured** or **affiliate**.
- Intentional acts
17. based upon or arising out of any actual or alleged fraud, dishonesty, criminal conduct, or any knowingly wrongful, malicious, or intentional acts or omissions, except that **we** will pay **claim expenses** until there is a final adjudication establishing such conduct.
- This exclusion will apply to the **named insured** only if the conduct was committed or allegedly committed by any:

Digital Media Liability Coverage Part

- a. partner, director, officer, or member of the board (or equivalent position) of the **named insured**; or
- b. employee of the **named insured** if any partner, director, officer, member of the board (or equivalent position) of the **named insured** knew or had reason to know of such conduct by the employee.

This exclusion will apply separately to each **insured** and will not apply to any **insured** who did not commit, participate in, acquiesce to, or ratify such conduct committed by another **insured**.

- | | | |
|---|-----|---|
| License/royalties | 18. | based upon or arising out of any actual or alleged obligation to pay any licensing fee or royalty. |
| Manufacture or design of goods/products | 19. | based upon or arising out of any goods or products designed, manufactured, sold, handled, or distributed by you . |
| Misappropriation of funds | 20. | based upon or arising out of the actual or alleged theft, misappropriation, commingling, or conversion of any funds, monies, assets, or property. |
| Network security | 21. | based upon or arising out of any actual or alleged failure of computer security, including but not limited to the: <ul style="list-style-type: none"> a. transmission of malicious software such as a computer virus, worm, logic bomb, or Trojan horse; b. failure to prevent a denial of service attack; c. failure to prevent authorized access to any computer system, personally identifiable information, or confidential corporate information held or transmitted in any form; or d. failure to prevent damage to any third party digital asset. |
| Ownership of content | 22. | based upon or arising out of any actual or alleged disputes with any of your present or former directors, officers, trustees, partners, joint venturers, employees, agents, or independent contractors concerning ownership of or the exercise of rights relating to content, material, or services supplied to you by any of them. |
| Patent/trade secret | 23. | based upon or arising out of any actual or alleged infringement, use, disclosure, or misappropriation of any patent or trade secret. |
| Pollution/environmental | 24. | based upon or arising out of any actual, alleged, or threatened discharge, dispersal, release, or escape of pollutants , including any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize pollutants . |
| Prior acts/notice/knowledge | 25. | based upon or arising out of any: <ul style="list-style-type: none"> a. claim or potential claim that was the subject of any notice given under any other policy of which this policy is a renewal or replacement; b. claim or potential claim that was the subject of, or is related to, any prior or pending litigation, claim, written demand, arbitration, administrative or regulatory proceeding or investigation, or licensing proceeding that was filed or commenced against you and of which you had notice prior to the policy period; or c. other matter you had knowledge of prior to the policy period, and you had a reasonable basis to believe could result in a claim. <p>However, if this policy is a renewal or replacement of a previous policy we issued that provided materially identical coverage, and is part of an unbroken chain of successive policies issued by us, the policy period referred to in paragraphs b and c, above, will be the policy period of the first such policy we issued.</p> |
| Privacy | 26. | based upon or arising out of any actual or alleged: |

Digital Media Liability Coverage Part

- a. unauthorized acquisition, access, use, or disclosure of, improper collection or retention of, or failure to protect any non-public personally identifiable information or confidential corporate information that is in **your** care, custody, or control; or
 - b. violation of any privacy law or consumer data protection law protecting against the use, collection, or disclosure of any information about a person or any confidential corporate information.

- Privacy policy violations 27. based upon or arising out of any actual or alleged:
 - a. failure to have or appropriately display a privacy policy;
 - b. failure of **your** privacy policy to comply with any federal, state, local, or foreign statutes, ordinances, regulations, or other laws;
 - c. breach of **your** privacy policy; or
 - d. changing of the terms of **your** privacy policy.

- Professional services 28. based upon or arising out of **your** actual or alleged performance of or failure to perform **professional services** or any other services customarily provided by an architect, engineer, surveyor, physician, surgeon, dentist, or other healthcare provider, accountant, insurance agent/broker, investment advisor, securities broker/dealer, or attorney.

- Property damage 29. based upon or arising out of any actual or alleged **property damage**.

- Repair/replace/recall 30. based upon or arising out of any actual or alleged repair, upgrade, correction, recall, replacement, withdrawal, removal, or disposal costs incurred by **you** or others.

- Scareware 31. based upon or arising out of any actual or alleged provision or transmission of Scareware, including but not limited to software that produces false or alarming warning messages.

- Sexual misconduct 32. based upon or arising out of any actual, alleged, or threatened abuse, molestation, harassment, mistreatment, or maltreatment of a sexual nature, including the negligent employment, investigation, supervision, training, or retention of a person who commits such conduct, or the failure to report such conduct to the proper authorities.

- Software copyright 33. based upon or arising out of any actual or alleged copyright infringement related to software or source code.

- Subsidiary outside control of named insured 34.
 - a. based upon or arising out of **media activities** or **advertising of professional services** performed by or on behalf of a past or present **subsidiary** while the **named insured** does not have majority ownership or management control of it; or
 - b. made against a **subsidiary** or anyone acting on its behalf while the **named insured** does not have majority ownership or management control of it.

- Sweepstakes/gambling/lotteries 35. based upon or arising out of any:
 - a. actual or alleged provision of any sweepstakes, gambling activities, or lotteries; or
 - b. price discounts, prizes, awards, money, or valuable consideration given in excess of a total contracted or expected amount, including but not limited to over redemption or under redemption of coupons, discounts, awards, or prizes.

- Unsolicited telemarketing 36. based upon or arising out of any actual or alleged violation of any federal, state, local, or foreign statutes, ordinances, rules, or regulations relating to unsolicited telemarketing, solicitations, emails, faxes, text messages, or any other communications of any type or nature, including but not limited to the Telephone Consumer Protection Act, CAN-SPAM Act, or any "anti-spam" or "do-not-call" statutes, ordinances, rules, or regulations.

- Virtual currency 37. based upon or arising out of any actual or alleged virtual currency, including but not limited to virtual goods exchanged in connection with an Internet game or virtual economy.

VII. Definitions

The following definitions apply to this Coverage Part. Additional definitions are contained in Section III. Who is an insured, and in the General Terms and Conditions, Section VI. Definitions applicable to all Coverage Parts.

Advertising

means the written, printed, online, digital, or electronic promotion of **your professional services**, by **you** or by anyone on **your** behalf acting under **your** control and at **your** specific direction, by broadcast, transmission, dissemination, telecast, cablecast, podcast, streaming, publication, republication, or by use of a website or social media.

Affiliate

means any person or entity related to any **insured** through common ownership, control, or management as follows:

1. any person or entity:
 - a. which wholly or partly owns, operates, controls, or manages the **named insured**;
 - b. which was operated, controlled, or managed by the **named insured**; or
 - c. in which any **insured** has an ownership interest of 15% or more, at anytime during or after the performance of the **media activities** or **your advertising of your professional services** giving rise to the **claim**; or
2. any entity for which any **insured** is an officer or director at the time the **claim** is made.

Affiliate does not include a **subsidiary**.

Bodily injury

means physical injury, sickness, disease, death, humiliation, mental injury, mental anguish, emotional distress, suffering, or shock sustained by a person.

Claim

means any written assertion of liability or any written demand for financial compensation or non-monetary relief.

Claim expenses

means the following sums incurred in excess of the **retention** and with **our** prior consent:

1. all reasonable and necessary fees, costs, and expenses (including the fees of attorneys and experts) incurred in the investigation, defense, or appeal of a **claim**; and
2. premiums on appeal bonds, attachment bonds, or similar bond, but **we** will have no obligation to apply for or furnish any such bonds.

Damages

means the following amounts incurred in excess of the **retention**:

1. a monetary judgment or monetary award that **you** are legally obligated to pay (including pre- or post-judgment interest and awards of claimant's attorney fees); or
2. a monetary settlement negotiated by **us** with **your** consent.

Damages includes punitive damages to the full extent they are insurable under the law of any applicable jurisdiction that most favors coverage.

Media activities

means the publication, broadcast, dissemination, or release of **media content** on **your** website or on a social media page owned or controlled by **you** and in connection with **your professional services**.

Media content

means the substance of any communication, including but not limited to language, data, facts, fiction, music, photographs, images, artistic expression, or visual or graphic materials, created by **you** or by anyone on **your** behalf.

Media content does not include:

1. the actual goods, products, or services described, depicted, illustrated, or displayed in any communication created by **you** or anyone on **your** behalf;
2. any content posted or created by any employee in their personal capacity for non-business purposes, whether or not such content is created during working hours or on **your** premises; or

Digital Media Liability Coverage Part

- any reviews, messages, or posts to any website, social media platform, or account by a third party without **your** consent.

Pollutants	means any solid, liquid, gaseous, biological, radiological, or thermal irritant or contaminant, including smoke, vapor, asbestos, silica, dust, nanoparticles, fibers, soot, fumes, acids, alkalis, chemicals, nuclear materials, germs, mold, and waste. Waste includes, but is not limited to, materials to be recycled, reconditioned, or reclaimed.
Potential claim	means any acts, errors, or omissions of an insured or other circumstances reasonably likely to lead to a claim covered under this policy.
Professional services	means only those services identified as Covered Professional Services under the Digital Media Liability Coverage Part of the Declarations.
Property damage	means physical loss of, physical damage to, or destruction or loss of use of any tangible property.
Retention	means the amount stated as such under the Digital Media Liability Coverage Part of the Declarations.
Unfair practices	means unfair competition, deceptive business practices, or false designation of origin.
You, your, or insured	means a named insured, subsidiary, employee, or acquired entity , as defined in Section III. Who is an insured.

Difference in Conditions Endorsement (Cyber)

In consideration of the premium charged, and on the understanding this endorsement leaves all other terms, conditions, and exclusions unchanged, it is agreed:

Except as otherwise stated below, to the extent a **prior Hiscox policy** provided broader coverage than the coverage provided by this policy, the relevant provisions of this policy will be replaced by the broader coverage contained in the **prior Hiscox policy**.

However, this Endorsement does not apply to:

- A. the amounts of any applicable limit of liability, sublimit, or retention contained in the **prior Hiscox policy**; or
- B. any media liability coverage provided under the Media Insuring Agreement in the **prior Hiscox policy** for any **claim expenses, damages**, or other loss arising from or in any way related to **your advertising of your professional services, or your technology services**.

For purposes of this Endorsement only, the terms "**prior Hiscox policy**", "**advertising**", "**professional services**", and "**technology services**" will be defined as follows:

- Advertising** will have the same meaning as in the **prior Hiscox policy**.
- Prior Hiscox policy** means any:
 - 1. Technology, Cyber, Data Risk, and Media Insurance policy; or
 - 2. Cyber, Data Risk and Media Insurance policy,and all endorsements attached to such policy, issued by Hiscox for which this policy is a renewal.
- Professional services** will have the same meaning as in the **prior Hiscox policy**.
- Technology Services** will have the same meaning as in the **prior Hiscox policy**.

Endorsement Effective: January 31, 2022
Endorsement No: CYBCL E1001 CW (04/19)

Policy No.: HCXCYP-P-5007387

By:



(Appointed Representative)

Blanket Additional Insured Endorsement (Written Contract)

In consideration of the premium charged, and on the understanding this endorsement leaves all other terms, conditions, and exclusions unchanged, it is agreed the Cyber Coverage Part is amended as follows:

I. The following definition is added to the end of Section III. Who is an insured:

Additional insured means any person(s) or organization(s) the **named insured** has agreed in a written contract or agreement to add as an additional insured to a policy providing the type of coverage afforded by this Coverage Part, provided the contract or agreement:

1. is currently in effect or becomes effective during the **policy period**; and
2. was executed before the business operations from which the **claim** or **event** arises were performed.

Coverage is available for **additional insureds** solely for their liability arising out of the **named insured's** negligence or of those acting on the **named insured's** behalf and not for any liability arising out of the sole negligence of the **additional insured**.

II. In the preamble of Section III. Who is an insured, the words "**additional insured,**" are added after "**named insured,**".

III. In Section VII. Definitions, the definition of "**You, your, or insured**" is amended to add the words "**additional insured,**" after "**named insured,**".

Endorsement Effective: January 31, 2022
Endorsement No: CYBCL-CYB E2013 CW (04/19)

Policy No.: HCXCYB-P-5007387

By:



(Appointed Representative)

Additional Insured Endorsement

In consideration of the premium charged, and on the understanding this endorsement leaves all other terms, conditions, and exclusions unchanged, it is agreed the Data Breach and Privacy Security Liability is/are amended as follows:

1. The following definition is added to the end of Section III. Who is an insured:

Additional means the person or organization listed below:

Insured

Coverage is available for **additional insureds** solely for their liability arising out of the **named insured's** negligence or of those acting on the **named insured's** behalf and not for any liability arising out of the sole negligence of the **additional insured**.

2. In the preamble of Section III. Who is an insured, the words "**additional insured**", are added after "**named insured**".
3. In Section VII. Definitions, the definition of "**You, your, or insured**" is amended to add the words "**additional insured**," after "**named insured**".

Endorsement Effective: January 31, 2022

Policy No.: HCXCYB-P-5007387

Endorsement No: E6149.4

By:



(Appointed Representative)

War and Civil War Exclusion Endorsement (Cyber Terrorism Carveback)

In consideration of the premium charged, and on the understanding this endorsement leaves all other terms, conditions, and exclusions unchanged, it is agreed the Cyber Coverage Part is amended as follows:

- I. This policy does not apply to and we will have no obligation to pay any **loss, damages, claim expenses**, or any other amounts for any **claim** or **event** directly or indirectly occasioned by, happening through, or in consequence of:
1. war, invasion, acts of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military, or usurped power; or
 2. confiscation, nationalization, requisition, destruction of, or damage to property by or under the order of any government, public, or local authority,

provided, however, this exclusion will not apply to **cyber terrorism**.

- II. Solely with respect to this Endorsement, the following definition is added to the end of Section VII. Definitions:

Cyber terrorism

means activities against **your** computer system or network:

1. that involve the following or preparation for the following:
 - a. use or threat of force or violence;
 - b. commission or threat of a dangerous act; or
 - c. commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and
2. when one or both of the following applies:
 - a. the effect is to intimidate or coerce a government or civilian population or any segment of either, or to disrupt any segment of the economy; or
 - b. it appears that the intent is to intimidate or coerce a government, to further political, ideological, religious, social, or economic objectives, or to express (or express opposition to) a philosophy or ideology.

Endorsement Effective: January 31, 2022
Endorsement No: CYBCL-CYB E2053 CW (04/19)

Policy No.: HCXCYB-P-5007387

By:



(Appointed Representative)

NAMED INSURED: Thomas Engineering Group, LLC

E6017.3 Nuclear Incident Exclusion Clause-Liability-Direct (Broad) Endorsement

In consideration of the premium charged, and on the understanding this endorsement leaves all other terms, conditions, and exclusions unchanged, it is agreed:

We will have no obligation to pay any sums under this policy, including any damages, claim expenses, or other covered amounts, for any claim, event, or occurrence:

- A. Under any liability coverage, for injury, sickness, disease, death, or destruction:
1. for which **you** are also insured under a nuclear energy liability policy issued by the Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, or Nuclear Insurance Association of Canada, or would be insured under any such policy but for 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, as amended; or
 - b. **you** are, 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 coverage, or under any Supplementary Payments provision relating to immediate medical or surgical relief, for expenses incurred with respect to bodily injury, sickness, disease, or death resulting from the **hazardous properties of nuclear material** and arising out of the operation of a **nuclear facility** by any person or organization.
- C. Under any liability coverage, for injury, sickness, disease, death, or destruction resulting from the **hazardous properties of nuclear material**, if:
1. the **nuclear material** is at any **nuclear facility** owned or operated by **you** or on **your** behalf, or has been discharged or dispersed from such a facility;
 2. the **nuclear material** is contained in **spent fuel** or **waste** which is or was at any time possessed, handled, used, processed, stored, transported, or disposed of by **you** or on **your** behalf; or
 3. the injury, sickness, disease, death, or destruction arises out of the furnishing by **you** 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 (3) applies only to injury to or destruction of property at such **nuclear facility**.

As used in this endorsement:

Hazardous properties includes radioactive, toxic, or explosive properties;

Nuclear material means **source material, special nuclear material, or byproduct material**;

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;

Source material, special nuclear material, and byproduct material have the meanings given them in the Atomic Energy Act of 1954, as amended;

Spent fuel means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a **nuclear reactor**;

Waste means any waste material:

1. containing **byproduct material**; and
2. resulting from the operation by any person or organization of any **nuclear facility** included in paragraph 1 or 2 of the definition of **nuclear facility**;

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 **your** custody 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; or
4. any structure, basin, excavation, premises, or place prepared or used for the storage or disposal of **waste**.

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

With respect to injury to or destruction of property, "injury" or "destruction" includes all forms of radioactive contamination of property.

Endorsement Effective: January 31, 2022
Endorsement No: WCL E6017 CW (04/19)

Policy No.: HCXCYP-P-5007387

By:

A handwritten signature in black ink, appearing to be "K. W. ...", written over a horizontal line.

(Appointed Representative)

NAMED INSURED: Thomas Engineering Group, LLC

E6018.2 Applicable Law Endorsement

In consideration of the premium charged, and on the understanding this endorsement leaves all other terms, conditions, and exclusions unchanged, it is agreed:

This policy is subject to the applicable state law to be determined by the court of competent jurisdiction as determined by the provisions of the Service of Suit Endorsement to this policy.

Endorsement Effective: January 31, 2022
Endorsement No: WCL E6018 CW (07/13)

Policy No.: HCXCYP-P-5007387

By:

A handwritten signature in black ink, appearing to read "Koull", written over a horizontal line.

(Appointed Representative)

NAMED INSURED: Thomas Engineering Group, LLC

E6016.1 Service of Suit Endorsement

In consideration of the premium charged, and on the understanding this endorsement leaves all other terms, conditions, and exclusions unchanged, it is agreed:

In the event **we** fail to pay any amount claimed to be due under this policy, **we** agree to submit to the jurisdiction of a Court of competent jurisdiction within the United States at your request. Nothing in this clause is intended to constitute a waiver of **our** right to commence an action in any Court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another Court as permitted by the laws of the United States or of any state in the United States.

Service of process in any suit against **us** may be made on:

Hiscox Inc.
520 Madison Ave. - 32nd Floor
New York, NY 10022
Attn: Head of Claims

In any suit instituted against **us**, **we** agree to abide by the final decision of such Court, or in the event of an appeal, of any Appellate Court.

The above named are authorized to accept service of process on **our** behalf in any such suit and will enter a general appearance on **our** behalf in the event such suit is instituted.

Further, pursuant to any statute of any state, territory, or district of the United States which makes provision therefore, **we** designate the Superintendent, Commissioner, or Director of Insurance, or other officer specified for that purpose in the statute, as **our** agent for service of process in any action, suit, or proceeding instituted by **you** or on **your** behalf, or any other beneficiary under this policy, and designate the above named as the person to whom such agent is authorized to mail process.

Endorsement Effective: January 31, 2022
Endorsement No: WCL E6016 CW (05/13)

Policy No.: HCXCYP-P-5007387

By:



(Appointed Representative)

NAMED INSURED: Thomas Engineering Group, LLC

E9999.2 Cap on Losses from Certified Acts of Terrorism Endorsement

THIS ENDORSEMENT IS ATTACHED TO AND MADE PART OF YOUR POLICY IN RESPONSE TO THE DISCLOSURE REQUIREMENTS OF THE FEDERAL TERRORISM RISK INSURANCE ACT. THIS ENDORSEMENT DOES NOT GRANT ANY COVERAGE OR CHANGE THE TERMS AND CONDITIONS OF ANY COVERAGE UNDER THE POLICY.

The following is hereby added to the Policy and shall apply to all coverage:

With respect to any one or more "act of terrorism", the Company will not pay any amounts for which we are not responsible under the terms of the federal Terrorism Risk Insurance Act due to the application of any clause which results in a cap on our liability for payments for terrorism losses.

The term "act of terrorism" means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to such Act. The criteria contained in the federal Terrorism Risk Insurance Act for an "act of terrorism" include the following:

1. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
2. 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.

If aggregate insured losses attributable to terrorist acts certified under the federal Terrorism Risk Insurance Act exceed \$100 billion in a calendar year and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to the pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for injury or damage that is otherwise excluded under this Coverage Part.

All other terms and conditions remain unchanged.

Endorsement Effective: January 31, 2022

Policy No.: HCXCIB-P-5007387

Endorsement No: INT E9999 CW (01/15)

By:

A handwritten signature in black ink, appearing to read "K. Smith", written over a horizontal line.

(Appointed Representative)

BYOD Endorsement (Amend Definition of Computer System)

In consideration of the premium charged, and on the understanding this endorsement leaves all other terms, conditions, and exclusions unchanged, it is agreed the Cyber Coverage Part is amended as follows:

In Section VII. Definitions, the definition of “**Computer system**” is deleted in its entirety and replaced with the following:

Computer system means all interconnected electronic or wireless computers and their components, including but not limited to:

1. operating systems and hardware;
2. software;
3. associated input and output devices, data storage devices, and back up facilities;
4. mobile devices used by **insureds** and authorized by the **insured organization** to access its networks; and
5. related peripheral components, including Internet of things (IoT) devices,

provided they are:

- a. under the control of or owned or leased by the **insured organization**;
- b. operated by a third party service provider, including but not limited to a cloud computing provider, pursuant to a written contract with the **insured organization**; or
- c. used by **your employees** and **executive employees**:
 - i. in the course of the **employee** or **executive’s** performance of business operations for or on behalf of the **insured organization**; and
 - ii. pursuant to the **insured organization’s** BYOD (“Bring Your Own Device”) policy.

However, **computer system** does not include any publically accessible interconnected electronic or wireless computers and their components, including those listed in parts 1 through 5 above.

Endorsement Effective: January 31, 2022
Endorsement No: CYBCL-CYB E2066 CW (06/20)

Policy No.: HCXCYP-P-5007387

By:



(Appointed Representative)

Ransomware Event Coinsurance Responsibility Endorsement

In consideration of the premium charged, and on the understanding this endorsement leaves all other terms, conditions, and exclusions unchanged, it is agreed the Cyber Coverage Part is amended as follows:

SCHEDULE	
Ransomware Coinsurance Percentage:	25%
Risk Management Vendor and Service:	Paladin Shield Cyber Protection Platform Website: hiscox.meetpaladin.com

I. The following is added to the end of Section VIII. Other provisions affecting coverage:

Ransomware event coinsurance RW-A. As a condition precedent to **our** payment of any **loss** arising from a covered **ransomware event**, **you** must incur **loss** in excess of the applicable **retention**, and for all **loss** in excess of the **retention**, **you** will be responsible for the Ransomware Coinsurance Percentage stated in the Schedule above, which **you** agree not to insure.

The payments **you** make towards the amount of the Ransomware Coinsurance Percentage will not reduce or erode the **coverage part limit**. Only those amounts **we** become obligated to pay in connection with a covered **ransomware event** will erode the **coverage part limit**.

However, if **you** create a username and password with **our** risk management vendor named in the above Schedule prior to **your** written notification to **us** of a **ransomware event** in accordance with Section V. Your obligations, **your** obligation to meet the Ransomware Coinsurance Percentage responsibility will be waived with respect to such **ransomware event**.

II. For purposes of this Endorsement only, the following definition is added to the end of Section VII. Definitions:

Ransomware event means:

1. an **extortion threat**; or
2. any other intentional attack by a third party (including acts of an employee acting outside the scope of their duties and without the authorization of the **insured organization**) against a **computer system** or **data asset**,

that is perpetrated through the use of any type of malicious software or malware designed to deny access to a **computer system** or **data asset** until a ransom is paid.

Ransomware event includes any subsequent **data breach** or **security failure** resulting from the initial threat or attack described above, except if **you** meet the definition of a covered entity or business associate as defined by under the Health Insurance Portability and Accountability Act.



NAMED INSURED: Thomas Engineering Group, LLC

Page 12 of 23

Endorsement Effective: January 31, 2022

Policy No.: HCXCYP-P-5007387

Endorsement No: CYBCL-CYB E2070 CW (03/21)

By:

A handwritten signature in black ink, appearing to be "K. Smith", written over a horizontal line.

(Appointed Representative)

Amend Cyber Crime Coverage Endorsement (Separate Limits Within Sublimit)

In consideration of the premium charged, and on the understanding this endorsement leaves all other terms, conditions, and exclusions unchanged, it is agreed the Cyber Coverage Part is amended as follows:

SCHEDULE

Funds Transfer Fraud Sublimit: \$250,000 aggregate

Social Engineering Sublimit: \$250,000 aggregate

Reverse Social Engineering Sublimit: \$250,000 aggregate

All payments **we** make under the above sublimits will be a part of, and not in addition to, the Cyber Crime Coverage limit stated in the Declarations.

In Section II. Coverage enhancements and sublimits, B. Cyber crime coverage is deleted in its entirety and replaced with the following:

- Cyber crime coverage B. **We** will pay up to the corresponding limits stated in the Schedule above for **your** loss:
1. resulting directly from **funds transfer fraud**;
 2. of **money** or **securities** transferred, paid, or delivered as a result of **social engineering**; or
 3. of **money** resulting directly from **reverse social engineering**, provided the **funds transfer fraud, social engineering, or reverse social engineering** first occurs and is first discovered by **you** during the **policy period**.

Any payment **we** make under this subsection B:

- a. is subject to the Cyber Crime Coverage limit stated in the Declarations;
- b. subject to the **retention** stated in the Declarations; and
- c. will be a part of, and not in addition to, **the coverage part limit**.

However, **our** obligation to make any payment under this subsection B is:

- i. specifically excess of and will not contribute with any other valid and collectible crime insurance available to **you**, whether or not such other insurance is written specifically as excess over this policy; and
- ii. in excess of any retention or deductible applicable to such other insurance, which **you** must pay before **we** will be obligated to make any payment under this policy.



NAMED INSURED: Thomas Engineering Group, LLC

Page 14 of 23

Endorsement Effective: January 31, 2022
Endorsement No: CYBCL-CYB E2063 CW (04/19)

Policy No.: HCXCYP-P-5007387

By:

A handwritten signature in black ink, appearing to be "K. Smith", written over a horizontal line.

(Appointed Representative)

NAMED INSURED: Thomas Engineering Group, LLC

E9011.3 Illinois Amendatory Endorsement

In consideration of the premium charged, and on the understanding this endorsement leaves all other terms, conditions, and exclusions unchanged, it is agreed the General Terms and Conditions are amended as follows:

I. Section IV. Optional extension period is deleted in its entirety and replaced by the following:

1. If **we** or the **named insured** cancels or non-renews this policy, then the **named insured** will have the right to purchase an optional extension period for the duration and at the percentage of the expiring premium stated in Item 5 of the Declarations. The optional extension period, if purchased, will start on the effective date of cancellation or non-renewal. However, the right to purchase an optional extension period will not apply in instances of non-payment of the initial premium.
2. The optional extension period will apply only to **claims** that:
 - a. are first made against **you** and reported to **us** during the optional extension period; and
 - b. arise from **your professional services** performed, or a **breach, data breach, offense, or occurrence** that takes place, on or after the **retroactive date** but prior to the effective date of cancellation or non-renewal of this policy.
3. The additional premium will be fully earned at the inception of the optional extension period and will be based upon the expiring annual premium. The premium for the optional extension period will be commensurate with the coverage provided, and will be dependent on the limits of liability remaining for the optional extension period.
4. The following optional extension periods are available:

Optional extension period	% of expiring premium
1 year	75%
2 year	150%
3 year	225%
5. Notice of election and full payment of the additional premium for the optional extension period must be received by **us** within 30 days after the effective date of cancellation or non-renewal, otherwise any right to purchase the optional extension period will lapse.
6. The limits of liability applicable during any purchased optional extension period will be the remaining available **coverage part limit**. There will be no separate or additional limit of liability available for any purchased optional extension period. However, the **named insured** will have the option to purchase for an additional premium an additional limits of liability for the optional extension period which is equal to the applicable limits of liability in effect at the inception of the **policy period**.
7. The right to purchase an optional extension period will apply only to Coverage Parts **you** have purchased that include coverage written on a claims-made or loss occurring and discovered basis, and not to any Coverage Parts written on an occurrence basis.

II. The following applies to the General Liability coverage part only, if purchased.

1. The **named insured** will have the right to a period of 5 years in which to give us written notice of **claims** made against the **insured** because of **bodily injury, property damage, or personal and advertising injury** arising

NAMED INSURED: Thomas Engineering Group, LLC

out of an offense or **occurrence** that takes place within the **policy period** or the 60 days immediately following the end of the **policy period**.

2. If **we** or the **named insured** cancel or non-renew this policy, then the **named insured** will have the right to purchase an optional extension period for the duration and at the percentage of the expiring premium stated in Item 5 of the Declarations. The optional extension period, if purchased, will start on the effective date of cancellation or non-renewal. However, the right to purchase an optional extension period will not apply in instances of non-payment of the initial premium.
3. The optional extension period will apply only to **claims** that:
 - a. are first made against **you** and reported to **us** during the optional extension period; and
 - b. arise from an offense, or **occurrence** that takes place, on or after the **retroactive date** but prior to the effective date of cancellation or non-renewal of this policy.
4. The additional premium will be fully earned at the inception of the optional extension period and will be based upon the rates in effect on the date the policy was issued or last renewed. The premium for the optional extension period will be commensurate with the coverage provided, and will be dependent on the limits of liability remaining for the optional extension period.
5. The following optional extension periods are available:

Optional extension period	% of expiring premium
1 year	75%
2 year	150%
3 year	275%
Unlimited	200%

6. Notice of election and full payment of the additional premium for the optional extension period must be received by **us** within 60 days after the effective date of cancellation or non-renewal, otherwise any right to purchase the optional extension period will lapse.
 7. The limits of liability applicable during any purchased optional extension period will be equal to the applicable limits of liability in effect at the inception of the **policy period**.
 8. The right to purchase an optional extension period will apply only to Coverage Parts **you** have purchased that include coverage written on a claims-made or loss occurring and discovered basis, and not to any Coverage Parts written on an occurrence basis.
 9. If purchased, the optional extension period will begin following the end of the **automatic extension period** and will not coincide with the **automatic extension period**.
- III. In Section V. Other provisions affecting coverage, C. Cancellation is deleted in its entirety and replaced with the following.
1. This policy may be canceled by the **named insured** by giving written notice, which must include the date the cancellation will be effective, to **us** at the address stated in the Declarations.
 2. This policy may be canceled by **us** by mailing to the **named insured** by registered, certified, or other first class-mail(or by email where allowed by applicable law), at the **named insured's** address (or email address)

NAMED INSURED: Thomas Engineering Group, LLC

stated in Item 1 of the Declarations and to the agent or broker, if applicable, written notice which must include the reason(s) for cancellation and the date the cancellation will be effective. The effective date of the cancellation will be no less than 60 days after the date of the notice of cancellation, or ten days if the cancellation is due to non-payment of premium.

For policies in effect for more than 60 days, we may only cancel this policy for one or more of the following reasons:

- a. Non-payment of premium;
- b. The policy was obtained through a material misrepresentation;
- c. The **insured** has violated any of the terms and conditions of the policy;
- d. The risk originally accepted has measurably increased;
- e. Certification to the Director of Insurance of the loss of reinsurance by **us** that provided coverage to **us** for all or a substantial part of the underlying risk insured; or
- f. A determination by the Director of Insurance that the continuation of the policy could place **us** in violation of the insurance laws of this State.

3. The mailing (or emailing) of such notice will be sufficient proof of notice and this policy will terminate at the date and hour specified in such notice.
4. If this policy is canceled by the **named insured**, we will retain the customary short rate proportion of the premium.
5. If this policy is canceled by **us**, we will return a pro rata proportion of the premium.
6. Payment or tender of any unearned premium by **us** will not be a condition precedent to the effectiveness of the cancellation, but such payment will be made as soon as possible.

IV. In Section V. Other provisions affecting coverage, F. Estates, heirs, legal representatives, spouses, and domestic partners is amended to include the following:

The term **spouse** will mean spouse or party to a civil union under Illinois law.

V. In Section V. Other provisions affecting coverage, G. False or fraudulent claims is modified to the extent necessary to provide the following:

If any **insured** commits fraud in connection with any **claim, potential claim, breach, offense, event, or occurrence**, whether regarding the amount or otherwise, such fraud may be grounds for cancellation and/or denial of coverage from the date such fraudulent claim is proffered. If **we** deny coverage, but do not cancel the policy, coverage for the policy will continue.

VI. In Section V. Other provisions affecting coverage, H. Other insurance is modified to the extent necessary to provide the following:

If there is any other valid and collectible insurance which applies to any loss covered by this policy, **we** will not be liable for a greater proportion of such loss than the applicable policy aggregate limit of liability stated in the Declarations bears to the total applicable limit of liability of all valid and collectible insurance against such loss.

NAMED INSURED: Thomas Engineering Group, LLC

VII. The following is added to Section V. Other provisions affecting coverage:

NR-A Non-renewal

If **we** elect not to renew this policy, **we** will mail to the **named insured** and its agent or broker written notice of non-renewal, stating the reason(s) for non-renewal, not less than 60 days before the end of the **policy period**.

We will mail the notice of non-renewal to the **named insured** at the last mailing address known to **us**. If the notice of non-renewal is mailed, proof of mailing will be sufficient proof of notice. **We** will maintain proof of mailing of such notice on a recognized U.S. Post Office form or a form acceptable to the U.S. Post Office or other commercial mail delivery service.

CT-A Contacting Us

If the **insured** has a complaint regarding this insurance, the **insured** may contact **us** at the address listed below:

104 South Michigan Avenue
Suite 600
Chicago, IL 60603

The **insured** also has the right to contact the Illinois Department of Insurance at the address and phone numbers listed below:

Illinois Department of Insurance
Consumer Division of Public Services Section
320 West Washington Street
Springfield, IL 62767
(217) 782-4515; or

Illinois Department of Insurance
Consumer Division of Public Services Section
122 S. Michigan Ave., 19 th Floor
Chicago, Illinois 60603
(312) 814-2420

<http://insurance.illinois.gov>

Endorsement Effective: January 31, 2022

Endorsement No: PLP E9011 IL (04/19)

Policy No.: HCXCYP-P-5007387

By:



(Appointed Representative)

NAMED INSURED: Thomas Engineering Group, LLC

Illinois Amendatory Endorsement

In consideration of the premium charged, and on the understanding this endorsement leaves all other terms, conditions, and exclusions unchanged, it is agreed the Cyber Coverage Part is amended as follows:

I. The following is added to the end of Section II. Coverage enhancements and sublimits:

Pre- and post-judgment interest	PI-A	Notwithstanding anything to the contrary in the policy, we will pay for covered pre- or post-judgment interest you are legally obligated to pay resulting from a covered judgment in addition to any applicable limit of liability. However, we will only pay such post-judgment interest that accrues after the entry of a judgment and before we have paid, offered to pay, or deposited into court that part of the judgment within the applicable limit of liability.
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Additionally, solely with respect to pre-judgment interest, the following applies:

1. if the claimant or their attorney makes a settlement offer resolving the **claim** against the **insured** (the principal amount of which is within the applicable policy limits), and the **insured** and the claimant or their attorney agree to their portion of such settlement offer, but **we** unreasonably withhold **our** consent to such settlement and reject **our** portion of the settlement offer, then, in the event a judgment is entered against the **insured** (the principal amount of which is within the applicable policy limits), **we** will be liable for all interest due on the judgment entered against the **insured**, even if the payment of the judgment, plus such pre-judgment interest thereon, totals a sum in excess of any applicable limit of liability; and
2. if the **insured** rejects a settlement offer made by a claimant or his/her attorney, and **we** consented to the settlement, then **we** will not be liable for any interest due on any subsequent judgment.

II. In Section VI. Exclusions – What is not covered, Exclusions applicable to entire Coverage Part, the “Pollution/environmental” exclusion is modified to the extent necessary to provide the following:

However, this exclusion will not apply to damage caused by heat, smoke or fumes from a hostile fire.

III. In Section VII. Definitions, the following is added to the end of the definition of “**Claim expenses**”:

Additionally, **claim expenses** do not include the compensation of **our** or **your** employees, officers, or staff attorneys.

IV. In Section VIII. Other provisions affecting coverage, A. Appraisal is modified to the extent necessary to provide the following:

The appraisal decision will only be binding with the **insured’s** consent.

NAMED INSURED: Thomas Engineering Group, LLC

Endorsement Effective: January 31, 2022
Endorsement No: CYBCL-CYB E9112 IL (04/19)

Policy No.: HCXCYP-P-5007387

By:

A handwritten signature in black ink, appearing to read "K. Powell", written over a horizontal line.

(Appointed Representative)

NAMED INSURED: Thomas Engineering Group, LLC

Illinois Amendatory Endorsement

In consideration of the premium charged, and on the understanding this endorsement leaves all other terms, conditions, and exclusions unchanged, it is agreed the Digital Media Liability Coverage Part is amended as follows:

I. The following is added to the end of Section II. Coverage enhancements:

Pre- and post-judgment interest PI-A. Notwithstanding anything to the contrary in the policy, **we** will pay for covered pre- or post-judgment interest **you** are legally obligated to pay resulting from a covered judgment in addition to any applicable limit of liability. However, **we** will only pay such post-judgment interest that accrues after the entry of a judgment and before **we** have paid, offered to pay, or deposited into court that part of the judgment within the applicable limit of liability.

Additionally, solely with respect to pre-judgment interest, the following applies:

1. if the claimant or their attorney makes a settlement offer resolving the **claim** against the **insured** (the principal amount of which is within the applicable policy limits), and the **insured** and the claimant or their attorney agree to their portion of such settlement offer, but **we** unreasonably withhold **our** consent to such settlement and reject **our** portion of the settlement offer, then, in the event a judgment is entered against the **insured** (the principal amount of which is within the applicable policy limits), **we** will be liable for all interest due on the judgment entered against the **insured**, even if the payment of the judgment, plus such pre-judgment interest thereon, totals a sum in excess of any applicable limit of liability; and
2. if the **insured** rejects a settlement offer made by a claimant or his/her attorney, and **we** consented to the settlement, then **we** will not be liable for any interest due on any subsequent judgment.

II. In Section VI. Exclusions – What is not covered, the “Pollution/environmental” exclusion is modified to the extent necessary to provide the following:

However, this exclusion will not apply to damage caused by heat, smoke or fumes from a hostile fire.

III. In Section VI. Exclusions – What is not covered, the “Sexual misconduct” exclusion is modified to the extent necessary to provide the following:

However, this exclusion will not apply in instances involving the **insured’s** vicarious liability.

IV. In Section VII. Definitions, the following is added to the end of the definition of “**Claim expenses**”:

Additionally, **claim expenses** do not include the compensation of **our** or **your** employees, officers, or staff attorneys.

NAMED INSURED: Thomas Engineering Group, LLC

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V. In the definition of "**Damages**" under Section VII. Definitions, the sentence beginning with the words "**Damages** includes punitive damages" is deleted in its entirety and replaced with the following:

Damages includes punitive damages to the full extent they are insurable under the law of any applicable jurisdiction that most favors coverage; however, for **claims** brought in the state of Illinois, punitive damages are only insurable in cases involving the **insured's** vicarious liability;

Endorsement Effective: January 31, 2022
Endorsement No: CYBCL-MED E9211 IL (04/19)

Policy No.: HCXCYP-P-5007387

By:

A handwritten signature in black ink, appearing to be "K. K. K.", written over a horizontal line.

(Appointed Representative)

NAMED INSURED: Thomas Engineering Group, LLC

E9997.4 Policyholder Disclosure Notice of Terrorism Insurance Coverage

Coverage for acts of terrorism is included in your policy. You are hereby notified that under the Terrorism Risk Insurance Act, as amended in 2015, the definition of act of terrorism has changed. As defined in Section 102(1) of the Act, the term "act of terrorism" means any act or acts that are certified by the Secretary of the Treasury – in consultation with the Secretary of Homeland Security, and the Attorney General of the United States – to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been 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. Under your coverage, any losses resulting from certified acts of terrorism may be partially reimbursed by the United States Government under a formula established by the Terrorism Risk Insurance Act, as amended. However, your policy may contain other exclusions which might affect your coverage, such as an exclusion for nuclear events. Under the formula, the United States Government generally reimburses 85% through 2015; 84% beginning on January 1, 2016; 83% beginning on January 1, 2017; 82% beginning on January 1, 2018; 81% beginning on January 1, 2019 and 80% beginning on January 1, 2020 of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage. The Terrorism Risk Insurance Act, as amended, contains a \$100 billion cap that limits U.S. Government reimbursement as well as insurers' liability for losses resulting from certified acts of terrorism when the amount of such losses exceeds \$100 billion in any one calendar year. If the aggregate insured losses for all insurers exceed \$100 billion, your coverage may be reduced.

The portion of your annual premium that is attributable to coverage for acts of terrorism is \$tria_coverage_premium, and does not include any charges for the portion of losses covered by the United States government under the Act.

I ACKNOWLEDGE THAT I HAVE BEEN NOTIFIED THAT UNDER THE TERRORISM RISK INSURANCE ACT, AS AMENDED, ANY LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM UNDER MY POLICY COVERAGE MAY BE PARTIALLY REIMBURSED BY THE UNITED STATES GOVERNMENT AND MAY BE SUBJECT TO A \$100 BILLION CAP THAT MAY REDUCE MY COVERAGE AND I HAVE BEEN NOTIFIED OF THE PORTION OF MY PREMIUM ATTRIBUTABLE TO SUCH COVERAGE.

Policyholder/Applicant's Signature: _____

Print Name: _____ Date: _____

Insurance Company: Hiscox Insurance Company Inc. Policy No.: HCXCYB-P-5007387

Endorsement Effective: January 31, 2022
Endorsement No: INT E9997 CW (01/15)

Policy No.: HCXCYB-P-5007387

By:



MAYOR
Keith Pekau

VILLAGE CLERK
John C. Mehalek

14700 S. Ravinia Avenue
Orland Park, IL 60462
708.403.6100
OrlandPark.org



TRUSTEES

Kathleen M. Fenton
James V. Dodge
Daniel T. Calandriello
William R. Healy
Cynthia Nelson Katsenes
Michael R. Miloni

November 30, 2020

Kevin VanDeWoestyne
Thomas Engineering Group, LLC
55 West 22nd Street, Suite 300
Lombard, Illinois 60148

NOTICE TO PROCEED – Master Agreement Professional Engineering Services

Dear Mr. VanDeWoestyne:

This notification is to inform you that the Village of Orland Park has received all necessary contracts, certifications and insurance documents for the Master Agreement Professional Engineering Services. When work is needed throughout the term of this agreement, we will require a fully executed proposal in writing which will be attached to this contract as Exhibit B.

Each Exhibit B/Proposal to this Master Agreement will have a separate Purchase Order assigned when required which will be emailed/faxed to your company. It is imperative that this number on the Purchase Order be noted on all invoices, correspondence, etc. All invoices should be sent directly to the Accounts Payable Department at 14700 S. Ravinia Ave. Orland Park, IL 60462 or emailed directly to accountspayable@orlandpark.org. Also, your final invoice for this each project should state that it is the final invoice pertaining to that Purchase Order.

For your records, I have enclosed one (1) original executed Master Agreement dated October 1, 2020 for Professional Engineering Services. If you have any questions, please call me at 708-403-6173.

Sincerely,

A handwritten signature in black ink that reads "Denise Domalewski".

Denise Domalewski
Purchasing & Contract Administrator

Encl:

cc: Khurshid Hoda

MAYOR
Keith Pekau

VILLAGE CLERK
John C. Mehalek

14700 S. Ravinia Avenue
Orland Park, IL 60462
708.403.6100
OrlandPark.org



TRUSTEES

Kathleen M. Fenton
James V. Dodge
Daniel T. Calandriello
William R. Healy
Cynthia Nelson Katsenes
Michael R. Milani

October 2, 2020

Kevin VanDeWoestyne
Thomas Engineering Group, LLC
55 West 22nd Street, Suite 300
Lombard, Illinois 60148

Notice of Award: Master Agreement Professional Engineering Services

Dear Mr. VanDeWoestyne:

This notification is to inform you that on August 17, 2020 the Village of Orland Park Board of Trustees approved awarding Thomas Engineering Group, LLC a master agreement for professional engineering services. It will cover "all projects" with the Village. Each project will require an executed (signed) proposal and separate Purchase Order which will be attached to the Master Agreement as Exhibit B. This procedure will eliminate the need to sign a contract and provide necessary documentation for each project. We do request that a current certificate of insurance be issued to us upon renewal each year.

- Attached is the Master Agreement for Professional Engineering Services including Terms and Conditions. Please sign and return directly to me. I will obtain signatures to fully execute and date the Agreement and one fully executed Master Agreement will be returned to you.
- Submit a Certificate of Insurance from your insurance company in accordance with all of the Insurance Requirements listed and agreed to at minimum and endorsements for a) the additional insured status, b) the waiver of subrogation for General Liability and c) the waiver of subrogation for Workers Compensation. Please reference "All projects with the Village of Orland Park" in the description. You will be required to provide a current certificate of insurance if/when your insurance coverage changes or renews during the year.
- In order to properly document your vendor relationship with the Village of Orland Park, your company must provide the Village with a completed W-9 Form.
- I've also included an Electronic Funds Transfer (EFT) Authorization Form. Enrollment is optional, and by authorizing EFTs, you will receive payments from the Village faster and more securely. Additionally, the Village will be able to send you a detailed email notification when payment has been remitted. If you'd like to enroll in EFT payments, complete, sign and return the EFT Authorization Form along with the other documents.

Please deliver this information directly to me, Denise Domalewski, Purchasing & Contract Administrator, at Village Hall located at 14700 S. Ravinia Ave., Orland Park, IL 60462 or email to ddomalewski@orlandpark.org.

For each project that occurs during the term of this agreement you will be issued a Notice to Proceed letter and a purchase order number once we have a fully executed proposal on file. If you have any questions, please do not hesitate to call me at 708-403-6173 or e-mail me at ddomalewski@orlandpark.org.

Sincerely,

A handwritten signature in black ink that reads "Denise Domalewski". The signature is written in a cursive style with a large initial 'D'.

Denise Domalewski
Purchasing & Contract Administrator

cc: Khurshid Hoda



ORLAND PARK

Master Agreement for Professional Engineering Services

This Master Agreement (hereinafter referred to as the "Agreement") is made this 1st day of October, 2020 by and between the VILLAGE OF ORLAND PARK (hereinafter referred to as the "VILLAGE") and THOMAS ENGINEERING GROUP, LLC (hereinafter referred to as the "ENGINEER").

WITNESSETH

In consideration of the promises and covenants made herein by the VILLAGE and the ENGINEER (hereinafter referred to collectively as the "PARTIES,") the PARTIES agree as follows:

SECTION 1: THE CONTRACT DOCUMENTS: This Agreement is a Master Agreement and shall be the agreement for all projects authorized by the VILLAGE. Specific projects under this Agreement shall be authorized in writing by the VILLAGE by a proposal, which shall be attached hereto as Exhibit B and made a part of this Agreement for each project authorized. As additional projects are authorized pursuant to this Master Agreement, such projects shall be authorized by subsequent proposals, each of which shall be marked Exhibit B and attached to this Agreement as Exhibit B.

This Agreement shall include the following documents (hereinafter referred to as the "CONTRACT DOCUMENTS") however this Agreement takes precedence and controls over any contrary provision in any of the CONTRACT DOCUMENTS. The Agreement, including the CONTRACT DOCUMENTS, expresses the entire agreement between the PARTIES and where it modifies, adds to or deletes provisions in other CONTRACT DOCUMENTS, the Agreement's provisions shall prevail. Provisions in the CONTRACT DOCUMENTS unmodified by this Agreement shall be in full force and effect in their unaltered condition.

- This Agreement
- Exhibit A - The Terms and General Conditions for Professional Engineering Services
- The Proposal(s) for the Project authorized under this Agreement as it is responsive to the VILLAGE's requirements attached as Exhibit B
- All Certifications required by the Village
- Certificates of Insurance

SECTION 2: SCOPE OF SERVICES AND PAYMENT: The ENGINEER agrees to provide labor, equipment and materials necessary to provide the services as described in the CONTRACT DOCUMENTS and further described below:

Provide professional engineering services as described in the attached proposal, Exhibit B. See proposal for complete scope of work as requested by the Village of Orland Park and agreed by the PARTIES

(hereinafter referred to as the "SERVICES") and the VILLAGE agrees to pay the ENGINEER pursuant to the provisions of the Local Government Prompt Payment Act (50 ILCS 505/1 *et seq.*) the following amount:

TOTAL FEE and REIMBURSABLE EXPENSES: The ENGINEER's Fee and Reimbursable Expenses shall

be a set forth in Exhibit B, the proposal for the project. Any services not identified in Exhibit B shall be considered additional services and shall be compensated as such based upon the agreement of the PARTIES.

SECTION 3: ASSIGNMENT: ENGINEER shall not assign the duties and obligations involved in the performance of the SERVICES which is the subject matter of this Agreement without the written consent of the VILLAGE.

SECTION 4: TERM OF THE CONTRACT: This Agreement shall commence on October 1, 2020 and continue for a period of five (5) years ending September 30, 2025. The SERVICES shall commence upon execution of each proposal and receipt of a Notice to Proceed and continue expeditiously from that date until final completion or by the agreed upon time frame per proposal for each event. Any project in progress on September 30, 2025 shall be allowed to continue until services are completed. This may be terminated by either of the PARTIES for default upon failure to cure after ten (10) days prior written notice of said default from the aggrieved PARTY. The VILLAGE, for its convenience, may terminate this Agreement with thirty (30) days prior written notice. Certain provisions of the Contract shall survive expiration or termination of the Contract.

SECTION 5: INDEMNIFICATION AND INSURANCE: The ENGINEER shall indemnify, defend and hold harmless the VILLAGE, its trustees, officers, officials, directors, agents, employees and representatives and assigns, from lawsuits, actions, costs (including attorneys' fees), claims or liability of any character, incurred due to the alleged negligence of the ENGINEER, brought because of any injuries or damages received or sustained by any person, persons or property on account of any act or omission, neglect or misconduct of said ENGINEER, its officers, officials, agents and/or employees arising out of, or in performance of any of the provisions of the CONTRACT DOCUMENTS, including any claims or amounts recovered for any infringements of patent, trademark or copyright; or from any claims or amounts arising or recovered under the "Worker's Compensation Act" or any other law, ordinance, order or decree. In connection with any such claims, lawsuits, actions or liabilities, the VILLAGE, its trustees, officers, officials, directors, agents, employees, representatives and their assigns shall have the right to defense counsel of their choice. The ENGINEER shall be solely liable for all costs of such defense and for all expenses, fees, judgments, settlements and all other costs arising out of such claims, lawsuits, actions or liabilities.

The ENGINEER shall not make any settlement or compromise of a lawsuit or claim, or fail to pursue any available avenue of appeal of any adverse judgment, without the approval of the Village and any other indemnified party. The Village or any other indemnified party, in its or their sole discretion, shall have the option of being represented by its or their own counsel. If this option is exercised, then the ENGINEER shall promptly reimburse the Village or other indemnified party, upon written demand, for any expenses, including but not limited to court costs, reasonable attorneys' and witnesses' fees and other expenses of litigation incurred by the Village or other indemnified party in connection therewith.

The indemnification obligation under this paragraph shall not be limited in any way by any limitations on the amount or type of damages, compensation or benefits payable by or for the benefit of Subcontractor or any indemnities under any Worker's Compensation Act, Occupational Disease Act, Disability Benefits Act, or any other employee benefits act. The Subcontractor further agrees to waive any and all liability limitations based upon the Worker's Compensation Act court interpretations or otherwise.

Execution of this Contract by the VILLAGE is contingent upon receipt of Insurance Certificates provided by the ENGINEER in compliance with the AGREEMENT DOCUMENTS.

SECTION 6: COMPLIANCE WITH LAWS: ENGINEER agrees to comply with all federal, state and local laws, ordinances, statutes, rules and regulations including but not limited to the Illinois Human Rights Act as follows: ENGINEER hereby agrees that this contract shall be performed in compliance with all requirements of the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., and that the ENGINEER and its subcontractors shall not engage in any prohibited form of discrimination in employment as defined in that Act and shall maintain a sexual harassment policy as the Act requires. The ENGINEER shall maintain, and require that its subcontractors maintain, policies of equal employment opportunity which shall prohibit discrimination against any employee or applicant for employment on the basis of race, religion, color, sex, national origin, ancestry, citizenship status, age, marital status, physical or mental disability unrelated to the individual's ability to perform the essential functions of the job, association with a person with a disability, or unfavorable discharge from military service. ENGINEER and all subcontractors shall comply with all requirements of the Act and of the Rules of the Illinois Department of Human Rights with regard to posting information on employees' rights under the Act. ENGINEER and all subcontractors shall place appropriate statements identifying their companies as equal opportunity employers in all advertisements for workers to be employed in work to be performed under this contract.

The ENGINEER shall obtain all necessary local and state licenses and/or permits that may be required for performance of the WORK and provide those licenses to the VILLAGE prior to commencement of the SERVICES.

SECTION 7: NOTICE: Where notice is required by the CONTRACT DOCUMENTS it shall be considered received if it is delivered in person, sent by registered United States mail, return receipt requested, delivered by messenger or mail service with a signed receipt, sent by facsimile or e-mail with an acknowledgment of receipt, to the following:

To the VILLAGE:
Denise Domalewski
Purchasing & Contract Administrator
Village of Orland Park
14700 South Ravinia Avenue
Orland Park, Illinois 60462
Telephone: 708-403-6173
Facsimile: 708-403-9212
e-mail: ddomalewski@orlandpark.org

To the ENGINEER:
Kevin VanDeWaestyne
Municipal Department Head
Thomas Engineering Group, LLC
55 West 22nd Street, Suite 300
Lombard, Illinois 60148
Telephone: 847-815-9500
Facsimile: 855-533-1700
e-mail: kevinv@thomas-engineering.com

or to such other person or persons or to such other address or addresses as may be provided by either party to the other party.

SECTION 8: STANDARD OF SERVICE: Services shall be rendered to the professional standards applicable to the same or similar services in the Chicagoland area. Sufficient competent personnel shall be provided who with supervision shall complete the services required within the time allowed for performance. The ENGINEER'S personnel shall, at all times present a neat appearance and shall be trained to handle all contact with Village residents or Village employees in a respectful manner. At the request of the Village Manager or a designee, the ENGINEER shall replace any

incompetent, abusive or disorderly person in its employ.

SECTION 9: PAYMENTS TO OTHER PARTIES: The ENGINEER shall not obligate the VILLAGE to make payments to third parties or make promises or representations to third parties on behalf of the VILLAGE without prior written approval of the Village Manager or a designee.

SECTION 10: COMPLIANCE: ENGINEER shall comply with all of the requirements of the Contract Documents, including, but not limited to, the Illinois Prevailing Wage Act where applicable and all other applicable local, state and federal statutes, ordinances, codes, rules and regulations.

SECTION 11: FREEDOM OF INFORMATION ACT COMPLIANCE: The Illinois Freedom of Information Act (FOIA) has been amended and effective January 1, 2010. This amendment adds a new provision to Section 7 of the Act which applies to public records in the possession of a party with whom the Village of Orland Park has contracted. The Village of Orland Park will have only a very short period of time from receipt of a FOIA request to comply with the request, and there is a significant amount of work required to process a request including collating and reviewing the information.

The undersigned acknowledges the requirements of FOIA and agrees to comply with all requests made by the Village of Orland Park for public records (as that term is defined by Section 2(c) of FOIA) in the undersigned's possession and to provide the requested public records to the Village of Orland Park within two (2) business days of the request being made by the Village of Orland Park. The undersigned agrees to indemnify, defend and hold harmless the Village of Orland Park from all claims, costs, penalty, losses and injuries (including but not limited to, attorney's fees, other professional fees, court costs and/or arbitration or other dispute resolution costs) arising out of or relating to its failure to provide the public records to the Village of Orland Park under this agreement.

SECTION 12: LAW AND VENUE: The laws of the State of Illinois shall govern this Contract and venue for legal disputes shall be Cook County, Illinois.

SECTION 13: MODIFICATION: This Contract may be modified only by a written amendment signed by both PARTIES.

SECTION 14: COUNTERPARTS: This Contract may be executed in two (2) or more counterparts, each of which taken together, shall constitute one and the same instrument.

This Contract shall become effective on the date first shown herein and upon execution by duly authorized agents of the parties.

FOR: THE VILLAGE

By:  _____

Print Name: George Koczwar

Its: Village Manager

Date: 11-3-20

FOR: THE ENGINEER

By:  _____

Print Name: Kevin VanDeWoestyne

Its: Principal

Date: October 7, 2020

 **ORLAND PARK**
PROFESSIONAL ENGINEERING SERVICES
TERMS AND GENERAL CONDITIONS

1. **Relationship Between Engineer and Village:** The Engineer shall serve as the Village's professional engineer consultant in those Projects, or phases of the Project, to which this Agreement applies. This relationship is that of a buyer and seller of professional services and as such the Engineer is an independent contractor in the performance of this Agreement and it is understood that the parties have not entered into any joint venture or partnership with the other. The Engineer shall not be considered to be the agent of the Village. Nothing contained in this Agreement shall create a contractual relationship with a cause of action in favor of a third party against either the Village or Engineer.

2. **Responsibility of the Engineer:** Notwithstanding anything to the contrary which may be contained in this Agreement or any other material incorporated herein by reference, or in any Agreement between the Village and any other party concerning the Project, the Engineer shall not have control or be in charge of and shall not be responsible for the means, methods, techniques, sequences or procedures of construction, or the safety, safety precautions or programs of the Village, the construction contractor, other contractors or subcontractors performing any of the work or providing any of the services on the Project. The Engineer shall not be responsible for the acts or omissions of the Village, or for the failure of the Village, any architect, another engineer, consultant, contractor or subcontractor to carry out their respective responsibilities in accordance with the Project documents, this Agreement or any other agreement concerning the Project. Any provision which purports to amend this provision shall be without effect unless it contains a reference that the content of this condition is expressly amended for the purposes described in such amendment and is signed by the Engineer.

The Engineer will be responsible for correctly laying out the design data shown on the contract documents where construction staking services are a part of this Agreement. The Engineer is not responsible for, and Village agrees herewith to hold Engineer harmless from any and all errors which may be contained within the Contract Documents, unless such errors are the result of the work of the Engineer. It is expressly understood that the uncovering of errors in the plans and specifications, unless such errors should have been uncovered by the Engineer in the exercise of its professional service, is not the responsibility of the Engineer and any and all costs associated with such errors shall be borne by others.

3. **Changes:** Village reserves the right by written change order or amendment to make changes in requirements, amount of work, or engineering time schedule adjustments, and Engineer and Village shall negotiate appropriate adjustments acceptable to both parties to accommodate any such changes, if commercially possible.

4. **Suspension of Services:** Village may, at any time, by written order to Engineer (Suspension of Services Order) require Engineer to stop all, or any part, of the services required by this Agreement. Upon receipt of such an order, Engineer shall immediately comply with its terms and take all reasonable steps to minimize the costs associated with the services affected by such order. The Village, however, shall pay all costs incurred by the suspension, including all costs necessary to maintain continuity and for the resumption of the services upon expiration of the Suspension of

Services Order. Engineer will not be obligated to provide the same personnel employed prior to suspension, when the services are resumed, in the event that the period of suspension is greater than thirty (30) days.

5. **Documents Delivered to Village:** Drawings, specifications, reports, and any other Project Documents prepared by Engineer in connection with any or all of the services furnished hereunder shall be delivered to the Village for the use of the Village. Engineer shall have the right to retain originals of all Project Documents and drawings for its files. Furthermore, it is understood and agreed that the Project Documents such as, but not limited to reports, calculations, drawings, and specifications prepared for the Project, whether in hard copy or machine readable form, are instruments of professional service intended for one-time use in the construction of this Project. These Project Documents are and shall remain the property of the Engineer to the extent permitted by law. The Village may retain copies, including copies stored on magnetic tape or disk, for information and reference in connection with the occupancy and use of the Project.

It is also understood and agreed that because of the possibility that information and data delivered in machine readable form may be altered, whether inadvertently or otherwise, the Engineer reserves the right, upon prior written notice to the Village, to retain the original tapes/disks and to remove from copies provided to the Village all identification reflecting the involvement of the Engineer in their preparation. The Engineer also reserves the right to retain hard copy originals of all Project Documentation delivered to the Village in machine readable form, which originals shall be referred to and shall govern in the event of any inconsistency between the two.

6. **Reuse of Documents:** All Project Documents including but not limited to reports, opinions of probable costs, drawings and specifications furnished by Engineer pursuant to this Agreement are intended for use on the Project only. They cannot be used by Village or others on extensions of the Project or any other project. Any reuse, without specific written verification or adaptation by Engineer, shall be at Village's sole risk, and Village shall indemnify and hold harmless Engineer from all claims, damages, losses, and expenses including attorney's fees arising out of or resulting therefrom. Any such verification or adaptation will entitle Engineer to further compensation at rates to be agreed upon by Village and Engineer.

The Engineer shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Engineer's promotional and professional materials. The Engineer's materials shall not include the Village's confidential and proprietary information if the Village has previously advised the Engineer in writing of the specific information considered by the Village to be confidential and proprietary.

7. **Opinions of Probable Cost:** Since Engineer has no control over the cost of labor, materials or equipment, or over the Contractor(s) method of determining prices, or over competitive bidding or market conditions, Engineer's opinions of probable Project Construction Cost provided for herein are to be made on the basis of Engineer's experience and qualifications and represent Engineer's judgment as a design professional familiar with the construction industry, but Engineer cannot and does not guarantee that proposal, bids or the Construction Cost will not vary from opinions of probable construction cost prepared by Engineer. If prior to the Bidding or Negotiating Phase, Village wishes greater accuracy as to the Construction Cost, the Village shall employ an independent cost estimator consultant for the purpose of obtaining a second construction cost opinion independent from Engineer.

8. **Successors and Assigns:** The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and authorized assigns.
9. **Waiver of Contract Breach:** The waiver of one party of any breach of this Agreement or the failure of one party to enforce at any time, or for any period of time, any of the provisions hereof, shall be limited to the particular instance, shall not operate or be deemed to waive any future breaches of this Agreement and shall not be construed to be a waiver of any provision, except for the particular instance.
10. **Entire Understanding of Agreement:** This Agreement represents and incorporates the entire understanding of the parties hereto, and each party acknowledges that there are no warranties, representations, covenants or understandings of any kind, matter or description whatsoever, made by either party to the other except as expressly set forth herein. Village and the Engineer hereby agree that any purchase orders, invoices, confirmations, acknowledgments or other similar documents executed or delivered with respect to the subject matter hereof that conflict with the terms of the Agreement shall be null, void and without effect to the extent they conflict with the terms of this Agreement.
11. **Amendment:** This Agreement shall not be subject to amendment unless another instrument is duly executed by duly authorized representatives of each of the parties.
12. **Changes in the Work:** All changes in the WORK must be requested by Engineer and approved by the Village via an Authorization to Proceed document bearing the signature of the Village Manager. Any change order or series of change orders that increase or decrease the base contract value by \$10,000 or more, or that increases or decreases the Contract duration beyond the approved project schedule must be accompanied by a written request from Engineer justifying the additional cost or change in schedule. Within an agreed upon period of time, Village will provide a response to Engineer's Change Order or Time request by providing a determination signed by the Village or its designee finding that the change requested was not reasonably foreseeable at the time the contract was signed, the change is germane to the contract or the change is in the best interest of the Village. Any change increasing the original contract value by fifty percent (50%) or more must be re-bid by the Village as required by law. Authorization to spend the Board approved contingency amount must be preapproved by the Village per the Request for Change Order form (Exhibit A of the contract documents).
13. **Severability of Invalid Provisions:** If any provision of the Agreement shall be held to contravene or to be invalid under the laws of any particular state, county or jurisdiction where used, such contravention shall not invalidate the entire Agreement, but it shall be construed as if not containing the particular provisions held to be invalid in the particular state, country or jurisdiction and the rights or obligations of the parties hereto shall be construed and enforced accordingly.
14. **Force Majeure:** Whenever a period of time is provided for in this Agreement for either the ENGINEER or Village to do or perform any act or obligation, neither party shall be liable for any delays or inability to perform due to causes beyond the control of said party such as war, riot, insurrection, rebellion, strike, lockout, fire, flood, storm, earthquake, tornado, pandemic, act of public enemies, action of federal or state government or any act of God; provided, however, that said time period shall be extended for only the actual amount of time said party is so delayed. An act or omission shall not be deemed to be "beyond ENGINEER's control" if committed, omitted, or caused by ENGINEER, ENGINEER's employees, officers or agents or a subsidiary, affiliate or parent of ENGINEER or by any corporation or other business entity that holds a controlling interest in

ENGINEER, whether held directly or indirectly (for example, but not by way of limitation, a strike by or lockout of ENGINEER's employees would not be an act "beyond ENGINEER's control"). ENGINEER shall notify the Village as soon as possible, but no later than two (2) business days, of any force majeure event. However, if the force majeure event continues to affect performance for more than three (3) business days, the Village may immediately terminate this Agreement. In the event of such termination, the ENGINEER shall be paid for services satisfactorily performed under this Agreement up to the effective date of termination and shall be entitled to reimbursement of any expenses already incurred and not recoverable by refunds.

15. **Subcontracts:** Engineer may subcontract portions of the work, but each subcontractor must be approved by Village in writing in advance.
16. **Access and Permits:** Village shall arrange for Engineer to enter upon public and private property and obtain all necessary approvals and permits required from all governmental authorities having jurisdiction over the Project. Village shall pay costs (including Engineer's employee salaries, overhead and fee) incident to any effort by Engineer toward assisting Village in such access, permits or approvals, if Engineer performed such services.
17. **Designation of Authorized Representative:** Each party to this Agreement shall designate one or more persons to act with authority in its behalf with respect to appropriate aspects of the Project. The persons designated shall review and respond promptly to all communications received from the other party.
18. **Village's Responsibilities:** The Village agrees to provide full information regarding requirements for and about the Project, including a program which shall set forth the Village's objectives, schedule, constraints, criteria, special equipment, systems and site requirements.

The Village agrees to furnish and pay for all legal, accounting and insurance counseling services as the Village may require at any time for the Project, including auditing services which the Village may require to verify the Contractor's Application for Payment or to ascertain how or for what purpose the Contractor has used the money paid by or on behalf of the Village. In addition, Village shall give prompt written notice to the Engineer whenever the Village observes or otherwise becomes aware of any development that affects the scope or timing of the Engineer's services, or any defect or non-conformance of the work of any Contractor.

19. **Information Provided by Others:** The Engineer shall indicate to the Village the information needed for rendering of the services of this Agreement. The Village shall provide to the Engineer such information as is available to the Village and the Village's consultants and contractors, and the Engineer shall be entitled to rely upon the accuracy and completeness thereof unless, in the exercise of his professional skill, Engineer determined inaccuracies or incompleteness. The Village recognizes that it is impossible for the Engineer to assure the accuracy, completeness and sufficiency of such information, either because it is impossible to verify, or because of errors or omissions which may have occurred in assembling the information the Village is providing.
20. **Terms of Payment:** Engineer shall submit monthly statements for Basic and Additional Services rendered and for Reimbursable Expenses incurred, based upon Engineer's estimate of the proportion of the total services actually completed at the time of billing or based upon actual hours expended during the billing period. In the event the Village has not paid amounts properly due the Engineer, Engineer may after giving seven days written notice to Village, suspend services under this Agreement until Engineer has been paid in full all amounts properly due for services, expenses and

charges. Engineer shall have no liability whatsoever to Village for any costs or damages as a result of such suspension.

21. **Hazardous Materials/Pollutants:** Unless otherwise provided by this Agreement, the Engineer and Engineer's consultants shall have no responsibility for the discovery (unless such discovery should have been made by the Engineer in the exercise of its professional skill), presence, handling, removal or disposal of or exposure of persons to hazardous materials/pollutants in any form at the Project site, including but not limited to mold/mildew, asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic/hazardous/pollutant type substances unless undertaken at the direction of the Engineer or Engineer's consultants.
22. **Attorney's Fees:** In the event of any dispute that leads to litigation arising from or related to the services provided under this agreement, the substantially prevailing party will be entitled to recovery of all reasonable costs incurred, including court costs, attorney's fees and other related expenses.
23. **Insurance:** The Engineer shall provide the Village with certificates of insurance and all endorsements evidencing all coverages held by the Engineer, with coverage minimums and from insurance providers in compliance with Village requirements.
24. **Electronic Transmissions:** The parties agree that each may rely, without investigation, upon the genuineness and authenticity of any document, including any signature or purported signature, transmitted by e-mail or facsimile machine, without reviewing or requiring receipt of the original document. Each document or signature so transmitted shall be deemed an enforceable original. Upon request, the transmitting party agrees to provide the receiving party with the original document transmitted by e-mail or facsimile machine; however, the parties agree that the failure of either party to comply with such a request shall in no way affect the genuineness, authenticity or enforceability of the document. Each party waives and relinquishes as a defense to the formation or enforceability of any contract between the parties, or provision thereof the fact that an e-mail or facsimile transmission was used.
25. **Certifications, Guarantees and Warranties:** Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee or warrant the existence of conditions the existence of which the Engineer cannot ascertain. The Village also agrees not to make resolution of any dispute with Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such certification as to unascertainable conditions.

BY SIGNATURE BELOW (WHICH MAY BE IN ELECTRONIC FORM), THE ABOVE GENERAL TERMS AND CONDITIONS ARE ACCEPTED BY THE VILLAGE AND ENGINEER:

THOMAS ENGINEERING GROUP LLC

By: 

October 6, 2020
Date

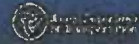
Print Name & Title: Kevin VanDeWoestyne, Principal

VILLAGE OF ORLAND PARK

By: 
George Kockwara, Village Manager

11-3-20
Date

Annual payroll SUBMITTAL



PAYROLL INFORMATION

COMPANY NAME *Fivord* **Anniver** **thomas engineering Group, LLC**

RATES ARE CURRENT AS OF **Sunday, February 09, 2020**

TYPE OF RAISE **Wednesday, January 01, 2020**

Please choose which classes are recommended for the \$75/hr cap

Project Principal

Department Head

Senior Project Manager

PAYROLL TITLE	EMPLOYEE NAME	HOURLY RATE	IDOT COMMENTS	HOURLY RATE USED
Project Principal	Thomas Gill	\$ 106.90		\$ 106.90
Senior Project Manager	Gregory Benske	\$ 88.80		\$ 88.80
Senior Project Manager	Kevin VanDeWoestyne	\$ 88.80		\$ 88.80
Senior Project Manager	Curtis Cornwell	\$ 73.50		\$ 73.50
Senior Project Manager	Edward Herlihy	\$ 75.68		\$ 75.68
Project Manager	Eric Rose	\$ 73.40		\$ 73.40
Project Manager	James Yuratovac	\$ 65.14		\$ 65.14
Project Manager	Brian Pawula	\$ 65.06		\$ 65.06
Senior Project Engineer	Glen Kirchen	\$ 67.82		\$ 67.82
Senior Project Engineer	Doug Masters	\$ 69.00		\$ 69.00
Project/Resident Engineer IV	Brian Witkowski	\$ 62.38		\$ 62.38
Project/Resident Engineer IV	Nicholas Orf	\$ 61.00		\$ 61.00
Project/Resident Engineer IV	Robert Nyce	\$ 59.28		\$ 59.28
Project/Resident Engineer IV	John Gatses	\$ 56.22		\$ 56.22
Project/Resident Engineer IV	Jeffrey Klein	\$ 56.00		\$ 56.00
Project/Resident Engineer IV	Matthew Champine	\$ 54.90		\$ 54.90
Project/Resident Engineer IV	Timothy Vedder	\$ 54.34		\$ 54.34
Project/Resident Engineer IV	Vincent Micek	\$ 43.60		\$ 43.60
Project/Resident Engineer III	Grant Johnson	\$ 47.00		\$ 47.00
Project/Resident Engineer III	Tomasz Tretowicz	\$ 42.53		\$ 42.53
Project/Resident Engineer III	Maciej Konczewski	\$ 39.90		\$ 39.90
Project/Resident Engineer III	Hyder Syed	\$ 39.38		\$ 39.38
Project/Resident Engineer III	Kyle Vander Zee	\$ 38.70		\$ 38.70
Project/Resident Engineer III	Zachary Jaydos	\$ 41.70		\$ 41.70
Project/Resident Engineer III	Elias Korolis	\$ 33.46		\$ 33.46
Project/Resident Engineer III	Jake Kelley	\$ 33.30		\$ 33.30
Engineer II	Alejandro Zepeda	\$ 31.50		\$ 31.50
Engineer I	Adair Huerta	\$ 27.50		\$ 27.50
Engineer I	Kyle Smith	\$ 27.50		\$ 27.50
Engineer I	Mitchell Severson	\$ 28.50		\$ 28.50
Engineer I	Jacob Cross	\$ 27.80		\$ 27.80
Business Manager	Sujata Banerjee	\$ 57.10		\$ 57.10
Chief Surveyor	Christopher DeYoung	\$ 56.10		\$ 56.10
Technical Manager	Steve VanDeveer	\$ 46.35		\$ 46.35
Senior Technician	James Haltsma	\$ 44.10		\$ 44.10
Senior Technician	Donald Naughton	\$ 44.10		\$ 44.10
Senior Technician	Charles Young	\$ 42.00		\$ 42.00
Technician IV	Kent Williams	\$ 39.70		\$ 39.70
Technician III	Mohsin Siddiqui	\$ 42.00		\$ 42.00
Technician II	Angelia Millsap	\$ 28.25		\$ 28.25
Technician	Brittany Carney	\$ 27.25		\$ 27.25
Marketing Coordinator	Angelica Gal	\$ 35.00		\$ 35.00
Administrative Assistant I	Marzena Lukaszczyk	\$ 25.50		\$ 25.50





ORLAND PARK

RFQ # 20-015

Professional Engineering Consulting Services

PROPOSAL SUMMARY SHEET

IN WITNESS WHEREOF, the parties hereto have executed this proposal as of date shown below.

Organization Name: Thomas Engineering Group, LLC

Street Address: 55 West 22nd Street, Suite 300

City, State, Zip: Lombard, IL 60148

Contact Name: Kevin VanDeWoestyne

Phone: (847) 815-9500 Fax: (855) 533-1700

E-Mail address: kevinv@thomas-engineering.com

Signature of Authorized Signee: 

Title: Municipal Department Head

Date: 5/7/2020

ACCEPTANCE: This proposal is valid for one hundred and twenty (120) calendar days from the date of submittal.



RFQ #20-015

Professional Engineering Consulting Services
Professional Services Checklist

Firm Name: Thomas Engineering Group, LLC

	Service	Check items that apply
1.	Land Planning Services (or Village Engineering Services) including reviews of Development Applications (residential and commercial)	<input checked="" type="checkbox"/>
2.	Civil Engineering Services	<input checked="" type="checkbox"/>
3.	Storm Water Engineering Services	<input checked="" type="checkbox"/>
4.	Site Design Services	<input checked="" type="checkbox"/>
5.	Structural Engineering Services	<input type="checkbox"/>
6.	Geotechnical/Soil Boring Services	<input type="checkbox"/>
7.	Environmental Planning including Regulatory and Permitting Services	<input checked="" type="checkbox"/>
8.	Environmental Reports and Studies	
a.	Phase I Reports and Studies	<input type="checkbox"/>
b.	Phase II Reports and Studies	<input type="checkbox"/>
9.	Traffic Engineering and Parking Services including wayfinding and Signage	<input checked="" type="checkbox"/>
10.	Roadway Engineering Services	<input checked="" type="checkbox"/>
11.	Roadway Phase I Engineering Services	<input checked="" type="checkbox"/>
12.	Roadway Phase II Engineering Services	<input checked="" type="checkbox"/>
13.	Roadway Phase III Engineering Services (Resident or Construction Engineering Services)	<input checked="" type="checkbox"/>
14.	Site Survey Services	<input checked="" type="checkbox"/>
15.	Phase III Services - Utilities	<input checked="" type="checkbox"/>
16.	Green Infrastructure Services	<input type="checkbox"/>

 **ORLAND PARK**
CERTIFICATE OF COMPLIANCE

The undersigned Thomas Gill, as President
(Enter Name of Person Making Certification) *(Enter Title of Person Making Certification)*

and on behalf of Thomas Engineering Group, LLC, certifies that:
(Enter Name of Business Organization)

1) BUSINESS ORGANIZATION:

The Proposer is authorized to do business in Illinois: Yes No

Federal Employer I.D. #: 26-1722938
(or Social Security # if a sole proprietor or individual)

The form of business organization of the Proposer is (check one):

- Sole Proprietor
 Independent Contractor (Individual)
 Partnership
 LLC
 Corporation _____
(State of Incorporation) *(Date of Incorporation)*

2) ELIGIBILITY TO ENTER INTO PUBLIC CONTRACTS: Yes No

The Proposer is eligible to enter into public contracts, and is not barred from contracting with any unit of state or local government as a result of a violation of either Section 33E-3, or 33E-4 of the Illinois Criminal Code, or of any similar offense of "Bid-Rigging" or "Bid-Rotating" of any state or of the United States.

3) SEXUAL HARRASSMENT POLICY: Yes No

Please be advised that Public Act 87-1257, effective July 1, 1993, 775 ILCS 5/2-105 (A) has been amended to provide that every party to a public contract must have a written sexual harassment policy in place in full compliance with 775 ILCS 5/2-105 (A) (4) and includes, at a minimum, the following information: (I) the illegality of sexual harassment; (II) the definition of sexual harassment under State law; (III) a description of sexual harassment, utilizing examples; (IV) the vendor's internal complaint process including penalties; (V) the legal recourse, investigative and complaint process available through the Department of Human Rights (the "Department") and the Human Rights Commission (the "Commission"); (VI) directions on how to contact the Department and Commission; and (VII) protection against retaliation as provided by Section 6-101 of the Act (Illinois Human Rights Act). Pursuant to 775 ILCS 5/1-103 (M) (2002), a "public Contract" includes "...every contract to which the State, any of its political subdivisions or any municipal corporation is a party."

4) EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE: Yes No

During the performance of this Project, Proposer agrees to comply with the "Illinois Human Rights Act", 775 ILCS Title 5 and the Rules and Regulations of the Illinois Department of Human Rights published at 44 Illinois Administrative Code Section 750, et seq. The

Proposer shall: (I) not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, national origin or ancestry, age, or physical or mental handicap unrelated to ability, or an unfavorable discharge from military service; (II) examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization; (III) ensure all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin or ancestry, age, or physical or mental handicap unrelated to ability, or an unfavorable discharge from military service; (IV) send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the Vendor's obligations under the Illinois Human Rights Act and Department's Rules and Regulations for Public Contract; (V) submit reports as required by the Department's Rules and Regulations for Public Contracts, furnish all relevant information as may from time to time be requested by the Department or the contracting agency, and in all respects comply with the Illinois Human Rights Act and Department's Rules and Regulations for Public Contracts; (VI) permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency and Department for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and Department's Rules and Regulations for Public Contracts; and (VII) include verbatim or by reference the provisions of this Equal Employment Opportunity Clause in every subcontract it awards under which any portion of this Agreement obligations are undertaken or assumed, so that such provisions will be binding upon such subcontractor. In the same manner as the other provisions of this Agreement, the Proposer will be liable for compliance with applicable provisions of this clause by such subcontractors; and further it will promptly notify the contracting agency and the Department in the event any subcontractor falls or refuses to comply therewith. In addition, the Proposer will not utilize any subcontractor declared by the Illinois Human Rights Department to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations. "Subcontract" means any agreement, arrangement or understanding, written or otherwise, between the Proposer and any person under which any portion of the Proposer's obligations under one or more public contracts is performed, undertaken or assumed; the term "subcontract", however, shall not include any agreement, arrangement or understanding in which the parties stand in the relationship of an employer and an employee, or between a Proposer or other organization and its customers. In the event of the Proposer's noncompliance with any provision of this Equal Employment Opportunity Clause, the Illinois Human Right Act, or the Rules and Regulations for Public Contracts of the Department of Human Rights the Proposer may be declared non-responsible and therefore ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and this agreement may be canceled or avoided in whole or in part, and such other sanctions or penalties may be imposed or remedies involved as provided by statute or regulation.

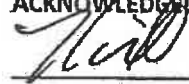
5) TAX CERTIFICATION: Yes No

Contractor is current in the payment of any tax administered by the Illinois Department of Revenue, or if it is not: (a) it is contesting its liability for the tax or the amount of tax in accordance with procedures established by the appropriate Revenue Act; or (b) it has entered into an agreement with the Department of Revenue for payment of all taxes due and is currently in compliance with that agreement.

6) AUTHORIZATION & SIGNATURE:

I certify that I am authorized to execute this Certificate of Compliance on behalf of the Contractor set forth on the Proposal, that I have personal knowledge of all the information set forth herein and that all statements, representations, that the Proposal is genuine and not collusive, and information provided in or with this Certificate are true and accurate. The undersigned, having become familiar with the Project specified, proposes to provide and furnish all of the labor, materials, necessary tools, expendable equipment and all utility and transportation services necessary to perform and complete in a workmanlike manner all of the work required for the Project.

ACKNOWLEDGED AND AGREED TO:



Signature of Authorized Officer

Thomas Gill

Name of Authorized Officer

President

Title

5/7/2020

Date

REFERENCES

These references are for the overall firm's performance evaluation. Project related references should be provided with project information.

ORGANIZATION City of West Chicago
ADDRESS 1400 Hawthorne Lane
CITY, STATE, ZIP West Chicago, IL 60186
PHONE NUMBER (630) 293-2200
CONTACT PERSON Robert Flatter
DATE OF PROJECT 2008-2020 (General Engineering Services Contract)

ORGANIZATION City of Wheaton
ADDRESS 303 W. Wesley Street
CITY, STATE, ZIP Wheaton, IL 60137
PHONE NUMBER (630) 260-2067
CONTACT PERSON Sarang Lagvankar
DATE OF PROJECT 2020

ORGANIZATION Village of Channahon
ADDRESS 24555 Navajo Dr.
CITY, STATE, ZIP Channahon, IL 60410
PHONE NUMBER (815) 467-6644
CONTACT PERSON Donald Kinzler
DATE OF PROJECT

Proposer's Name & Title: Kevin VanDeWoestyne, Municipal Department Head

Signature and Date:  5/7/2020

 **ORLAND PARK**
INSURANCE REQUIREMENTS

Please submit a policy Specimen Certificate of Insurance showing bidder's current coverage's

WORKERS COMPENSATION & EMPLOYER LIABILITY

\$1,000,000 – Each Accident \$1,000,000 – Policy Limit
\$1,000,000 – Each Employee

Waiver of Subrogation in favor of the Village of Orland Park

AUTOMOBILE LIABILITY

\$1,000,000 – Combined Single Limit

Additional Insured Endorsement in favor of the Village of Orland Park

GENERAL LIABILITY (Occurrence basis)

\$1,000,000 – Each Occurrence \$2,000,000 – General Aggregate Limit
\$1,000,000 – Personal & Advertising Injury

\$2,000,000 – Products/Completed Operations Aggregate

Additional Insured Endorsement & Waiver of Subrogation in favor of the Village of Orland Park

EXCESS LIABILITY (Umbrella-Follow Form Policy)

\$2,000,000 – Each Occurrence \$2,000,000 – Aggregate

EXCESS MUST COVER: General Liability, Automobile Liability, Workers Compensation

PROFESSIONAL LIABILITY

\$1,000,000 Limit -Claims Made Form, Indicate Retroactive Date & Deductible

Any insurance policies providing the coverages required of the Contractor, excluding Professional Liability, shall be specifically endorsed to identify "The Village of Orland Park, and their respective officers, trustees, directors, employees and agents as Additional Insureds on a primary/non-contributory basis with respect to all claims arising out of operations by or on behalf of the named insured." If the named insureds have other applicable insurance coverage, that coverage shall be deemed to be on an excess or contingent basis. The policies shall also contain a Waiver of Subrogation in favor of the Additional Insureds in regards to General Liability and Workers Compensation coverage's. The certificate of insurance shall also state this information on its face. Any insurance company providing coverage must hold an A VII rating according to Best's Key Rating Guide. Permitting the contractor, or any subcontractor, to proceed with any work prior to our receipt of the foregoing certificate and endorsement however, shall not be a waiver of the contractor's obligation to provide all of the above insurance.

Proposer agrees that prior to any commencement of work to furnish evidence of insurance coverage providing for at minimum the coverages and limits described above directly to the Village of Orland Park, Denise Domalewski, Contract Administrator, 14700 S. Ravinia Avenue, Orland Park, IL 60462. Failure to provide this evidence in the time frame specified and prior to beginning of work may result in the termination of the Village's relationship with the contractor.

ACCEPTED & AGREED THIS 7th DAY OF May, 2020



Signature
Kevin VanDeWoestyne, Municipal Department Head
Printed Name & Title

Authorized to execute agreements for:
Thomas Engineering Group, LLC
Name of Company

ACORD™

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 10/06/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER: USI Ins Svcs LLC Euclid-Prof, 2021 Spring Road, Suite 100, Oak Brook, IL 60523, 312 442-7200. CONTACT NAME: Laurie Cloninger, PHONE: 630 625-5219, FAX: 610 537-4939, E-MAIL ADDRESS: laurie.cloninger@usi.com. INSURER(S) AFFORDING COVERAGE: INSURER A: Phoenix Insurance Company (NAIC# 25623), INSURER B: Travelers Property Cas. Co. of America (25674), INSURER C: Argonaut Insurance Company (19801), INSURER D: , INSURER E: , INSURER F: .

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Table with columns: INSR LTR, TYPE OF INSURANCE, ADDL SUBR INSR, POLICY NUMBER, POLICY EFF (MM/DD/YYYY), POLICY EXP (MM/DD/YYYY), LIMITS. Rows include: A COMMERCIAL GENERAL LIABILITY (6802J652203), B AUTOMOBILE LIABILITY (BA2J664350), B UMBRELLA LIAB (CUP2J654257), B WORKERS COMPENSATION AND EMPLOYERS' LIABILITY (UB2J654000), C Professional Liability (121AE000363001).

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) Professional Liability is written on a 'claims made' policy form.

The General Liability, Automobile Liability and Umbrella Liability policies include an automatic Additional Insured endorsement that provides Additional Insured status to The Village of Orland Park, their respective officers, trustees, directors, employees and agents, only when there is a written contract that requires (See Attached Descriptions)

CERTIFICATE HOLDER: Village of Orland Park, 14700 South Ravinia Avenue, Orland Park, IL 60462. CANCELLATION: SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE: [Signature]

DESCRIPTIONS (Continued from Page 1)

such status, and only with regard to work performed on behalf of the named Insured. The General Liability, Automobile Liability and Umbrella Liability policies contain a special endorsement with Primary and Noncontributory wording, when required by written contract. The General Liability and Workers Compensation policies provide a Blanket Waiver of Subrogation when required by written contract, except as prohibited by law.