

# WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

**202201032**

Originating Department:	Public Works
Division/Program: (i.e. Dept. Division and Program)	905900 / Construction
Contract or Grant Administrator:	Doug Burghart, Engineering Manager D/C Section
Contractor's / Agency Name:	GeoTest Services, Inc.
Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes <input type="radio"/> No <input checked="" type="radio"/> Yes <input checked="" type="radio"/> No <input type="radio"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____ Does contract require Council Approval? Yes <input checked="" type="radio"/> No <input type="radio"/> If No, include WCC: _____ Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100) Is this a grant agreement? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, grantor agency contract number(s): _____ CFDA#: _____ Is this contract grant funded? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, Whatcom County grant contract number(s): _____ Is this contract the result of a RFP or Bid process? Contract _____ Yes <input checked="" type="radio"/> No <input type="radio"/> If yes, RFP and Bid number(s): RFQ 21-78 Cost Center: varies Is this agreement excluded from E-Verify? No <input type="radio"/> Yes <input checked="" type="radio"/> If no, include Attachment D Contractor Declaration form. If YES, indicate exclusion(s) below: <input checked="" type="checkbox"/> Professional services agreement for certified/licensed professional. <input type="checkbox"/> Goods and services provided due to an emergency <input type="checkbox"/> Contract work is for less than \$100,000. <input type="checkbox"/> Contract for Commercial off the shelf items (COTS). <input type="checkbox"/> Contract work is for less than 120 days. <input type="checkbox"/> Work related subcontract less than \$25,000. <input type="checkbox"/> Interlocal Agreement (between Governments). <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA. Contract Amount:(sum of original contract amount and any prior amendments): \$ 150,000.00 This Amendment Amount: \$ _____ Total Amended Amount: \$ _____ Summary of Scope: Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when</b> : 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance. 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County. This contract will provide construction materials testing and inspection and construction inspection associated with the Public Works Department's 2022 Annual Construction Program. Term of Contract: Completion of Project Expiration Date: 12/31/2022	

Contract Routing:	1. Prepared by: <u>DJB</u>	Date: <u>1-7-2022</u>
	2. Attorney signoff: <u>Christopher Quinn</u>	Date: <u>1/11/22</u>
	3. AS Finance reviewed: <u>M Caldwell</u>	Date: <u>1/11/22</u>
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: _____	Date: _____
	6. Submitted to Exec.: _____	Date: _____
	7. Council approved (if necessary): <u>AB2022-057</u>	Date: _____
	8. Executive signed: <u>Satpal Saini</u>	Date: <u>1/27/2022</u>
	9. Original to Council: _____	Date: _____

**WHATCOM COUNTY  
PUBLIC WORKS DEPARTMENT**

**Jon Hutchings**  
Director



**James P. Karcher, P.E.**  
*County Engineer*  
322 N. Commercial Street, Ste 301  
Bellingham, WA 98225-4042  
Phone: (360) 778-6210  
Fax: (360) 778-6211

## Memorandum

**To:** The Honorable Satpal Singh Sidhu, Whatcom County Executive and  
The Honorable Members of the Whatcom County Council

**Through:** Jon Hutchings, Director

**From:** James P. Karcher, P.E., County Engineer *JPK*  
Doug Burghart, Engineering Manager *DB*

**Date:** January 12, 2022

**Re:** On-call Construction Materials Testing & Inspection and Construction Inspection Services  
**Contract for Services Agreement – GeoTest Services, Inc.**

---

Enclosed for your review and signature are two (2) originals each of the above referenced contract between GeoTest Services, Inc. and Whatcom County.

### Requested Action

Public Works respectfully requests that the County Council authorize the County Executive to enter into a contract with the selected consultant in the amount not to exceed \$150,000.

### Background and Purpose

The contract will cover material sample collection, on-site material inspection, on-site construction inspection, the testing of concrete, hot mix asphalt (HMA), aggregates and other construction materials for various Whatcom County Public Works projects in the 2022 program year.

GeoTest Services, Inc. was determined by the selection committee as the most qualified of the four (4) firms that responded to the Request for Qualifications (RFQ No. 21-78) and subsequent interviews.

### Funding Amount and Source

Sufficient Local Road Funds exist within the budget to cover all anticipated material testing, material inspection and construction inspection services to be performed under this contract.

Please contact Doug Burghart at extension 6277 with any questions regarding this contract.

Whatcom County Contract No.

202201032

**CONTRACT FOR SERVICES**  
**2022 On-call Construction Materials Testing and Inspection, and Construction Inspection Services**  
**Between Whatcom County and GeoTest Services, Inc.**

GeoTest Services, Inc., hereinafter called **Contractor** and Whatcom County, hereinafter referred to as **County**, agree and contract as set forth in this Agreement, including:

General Conditions, pp. 3 to 13,  
 Exhibit A (Scope of Work), pp. 14 to 15,  
 Exhibit B (Compensation), pp. 16 to 18,  
 Exhibit C (Certificate of Insurance).

Copies of these items are attached hereto and incorporated herein by this reference as if fully set forth herein.

The term of this Agreement shall commence on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31st day of December, 2022.

The general purpose or objective of this Agreement is to: provide construction materials testing and inspection and construction inspection, as more fully and definitively described in Exhibit A hereto. The language of Exhibit A controls in case of any conflict between it and that provided here.

The maximum consideration for the initial term of this agreement or for any renewal term shall not exceed \$ 150,000. The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

Contractor acknowledges and by signing this contract agrees that the Indemnification provisions set forth in Paragraphs 11.1, 21.1, 30.1, 31.2, 32.1, 34.2, and 34.3, if included, are totally and fully part of this contract and have been mutually negotiated by the parties.

Each person signing this Contract represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Contract.

**IN WITNESS WHEREOF**, the parties have executed this Agreement this \_\_\_\_ day of 1/27/2022, 20 \_\_\_\_.

**CONTRACTOR:**

GeoTest Services, Inc.

Jeremy Wolf

Jeremy Wolf, Vice President

**CONTRACTOR INFORMATION:**

GeoTest Services, Inc.

Jeremy Wolf

Address:

741 Marine Drive

Bellingham, WA 98225

Contact Name: Jeremy Wolf, Vice President

Contact Phone: (360) 733-7318

Contact Email: jeremyw@geotest-inc.com

**WHATCOM COUNTY:**

**Recommended for Approval:**


 1/27/2022  
9359983910E345B  
Jon Hutchings Public Works Department Director Date

**Approved as to form:**

 1/27/2022  
EC466EE5C8B4FD  
Christopher Quinn, Senior Civil Deputy Prosecuting Attorney Date

**Approved:**

Accepted for Whatcom County:

DocuSigned by:  
 1/27/2022  
By: 1192C7C18B064E3...  
Satpal Singh Sidhu, Whatcom County Executive

## GENERAL CONDITIONS

### ***Series 00-09: Provisions Related to Scope and Nature of Services***

#### **0.1 Scope of Services:**

The Contractor agrees to provide to the County services and any materials as set forth in the project narrative identified as Exhibit "A", during the agreement period. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in the Agreement.

### ***Series 10-19: Provisions Related to Term and Termination***

#### **10.1 Term:**

Services provided by Contractor prior to or after the term of this contract shall be performed at the expense of Contractor and are not compensable under this contract unless both parties hereto agree to such provision in writing. The term of this Agreement may be extended by mutual agreement of the parties; provided, however, that the Agreement is in writing and signed by both parties.

#### **10.2 Extension:**

The duration of this Agreement may be extended by mutual written consent of the parties, for a period of up to one year, and for a total of no longer than three years.

#### **11.1 Termination for Default:**

If the Contractor defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may, by depositing written notice to the Contractor in the U.S. mail, first class postage prepaid, terminate the contract, and at the County's option, obtain performance of the work elsewhere. Termination shall be effective upon Contractor's receipt of the written notice, or within three (3) days of the mailing of the notice, whichever occurs first. If the contract is terminated for default, the Contractor shall not be entitled to receive any further payments under the contract until all work called for has been fully performed. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

#### **11.2 Termination for Reduction in Funding:**

In the event that funding from State, Federal or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement, and prior to its normal completion, the County may summarily terminate this Agreement as to the funds withdrawn, reduced, or limited, notwithstanding any other termination provisions of this Agreement. If the level of funding withdrawn, reduced or limited is so great that the County deems that the continuation of the programs covered by this Agreement is no longer in the best interest of the County, the County may summarily terminate this Agreement in whole, notwithstanding any other termination provisions of this Agreement. Termination under this section shall be effective upon receipt of written notice as specified herein, or within three days of the mailing of the notice, whichever occurs first.

### 11.3 Termination for Public Convenience:

The County may terminate the Agreement in whole or in part whenever the County determines, in its sole discretion, that such termination is in the interests of the County. Whenever the Agreement is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit contract prices for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this Agreement by the County at any time during the term, whether for default or convenience, shall not constitute breach of contract by the County.

## ***Series 20-29: Provisions Related to Consideration and Payments***

### 20.1 Accounting and Payment for Contractor Services:

Payment to the Contractor for services rendered under this Agreement shall be as set forth in Exhibit "B." Where Exhibit "B" requires payments by the County, payment shall be based upon written claims supported, unless otherwise provided in Exhibit "B," by documentation of units of work actually performed and amounts earned, including, where appropriate, the actual number of days worked each month, total number of hours for the month, and the total dollar payment requested, so as to comply with municipal auditing requirements.

Unless specifically stated in Exhibit "B" or approved in writing in advance by the official executing this Agreement for the County or his designee (hereinafter referred to as the "Administrative Officer") the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this contract. Where required, the County shall, upon receipt of appropriate documentation, compensate the Contractor, no more often than monthly, in accordance with the County's customary procedures, pursuant to the fee schedule set forth in Exhibit "B."

### 21.1 Taxes:

The Contractor understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Contractor authorizes the County to withhold for any taxes other than income taxes (i.e., Medicare). All compensation received by the Contractor will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the Contractor to make the necessary estimated tax payments throughout the year, if any, and the Contractor is solely liable for any tax obligation arising from the Contractor's performance of this Agreement. The Contractor hereby agrees to indemnify the County against any demand to pay taxes arising from the Contractor's failure to pay taxes on compensation earned pursuant to this Agreement.

The County will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes, including, but not limited to, Business and Occupation Tax, taxes based on the Contractor's gross or net income, or personal property to which the County does not hold title. The County is exempt from Federal Excise Tax.

### 22.1 Withholding Payment:

In the event the County's Administrative Officer determines that the Contractor has failed to perform any obligation under this Agreement within the times set forth in this Agreement, then the County may withhold from amounts otherwise due and payable to Contractor the amount determined by the County as necessary to cure the default, until the Administrative Officer determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Contractor to termination or damages, provided that the County promptly gives notice in writing to the Contractor of the nature of the default or failure to perform, and in no case more than 10 days after it determines to withhold amounts otherwise due. A determination of the Administrative Officer set forth in a notice to the Contractor of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Contractor acts within the times and in strict accord with the provisions of the Disputes clause of this Agreement. The County may act in accordance with any determination of the Administrative Officer which has become conclusive under this clause, without prejudice to any other remedy under the Agreement, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Contractor, (3) to set off any amount so paid or incurred from amounts due or to become due the Contractor. In the event the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Contractor by reason of good faith withholding by the County under this clause.

### 23.1 Labor Standards:

The Contractor agrees to comply with all applicable state and federal requirements, including but not limited to those pertaining to payment of wages and working conditions, in accordance with RCW 39.12.040, the Prevailing Wage Act; the Americans with Disabilities Act of

1990; the Davis-Bacon Act; and the Contract Work Hours and Safety Standards Act providing for weekly payment of prevailing wages, minimum overtime pay, and providing that no laborer or mechanic shall be required to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous to health and safety as determined by regulations promulgated by the Federal Secretary of Labor and the State of Washington.

**Series 30-39: Provisions Related to Administration of Agreement**

**30.1 Independent Contractor:**

The Contractor's services shall be furnished by the Contractor as an independent contractor, and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by the Contractor as an independent contractor.

The Contractor acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Contractor is not entitled to any benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to employees of the County. The Contractor represents that he/she/it maintains a separate place of business, serves clients other than the County, will report all income and expense accrued under this contract to the Internal Revenue Service, and has a tax account with the State of Washington Department of Revenue for payment of all sales and use and Business and Occupation taxes collected by the State of Washington.

Contractor will defend, indemnify and hold harmless the County, its officers, agents or employees from any loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph

**30.2 Assignment and Subcontracting:**

The performance of all activities contemplated by this agreement shall be accomplished by the Contractor. No portion of this contract may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the County.

**30.3 No Guarantee of Employment:**

The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.

**31.1 Ownership of Items Produced and Public Records Act:**

All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or subcontractors, in connection with performance of this Agreement, shall be the sole and absolute property of the County. If the Contractor creates any copyrightable materials or invents any patentable property, the Contractor may copyright or patent the same, but the County retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover, or otherwise use the materials or property and to authorize other governments to use the same for state or local governmental purposes. Contractor further agrees to make research, notes, and other work products produced in the performance of this Agreement available to the County upon request.

Ownership. Any and all data, writings, programs, public records, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the Contractor or the Contractor's subcontractors or consultants for delivery to the County under this Contract shall be the sole and absolute property of the County. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the County at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the Contractor uses to perform this Contract but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the County is owned by the Contractor and is not "work made for hire" within the terms of this Agreement.

Public Records Act. This Contract and all records associated with this Contract shall be available for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor agrees to make them promptly available to the County at no cost to the County. If the Contractor considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Contractor shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Contractor and the County determines that release of the information is

required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Contractor (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County shall not be liable to the Contractor for releasing records not clearly identified by the Contractor as confidential or proprietary. The County shall not be liable to the Contractor for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

The Contractor shall be liable to the requester for any and all fees, costs, penalties or damages imposed or alleged as a result of the Contractor's failure to provide adequate or timely records.

This provision and the obligations it establishes shall remain in effect after the expiration of this contract.

### 31.2 Patent/Copyright Infringement:

Contractor will defend and indemnify the County from any claimed action, cause or demand brought against the County, to the extent such action is based on the claim that information supplied by the Contractor infringes any patent or copyright. The Contractor will pay those costs and damages attributable to any such claims that are finally awarded against the County in any action. Such defense and payments are conditioned upon the following:

A. The Contractor shall be notified promptly in writing by the County of any notice of such claim.

B. Contractor shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the information, in the event such claim of infringement, is made, provided no reduction in performance or loss results to the County.

### 32.1 Confidentiality:

The Contractor, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Contractor in performance of this Agreement, except upon the prior written consent of the County or an order entered by a court after having acquired jurisdiction over the County. Contractor shall immediately give to the County notice of any judicial proceeding seeking disclosure of such information. Contractor shall indemnify and hold harmless the County, its officials, agents or employees from all loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees and costs resulting from Contractor's breach of this provision.

### 33.1 Right to Review:

This contract is subject to review by any Federal, State or County auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Administrative Officer or by the County Auditor's Office. Such review may occur with or without notice and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for three (3) years after contract termination, and shall make them available for such review, within Whatcom County, State of Washington, upon request. Contractor also agrees to notify the Administrative Officer in advance of any inspections, audits, or program review by any individual, agency, or governmental unit whose purpose is to review the services provided within the terms of this Agreement. If no advance notice is given to the Contractor, then the Contractor agrees to notify the Administrative Officer as soon as it is practical.

### 34.1 Insurance

The Contractor shall, at its own expense, obtain and continuously maintain the following insurance coverage for the duration of this contract, which shall include insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, subcontractors or employees. All insurers providing such insurance shall have an A.M. Best Rating of not less than A- (or otherwise be acceptable to the County) and be licensed to do business in the State of Washington and admitted by the Washington State Insurance Commissioner. Coverage limits shall be the minimum limits identified in this Contract or the coverage limits provided or available under the policies maintained by the Contractor without regard to this Contract, whichever are greater.

#### 1. **Commercial General Liability**

Property Damage	\$500,000.00, per occurrence
General Liability & bodily injury	\$1,000,000.00, per occurrence

Annual Aggregate

\$2,000,000.00

At least as broad as ISO form CG 00 01 or the equivalent, which coverage shall include personal injury, bodily injury and property damage for Premises Operations, Products and Completed Operations, Personal/Advertising Injury, Contractual Liability, Independent Contractor Liability, medical payments and Stop Gap/Employer's Liability. Coverage shall not exclude or contain sub-limits less than the minimum limits required, unless approved in writing by the County.

## **2. Professional Liability**

Professional Liability - \$1,000,000 per occurrence

a. Obtain professional liability insurance covering the negligent acts, errors, or omissions of the professional in connection with the performance of services to the County. If any insurance policy or the professional liability insurance is written on a claims made form, its retroactive date, and that of all subsequent renewals, shall be no later than the effective date of this Contract. The policy shall state that coverage is claims made, and state the retroactive date. Claims-made form coverage shall be maintained by the Contractor for a minimum of 36 months following the Completion Date or earlier termination of this Contract, and the Contractor shall annually provide the Contracting Agency with proof of renewal. If renewal of the claims made form of coverage becomes unavailable, or economically prohibitive, the Contractor shall purchase an extended reporting period ("tail") or execute another form of guarantee acceptable to the Contracting Agency to assure financial responsibility for liability for services performed.

## **3. Business Automobile Liability**

\$1,000,000.00 Minimum, per occurrence

\$2,000,000.00 Minimum, Annual Aggregate

Contractor shall provide auto liability coverage for owned, non-owned and hired autos using ISO Business Auto Coverage form CA 00 01 or the exact equivalent with a limit of no less than \$1,000,000 per accident. If Contractor owns no vehicles this requirement may be met through a non-owned auto Endorsement to the CGL policy.

## **4. Additional Insurance Requirements and Provisions**

- a. All insurance policies shall provide coverage on an occurrence basis.
- b. Additional Insureds. Whatcom County, its departments, elected and appointed officials, employees, agents and volunteers shall be included as additional insureds on Contractor's and Contractor's subcontractors' insurance policies by way of endorsement for the full available limits of insurance required in this contract or maintained by the Contractor and subcontractor, whichever is greater.
- c. Primary and Non-contributory Insurance. Contractor shall provide primary insurance coverage and the County's insurance shall be non-contributory. Any insurance, self-insured retention, deductible, risk retention or insurance pooling maintained or participated in by the County shall be excess and non-contributory to Contractor's insurance.
- d. Waiver of Subrogation. The insurance policy shall provide a waiver of subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the Contractor enter into such a waiver of subrogation on a pre-loss basis.
- e. Review of and Revision of Policy Provisions. Upon request, the Contractor shall provide a full and complete certified copy of all requested insurance policies to the County. The County reserves the right, but not the obligation, to revise any insurance requirement, including but not limited to limits, coverages and endorsements, or to reject any insurance policies which fail to meet the requirements of this Contract. Additionally, the County reserves the right, but not the obligation, to review and reject any proposed insurer providing coverage based upon the insurer's financial condition or licensing status in Washington.

- f. Verification of Coverage/Certificates and Endorsements. The Contractor shall furnish the County with a certificate of insurance and endorsements required by this contract. The certificates and endorsements for each policy shall be signed by a person authorized by the insurer to bind coverage on its behalf. The certificate and endorsements for each insurance policy are to be on forms approved by the County prior to commencement of activities associated with the contract. The certificate and endorsements, and renewals thereof, shall be attached hereto as Exhibit "C". If Exhibit C is not attached, the Contractor must submit the certificate and endorsements required in this contract to the County prior to the commencement of any work on the contracted project. A certificate alone is insufficient proof of the required insurance; endorsements must be included with the certificate. The certificate of insurance must reflect the insurance required in this contract, including appropriate limits, insurance coverage dates, per occurrence, and in the description of operations, include the County project, Whatcom County, its departments, officials, employees, agents and volunteers as additional insureds, primary, non-contributory, and waiver of subrogation.
- g. The County must be notified immediately in writing of any cancellation of the policy, exhaustion of aggregate limits, notice of intent not to renew insurance coverage, expiration of policy or change in insurer carrier. Contractor shall always provide the County with a current copy of the certificate and endorsements throughout the duration of the contract.
- h. No Limitation on Liability. The insurance maintained under this Contract shall not in any manner limit the liability or qualify the liabilities or obligations of the Contractor to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or equity.
- i. Payment Conditioned on Insurance and Failure to Maintain Insurance. Compensation and/or payments due to the Contractor under this Contract are expressly conditioned upon the Contractor's compliance with all insurance requirements. Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract. Payment to the Contractor may be suspended in the event of non-compliance, upon which the County may, after giving five business days' notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the County on demand or offset against funds due the Contractor. Upon receipt of evidence of Contractor's compliance, payments not otherwise subject to withholding or set-off will be released to the Contractor.
- j. Workers' Compensation. The Contractor shall maintain Workers' Compensation coverage as required under the Washington State Industrial Insurance Act, RCW Title 51, for all Contractors' employees, agents and volunteers eligible for such coverage under the Industrial Insurance Act.
- k. Failure of the Contractor to take out and/or maintain required insurance shall not relieve the Contractor or subcontractors from any liability under the contract, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations concerning indemnification. The County does not waive any insurance requirements even in the event the certificate or endorsements provided by the Contractor were insufficient or inadequate proof of coverage but not objected to by the County. The County's failure to confirm adequate proof of insurance requirements does not constitute a waiver of the Contractor's insurance requirements under this Contract.
- l. Availability of Contractor Limits. If the Contractor maintains higher insurance limits than the minimums shown above, the County shall be insured for the full available limits, including Excess or Umbrella liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this contract or whether any certificate furnished to the County evidences limits of liability lower than those maintained by the Contractor.
- m. Insurance for Subcontractors. If the Contractor subcontracts (if permitted in the contract) any portion of this Contract, the Contractor shall include all subcontractors as insureds under its policies or shall require separate certificates of insurance and policy endorsements from each subcontractor. Insurance coverages by subcontractors must comply with the insurance requirements of the Contractor in this contract and shall be subject to all of the requirements stated herein, including naming the County as additional insured.

- n. The Contractor agrees Contractor's insurance obligation shall survive the completion or termination of this Contract for a minimum period of three years.

34.3 Defense & Indemnity Agreement. To the fullest extent permitted by law, the Contractor agrees to indemnify, defend and hold the County and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees, and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease, or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which: 1) are caused in whole or in part by any error, act or omission, negligent or otherwise, of the Contractor, its employees, agents or volunteers or Contractor's subcontractors and their employees, agents or volunteers; or 2) directly or indirectly arise out of or occur in connection with performance of this Contract or 3) are based upon the Contractor's or its subcontractors' use of, presence upon, or proximity to the property of the County. This indemnification obligation of the Contractor shall not apply in the limited circumstance where the claim, damage, loss, or expense is caused by the sole negligence of the County.

Should a court of competent jurisdiction determine that this contract is subject to RCW 4.24.115, then in the event of concurrent Negligence of the Contractor, its subcontractors, employees or agents, and the County, its employees or agents, this indemnification obligation of the Contractor shall be valid and enforceable only to the extent of the negligence of the Contractor, its subcontractors, employees, and agents. This indemnification obligation of the Contractor shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the Contractor hereby expressly waives any immunity afforded by such acts.

It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein. The parties specifically agree that this Contract is for the benefit of the parties only and this Contract shall create no rights in any third party. The County reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses, or expenses, and such participation shall not constitute a waiver of Contractor's indemnity obligations under this Agreement.

In the event the Contractor enters into subcontracts to the extent allowed under this Contract, the Contractor's subcontractors shall indemnify the County on a basis equal to or exceeding Contractor's indemnity obligations to the County. The Contractor shall pay all attorney's fees and expenses incurred by the County in establishing and enforcing the County's rights under this indemnification provision, whether or not suit was instituted.

The Contractor agrees all Contractor's indemnity obligations shall survive the completion, expiration or termination of this Agreement. The foregoing indemnification obligations of the Contractor are a material inducement to County to enter into this Agreement and are reflected in the Contractor's compensation.

By signing this contract, the Contractor acknowledges that it has freely negotiated and agreed to the indemnification requirements to defend, indemnify and hold harmless the County from all claims and suits including those brought against the County by the Contractor's own employees, arising from this contract.

### 35.1 Non-Discrimination in Employment:

The County's policy is to provide equal opportunity in all terms, conditions and privileges of employment for all qualified applicants and employees without regard to race, color, creed, religion, national origin, sex, sexual orientation (including gender identity), age, marital status, disability, or veteran status. The Contractor shall comply with all laws prohibiting discrimination against any employee or applicant for employment on the grounds of race, color, creed, religion, national origin, sex, sexual orientation (including gender identity), age, marital status, disability, political affiliation, or veteran status, except where such constitutes a bona fide occupational qualification.

Furthermore, in those cases in which the Contractor is governed by such laws, the Contractor shall take affirmative action to insure that applicants are employed, and treated during employment, without regard to their race, color, creed, religion, national origin, sex, age, marital status, sexual orientation (including gender identity), disability, or veteran status, except where such constitutes a bona fide occupational qualification. Such action shall include, but not be limited to: advertising, hiring, promotions, layoffs or terminations, rate of pay or other forms of compensation benefits, selection for training including apprenticeship, and participation in recreational and

educational activities. In all solicitations or advertisements for employees placed by them or on their behalf, the Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

The foregoing provisions shall also be binding upon any subcontractor, provided that the foregoing provision shall not apply to contracts or subcontractors for standard commercial supplies or raw materials, or to sole proprietorships with no employees.

35.2 Non-Discrimination in Client Services: The Contractor shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation (including gender identity), disability, or veteran status; or deny an individual or business any service or benefits under this Agreement unless otherwise allowed by applicable law; or subject an individual or business to segregation or separate treatment in any manner related to his/her/its receipt any service or services or other benefits provided under this Agreement unless otherwise allowed by applicable law; or deny an individual or business an opportunity to participate in any program provided by this Agreement unless otherwise allowed by applicable law.

36.1 Waiver of Noncompetition:  
Contractor irrevocably waives any existing rights which it may have, by contract or otherwise, to require another person or corporation to refrain from submitting a proposal to or performing work or providing supplies to the County, and contractor further promises that it will not in the future, directly or indirectly, induce or solicit any person or corporation to refrain from submitting a bid or proposal to or from performing work or providing supplies to the County.

36.2 Conflict of Interest:  
If at any time prior to commencement of, or during the term of this Agreement, Contractor or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the County's interest, then Contractor shall immediately notify the County of the same. The notification of the County shall be made with sufficient specificity to enable the County to make an informed judgment as to whether or not the County's interest may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County may require the Contractor to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the provisions herein for termination.

37.1 Administration of Contract:  
This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington. The Contractor also agrees to comply with applicable federal, state, county or municipal standards for licensing, certification and operation of facilities and programs, and accreditation and licensing of individuals.

The County hereby appoints, and the Contractor hereby accepts, the Whatcom County Executive, and his or her designee, as the County's representative, hereinafter referred to as the Administrative Officer, for the purposes of administering the provisions of this Agreement, including the County's right to receive and act on all reports and documents, and any auditing performed by the County related to this Agreement. The Administrative Officer for purposes of this agreement is:

Marti Jones, Engineering Tech IV  
Whatcom County Public Works Department  
322 N. Commercial St., Ste. 301  
Bellingham, WA 98225-4042  
Phone: (360) 778-6262  
Fax: 360-778-6211  
Email: [mjones@co.whatcom.wa.us](mailto:mjones@co.whatcom.wa.us)

37.2 Notice:  
Any notices or communications required or permitted to be given by this Contract must be (i) given in writing and (ii) personally delivered or mailed, by prepaid, certified mail or overnight courier, or transmitted by electronic mail transmission (including PDF), to the party to whom such notice or communication is directed, to the mailing address or regularly-monitored electronic mail address of such party as follows:

GeoTest Services, Inc.

741 Marine Drive  
Bellingham, WA 98225

Attention: Jeremy Wolf

Telephone: (360) 733-7318

Email: jeremyw@geotest-inc.com

Any such notice or communication shall be deemed to have been given on (i) the day such notice or communication is personally delivered, (ii) three (3) days after such notice or communication is mailed by prepaid certified or registered mail, (iii) one (1) working day after such notice or communication is sent by overnight courier, or (iv) the day such notice or communication is sent electronically, provided that the sender has received a confirmation of such electronic transmission. A party may, for purposes of this Agreement, change his, her or its address, email address or the person to whom a notice or other communication is marked to the attention of, by giving notice of such change to the other party pursuant to this Section.

37.3 If agreed by the parties, this Contract may be executed by Email transmission and PDF signature and Email transmission and PDF signature shall constitute an original for all purposes.

38.1 Certification of Public Works Contractor's Status under State Law:

If applicable, Contractor certifies that it has fully met the responsibility criteria required of public works contractors under RCW 39.04.350 (1), which include: (a) having a certificate of registration in compliance with RCW 18.27; (b) having a current state unified business identifier number; (c) if applicable, having industrial insurance coverage for its employees working in Washington as required in Title 51 RCW, an employment security department number as required in Title 50 RCW, and a state excise tax registration number as required in Title 82 RCW; and (d) not being disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).

38.2 Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions:

If applicable, the Contractor further certifies, by executing this contract, that neither it nor its principles is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or Agency.

The Contractor also agrees that it shall not knowingly enter into any lower tier covered transactions (a transaction between the Contractor and any other person) with a person who is proposed for debarment, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, and the Contractor agrees to include this clause titled "Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction" without modification, in all lower tier covered transactions and in all solicitations for lower tier transactions.

The "Excluded Parties List System in the System for Award Management (SAM) website is available to research this information at WWW.SAM.GOV. Contractor shall immediately notify Whatcom County if, during the term of this Contract, Contractor becomes debarred.

38.3 E-Verify:

The E-Verify contractor program for Whatcom County applies to contracts of \$100,000 or more and sub contracts for \$25,000 or more if the primary contract is for \$100,000 or more. If applicable, Contractor represents and warrants that it will, for at least the duration of this contract, register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work for Whatcom County. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor/Seller agrees to maintain records of such compliance and, upon request of the County, to provide a copy of each such verification to the County. Contractor/Seller further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Washington. Contractor/Seller understands and agrees that any breach of these warranties may subject Contractor/Seller to the following: (a) termination of this Agreement and ineligibility for any Whatcom County contract for up to three (3) years, with notice of such cancellation/termination being made public. In the event of such termination/cancellation, Contractor/Seller would also be liable for any additional costs incurred by the County due to contract cancellation or loss of license or permit." Contractor will review and enroll in the E-Verify program through this website: [www.uscis.gov](http://www.uscis.gov)

**Series 40-49: Provisions Related to Interpretation of Agreement and Resolution of Disputes**

40.1 Modifications:

Either party may request changes in the Agreement. Any and all agreed modifications, to be valid and binding upon either party, shall be in writing and signed by both of the parties.

40.2 Contractor Commitments, Warranties and Representations:

Any written commitment received from the Contractor concerning this Agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to fulfill such a commitment shall render the Contractor liable for damages to the County. A commitment includes, but is not limited to, any representation made prior to execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

41.1 Severability:

If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.

41.2 Waiver:

Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto. The failure of the County to insist upon strict performance of any of the covenants and agreements of this Agreement, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such, or any other covenants or agreements, but the same shall be and remain in full force and effect.

42.1 Disputes:

## a. General:

Differences between the Contractor and the County, arising under and by virtue of the Contract Documents, shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, rulings, instructions, and decisions of the Administrative Officer shall be final and conclusive.

## b. Notice of Potential Claims:

The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Administrative Officer or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

## c. Detailed Claim:

The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within thirty (30) days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, the Contractor has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

## d. Arbitration:

Other than claims for injunctive relief, temporary restraining order, or other provisional remedy to preserve the status quo or prevent irreparable harm, brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinabove, any claim, dispute or controversy between the parties under, arising out of, or related to this Contract or otherwise, including issues of specific performance, shall be determined by arbitration in Bellingham, Washington, under the applicable American Arbitration Association (AAA) rules in effect on the date hereof, as modified by this Agreement. There shall be one arbitrator selected by the parties within ten (10) days of the arbitration demand, or if not, by the AAA or any other group having similar credentials. Any issue about whether a claim is covered by this Contract shall be determined by the arbitrator. The arbitrator shall apply substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge but shall not have the power to award punitive damages. Each Party shall pay all their own costs, attorney fees and expenses of arbitration and the parties shall share equally in the Arbitrator's fees and costs. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in any court having jurisdiction. The parties agree that the decision of

the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date; provided, that either party may decline to mediate and proceed with arbitration.

Any arbitration proceeding commenced to enforce or interpret this Contract shall be brought within six years after the initial occurrence giving rise to the claim, dispute, or issue for which arbitration is commenced, regardless of the date of discovery or whether the claim, dispute, or issue was continuing in nature. Claims, disputes, or issues arising more than six years prior to a written request or demand for arbitration issued under this Contract are not subject to arbitration.

- e. The parties may agree in writing signed by both parties that a claim or dispute may be brought in Whatcom County Superior Court rather than mediation or arbitration.

*Unless otherwise specified herein, this Contract shall be governed by the laws of Whatcom County and the State of Washington.*

43.1 Venue and Choice of Law:

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Whatcom. This Agreement shall be governed by the laws of the State of Washington.

44.1 Survival:

The provisions of paragraphs 11.1, 11.2, 11.3, 21.1, 22.1, 30.1, 31.1, 31.2, 32.1, 33.1, 34.2, 34.3, 36.1, 40.2, 41.2, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

45.1 Entire Agreement:

This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

**EXHIBIT "A"**  
(SCOPE OF WORK)

**GeoTest Services, Inc – 2022 Material Testing, Material Inspection and Construction Inspection Services Contract**

This contract will cover on-site construction field inspection, material sample collection, on-site material inspection, and lab testing of concrete, hot mix asphalt (HMA), aggregates and other construction materials for Whatcom County Public Works Projects. **The Consultant must have a lab meeting the AASHTO Materials Reference Laboratory's (AMRL) accreditation of "AASHTO R 18" through the life of the Contract.** At the option of the County, this contract may be supplemented for construction inspection services on a project-by-project basis.

**Material Testing (with associated material sample collection as required):**

1. All test procedures shall be in accordance with applicable ASTM, IBC, WSDOT, AASHTO or other procedures as required in projects adhering to the current Washington State Department of Transportation's (WSDOT's) Standard Specifications for Road, Bridge and Municipal Construction, as well as the WSDOT Construction Manual and Whatcom County Road Standards. County will supply or indicate target material specifications to Consultant for each test, and Consultant shall show the target specification on the test result.
2. Initial test results for aggregate gradations, sand equivalents (SE), and fracture shall be available within 48 hours from receipt of materials, unless the County is notified and agrees to a different schedule. Notification shall be primarily via email and telephone call, and secondarily via fax if email is down.
3. HMA oil content initial results shall be available within 8 business operation hours from receipt of material at the testing lab. This test result is critical to verify the quality of material used in the paving operation; therefore, the County requests notification as soon as test is complete via a telephone call. Formal Notification shall follow primarily via email and secondarily via fax if email is down.
4. HMA Rice Density initial results shall be available within 3 hours after Consultant procures hot sample. This test result is critical to verify the quality of material used in the paving operation; therefore, the County requests notification as soon as test is complete via a telephone call. Formal Notification shall follow primarily via email and secondarily via fax if email is down.
5. For 7-Day compressive strength concrete cylinder breaks, County requests early notification (via telephone call) by Consultant if lab technicians or professionals see potential problem with predicted strength of material meeting specifications. Formal Notification shall follow primarily via email and secondarily via fax if email is down.
6. Testing will be performed by qualified technicians and professionals, having certifications to perform the range of tests required by road, bridge and municipal construction projects per testing procedures in the WSDOT Construction Manual.

**Material Inspection:** On a specific project, Consultant may be requested to provide material inspection of field installed materials at the project site. Consultant will provide personnel with appropriate qualifications and expertise in the material(s) being inspected and shall be compensated per the contract's fee schedule for the specific tests and classification of personnel involved.

**Administration:**

1. Consultant shall utilize a project management system that will:
  - a) Allow simultaneous distribution to all project team members of any testing requests and will distribute test results immediately following their completion to all project team members. Testing results shall be available in PDF format through the project management system and shall also be sent via email. For each project, the County will supply email addresses and telephone numbers of all project team members. Consultant will maintain this data, segregated by Project and identifying project number (i.e. CRP No, if applicable) for the life of the contract.

- b) Segregate test results by project, display all tests conducted per project and indicate clearly which tests meet or fail project specifications. Each test result or report shall have an identifying number that is distinct from other test results/reports on the same project.
2. For each project, the County's assigned project manager will establish a project budget and assign a Purchase Order (PO) number for each project. The Consultant's project manager(s) shall work directly with each of the County's project managers for a given project.
3. Consultant will provide the County with a monthly statement (Excel format) for the contract dollar amount expended to date during periods of contract activity. The Statement shall summarize, by Project name, Project number (i.e. CRP No, if applicable), each invoice number, date and amount. This information shall be emailed to the County's administration officer(s) listed in the contract. Consultant shall reference the Whatcom County Contract No. (WCC#) on all correspondence related to this contract.
4. All initial test results and final test reports shall have the Project name and identifying Project number (i.e. CRP No, if applicable) on them. The Consultant will ensure this information is obtained when samples are delivered or picked-up at the project site.
5. Tasks, tests and personnel listed on invoices shall use the exact description as they appear on the consultant's fee schedule for the services involved. All mileage distances claimed for reimbursement shall include some backup; mileage reimbursement rate shall match the current federal reimbursement rate (\$/mile).
6. Invoices shall be segregated by project name, identifying project number (i.e. CRP No, if applicable), PO number, and all tests being billed for on the invoice should indicate the identifying test report number. Invoices shall be emailed to the applicable project manager and CC the County's administration officer.

#### **Construction Inspection Services:**

On a specific project, Consultant may be requested to provide construction inspection services associated with Whatcom County's Public Works Contracts. Consultant will provide personnel with appropriate qualifications and expertise and shall be compensated per the contract's fee schedule for the classification of personnel involved.

Consultant Field Inspector will report to a specific Whatcom County Public Works' Project Engineer on each assigned project. The duties of both Engineer and Inspector shall conform to responsibilities detailed in the current edition of the WSDOT Standard Specifications and WSDOT Construction Manual.

The Project Engineer (County) and Consultant Field Inspector will formalize the extent of duties required for each assigned project, which would typically include some or all of the following:

1. Reports & Documentation generation & acquisition:
  - a) Generate: Inspectors Daily Report & Weekly Statement of Working Days, required Interviews using forms supplied by the County.
  - b) Receive: Traffic Control Reports from Consultant, Material Quantity Tickets (gravel, HMA, concrete, scalesmans daily reports & misc. materials invoices, etc.).
2. Materials Acceptance & documentation & tracking (ROM & RAM'S):
  - a) Coordinate with Project Engineer to validate & track required materials documentation. Ensure ongoing compliance with required construction documentation during the entire life of the project, with the ROM being the primary guiding document. Whatcom County Project Engineer will modify and make all changes to the ROM. Field Inspectors will be need to be knowledgeable of the ROM, and with direction from the Project Engineer, ensure compliance with needed material tests and documentation.
  - b) Prior to installation required documentation may include: Manufacturer's Certificate of Compliance (MCC), Qualified Products List Cover Sheet (QPL), Catalog Cut, Certificate of Materials Origin (CMO), Satisfactory Test Reports, Lot or Roll Numbers, "WSDOT Inspected" Stamp if required.



## EXHIBIT "B" (COMPENSATION)

1.888.251.5276

Bellingham | Arlington | Oak Harbor

www.geotest-inc.com

### FEE SCHEDULE

#### 2022 On-call Construction Materials Testing and Inspection, and Construction Inspection Services – Whatcom County

##### PROFESSIONAL SERVICES

Senior Geotechnical Engineer.....	190.00 hour
Professional Engineer .....	160.00 hour
Geotechnical Engineer.....	160.00 hour
Technical Director.....	160.00 hour
Staff Engineer .....	125.00 hour
Engineering Geologist.....	135.00 hour
Environmental Professional.....	125.00 hour
Geologist .....	115.00 hour
Building Envelope Consultant .....	150.00 hour
Construction Inspector - Whitewolf Engineering Services - Subconsultant .....	144.00 hour
Project Manager - Whitewolf Engineering Services - Subconsultant .....	150.00 hour
Project Engineer - Whitewolf Engineering Services - Subconsultant .....	161.00 hour
<i>Subconsultant fees include a 15% markup.</i>	

##### CONSTRUCTION TESTING SERVICES

Concrete Inspector (Post-Tension, Prestressed, Shotcrete, Reinforcing, or Grout, etc.) .....	85.00 hour
Masonry Inspector.....	85.00 hour
Spray-Applied Fire-Resistive Materials Inspector.....	85.00 hour
Fire-Resistant Penetrations and Joints Inspector .....	85.00 hour
Post-Installed Anchor Inspector .....	85.00 hour
Structural Wood Inspector .....	90.00 hour
Cold-Formed Steel Framing Inspector.....	90.00 hour
Structural Steel Welding and Bolting Inspector.....	90.00 hour
In-Place Density Tech – Soils & Asphalt .....	90.00 hour
CESCL (Certified Erosion & Sediment Control Lead).....	90.00 hour
Geotechnical Technician.....	95.00 hour
Non-Destructive Testing Technician .....	110.00 hour
Building Envelope Inspector .....	110.00 hour

##### CONSTRUCTION SUPPORT SERVICES

QA/QC Inspection Engineer .....	110.00 hour
Field Technician.....	85.00 hour
Laboratory Technician .....	90.00 hour
Project Manager.....	120.00 hour

##### BUILDING ENVELOPE SERVICES

Whole Building Air Leakage Test .....	quote
Window Water Penetration Test.....	quote
Building Envelope Assessment .....	quote



## FEE SCHEDULE – 2022

### SPECIALTY SERVICES

Bolt Pull-out Test Technician .....	100.00 hour
Ground Penetrating Radar (GPR) Technician.....	175.00 hour
Pachometer (Magnetic) Rebar Location Technician.....	100.00 hour
Concrete & Asphalt Coring Technician .....	125.00 hour
Schmidt Hammer Technician .....	125.00 hour
Windsor Probe Technician .....	125.00 hour
Floor Flatness and Levelness Testing Technician.....	150.00 hour
Concrete Relative Humidity/Moisture Testing Technician .....	110.00 hour

### LABORATORY MATERIALS TESTING:

#### CONCRETE

Compressive Strength – Concrete.....	30.00 ea
Compressive Strength – Concrete (cast by others) .....	38.00 ea
Compressive Strength – Drilled Cores or Sawed Specimens.....	65.00 ea
Flexural Strength – 6" x 6" Beams .....	60.00 ea
Air Dry Unit Weight .....	35.00 ea
Trimming Specimens – Per End (when required).....	15.00 ea

#### MASONRY

Compressive Strength – Mortar, 2" x 4" Cylinder .....	30.00 ea
Compressive Strength – Grout, 4" x 4" x 8" Prism .....	30.00 ea
Compressive Strength – Composite Prism .....	110.00 ea
Compressive Strength – Masonry Units.....	110.00 ea

#### AGGREGATE

Sieve Analysis, with Wet Wash .....	170.00 ea
Sieve Analysis, Dry Only .....	100.00 ea
Sieve Analysis, % Passing #200 Sieve .....	100.00 ea
Specific Gravity and Absorption – Fine Aggregate.....	85.00 ea
Specific Gravity and Absorption – Coarse Aggregate.....	85.00 ea
Uncompacted Voids – Fine Aggregate .....	175.00 ea
Unit Weight and Voids.....	50.00 ea
Sand Equivalent .....	90.00 ea
Moisture Content.....	50.00 ea
Percent Fracture .....	90.00 ea
Organic Impurities Test.....	60.00 ea
Clay Lumps and Friable Particles.....	90.00 ea
Lightweight Pieces .....	90.00 ea
Flat/Elongated Particles .....	90.00 ea

#### ASPHALT

Asphalt Content & Gradation (Ignition Furnace) .....	295.00 ea
Maximum Specific Gravity (Rice Density) .....	110.00 ea
Asphalt Core Density/Thickness.....	50.00 ea
Asphalt Superpave Test .....	550.00 ea



## FEE SCHEDULE – 2022

### SOILS

Sieve Analysis, with Wet Sieve .....	170.00 ea
Sieve Analysis, % Passing #200 Sieve .....	100.00 ea
Sieve Analysis w/ Hydrometer .....	260.00 ea
Moisture Density Relationship (Proctor).....	220.00 ea
Moisture Density Relationship (Proctor) w/ Sieve .....	280.00 ea
Check Point .....	80.00 ea
Moisture Content.....	50.00 ea
Atterberg Limits (3 points).....	170.00 ea
Specific Gravity.....	85.00 ea
Consolidation – 5 Loads .....	380.00 ea
Permeability – Constant Head or Falling Head (each point) .....	350.00 ea
Organic Content .....	90.00 ea

### MISCELLANEOUS

Compressive Strength – 2" x 2" Cubes (Cementitious Grout).....	30.00 ea
Compressive Strength – 2" x 2" Cubes (Epoxy Grout).....	40.00 ea
Fireproofing Density Test.....	80.00 ea
Floor Moisture/RH Test Kit .....	65.00 ea
Windsor Probe Pin (Set of 3).....	40.00 ea
Skidmore Usage (Per Use).....	100.00 ea
Dynamic Cone Penetrometer (DCP) Tip.....	25.00 ea
Ultrasonic Flaw Detector Usage (Per Use) .....	100.00 ea

- GeoTest requests 24 hours advance notice for scheduling field services. GeoTest may not be able to provide service for same day scheduling.
- GeoTest Services, Inc. (GTS) construction inspection services, construction testing services, construction support services, building envelope & specialty services are billed portal to portal. A daily four-hour minimum charge applies to Construction Testing Services and Specialty Services per staff member for all field services. Same day cancellations will incur a two-hour minimum charge.
- GeoTest standard operating hours are 7 AM to 5 PM, Monday through Friday, with the exception of holidays. A premium rate of 1.5 times the standard rate will be charged for all work in excess of 8 hours per day and Weekends.
- A one-hour minimum laboratory technician fee will be applied on Saturdays, Sundays & legal Holidays at 1.5 times the regular rate for any laboratory testing services.
- Night shift (work starting outside standard operating hours): Charged at 1.5 times the standard rate including same day cancellations. A four (4) hour minimum charge at 1.5 times the regular rate applies to lab night work.
- A trip charge shall be invoiced at the federally issued standard mileage rate per map mile from our nearest office – portal to portal.
- Field testing equipment expenses are included in the hourly rates except where specifically noted on the fee schedule or a project specific proposal.
- Laboratory rush samples (less than 48hr turn-around time) will be invoiced at 1.5 times the standard test rate.
- Rental equipment, reimbursable expenses, subconsultant and subcontractor fees will be invoiced at cost plus 15%.
- Unless otherwise agreed, test specimens or samples will be disposed of immediately upon completion of the test. The ordering of work from GTS shall constitute acceptance of the Fee Schedule, General Conditions, and any project specific proposal.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

01/10/2022

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).

<b>PRODUCER</b> Rice Insurance LLC 1400 Broadway P.O. Box 639 Bellingham WA 98227	<b>CONTACT NAME:</b> Taryn Schram von Haupt <b>PHONE (A/C, No, Ext):</b> (360) 734-1161 <b>FAX (A/C, No):</b> (360) 734-1173 <b>E-MAIL ADDRESS:</b> taryn@riceinsurance.com														
<b>INSURED</b> GeoTest Services, Inc. 741 Marine Dr Bellingham WA 98225	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: left;">NAIC #</th> </tr> <tr> <td><b>INSURER A:</b> American Hallmark Insurance Company of Texas</td> <td>43494</td> </tr> <tr> <td><b>INSURER B:</b> Hamilton Specialty Insurance Co</td> <td>44520</td> </tr> <tr> <td><b>INSURER C:</b> Alaska National Insurance Co</td> <td>38733</td> </tr> <tr> <td><b>INSURER D:</b></td> <td></td> </tr> <tr> <td><b>INSURER E:</b></td> <td></td> </tr> <tr> <td><b>INSURER F:</b></td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	<b>INSURER A:</b> American Hallmark Insurance Company of Texas	43494	<b>INSURER B:</b> Hamilton Specialty Insurance Co	44520	<b>INSURER C:</b> Alaska National Insurance Co	38733	<b>INSURER D:</b>		<b>INSURER E:</b>		<b>INSURER F:</b>	
INSURER(S) AFFORDING COVERAGE	NAIC #														
<b>INSURER A:</b> American Hallmark Insurance Company of Texas	43494														
<b>INSURER B:</b> Hamilton Specialty Insurance Co	44520														
<b>INSURER C:</b> Alaska National Insurance Co	38733														
<b>INSURER D:</b>															
<b>INSURER E:</b>															
<b>INSURER F:</b>															

**COVERAGES****CERTIFICATE NUMBER:** CL2132681538**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
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	44CL604875	04/02/2021	04/02/2022	EACH OCCURRENCE \$ 1,000,000
	DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000						
	MED EXP (Any one person) \$ 5,000						
	PERSONAL & ADV INJURY \$ 1,000,000						
A	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	44CL604875	04/02/2021	04/02/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	BODILY INJURY (Per person) \$						
	BODILY INJURY (Per accident) \$						
	PROPERTY DAMAGE (Per accident) \$						
A	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	Y	Y	44CL604875	04/02/2021	04/02/2022	EACH OCCURRENCE \$ 5,000,000
	AGGREGATE \$ 5,000,000						
	\$						
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N If yes, describe under DESCRIPTION OF OPERATIONS below	N	A	44CL604875 - WA Stop Gap	04/02/2021	04/02/2022	PER STATUTE <input checked="" 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						
B	Professional and Pollution	Y	Y	ENVPKG800169	04/02/2021	04/02/2022	Each Occurrence 2,000,000 Aggregate 2,000,000 Deductible 10,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**

Whatcom County, its departments, elected and appointed officials, employees, agents and volunteers are Additional Insured as respects to attached form A 01/10 for General Liability. Coverage is Primary and Non Contributory and the Waiver of Subrogation is included in form #MP9767 for General Liability. Completed Operations is included per form B 01/10. Professional/Pollution Additional Insured form ENV.P 1002 which includes the Waiver of Subrogation. The blanket primary and Non contributory form ENV.ML 0013 is attached. Auto Additional Insured per form #BA2060 04/11 Primary/Non Contributory applies with the Waiver of Subrogation for the Auto Liability. Umbrella is following form. 30 days notice for cancellation, 10 days non pay.

**CERTIFICATE HOLDER****CANCELLATION**

Whatcom County 322 N Commercial Street Suite 301 Bellingham WA 98225-4042	<p><b>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</b></p> <p><b>AUTHORIZED REPRESENTATIVE</b></p>
--	--

© 1988-2015 ACORD CORPORATION. All rights reserved.

AGENCY CUSTOMER ID: \_\_\_\_\_

LOC #: \_\_\_\_\_



ADDITIONAL REMARKS SCHEDULE

Page \_\_\_\_ of \_\_\_\_

AGENCY Rice Insurance LLC		NAMED INSURED GeoTest Services, Inc.
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,**

**FORM NUMBER:** 25      **FORM TITLE:** Certificate of Liability Insurance: Notes

Excess Liability - Starstone Insurance Company, EFF 4/02/2021 - 4/02/2022 Policy #79442K212ALI  
\$5,000,000 Limit.

Transportation Pollution Liability applies per attached form ENV.P 1001 with a 2MM Limit.

USL&H  
9/10/2020 to 9/10/2021  
\$1,000,000 Limit

Employee Benefits Liability Coverage - American Hallmark  
Policy #44CL604875  
04/02/2021 - 04/02/2022  
Each Employee: \$1,000,000  
Aggregate: \$2,000,000  
Deductible: \$1,000

# ARTISANS ADVANTAGE ENHANCED COVERAGE ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

**BUILDING AND PERSONAL PROPERTY COVERAGE FORM  
CAUSES OF LOSS – SPECIAL FORM  
COMMERCIAL PROPERTY CONDITIONS  
COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

When this endorsement is attached to the policy, insurance under the Building and Personal Property Coverage Form, the Causes of Loss – Special Form, the Commercial Property Conditions and the Commercial General Liability Coverage Form is enhanced to provide the coverages described in this endorsement. All other conditions of the policy continue to apply.

This coverage is subject to the provisions applicable to the Building and Personal Property Coverage Form, Causes of Loss – Special Form, the Commercial Property Conditions and the General Liability Coverage Form.

## SCHEDULE

<u>Coverage Enhancements</u>	<u>Limits of Insurance Each Location</u>
<b><u>Property Coverage</u></b>	
Premises Boundary	1,000 feet
<b><u>Property Coverage Extensions</u></b>	
Newly Acquired or Constructed Property	
Buildings	\$500,000. at Each Building
Business Personal Property	\$250,000. at Each Building
Personal Effects and Property of Others	\$ 25,000. at Replacement Cost
Valuable Papers and Records (Other than Electronic Data)	\$ 25,000.
Property Off-Premises (Including Laptops and Other Electronic Equipment)	\$ 15,000.
Outdoor Property (Named Perils)	\$ 1,000. per tree/shrub, max. limit \$25,000.
Non-Owned Detached Trailers	\$ 10,000.
Accounts Receivable	\$ 50,000.
Property in Transit (Including Laptops and Other Electronic Equipment)	\$ 15,000.
Fine Arts	\$ 25,000.
<b><u>Property Additional Coverages</u></b>	
Debris Removal	\$ 25,000.
Fire Department Service Charge	\$ 5,000.
Pollutant Clean-up and Removal	\$ 15,000.
Electronic Data	\$ 25,000.
Interruption of Computer Operations	\$ 15,000.
Arson Reward	\$ 5,000.
Water Back-Up and Sump Overflow	\$ 25,000.
Brands and Labels	\$ 25,000.
Employee Theft	\$ 10,000.
Business Income Including Extra Expense	\$ 25,000.
Business Income from Dependent Properties	\$ 10,000.
Claims Expenses	\$ 10,000.
Inventory or Appraisal Cost	\$ 5,000.
Money and Securities	
Inside	\$ 10,000.
Outside	\$ 5,000.
Off Premises Power Failure – Direct Damage	\$ 10,000.
Ordinance or Law Coverage	
Coverage A	Included within Building Limit.
Coverages B and C Combined	25% of Bldg. Limit, \$150,000. maximum
Outdoor Signs	\$ 10,000.
Recharging of Fire Extinguishers	\$ 5,000.
Unauthorized Business Card Use	\$ 5,000.
Forgery or Alteration	\$ 10,000.
Salespersons Samples	\$ 2,500.

**Inland Marine Coverages**

Installation Coverage	\$ 10,000.
Contractors Equipment Coverages:	
Small Tools	\$ 5,000. (Maximum limit per item \$1,000)
Employee Small Tools	\$ 1,000. (Maximum limit per item \$250)
Leased and Rented Equipment	\$ 5,000.
Rental Reimbursement	\$ 1,000.

**General Liability Additional Coverages**

Blanket Additional Insured (Including Primary Non-Contributing Coverage)	Included in Each Occurrence Limit
Mobile Equipment Broadened Coverage	Included in Each Occurrence Limit
Aggregate Limit Per Project	Included in Each Occurrence Limit
Blanket Waiver	Included in Each Occurrence Limit
Voluntary Property Damage Coverage	\$ 2,500.

The following applies to coverages under this endorsement only.

**Property Coverage**

The phrase 'within 100 feet of the described premises' used in Paragraphs **a.(5)(b)**, **b.** and **c.(2)** under **A.1. Covered Property** of the **BUILDING AND PERSONAL PROPERTY COVERAGE FORM** and Paragraph **2.c.(1)** under **C. Limitations** of the **CAUSES OF LOSS – SPECIAL FORM** is replaced by the phrase 'within 1,000 feet of the described premises'.

**Property Coverage Extensions**

Paragraph **A.5. Coverage Extensions** of the **BUILDING AND PERSONAL PROPERTY COVERAGE FORM** is deleted in its entirety and replaced by the following:

**5. Coverage Extensions**

Except as otherwise provided, the following Extensions apply to property located in or on the building described in the Declarations or in the open (or in a vehicle) within 1,000 feet of the described premises.

If a Coinsurance percentage of 80% or more or, a Value Reporting period symbol, is shown in the Declarations, you may extend the insurance provided by this Coverage Part as follows:

**a. Newly Acquired Or Constructed Property****(1) Buildings**

If this policy covers Building, you may extend that insurance to apply to:

- (a)** Your new buildings while being built on the described premises; and
- (b)** Buildings you acquire at locations, other than the described premises, intended for:
  - (i)** Similar use as the building described in the Declarations; or
  - (ii)** Use as a warehouse.

The most we will pay for loss or damage under this Extension is \$500,000 at each building.

**(2) Your Business Personal Property**

**(a)** If this policy covers Your Business Personal Property, you may extend that insurance to apply to:

- (i)** Business personal property, including such property that you newly acquire, at any location you acquire, at any location you acquire other than at fairs, trade shows or exhibitions;
- (ii)** Business personal property, including such property that you newly acquire, located at your newly constructed or acquired buildings at the location described in the Declarations; or
- (iii)** Business personal property that you newly acquire, located at the described premises.

The most we will pay for loss or damage under this Extension is \$250,000 at each building.

**(b)** This Extension does not apply to:

- (i) Personal property of others that is temporarily in your possession in the course of installing or performing work on such property; or
- (ii) Personal property of others that is temporarily in your possession in the course of your manufacturing or wholesaling activities.

**(3) Period of Coverage**

With respect to insurance on or at each newly acquired or constructed property, coverage will end when any of the following first occurs:

- (a) This policy expires;
- (b) 30 days expire after you acquire or begin construction of that part of the building that would qualify as covered property; or
- (c) You report values to us.

We will charge you additional premium for values reported from the date you acquire the property or begin construction of that part of the building that would qualify as covered property.

**b. Personal Effects And Property Of Others**

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to:
  - (a) Personal effects owned by you, your officers, your partners or members, your managers or your employees.
  - (b) Personal property of others in your care, custody or control.
 This Extension does not apply to employee tools.
- (2) The most we will pay for loss or damage under this Extension is \$25,000 at each described premises. Our payment for loss of or damage to personal property of others will only be for the account of the owner of the property.
- (3) **Extension Of Replacement Cost To Personal Property Of Others**
  - (a) Replacement Cost coverage is extended to apply to personal property of others.
  - (b) Paragraphs 3.b.(1) and 4. under **G. Optional Coverages** of the **BUILDING AND PERSONAL PROPERTY COVERAGE FORM** are deleted and all other provisions of the Replacement Cost Optional Coverage apply to replacement cost on personal property of others.
  - (c) With respect to replacement cost on the personal property of others the following limitation applies:
 

If an item of personal property of others is subject to a written contract which governs your liability for loss or damage to that item, then valuation of that item will be based on the amount for which you are liable under such contract, but not to exceed the lesser of the replacement cost of the property or the applicable Limit of Insurance.

**c. Valuable Papers And Records (Other Than Electronic Data)**

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to direct physical loss or damage to valuable papers and records that you own, or that are in your care, custody or control, caused by or resulting from a Covered Cause of Loss. This Extension includes the cost to research lost information on valuable papers and records for which duplicates do not exist. But this Extension does not apply to valuable papers and records which exist as electronic data. Electronic data has the meaning described under Property Not Covered, Electronic Data.
- (2) Coverage under this Extension is limited to the "specified causes of loss" as defined in the **CAUSES OF LOSS – SPECIAL FORM**, and Collapse as set forth in that form.
- (3) This Extension does not apply to:
  - (a) Property held as samples or for delivery after sale;
  - (b) Property in storage away from the premises shown in the Declarations.
- (4) Section **B. Exclusions** in the **CAUSES OF LOSS – SPECIAL FORM** does not apply to this Extension, except for:
  - (a) Paragraph **B.1.c.** Governmental Action;
  - (b) Paragraph **B.1.d.** Nuclear Hazard;
  - (c) Paragraph **B.1.f.** War And Military Action;
  - (d) Paragraph **B.2.f.**;
  - (e) Paragraph **B.2.g.**; and
  - (f) Paragraph **B.3.**
- (5) The most we will pay under this Extension for loss or damage to valuable papers and records in any one occurrence at each described premises is \$25,000.

For valuable papers and records not at a described premises, the most we will pay is \$5,000 in any one occurrence.

Such amounts are additional insurance. We will also pay for the cost of blank material for reproducing the records (whether or not duplicates exist), and (when there is a duplicate) for the cost of labor to transcribe or copy the records. The costs of blank material and labor are subject to the applicable Limit of Insurance on Your Business Personal Property and therefore coverage of such costs is not additional insurance.

**d. Property Off-Premises (Including Laptops And Other Electronic Equipment)**

- (1) You may extend the insurance provided by this Coverage Form to apply to your Covered Property while it is away from the described premises, if it is:
  - (a) Temporarily at a location you do not own, lease or operate;
  - (b) In storage at a location you lease, provided the lease was executed after the beginning of the current policy term; or
  - (c) At any fair, trade show or exhibition.
- (2) This Extension does not apply to property:
  - (a) In or on a vehicle; or
  - (b) In the care, custody or control of your salespersons, unless the property is in such care, custody or control at a fair, trade show or exhibition.
- (3) The most we will pay for loss or damage under this Extension is \$15,000.

**e. Outdoor Property (Named Perils)**

You may extend the insurance provided by this Coverage Form to apply to your outdoor fences, retaining walls (other than retaining walls that are a part of a building), radio and television antennas (including satellite dishes), signs (other than signs attached to buildings), trees, shrubs and plants (other than "stock" of trees, shrubs or plants), including debris removal expense, caused by or resulting from any of the following causes of loss if they are Covered Causes of Loss:

- (1) Fire;
- (2) Lightning;
- (3) Explosion;
- (4) Vandalism;
- (5) Vehicle Damage;
- (6) Riot or Civil Commotion; or
- (7) Aircraft.

The most we will pay for loss or damage under this Extension is \$25,000, but not more than \$1,000 for any one tree, shrub or plant. These limits apply to any one occurrence, regardless of the types or number of items lost or damaged in that occurrence.

**f. Non-Owned Detached Trailers**

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to loss or damage to trailers that you do not own, provided that:
  - (a) The trailer is used in your business;
  - (b) The trailer is in your care, custody or control at the premises described in the Declarations; and
  - (c) You have a contractual responsibility to pay for loss or damage to the trailer.
- (2) We will not pay for any loss or damage that occurs:
  - (a) While the trailer is attached to any motor vehicle or motorized conveyance, whether or not the motor vehicle or motorized conveyance is in motion;
  - (b) During hitching or unhitching operations, or when a trailer becomes accidentally unhitched from a motor vehicle or motorized conveyance.
- (3) The most we will pay for loss or damage under this Extension is \$10,000, unless a higher limit is shown in the Declarations.
- (4) This insurance is excess over the amount due (whether you can collect on it or not) from any other insurance covering such property.

**g. Accounts Receivable**

- (1) You may extend the insurance that applies to Your Business Personal Property to accounts receivable. We will pay:

- (a) All amounts due from your customers that you are unable to collect;
  - (b) Interest charges on any loan required to offset amounts you are unable to collect pending our payment of these amounts;
  - (c) Collection expenses in excess of your normal collection expenses that are made necessary by "loss"; and
  - (d) Other reasonable expenses that you incur to re-establish your records of accounts receivable; that result from direct physical loss or damage by any Covered Cause of Loss to your records of accounts receivable.
- (2) The most we will pay under this Extension for loss or damage in any one occurrence at each described "premises" is \$50,000.
- (3) Section **B.Exclusions** in the **CAUSES OF LOSS – SPECIAL FORM** does not apply to this Extension, except for:
- (a) Paragraph **B.1.c.** Governmental Action;
  - (b) Paragraph **B.1.d.** Nuclear Hazard;
  - (c) Paragraph **B.1.f.** War And Military Action;
  - (d) Paragraph **B.2.f.**;
  - (e) Paragraph **B.2.g.**; and
  - (f) Paragraph **B.3.**
- (4) The following additional exclusion applies to the Extension:
- We will not pay for:
- (a) Loss or damage caused by or resulting from alteration, falsification, concealment or destruction of records of accounts receivable done to conceal the wrongful giving, taking or withholding of "money," "securities" or other property.  
This exclusion applies only to the extent of the wrongful giving, taking or withholding.
  - (b) Loss or damage caused by or resulting from bookkeeping, accounting or billing errors or omissions.
  - (c) Any loss or damage that requires any audit of records or any inventory computation to prove its factual existence.

#### **h. Property In Transit (Including Laptops And Other Electronic Equipment)**

**F.1.** under **Additional Coverage Extensions** of the **CAUSES OF LOSS – SPECIAL FORM** is deleted and replaced with the following:

##### **1. Property In Transit (Including Laptops And Other Electronic Equipment)**

This Extension applies only to your personal property to which this form applies.

- a. You may extend the insurance provided by this Coverage Part to apply to your personal property (other than property in the care, custody or control of your salespersons) in transit more than 1,000 feet from the described premises. Property must be in or on a motor vehicle you own, lease or operate while between points in the coverage territory.
- b. Loss or damage must be caused by or result from one the following causes of loss:
  - (1) Fire, lightning, explosion, windstorm or hail, riot or civil commotion, or vandalism.
  - (2) Vehicle collision, upset or overturn. Collision means accidental contact of your vehicle with another vehicle or object. It does not mean your vehicle's contact with the road bed.
  - (3) Theft of an entire bale, case or package by forced entry into a securely locked body or compartment of the vehicle. There must be visible marks of the forced entry.
- c. The most we will pay for loss or damage under this Extension is \$15,000.

#### **i. Fine Arts**

- (1) You may extend the insurance that applies to Your Business Personal Property to cover "fine arts" owned by you and located on the premises described in the Declarations
- (2) In addition to the exclusions in **CAUSES OF LOSS – SPECIAL FORM** we will not pay for loss or damage caused by or resulting from repairing, restoration, or retouching processes.
- (3) In the event of loss or damage, we will pay the actual cash value of the item. The actual cash value will be the price you paid for the item, or the value as determined by an appraisal of the item not more than 360 days prior to the date of loss or damage. In no event will the actual cash value exceed the amount necessary to repair or replace the item with substantially like property.

(4) The most we will pay for "fine arts" at any premises described in the Declarations is \$25,000.

Each of these Extensions is additional insurance unless otherwise indicated. The Additional Condition, Coinsurance, does not apply to these Extensions.

---

## Property Additional Coverages

---

The following are Additional Coverages. The Additional Condition, Coinsurance, does not apply to these coverages.

### A. Debris Removal

A.4.a. of the **BUILDING AND PERSONAL PROPERTY COVERAGE FORM** is deleted and replaced as follows:

#### a. Debris Removal

- (1) Subject to Paragraphs (3) and (4), we will pay your expense to remove debris of Covered Property caused by or resulting from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.
- (2) Debris Removal does not apply to costs to:
  - (a) Extract "pollutants" from land or water; or
  - (b) Remove, restore or replace polluted land or water.
- (3) Subject to the exceptions in Paragraph (4), the following provisions apply:
  - (a) The most we will pay for the total of direct physical loss or damage plus debris removal expense is the Limit of Insurance applicable to the Covered Property that has sustained loss or damage.
  - (b) Subject to (a) above, the amount we will pay for debris removal expense is limited to 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.
- (4) We will pay up to an additional \$25,000 for debris removal expense, for each location, in any one occurrence of physical loss or damage to Covered Property, if one or both of the following circumstances apply:
  - (a) The total of the actual debris removal expense plus the amount we pay for direct physical loss or damage exceeds the Limit of Insurance on the Covered Property that has sustained loss or damage.
  - (b) The actual debris removal expense exceeds 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.

Therefore, if (4)(a) and/or (4)(b) apply, our total payment for direct physical loss or damage and debris removal expense may reach but will never exceed the Limit of Insurance on the Covered Property that has sustained loss or damage, plus \$25,000.

#### (5) Examples

##### Example #1

Limit of Insurance	\$ 90,000
Amount of Deductible	\$ 500
Amount of Loss	\$ 50,000
Amount of Loss Payable	\$ 49,500
	(\$50,000 – \$500)
Debris Removal Expense	\$ 10,000
Debris Removal Expense Payable	\$ 10,000
	(\$10,000 is 20% of \$50,000)

The debris removal expense is less than 25% of the sum of the loss payable plus the deductible. The sum of the loss payable and the debris removal expense (\$49,500 + \$10,000 = \$59,500) is less than the Limit of Insurance. Therefore, the full amount of debris removal expense is payable in accordance with the terms of Paragraph (3).

##### Example #2

Limit of Insurance	\$ 90,000
Amount of Deductible	\$ 500
Amount of Loss	\$ 80,000
Amount of Loss Payable	\$ 79,500
	(\$80,000 – \$500)
Debris Removal Expense	\$ 35,500

Debris Removal Expense  
Payable

Basic Amount	\$ 10,500
Additional Amount	\$ 25,000

The basic amount payable for debris removal expense under the terms of Paragraph (3) is calculated as follows: \$80,000 (\$79,500 + \$500) x .25 = \$20,000; capped at \$10,500). The cap applies because the sum of the loss payable (\$79,500) and the basic amount payable for debris removal expense (\$10,500) cannot exceed the Limit of Insurance (\$90,000).

The additional amount payable for debris removal expense is provided in accordance with the terms of Paragraph (4), because the debris removal expense (\$35,500) exceeds 25% of the loss payable plus the deductible (\$35,500 is 44.375% of \$80,000), and because the sum of the loss payable and debris removal expense (\$79,500 + \$35,500 = \$115,000) would exceed the Limit of Insurance (\$90,000). The additional amount of covered debris removal expense is \$25,000, the maximum payable under Paragraph (4). Thus the total payable for debris removal expense in this example is \$35,500.

## B. Fire Department Service Charge

**A.4.c.** of the **BUILDING AND PERSONAL PROPERTY COVERAGE FORM** is deleted and replaced as follows:

### c. Fire Department Service Charge

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to \$5,000 for your liability for fire department service charges:

- (1) Assumed by contract or agreement prior to loss; or
- (2) Required by local ordinance.

No Deductible applies to this Additional Coverage.

## C. Pollutant Clean-up And Removal

**A.4.d.** of the **BUILDING AND PERSONAL PROPERTY COVERAGE FORM** is deleted and replaced as follows:

### d. Pollutant Clean-up And Removal

We will pay your expense to extract "pollutants" from land or water at the described premises if the discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date on which the Covered Cause of Loss occurs.

This Additional Coverage does not apply to costs to test for, monitor or assess the existence, concentration or effects of "pollutants". But we will pay for testing which is performed in the course of extracting the "pollutants" from the land or water.

The most we will pay under this Additional Coverage for each described premises is \$15,000 for the sum of all covered expenses arising out of Covered Causes of Loss occurring during each separate 12 month period of this policy.

## D. Electronic Data

**A.4.f.** of the **BUILDING AND PERSONAL PROPERTY COVERAGE FORM** is deleted and replaced as follows:

### f. Electronic Data

- (1) Under this Additional Coverage, electronic data has the meaning described under Property Not Covered, Electronic Data.
- (2) Subject to the provisions of this Additional Coverage, we will pay for the cost to replace or restore electronic data, which has been destroyed or corrupted by a Covered Cause of Loss. To the extent that electronic data is not replaced or restored, the loss will be valued at the cost of replacement of the media on which the electronic data was stored, with blank media of substantially identical type.
- (3) In addition to the "specified causes of loss" as defined in the **CAUSES OF LOSS – SPECIAL FORM**, and Collapse as set forth in that form, the following are covered causes of loss:
  - (a) A virus, harmful code or similar instruction introduced into or enacted on a computer system (including electronic data) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for loss or damage caused by or resulting from manipulation of a computer system (including electronic data) by any employee, including a temporary or leased employee, or by an entity retained by you or for you to inspect, design, install, modify, maintain, repair or replace that system.
  - (b) Changes in your electrical power supply, including interruption, power surge, blackout or brownout, if the cause of such event originates 100 feet or less from any premises described in the Declarations;
  - (c) Dishonest acts committed by your employees acting alone or in collusion with other persons, except you or your partners, directors or trustees, but theft by employees is not covered;

- (d) Dampness or dryness of atmosphere or changes in or extremes of temperature;
  - (e) Floods, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not; and
  - (f) Earth movement, such as an earthquake, landslide or earth sinking, rising or shifting.
- (4) The most we will pay under this **Additional Coverage – Electronic Data** is \$25,000 for all loss or damage sustained in any one policy year, regardless of the number of occurrences of loss or damage or the number of premises, locations or computer systems involved.

#### E. Interruption Of Computer Operations

We will pay your necessary "Extra Expense" to continue normal operations caused by an interruption in computer operations due to destruction or corruption of your electronic data due to a Covered Cause of Loss.

We will also pay for your actual "Business Income" if you must close all or part of your business due to destruction or corruption of your electronic data due to a Covered Cause of Loss.

The most we will pay under this coverage is \$15,000 for any one occurrence.

Under this **Additional Coverage – Interruption Of Computer Operations**, electronic data has the meaning set forth in Paragraph 5. **Limitation – Interruption of Computer Operations** included in **Additional Coverage – Business Income Including Extra Expense** of this form.

#### F. Arson Reward

We will reimburse you for an arson reward that you give to someone who discloses information that leads to the conviction of a person or persons for arson at the premises described in the Declarations.

The most we will pay under this coverage is \$5,000 each occurrence.

#### G. Water Back-Up And Sump Overflow

1. We will pay for direct physical loss or damage to Covered Property caused by or resulting from:
  - a. Water which backs up through or overflows from a sewer or drain; or
  - b. Water which overflows from a sump, even if the overflow results from mechanical breakdown of a sump pump or its related equipment.

However, with respect to Paragraph b. above, we will not pay the cost of repairing or replacing a sump pump or its related equipment in the event of mechanical breakdown.
2. The coverage described in Paragraph 1. above does not apply to loss or damage resulting from an insured's failure to:
  - a. Keep a sump pump or its related equipment in proper working condition; or
  - b. Perform the routine maintenance or repair necessary to keep a sewer or drain free from obstructions.
3. The most we will pay under this coverage is \$25,000 each occurrence.
4. With respect to the coverage provided in this **Additional Coverage – Water Back-Up and Sump Overflow**, Paragraph 3. of the **Water Exclusion** included in this Policy does not apply.

#### H. Brands And Labels

If branded or labeled merchandise that is Covered Property is damaged by a Covered Cause of Loss, we may take all or part of the property at an agreed or appraised value. If so, you may:

1. Stamp the word 'Salvage' on the merchandise or its containers, if the stamp will not physically damage the merchandise; or
2. Remove the brands and labels, if doing so will not physically damage the merchandise or its containers to comply with the law.

We will pay reasonable costs you incur to perform the activity described in Paragraphs 1. and 2. above. The most we will pay for these costs and the value of the damaged property under this Additional Coverage is \$25,000.

Payments under this Additional Coverage are subject to and not in addition to the Limits of Insurance.

#### I. Employee Theft

1. We will pay for direct loss of or damage to Your Business Personal Property and your "money" and "securities" resulting from "theft" committed by any of your "employees" acting alone or in collusion with other persons (except you or your partners, members or managers) with the manifest intent to:
  - a. Cause you to sustain loss or damage; and also
  - b. Obtain financial benefit (other than salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions or other employee benefits earned in the normal course of employment) for:
    - (1) Any "employee"; or
    - (2) Any other person or organization.

2. We will not pay for loss or damage:
  - a. Resulting from any dishonest or criminal act that you or any of your partners, members, officers, "managers," directors, trustees, authorized representatives or anyone to whom you entrust the property for any purpose commit, whether acting alone or in collusion with other persons; or
  - b. The only proof of which as to its existence or amount is one or both of the following:
    - (1) An inventory computation; or
    - (2) A profit and loss computation.
3. The most we will pay under this Additional Coverage for loss or damage in any one occurrence is \$10,000.
4. All loss or damage:
  - a. Caused by one or more "employees"; and
  - b. Involving a single act or series of related acts; is considered one occurrence.
5. We will pay only for loss or damage you sustain through acts committed or events occurring during the policy period. Regardless of the number of years this policy remains in force or the number of premiums paid, no Limit of Insurance cumulates from year to year or period to period.
6. This Additional Coverage does not apply to loss caused by an "employee" after discovery by:
  - a. You; or
  - b. Any of your partners, officers or directors, or members or "managers" not in collusion with the "employee"; of any "theft" or any other dishonest act committed by that "employee" before or after being hired by you.
7. **Extended Period To Discover Loss**
  - a. We will pay for loss that you sustained prior to the effective date of termination or cancellation of this policy, which is discovered by you no later than 1 year from the date of that termination or cancellation.
  - b. However, this extended period to discover loss terminates immediately upon the effective date of any other insurance obtained by you replacing in whole or in part the insurance afforded by this policy, whether or not such other insurance provides coverage for loss sustained prior to its effective date.
8. If you discover a loss or damage during the policy period that you (or any predecessor in interest) sustained during the period of any prior insurance that you could have recovered under that insurance except that the time within which to discover loss or damage had expired, we will pay for it under this Additional Coverage, provided:
  - a. This Additional Coverage became effective at the time of cancellation or termination of the prior insurance; and
  - b. The loss or damage would have been covered by this Additional Coverage had it been in effect when the acts or events causing the loss or damage were committed or occurred.
9. The insurance under Paragraph 8. above is provided within, and not in addition to, the Limit of Insurance applying to this Additional Coverage and is limited to the lesser of the amount recoverable under:
  - a. This Additional Coverage as of its effective date; or
  - b. The prior insurance, had it remained in effect.
10. None of the exclusions in Section **B. Exclusions** of the **CAUSES OF LOSS – SPECIAL FORM** apply to Employee Theft Coverage provided under this endorsement except:
  - a. **B.1.c. Governmental Action;**
  - b. **B.1.d. Nuclear Hazard;** and
  - c. **B.1.f. War And Military Action.**
11. We will not pay for loss as specified below:
  - a. **Acts Committed by You or Your Partners**  
Loss resulting from any dishonest or criminal act committed by your or any of your partners whether acting alone or in collusion with other persons.
  - b. **Indirect Loss**  
Loss that is an indirect result of any act or occurrence covered by this insurance including, but not limited to, loss resulting from:
    - (1) Your inability to realize income that you would have realized had there been no loss of, or loss from damage to "money" and "securities".
    - (2) Payment of damages of any type for which you are legally liable. But, we will pay compensatory damages arising directly from a loss covered under this Additional Coverage.

- (3) Payment of costs, fees or other expenses you incur in establishing either the existence or the amount of loss under this Additional Coverage.

**c. Legal Expenses**

Expenses related to any legal action.

**12. Ownership Of Property; Interests Covered**

The property covered under this Additional Coverage is limited to property:

- a. That you own or lease;
- b. That you hold for others; or
- c. For which you are legally liable, except for property inside the premises of a "client" of yours.

However, this coverage is for your benefit only. It provides no rights or benefits to any other person or organization. Any claim for loss that is covered under this coverage must be presented by you.

**13. Valuation – Settlement**

Subject to the Limit of Insurance, we will pay for:

- a. Loss of "money" but only up to and including its face value. We may, at our option, pay for loss of "money" issued by any country other than the United States of America:
  - (1) At face value in the "money" issued by that country; or
  - (2) In the United States of America dollar equivalent determined by the rate of exchange published in The Wall Street Journal on the day the loss was discovered.
- b. Loss of "securities" but only up to and including their value at the close of business on the day that loss was discovered. We may, at our option:
  - (1) Pay the value of such "securities" or replace them in kind, in which event you must assign to us all your rights, title and interest in and to those "securities";
  - (2) Pay the cost of any Lost Securities Bond required in connection with issuing duplicates of the "securities." However, we will be liable only for the payment of so much of the cost of the bond as would be charged for a bond having a penalty not exceeding the lesser of the:
    - (a) Value of the "securities" at the close of business on the day the loss was discovered; or
    - (b) Limit of Insurance.

**J. Business Income Including Extra Expense**

**1. Coverage**

**a. Business Income**

Business Income means the:

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

For manufacturing risks, Net Income includes the net sales value of production.

Business Income includes "Rental Value."

We will pay the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration." The "suspension" must be caused by direct physical loss of or damage to property at the premises described in the Declarations, including personal property in the open (or in a vehicle) within 1,000 feet, caused by or resulting from any Covered Cause of Loss.

**b. Extra Expense**

Extra Expense means necessary expenses you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to property caused by or resulting from a Covered Cause of Loss.

We will pay Extra Expense (other than the expenses to repair or replace property) to:

- (1) Avoid or minimize the "suspension" of business and to continue operations at the premises described in the Declarations or at replacement premises or temporary locations, including relocation expenses and costs to equip and operate the replacement location or temporary location;
- (2) Minimize the "suspension" of business if you cannot continue "operations."

We will pay Extra Expense to repair or replace property, but only to the extent it reduces the amount of loss that otherwise would have been payable under this Additional Coverage.

## 2. Additional Coverages

### a. Alterations And New Buildings

We will pay for the actual loss of Business Income you sustain and necessary Extra Expense you incur due to direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss to:

- (1) New buildings or structures, whether complete or under construction;
- (2) Alterations or additions to existing buildings or structures; and
- (3) Machinery, equipment, supplies or building materials located on or within 1,000 feet of the described premises and:
  - (a) Used in the construction, alterations or additions; or
  - (b) Incidental to the occupancy of new buildings.

If such direct physical loss or damage delays the start of "operations," the "period of restoration" for Business Income Coverage will begin on the date "operations" would have begun if the direct physical loss or damage had not occurred.

### b. Civil Authority

When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises, provided both of the following apply:

- (1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and
- (2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

Civil Authority Coverage for Business Income will begin 72 hours after the time of the first action of civil authority that prohibits access to the described premises and will apply for a period of up to four consecutive weeks from the date on which such coverage began.

Civil Authority for Extra Expense will begin immediately after the time of the first action of civil authority that prohibits access to the described premises and will end:

- (1) Four consecutive weeks after the date of that action; or
  - (2) When Civil Authority for Business Income ends;
- whichever is later.

### c. Extended Business Income

#### (1) Business Income Other Than "Rental Value"

If the necessary "suspension" of your "operations" produces a Business Income loss payable under this additional coverage, we will pay for the actual loss of Business Income you incur during the period that:

- (a) Begins on the date property (except "finished stock") is actually repaired, rebuilt or replaced and "operations" are resumed; and
- (b) Ends on the earlier of:
  - (i) The date you could restore your "operations," with reasonable speed, to the level which would generate the "business income" amount that would have existed if no direct physical loss or damage had occurred; or
  - (ii) 30 consecutive days after the date determined in (1)(a) above.

However, Extended Business Income does not apply to loss of Business Income incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premises are located.

Loss of Business Income must be caused by direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss.

#### (2) "Rental Value"

If the necessary "suspension" of your "operations" produces a "Rental Value" loss payable under this additional coverage, we will pay for the actual loss of "Rental Value" you incur during the period that:

- (a) Begins on the date property is actually repaired, rebuilt or replaced and tenantability is restored; and

**(b) Ends on the earlier of:**

- (i)** The date you could restore tenant occupancy, with reasonable speed, to the level which would generate the "Rental Value" that would have existed if no direct physical loss or damage had occurred; or
- (ii)** 30 consecutive days after the date determined in **(2)(a)** above.

However, Extended Business Income does not apply to loss of "Rental Value" incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premises are located.

Loss of "Rental Value" must be caused by direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss.

**3. Limits of Insurance**

The most we will pay for loss under this **Additional Coverage - Business Income Including Extra Expense** in any one occurrence is \$25,000.

Payments under the following additional coverages will not increase the applicable Limit of Insurance:

- a.** Alterations and New Buildings;
- b.** Civil Authority; or
- c.** Extended Business Income.

**4. Valuation**

The following is added to **E.7. Valuation** of the **BUILDING AND PERSONAL PROPERTY COVERAGE FORM**:

**g.** The amount of Business Income loss will be determined based on:

- (1)** The Net Income of the business before the direct physical loss or damage occurred;
- (2)** The likely Net Income of the business if no loss or damage occurred, but not including any Net Income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the Covered Cause of Loss on customers or on other businesses;
- (3)** The operating expenses, including payroll expenses, necessary to resume "operations" with the same quality of service that existed just before the direct physical loss or damage; and
- (4)** Other relevant sources of information, including:
  - (a)** Your financial records and accounting procedures;
  - (b)** Bills, invoices and other vouchers; and
  - (b)** Deeds, liens or contracts.

**h.** The amount of Extra Expense will be determined based on:

- (1)** All expenses that exceed the normal operating expenses that would have been incurred by "operations" during the "period of restoration" if no direct physical loss or damage had occurred. We will deduct from the total of such expenses:
  - (a)** The salvage value that remains of any property bought for temporary use during the "period of restoration" once "operations" are resumed; and
  - (b)** Any Extra Expense that is paid for by other insurance, except for insurance that is written subject to the same plan, terms, conditions and provisions as this insurance; and
- (2)** Necessary expenses that reduce the Business Income loss that otherwise would have been incurred.

**i. Loss Payment**

We will pay for covered loss within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this Additional Coverage and:

- (1)** We have reached an agreement with you on the amount of loss; or
- (2)** An appraisal award has been made.

**j. Resumption of Operations**

We will reduce the amount of your:

- (1)** Business Income loss, other than Extra Expense, to the extent you can resume your "operations," in whole or in part, by using damaged or undamaged property (including merchandise or stock) at the described premises or elsewhere.
- (2)** Extra Expense loss to the extent you can return "operations" to normal and discontinue such Extra Expense. If you do not resume "operations," or do not resume "operations" as quickly as possible, we will pay based on the length of time it would have taken to resume "operations" as quickly as possible.

## 5. Limitation – Interruption of Computer Operations

- a. Coverage for Business Income does not apply when action is taken to avoid or minimize a “suspension” of “operations” caused by destruction or corruption of electronic data, or any loss or damage to electronic data, except as provided under the **Additional Coverage – Interruption Of Computer Operations**.
- b. Coverage for Extra Expense does not apply when action is taken to avoid or minimize a “suspension” of “operations” caused by destruction or corruption of electronic data, or any loss or damage to electronic data, except as provided under the **Additional Coverage – Interruption Of Computer Operations**.
- c. Electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data.

## K. Business Income From Dependent Properties

1. We will pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the coverage period. The "suspension" must be caused by direct physical loss of or damage at the premises of a dependent property caused by or resulting from a Covered Cause of Loss.

However, this Additional Coverage does not apply when the only loss to dependent property is loss or damage to electronic data, including destruction or corruption of electronic data. If the dependent property sustains loss or damage to electronic data and other property, coverage under this Additional Coverage will not continue once the other property is repaired, rebuilt or replaced. Electronic data has the meaning set forth in Paragraph 5. **Limitation – Interruption of Computer Operations** included in **Additional Coverage – Business Income Including Extra Expense** of this form.

The most we will pay under this Additional Coverage is \$10,000 in any one occurrence.

2. We will reduce the amount of your Business Income loss, other than Extra Expense, to the extent you can resume "operations," in whole or in part, by using any other available:
  - a. Source of materials; or
  - b. Outlet for your products.
3. If you do not resume “operations,” or do not resume “operations” as quickly as possible, we will pay based on the length of time it would have taken to resume “operations” as quickly as possible.
4. Business Income, as it pertains to this **Additional Coverage – Business Income From Dependent Properties**, means:
  - a. Net income (net profit or loss before income taxes) that would have been earned or incurred if no physical loss or damage had occurred, but not including any net income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the Covered Cause of Loss; and
  - b. Continuing normal operating expenses incurred, including ordinary payroll.

5. Dependent property means property operated by others whom you depend on to:

- a. Deliver materials or services to you, or to others for your account. But services does not mean water, communication or power supply services;
- b. Accept your products or services;
- c. Manufacture your products for delivery to your customers under contract for sale; or
- d. Attract customers to your business.

The dependent property must be located in the coverage territory of this policy.

6. The coverage period for Business Income under this Additional Coverage:
  - a. Begins 72 hours after the time of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at the premises of the dependent property; and
  - b. Ends on the date when the property at the premises of the dependent property should be repaired, rebuilt or replaced with reasonable speed and similar quality.
7. The Business Income coverage period, as stated in Paragraph 6., does not include any increased period required due to the enforcement of any ordinance or law that:
  - a. Regulates the construction, use or repair, or requires the tearing down, of any property; or
  - b. Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of "pollutants".

The expiration date of this policy will not reduce the Business Income coverage period.

**L. Claims Expenses**

In the event of covered loss or physical damage we will pay up to \$10,000 in any one occurrence as an additional Limit of Insurance to cover reasonable expenses incurred by you at our specific request to assist us in:

1. The investigation of a claim or suit; or
2. The determination of the amount of loss, such as taking inventory, or auditing business records.

**M. Inventory Or Appraisal Cost**

We will pay up to \$5,000 each occurrence for the cost of any inventory or appraisal required as a result of direct physical loss or damage to covered property caused by or resulting from a Covered Cause of Loss.

**N. Money And Securities**

1. We will pay for loss of "money" and "securities" used in your business caused by "theft," disappearance or destruction. The most we will pay for loss in any one "occurrence" under this coverage is:

- a. \$10,000 for "money" and "securities" while inside the "premises" or a "banking premises."
- b. \$5,000 for "money" and "securities" while in the care and custody of a "messenger."

2. **Additional Exclusions Applicable to Money And Securities**

We will not pay for loss as specified below:

- a. Loss resulting from accounting or arithmetical errors or omissions;
- b. Loss resulting from the giving or surrendering of property in any exchange or purchase.
- a. Loss of property contained in any money operated device unless the amount of "money" deposited in it is recorded by a continuous recording instrument in the device.
- d. Loss resulting from any dishonest or criminal act committed by any of your "employees," directors, trustees or authorized representatives:
  - (1) Acting alone or in collusion with other persons; or
  - (2) While performing services for you or otherwise.
- e. Loss of property after it has been transferred or surrendered to a person or place outside the "premises" or "banking premises."
  - (1) On the basis of unauthorized instructions; or
  - (2) As a result of a threat to do:
    - (a) Bodily harm to any person; or
    - (b) Damage to any property.
  - (3) But, this exclusion does not apply to loss of "money" and "securities" while outside the "premises" or "banking premises" in the care and custody of a "messenger" if you:
    - (a) Had no knowledge of any threat at the time the conveyance began; or
    - (b) Had knowledge of a threat at the time the conveyance began, but the loss was not related to the threat.
- f. Loss resulting from your, or anyone acting on your express or implied authority, being induced by any dishonest act to voluntarily part with title to or possession of any property.

3. **Additional Conditions**

- a. The reference to "money" and "securities" in Subparagraph **A.2.a. Property Not Covered** of the **BUILDING AND PERSONAL PROPERTY COVERAGE FORM** does not apply to the coverage provided by this form.
- b. You must keep records of all "money" and "securities" so we can verify the amount of loss or damage.

**O. Off Premises Power Failure – Direct Damage**

1. With respect to coverage provided in this **Additional Coverage – Off Premises Power Failure – Direct Damage**, Exclusion **B.1.e.** of the **CAUSES OF LOSS – SPECIAL FORM** is deleted in its entirety and replaced as follows:

- e. **Utility Services**

The failure of utility service (other than Power Supply Service) supplied to the described premises, however caused, if the failure occurs away from the described premises. Failure includes lack of sufficient capacity and reduction in supply.

But if the failure of utility service results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

This exclusion does not apply to the Business Income coverage or to Extra Expense coverage. Instead, the Special Exclusion in Paragraph **B.4.a.(1)** applies to these coverages.

2. The following Additional Coverage is added:

**Off Premises Power Failure – Direct Damage**

- a. We will pay for loss of or damage to Covered Property caused by an interruption in Power Supply Service to the described premises. The interruption in Power Supply Service must result from direct physical loss or damage by a Covered Cause of Loss to property that is located off the described premises.
- b. Coverage under this Additional Coverage does not apply to loss or damage to electronic data, including destruction or corruption of electronic data. The term electronic data has the meaning set forth in Paragraph 5. **Limitation – Interruption of Computer Operations** included in **Additional Coverage – Business Income Including Extra Expense** of this form.
- c. Power Supply Service means the following types of property supplying electricity, steam or gas to the described premises:
  - (1) Utility generating plants;
  - (2) Switching stations;
  - (3) Substations;
  - (4) Transformers; and
  - (5) Transmission lines, including overhead transmission lines.
- d. The most we will pay for any one occurrence is \$10,000.

**P. Ordinance Or Law Coverage**

Exclusion **B.1.a. Ordinance Or Law** of the **CAUSES OF LOSS – SPECIAL FORM** is deleted and the following coverage applies:

- 1. Ordinance or Law Coverage applies only if the following is satisfied.
  - a. The ordinance or law:
    - (1) Regulates the demolition, construction or repair of buildings, or establishes zoning or land use requirements at the described premises; and
    - (2) Is in force at the time of loss.

But coverage under this endorsement applies only in response to the minimum requirements of the ordinance or law. Losses and costs incurred in complying with recommended actions or standards that exceed actual requirements are not covered under this endorsement.
  - b. (1) The building sustains direct physical damage that is covered under this policy and such damage results in enforcement of the ordinance or law; or
  - (2) The building sustains both direct physical damage that is covered under this policy and direct physical damage that is not covered under this policy, and the building damage in its entirety results in enforcement of the ordinance or law.
  - (3) But if the building sustains direct physical damage that is not covered under this policy, and such damage is the subject of the ordinance or law, then there is no coverage under this additional coverage even if the building has also sustained covered direct physical damage.
  - c. In the situation described in **1.b.(2)** above, we will not pay the full amount of loss otherwise payable under the terms of **Coverage A** and/or **Coverage B and C Combined** of this additional coverage. Instead, we will pay a proportion of such loss; meaning the proportion that the covered direct physical damage bears to the total direct physical damage.

However, if the covered direct physical damage, alone, would have resulted in enforcement of the ordinance or law, then we will pay the full amount of loss otherwise payable under the terms of **Coverages A** and/or **B and C Combined** of this endorsement.
- 2. Under this coverage, we will not pay for loss due to any ordinance or law that:
  - a. You were required to comply with before the loss, even if the building was undamaged; and
  - b. You failed to comply with.
- 3. Under this coverage, we will not pay for:
  - a. Enforcement of any ordinance or law which requires the demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by “pollutants” or due to the presence, growth, proliferation, spread or any activity of “fungus,” wet or dry rot or bacteria; or
  - b. The costs associated with the enforcement of any ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of “pollutants,” “fungus,” wet or dry rot or bacteria.

#### 4. Coverage A: Coverage for Loss to the Undamaged Portion of the Building

- a. If a Covered Cause of Loss occurs to covered building property at the premises described in the Declarations, we will pay for the loss in value of the undamaged portion of the building as a consequence of enforcement of an ordinance or law that requires demolition of undamaged parts of the same building.
- b. **Coverage A** is included within the Limit of Insurance applicable to the covered building property at the premises described in the Declarations. **Coverage A** does not increase the Limit of Insurance.
- c. Loss will be determined as follows:
  - (1) If the Replacement Cost Coverage Option applies and the property is repaired or replaced, on the same premises or another premises, we will not pay more than the lesser of:
    - (a) The amount you actually spend to repair, rebuild or reconstruct the building, but not for more than the amount it would cost to restore the building on the same premises and to the same height, floor area, style and comparable quality of the original property insured; or
    - (b) The Limit of Insurance shown in the Declarations as applicable to the covered building property.
  - (2) If the Replacement Cost Coverage Option applies and the property is **not** repaired or replaced, or if the Replacement Cost Coverage Option does **not** apply, we will not pay more than the lesser of:
    - (a) The actual cash value of the building at the time of loss; or
    - (b) The Limit of Insurance shown in the Declarations as applicable to the covered building property.

#### 5. Coverages B: Demolition Cost and C: Increased Cost of Construction (Combined)

If a Covered Cause of Loss occurs to covered building property, we will pay up to 25 percent (25%) of the Limit of Insurance applicable to building property at the premises described in the Declarations, subject to a maximum limit of \$150,000, for the total of all covered losses (combined) for Demolition Cost and Increased Cost of Construction. Subject to these limits of coverage, the following conditions will apply:

##### a. Demolition Cost

- (1) With respect to the building that has sustained covered direct physical damage, we will pay the cost to demolish and clear the site of undamaged parts of the same building, as a consequence of enforcement of an ordinance or law that requires demolition of such undamaged property.
- (2) The Coinsurance Additional Condition does not apply to Demolition Cost.
- (3) We will not pay more than the amount you actually spend to demolish and clear the site of the premises described in the Declarations.

##### b. Increased Cost of Construction

- (1) With respect to the building that has sustained covered direct physical damage, we will pay the increased cost to:
  - (a) Repair or reconstruct damaged portions of that building property; and/or
  - (b) Reconstruct or remodel undamaged portions of that building property, whether or not demolition is required; when the increased cost is a consequence of enforcement of the minimum requirements of the ordinance or law.
 However:
  - (a) This coverage applies only if the restored or remodeled property is intended for similar occupancy as the current property, unless such occupancy is not permitted by zoning or land use ordinance or law.
  - (b) We will not pay for increased cost of construction if the building is not repaired, reconstructed or remodeled. The Coinsurance Additional Condition does not apply to Increased Cost of Construction.
- (2) When covered building property is damaged or destroyed by a Covered Cause of Loss and Increased Cost of Construction applies to that property in accordance with **b.(1)** above, coverage for the Increased Cost of Construction also applies to repair or reconstruction of the following, subject to the same conditions stated in **b.(1)**:
  - (a) The cost of excavations, grading, backfilling and filling;
  - (b) Foundation of the building;
  - (c) Pilings; and
  - (d) Underground pipes, flues and drains.
 The items listed in **(2)(a)** through **(2)(d)** above are deleted from Property Not Covered, but only with respect to the coverage described in this provision **5.b**.
- (3) Loss Payment will be determined as follows:

**(a) We will not pay:**

- (i)** Until the property is actually repaired or replaced, at the same or another premises; and
- (ii)** Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.

**(b) If the building is repaired or replaced at the same premises, or you elect to rebuild at another premises, the most we will pay is the increased cost of construction at the same premises.****Q. Outdoor Signs**

1. We will pay for direct physical loss of or damage to all Outdoor Signs at the premises described in the Declarations:
  - a. owned by you; or
  - b. owned by others but in your care, custody or control.
2. None of the exclusions in Section **B. Exclusions** of the **CAUSES OF LOSS – SPECIAL FORM** apply to Outdoor Signs provided under this coverage except:
  - a. **B.1.c. Governmental Action;**
  - b. **B.1.d. Nuclear Hazard;** and
  - c. **B.1.f. War and Military Action.**
3. We will not pay for loss or damage caused by or resulting from:
  - a. wear and tear;
  - b. hidden or latent defect;
  - c. rust;
  - d. corrosion; or
  - e. mechanical breakdown.

The most we will pay for loss of or damage in any one occurrence is \$10,000.

**R. Recharging Of Fire Extinguishers**

We will pay for expenses you incur for the recharging of Fire Extinguishers made necessary by the fighting of a fire at the premises described in the Declarations or adjacent to such property.

The most we will pay for any one occurrence is \$5,000.

**S. Unauthorized Business Card Use**

We will pay for the loss of "money" resulting from theft, forgery or unauthorized use of credit, debit or charge cards issued in the business name to you, your partners or officers, including:

1. Fund transfer cards;
2. Charge plates; and
3. Telephone cards.

The most we will pay under this Additional Coverage during each 12 month period of this policy (including any extension of less than one year), is \$5,000.

We will not pay for loss resulting from the use of any credit, debit or charge card if not customarily used in your business.

**T. Forgery Or Alteration**

1. We will pay for loss resulting directly from "forgery" or alteration of checks, drafts, promissory notes, or similar written promises, orders or directions to pay a sum certain in "money" that are:

- (a)** Made or drawn by or drawn upon you; or
  - (b)** Made or drawn by one acting as your agent;
- or that are purported to have been so made or drawn.

For the purposes of this Insuring Agreement, a substitute check as defined in the Check Clearing for the 21st Century Act shall be treated the same as the original it replaced.

2. If you are sued for refusing to pay any instrument covered in Paragraph 1. above, on the basis that it has been forged or altered, and you have our written consent to defend against the suit, we will pay for any reasonable legal expenses that you incur and pay in that defense.
3. The most we will pay for any loss in any one "occurrence" including legal expenses is \$10,000.

**U. Salespersons Samples**

1. We will pay for loss of or damage to Covered Property from a Covered Cause of Loss to samples (including their containers) of your stock in trade that are:
  - (a)** Owned by you; or

(b) The property of others for which you are legally liable.

But this coverage applies only while such property is:

(a) In the custody of your salespersons or authorized sales representatives;

(b) In your custody, if you are an individual, while you are acting as a salesperson; or

(c) In due course of transit to or from your premises and your salespersons or authorized sales representatives.

### 3. **Additional Exclusion Applicable to Salespersons Samples**

We will not pay for loss as specified below:

Theft from an unattended vehicle unless at the time of theft, its windows, doors and compartments were closed and locked and there are visible signs that the theft was the result of forced entry.

4. The most we will pay under this coverage is \$2,500 in any one occurrence.

---

## Inland Marine Coverages

---

The following coverages are added under **4. Additional Coverages** of the **BUILDING AND PERSONAL PROPERTY COVERAGE FORM**. The Additional Condition, Coinsurance, does not apply to these coverages.

### A. **Installation Coverage**

#### 1. **Coverage**

a. We will pay for loss of or damage to the following property:

(1) Materials, supplies, equipment, machinery and fixtures owned by you or in your care, custody or control, and which are to be installed by you or at your direction; and

(2) Temporary structures built or assembled by you on site, including cribbing, scaffolding and construction forms.

This property is covered while:

(1) At any job site you do not own, lease or operate;

(2) Awaiting and during installation, or awaiting acceptance by the purchaser;

(3) At a "temporary storage location."

But property in transit is not covered except as provided under Property Extension – Property In Transit.

b. This Additional Coverage does not apply to:

(1) An existing building or structure to which an addition, alteration, improvement or repair is being made;

(2) Property stored at a permanent warehouse or storage yard that you own;

(3) A plan, blueprint, design or specification; and

(4) Machinery, tools, equipment, supplies or similar property that will not become a permanent part of the project. This includes contractors equipment and other tools belonging to a contractor or sub-contractor.

c. We will not pay for loss or damage caused by or resulting from any of the following:

(1) The cost to make good or replace faulty or defective materials or workmanship;

(2) Penalties for noncompletion or non-compliance with any contract terms or conditions;

(3) Testing including stand-up performance, stress, pressure, overload testing of the covered property;

(4) A fault, defect, deficiency, error or omission in a plan, blueprint, design or specification; or

(5) The weight of a load when it exceeds the designed capacity of any property covered under this Additional Coverage to lift, move or support the load from any position.

#### 2. The following is added to **E.7. Valuation** of the **BUILDING AND PERSONAL PROPERTY COVERAGE FORM**:

f. As respects your materials, supplies, machinery, fixtures and equipment and similar property of others in your care, custody or control which will become a permanent part of your installation, fabrication or erection project, the value of covered property may be valued as follows:

(1) **Actual Cost to Repair, Replace or Rebuild.** The value of covered property will be based on the lesser of the following accounts:

(a) The actual cost to repair, replace or rebuild the covered property with materials of like kind and quality. The actual cost may include material, labor and reasonable overhead expenses; or

(b) The amount you actually spend to repair, replace or rebuild the covered property.

This valuation provision does not apply to Paragraphs (2) or (3) below.

**(2) Pair or Set.** The value of a lost or damaged article which is part of a pair or set is based on a reasonable proportion of the value of the entire pair or set. The loss is not considered a total loss of the pair or set.

**(3) Loss to Parts.** The value of a lost or damaged part of an item that consists of several parts when it is complete is based on the value of only the lost or damaged part or the cost to repair or replace it.

### 3. Limit of Insurance

The most we will pay for loss or damage to property covered under this Additional Coverage is \$10,000 per occurrence.

This is the most we will pay regardless of:

- a. The number of job sites you do not own, lease or operate; or
- b. "Temporary storage locations."

4. With respect to this coverage, **Installation Coverage**, Section **D. Deductible** of the **BUILDING AND PERSONAL PROPERTY COVERAGE FORM** is deleted and replaced by the following:

#### D. Deductible

We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds \$500. We will then pay the amount of loss or damage in excess of \$500 up to the applicable limit of insurance.

5. Paragraph **e.** of **C.1. Limitations** of the **CAUSES OF LOSS – SPECIAL FORM** is replaced by the following:

- e. Property that is missing, where the only evidence of the loss or damage is a shortage disclosed on taking inventory, or other instances where there is no physical evidence to show what happened to the property.

But, this limitation does not apply to covered property in the custody of a carrier for hire.

6. The following are added to **F. Additional Conditions** of the **BUILDING AND PERSONAL COVERAGE FORM**:

#### 3. Carriers for Hire

You may accept bills of lading or shipping receipts issued by carriers for hire that limit their liability to less than the actual cash value of the covered property.

4. Coverage provided under the Installation Coverage will end when one of the following first occurs:

- (1) This policy expires or is cancelled;
- (2) The property covered under this Additional Coverage is accepted by the purchaser;
- (3) Your interest in the property covered under this Additional Coverage ceases;
- (4) You abandon the project to be performed by you for the purchaser, with no intention to complete it;
- (5) 90 days after the project to be performed by you for the purchaser is completed, unless we specify a different date in writing.

## B. Contractors Equipment Coverage

### 1. Your "Small Tools" and "Small Tools" Owned by Your Employees

We will pay for your "small tools" and "small tools" owned by your employees. The most we will pay is as follows:

Limit for Your "Small Tools": \$5,000. (maximum limit per item \$1,000)

Limit for "Small Tools" Owned by Your Employees: \$1,000. (maximum limit per item \$250)

#### Leased and Rented Equipment

We will pay for contractors' equipment that is leased or rented from others to you. Contractors' equipment means machinery, equipment, and tools of a mobile nature that you use in your contracting, installation, erection, or moving operations or projects. The most we will pay for property leased or rented from others is \$5,000.

a. Coverage applies only to covered property while:

- (1) At the described premises;
- (2) On a "client's" premises; or
- (3) In transit directly between the described premises and a "client's" premises and while in a motor vehicle owned, leased or operated by the named insured.

b. The coverage provided by this Additional Coverage applies only to loss caused by or resulting from the following causes of loss and only if they are Covered Causes of Loss:

- (1) Fire;
- (2) Lightning;
- (3) Explosion;
- (4) Aircraft;

- (5) Vandalism and malicious mischief; or
- (6) Theft.

c. The following is added to **A.2. Property Not Covered** of the **BUILDING AND PERSONAL PROPERTY COVERAGE FORM**:

- r. Property while stored or operated underground in connection with any mining operations.

d. The following is added to Paragraph 2. of **B. Exclusions** of the **CAUSES OF LOSS - SPECIAL FORM**:

- n. We will not pay for loss or damage caused by puncture, blowout and road damage to tires and tubes mounted on vehicles. However, we do pay for puncture, blowout or road damage caused by a specified peril.
- o. We will not pay for loss caused by humidity, dampness, dryness or changes in or extremes of temperature.
- p. We will not pay for loss caused by the weight of a load which, under the operating conditions at the time of a loss, exceeds the registered lifting capacity of any equipment or machine.
- q. We will not pay for loss due to theft or mysterious disappearance from any vehicle or attached container. We will pay for loss due to burglary when there are signs of forcible entry to a locked vehicle or container.

e. **E.7. Valuation** of the **BUILDING AND PERSONAL PROPERTY COVERAGE FORM** is deleted and replaced by the following:

**7. Valuation**

We will determine the value of covered property in the event of loss or damage as follows:

- a. At actual cash value at the time of the loss (with a deduction for depreciation) except as provided in Paragraphs b. and c. following.
- b. **Pair or Set.** The value of a lost or damaged article which is part of a pair or set is based on a reasonable proportion of the value of the entire pair or set. The loss is not considered a total loss of the pair or set.
- c. **Loss to Parts.** The value of a lost or damaged part of an item that consists of several parts when it is complete is based on the value of only the lost or damaged part or the cost to repair or replace it.

**2. Rental Reimbursement**

In the event of loss by a covered peril to covered contractors' equipment that you own, we will reimburse you for your expense to rent similar equipment while your equipment is inoperable. The most we will reimburse you for rental reimbursement expenses is \$1,000. We will continue to reimburse you for the rental of equipment after the expiration date of this coverage provided the loss occurred before the expiration date.

We will not reimburse you:

- a. If you can continue or resume your operations with similar equipment that is available to you at no additional expense to you; or
- b. For the rental expense of any equipment unless you make every reasonable effort to repair, replace or rebuild the inoperable equipment after the covered loss occurs.

3. With respect to this Additional Coverage, **Contractors Equipment Coverage**, Section **D. Deductible** of the **BUILDING AND PERSONAL PROPERTY COVERAGE FORM** is deleted and replaced by the following:

**D. Deductible**

We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds \$500. We will then pay the amount of loss or damage in excess of \$500 up to the applicable limit of insurance.

We will not reimburse you for the rental of equipment until after 72 hours have passed since the covered property was rendered inoperable. After 72 hours have passed, we will only reimburse you for the rental expense that you actually incur.

The deductible of \$500 does not apply to rental reimbursement expenses.

---

## General Liability Additional Coverages

The following Additional Coverages are added to the **COMMERCIAL GENERAL LIABILITY COVERAGE FORM**.

**A. Blanket Additional Insured Coverage**

- 1. **SECTION II – WHO IS AN INSURED** of the **COMMERCIAL GENERAL LIABILITY COVERAGE FORM** is amended to include as an insured any person or organization (referred to as Additional Insured) whom you are required to add as an Additional Insured on this policy under:
  - a. A written contract or agreement; and
  - b. Where a certificate of insurance showing that person or organization as an additional insured has been issued; and

- c. When the written contract or agreement and certificate of insurance are currently in effect or becoming in effect during the term of the policy and executed prior to the "bodily injury," "property damage," or "personal and advertising injury."
- 2. The insurance provided to the Additional Insured is limited as follows:
  - a. The Additional Insured is only an additional insured for:
    - (1) "Bodily injury," "property damage," or "personal and advertising injury" caused in whole or in part by negligent acts or omissions of the Named Insured or anyone directly or indirectly employed by the Named Insured or for whose acts a Named Insured may be liable.
    - (2) Liability arising out of your ongoing operations for the Additional Insured by or for you. A person's or organization's status as an insured under this coverage ends when your operations for that insured are completed.
  - b. The Limits of Insurance applicable to the Additional Insured are those specified in the written contract or agreement but not more than the Limits of Insurance specified in the Declarations for this policy. The Limits of Insurance applicable to the Additional Insured are inclusive of and not in addition to the Limits of Insurance shown in the Declarations for the Named Insured.
- 3. In addition to the other exclusions applicable to **Section I, Coverages A., B. and C. of the COMMERCIAL GENERAL LIABILITY COVERAGE FORM**, the insurance provided to the Additional Insured does not apply to:
  - a. "Property damage" to:
    - (1) Property owned, used, occupied by, loaned or rented to the Additional Insured;
    - (2) Property in the care, custody or control of the Additional Insured or over which the Additional Insured are for any purpose exercising physical control; or
    - (3) "Your work" performed for the Additional Insured.
  - b. "Bodily injury," "property damage," or "personal and advertising injury" arising out of an architect's, engineer's or surveyor's rendering or failure to render any professional services for you, for the Additional Insured or for others, including, but not limited to:
    - (1) The preparing, approving or failure to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or
    - (2) Supervisory, inspection or engineering services.
  - c. "Bodily injury" or "property damage" occurring 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 at the site 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.
- 4. **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, Paragraph 4. **Other Insurance**, is amended to add the following subparagraph:
  - d. **Additional Insured's Other Insurance As Excess Insurance**  
 To the extent required by an "insured contract," this insurance is primary on behalf of the Additional Insured; and any other insurance maintained by the Additional Insured is excess and not contributory with this insurance. If the "insured contract" does not require this provision, then Paragraph a. above will apply.

## **B. Mobile Equipment Broadened Coverage**

**V.12.f.(1)** of the **COMMERCIAL GENERAL LIABILITY COVERAGE FORM** is replaced by the following:

- (1) Equipment designed primarily for:
  - (a) Snow Removal;
  - (b) Road maintenance, but not construction or resurfacing; or
  - (c) Street cleaning.

Except the above provisions do not apply to self-propelled vehicles of less than 1,000 pounds gross vehicle weight which are not intended for use on a highway.

## **C. Aggregate Limit Per Project**

The General Aggregate Limit under **SECTION III – LIMITS OF INSURANCE** of the **COMMERCIAL GENERAL LIABILITY COVERAGE FORM** applies separately to each of your projects away from premises owned by or rented to you.

**D. Blanket Waiver Of Transfer Of Rights Of Recovery Against Others To Us**

The **Transfer Of Rights Of Recovery Against Others To Us** Condition (**SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**) is amended by the addition of the following:

We waive any right of recovery we may have against any person or organization to whom you by written contract or written agreement have waived your own right of recovery for loss caused by that person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a written contract or written agreement with that person or organization and included in the "products-completed operations hazard."

This provision does not apply unless the written contract or written agreement has been executed prior to the "occurrence" or offense giving rise to the "bodily injury" or "property damage."

**E. Voluntary Property Damage Coverage**

1. We will, at your request, pay but not defend any claim for "property damage" to the property of others otherwise excluded under **A.2.j.(4), (5) and (6)** of the **COMMERCIAL GENERAL LIABILITY COVERAGE FORM** provided that:
  - a. Such "property damage" takes place while such property is in your care, custody or control, or is property of others over which you, for any purpose, are exercising or have exercised physical control; and
  - b. Such "property damage" takes place away from any premises you own, rent or lease; and
  - c. Such "property damage" takes place within the "coverage territory" and during the policy term; and
  - d. Such "property damage" takes place only during your operations that are known to us, are scheduled on the policy and for which a premium has been charged.
2. The insurance under this additional coverage does not apply to "property damage" to property:
  - a. Held by you for servicing, repair, storage or sale at premises owned by, rented or leased to you;
  - b. While being transported by or caused by the ownership, maintenance, operation, use, "loading or unloading" of any "auto," watercraft or aircraft; or
  - c. Owned or occupied by or rented to you.

**3. Deductible**

This additional coverage will apply only to that amount of any loss in each "occurrence" that exceeds \$500.

The terms of the policy with respect to your duties in the event of "occurrence," claim or "suit" and the Company's right to investigate, negotiate and settle any claim or "suit" apply irrespective of the application of the deductible amount of \$500.

We may pay any part or all of the deductible amount of \$500 to effect settlement of any claim or "suit." Upon notification of the action taken, you must promptly reimburse us for such part of the deductible amount as has been paid by us.

**4. Limits of Liability**

The Limit of Liability for this additional coverage shall not exceed \$2,500 for each "occurrence" and is the limit of the Company's liability for all damages on account of each claim or "suit" covered herein. The annual aggregate Limit of Liability is \$2,500 and is, subject to the above provisions respecting each claim, the total limit of the Company's liability for all damages.

**5. Settlement**

In the event of loss covered by this additional coverage, you shall, if requested by us, replace the property or furnish the labor and materials necessary for repairs thereto at actual cost to you, excluding prospective profit or overhead charges of any nature. Any property so paid for or replaced shall, at our option, become the property of the Company. Payment hereunder shall not constitute an admission of liability of you or, except as stated herein, of the Company.

---

**Additional Conditions****A. Insurance Under Two Or More Coverages**

The following is added to Paragraph **C. Insurance under Two or More Coverages** of the **COMMERCIAL PROPERTY CONDITIONS**:

If a Coverage Form is attached to this policy that provides a limit for any coverage provided by this endorsement; the limit shown in the **SCHEDULE** and the coverage provided by this endorsement are deleted and replaced by the limit and coverage provided by the Coverage Form.

**B. Limits Of Insurance**

Regardless of the number of buildings at a location covered by this endorsement, the most we will pay under this Coverage Enhancement endorsement in any one occurrence is the applicable Limits of Insurance shown in the **SCHEDULE** on page 1 of this endorsement.

**C. Deductibles**

The Deductible described in section **D.** of the **BUILDING AND PERSONAL PROPERTY COVERAGE FORM** applies to each of the Coverage Enhancements except as shown below:

We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds \$500. We will then pay the amount of loss or damage in excess of \$500 up to the applicable Limit of Insurance for the following enhancements:

1. Personal Effects and Property of Others
2. Valuable Papers and Records (Other than Electronic Data)
3. Property Off-Premises (Including Laptops and Other Electronic Equipment)
4. Outdoor Property (Named Perils)
5. Accounts Receivable
6. Property in Transit (Including Laptops and Other Electronic Equipment)
7. Fine Arts
8. Electronic Data
9. Water Back-Up and Sump Overflow
10. Employee Theft
11. Money and Securities
12. Forgery or Alteration

No deductible provisions apply to the following enhancements:

1. Fire Department Service Charge
2. Arson Reward
3. Claims Expenses
4. Inventory or Appraisal Cost
5. Recharging of Fire Extinguishers
6. Rental Reimbursement

**D. Additional Definitions**

The following **Additional Definitions** apply to this endorsement only:

1. **"Banking Premises"** means the interior of that portion of any building occupied by a banking institution or similar safe depository.
2. **"Business Income"** means the:
  - a. Net income (Net Profit or Loss before income taxes) that would have been earned had no loss occurred; and
  - b. Continuing normal operating expenses incurred, including payroll.

For manufacturing risks, Net Income includes the net sales value of production.
3. **"Client"** as used in **Employee Theft** Coverage means any entity for whom you perform services under a written agreement.
4. **"Client"** as used in **Contractors Equipment** Coverage means an individual, company or organization with whom you have a written contract or work order for your services for a described premises and have billed for your services.
5. **"Employee"** as used in **Employee Theft** and **Money And Securities** Coverages means:
  - a. **"Employee"** means:
    - (1) Any natural person:
      - (a) While in your service or for 30 days after termination of service;
      - (b) Who you compensate directly by salary, wages or commissions; and
      - (c) Who you have the right to direct and control while performing services for you;
    - (2) Any natural person who is furnished temporarily to you:
      - (a) To substitute for a permanent **"employee"** as defined in Paragraph (1) above, who is on leave; or
      - (b) To meet seasonal or short-term work load conditions;

while that person is subject to your direction and control and performing services for you, excluding, however, any such person while having care and custody of property outside the **"premises"**;

- (3) Any natural person who is leased to you under a written agreement between you and a labor leasing firm, to perform duties related to the conduct of your business, but does not mean a temporary employee as defined in Paragraph (2) above;
  - (4) Any natural person who is your director or trustee while that person is handling **"money"** or **"securities."**
  - (5) Any natural person who is a former **"employee,"** director, partner, member (an owner of a limited liability company represented by its membership interest, who also may serve as a manager), manager (a person serving in a directorial capacity for a limited liability company), representative or trustee retained as a consultant while performing services for you; or
  - (6) Any natural person who is a guest student or intern pursuing studies or duties, excluding, however, any such person while having care and custody of **"money"** or **"securities"** outside the **"premises."**
- b. **"Employee"** does not mean:
- (1) Any agent, broker, factor, commission merchant, consignee, independent contractor or representative of the same general character; or
  - (2) Any manager (a person serving in a directorial capacity for a limited liability company), director or trustee except while performing acts coming within the scope of the usual duties of an **"employee."**
6. **"Extra Expense"** means necessary expenses you incur during the **"period of restoration"** that you would not have incurred if there had been no direct physical loss or damage to property caused by or resulting from a Covered Cause of Loss. Coverage pertains to expenses (other than the expense to repair or replace property) which are incurred to
- a. Avoid or minimize the **"suspension"** of business and to continue **"operations"** at the described premises or at replacement premises or temporary locations, including relocation expenses and costs to equip and operate the replacement location or temporary location.
  - b. Minimize the **"suspension"** of business if you cannot continue **"operations."**
7. **"Fine Arts"** means paintings, etchings, pictures, tapestries, art glass windows, valuable rugs, statuary, marbles, bronzes, antique furniture, rare books, antique silver, manuscripts, porcelains, rare glass, bric-a-brac, and similar property of rarity, historical value or artistic merit.
8. **"Finished Stock"** means stock you have manufactured. Finished stock also includes whiskey and alcoholic products being aged.
9. **"Forgery"** means the signing of the name of another person or organization with intent to deceive; it does not mean a signature which consists in whole or in part of one's own name signed with or without authority, in any capacity, for any purpose.
10. **"Loss"** as used in the **Accounts Receivable** Extension means accidental loss or damage.
11. **"Manager"** as used in **Employee Theft** Coverage means a person serving in a directorial capacity for a limited liability company.
12. **"Messenger"** means you, any of your partners or any employee while having care and custody of the property outside the **"premises."**
13. **"Money"** means:
- a. Currency, coins and bank notes whether or not in current use; and
  - b. Travelers checks, register checks and money orders held for sale to the public.
14. **"Occurrence"** as used in the **Money And Securities** Coverage means an act or series of related acts involving one or more persons; or an act or event, or a series of related acts or events not involving any person.
15. **"Occurrence"** as used in the **Forgery Or Alteration** Coverage means all loss caused by any person or in which that person is involved, whether the loss involves one or more instruments.
16. **"Operations"** as used in the **Business Income Including Extra Expense** and **Business Income From Dependent Properties** Coverages **"Extra Expense"** Definition means your business activities occurring at the address shown in the Declaration that you occupy for your business.
17. **"Period of Restoration"** means the period of time that:
- a. Begins with the date of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at the described premises; and
  - b. Ends on the date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality.
- "Period of Restoration"** does not include any increased period required due to the enforcement of any ordinance of law that:
- (1) Regulates the construction, use or repair, or requires the tearing down of any property; or

(2) Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **"pollutants."**

18. **"Pollutants"** as used in the **Business Income From Dependent Properties** Coverage and the **"Period of Restoration"** Definition means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
19. **"Premises"** as used in the **Money And Securities** Coverage and **"Employee"** and **"Messenger"** Definitions means the interior of that portion of any building you occupy in conducting your business.
20. **"Premises"** as used in the **Accounts Receivable** Extension means that interior of the building at the address shown in the Declarations that you occupy for your business.
21. **"Rental Value"** means the:
  - a. Total anticipated rental income from tenant occupancy of the premises described in the Declarations as furnished and equipped by you, and
  - b. Amount of all charges which are the legal obligation of the tenant(s) and which would otherwise be your obligations, and
  - c. Fair rental value of any portion of the described premises which is occupied by you.
22. **"Securities"** means negotiable and non-negotiable instruments or contracts representing either **"money"** or other property and include:
  - a. Tokens, tickets, revenue and other stamps whether or not in current use; and
  - b. Evidences of debt issued in connection with credit or charge cards, which are not of your own issue but does not include **"money."**
23. **"Small Tools"** means any tool which can be moved easily by one person without mechanical assistance and/or can be hand held for the purpose of doing labor.
24. **"Suspension"** means the slowdown or cessation of your business activities.
25. **"Temporary Storage Location"** means a location where property that is to become a permanent part of a completed project is stored while waiting to be delivered to the job site:
  - a. That you do not own, lease or operate; and
  - b. Where work is in progress, or will begin in 30 days.
26. **"Theft"** as used in the **Employee Theft** and **Money And Securities** Coverages means the unlawful taking of **"money"** or **"securities"** to the deprivation of the insured.

All Other Conditions of this Policy apply.

Policy #44CL604875

COMMERCIAL AUTO  
BA 20 60 04 11**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****COMMERCIAL AUTO COVERAGE FORM  
ENHANCEMENT ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM**

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

**A. SECTION II – LIABILITY COVERAGE, A.1. Who Is An Insured**, is amended by the addition of the following:**1. Broadened Named Insured**

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, and there is no other similar insurance available to that organization.

However, insurance provided by this provision:

- a. Is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
- b. Does not apply to "bodily injury" or "property damage" resulting from an "accident" that occurred before you acquired or formed the organization;
- c. Does not apply to an insured under any other automobile liability policy, or would be an insured under such a policy but for the exhaustion of such policy's limits of insurance or the termination of such policy; and
- d. No newly acquired or formed organization is an insured with respect to any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

**2. Blanket Additional Insured**

Any person or organization with respect to the operation, maintenance, or use, of a covered "auto" that you are required to include as additional insured on the Coverage Form in a written agreement or written "insured contract" that is signed and executed by you before the "bodily injury" or "property damage" occurs.

However, such person or organization is an insured:

- a. Only for "bodily injury" or "property damage" caused by an "accident" which takes place after you executed the written agreement or written "insured contract";
- b. Is in effect during the policy period; and
- c. Only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

**B. Employee Hired Autos****1. SECTION II – LIABILITY COVERAGE, A.1. Who Is An Insured**, is amended by the addition of the following:

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business.

**2. Under SECTION IV – BUSINESS AUTO CONDITIONS, B.5., Other Insurance**, Paragraph **b.** is deleted and replaced with the following:

- b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:
  - (1) Any covered "auto" you lease, hire, rent or borrow; and

- (2) Any covered "auto" hired or rented by your "employee" under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

If Employee Hired Autos Coverage Form **CA 20 54** is attached to this policy, then the Employee Hired Autos coverage described above does not apply.

#### **C. Supplementary Payments**

Under **SECTION II – LIABILITY COVERAGE, A.2., Coverage Extensions, a. Supplementary Payments**, Paragraphs **a.(2)** and **a.(4)** are deleted and replaced by the following:

- (2) Up to \$2,500 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

#### **D. Transportation Expenses**

Under **SECTION III – PHYSICAL DAMAGE COVERAGE, A.4., Coverage Extensions, a. Transportation Expenses** is deleted in its entirety and replaced with the following:

##### **a. Transportation Expenses**

We will pay up to \$50 per day to a maximum of \$1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes Of Loss Coverage, including Theft Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

#### **E. Loss Of Use Expenses**

Under **SECTION III – PHYSICAL DAMAGE COVERAGE, A. Coverage, 4. Coverage Extensions**, the last paragraph under **b. Loss Of Use Expenses** is replaced as follows:

However, the most we will pay for any expenses for loss of use is \$65 per day, to a maximum of \$1,000.

#### **F. Theft Expense**

Under **SECTION III – PHYSICAL DAMAGE COVERAGE, A.4., Coverage Extensions**, the following is added:

If Comprehensive Coverage is purchased on a covered "auto", and that covered "auto" is stolen, we will pay the expense of returning that stolen auto to you. The limit for this coverage extension is \$1,000.

#### **G. Rental Agency Expense**

Under **SECTION III – PHYSICAL DAMAGE COVERAGE, A.4., Coverage Extensions**, the following is added:

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

Maximum amount we will pay for any one written contract or written agreement:

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

#### **H. Hired Auto Physical Damage**

Under **SECTION III – PHYSICAL DAMAGE COVERAGE, A.4., Coverage Extensions**, the following is added:

If hired "autos" are covered "autos" for Liability Coverage, and if Comprehensive, Specified Causes Of Loss, or Collision Coverage as provided under this Coverage Part, then coverage is extended to "autos" you hire without a driver, subject to the following:

1. The most we will pay for "loss" to any hired "auto" is \$35,000 or the actual cash value or cost to repair or replace, whichever is less, minus a deductible.
2. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage.

Coverage provided by this extension applies only to "autos" you hire of the private passenger type or light truck (gross vehicles weight 10,000 pounds or less) type vehicles.

If a limit for Hired Auto – Physical Damage is shown in the Declarations, then that limit replaces, and is not added to, the \$35,000 limit indicated above.

#### **I. Airbag Coverage**

Under **SECTION III – PHYSICAL DAMAGE COVERAGE, B. Exclusions**, Paragraph 3.a. is replaced as follows:

- a. Wear and tear, freezing, mechanical or electrical breakdown. However, mechanical or electrical breakdown does not apply to the unintended discharge of an airbag. Any loss covered under this provision is excess over any other collectible insurance or warranty.

#### **J. Glass Breakage**

Under **SECTION III – PHYSICAL DAMAGE COVERAGE, D., Deductible**, the following is added:

However, if Comprehensive or Specified Causes Of Loss Coverage is purchased on a covered "auto", any deductible shown in the Declarations as applying to the covered "auto" will not apply to glass breakage if the damaged glass is repaired in a manner acceptable to us rather than replaced.

#### **K. Rental Reimbursement**

**SECTION III – PHYSICAL DAMAGE COVERAGE** is amended by the addition of the following:

If Physical Damage Coverage for which a premium is shown, is designated in the Declarations for a covered "auto" we will provide Rental Reimbursement Coverage.

1. We will pay for rental reimbursement expenses incurred by you for the rental of an "auto" because of "loss" to a covered "auto". Payment applies in addition to the otherwise applicable amount of each coverage you have on a covered "auto". No deductible applies to this coverage.
2. We will pay only for those expenses incurred during the policy period beginning 24 hours after the "loss" and ending, regardless of the policy's expiration, with the lesser of the following number of days:
  - a. 30 days; or
  - b. The number of days reasonably required to repair or replace the covered "auto". If "loss" is caused by theft, this number of days is added to the number of days it takes to locate the covered "auto" and return it to you.
3. Our payment is limited to the lesser of the following amounts:
  - a. \$40 any one day; or
  - b. Necessary and actual expenses incurred.
4. This coverage does not apply while there are spare or reserve "autos" available to you for your operations.
5. If "loss" results from the total theft of a covered "auto" of the private passenger type, we will pay under this coverage only that amount of your rental reimbursement expenses which is not already provided for under Paragraph **A.4. Coverage Extensions, a. Transportation Expenses**.

If Rental Reimbursement Coverage Form **CA 99 23** is attached to this policy, then the Rental Reimbursement Coverage described above does not apply.

#### **L. Blanket Waiver of Subrogation**

Under **SECTION IV – BUSINESS AUTO CONDITIONS, A. Loss Conditions**, Paragraph 5., **Transfer Of Rights Of Recovery Against Others To Us**, is amended by the addition of the following:

We will, however, waive any right of recovery we may have against any person or organization because of payments we make for "bodily injury" or "property damage" arising out of the operation of a covered "auto" when you have assumed liability for such "bodily injury" or "property damage" under an "insured contract".

This provision does not apply unless the permit has been issued or the written contract or written agreement has been executed, prior to the "bodily injury" or "property damage".

**M. Unintentional Failure To Disclose Hazards**

Under **SECTION IV – BUSINESS AUTO CONDITIONS, B. General Conditions**, Paragraph **2. Concealment, Misrepresentation Or Fraud**, is amended by the addition of the following:

The unintentional omission of, or unintentional error in, any information given by you shall not prejudice your rights under this insurance. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

**N. Duties In The Event Of Accident, Claim, Suit Or Loss**

Under **SECTION IV – BUSINESS AUTO CONDITIONS, A.2. Duties In The Event Of Accident, Claim, Suit Or Loss**, Paragraph **2.a.**, is deleted and replaced with the following:

- a. In the event of "accident", claim, "suit" or "loss", you must give us or our authorized representative prompt notice of the "accident" or "loss" after it becomes known to:

- (1) You, if you are an individual;
- (2) A partner or member, if you are a partnership or joint venture;
- (3) A member or manager, if you are a limited liability company; or
- (4) An executive officer or insurance manager if you are an organization other than a partnership, joint venture or limited liability company.

Notice should include the following:

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

Your "employees" may know of an "accident", claim, "suit" or "loss". This will not mean that you have such knowledge of an "accident", claim, "suit" or "loss".

**COMMERCIAL GENERAL LIABILITY  
FORM B**

**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 Person or Organization:**

Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured for completed operations.

**Location and Description of Completed Operations:**

Within the State of Washington

Operations related to construction materials testing, soil testing, asphalt & concrete testing, metal & weld testing.

**Section II - Who Is An Insured** is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" at the location designated and described in the schedule of this endorsement performed for that insured and included in the "products-completed operations hazard".

**COMMERCIAL GENERAL LIABILITY  
FORM A**

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

**ADDITIONAL INSURED - OWNERS, LESSEES OR  
CONTRACTORS**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**SCHEDULE**

**Name of Person or Organization:**

Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured for completed operations.

A. Section II - Who Is An Insured is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.

B. With respect to the insurance afforded to these additional insureds, the following exclusion is added:

**2. Exclusions**

This insurance does not apply to "bodily injury" or "property damage" occurring 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 site 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.**

**PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION – BLANKET**

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
GARAGE COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM  
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

- A.** The following is added to the **Other Insurance General Condition** in the Business Auto and Garage Coverage Forms and the **Other Insurance – Primary And Excess Insurance Provisions** in the Motor Carrier and Truckers Coverage Forms and supersedes any provision to the contrary:

This Coverage Form's Covered Autos Liability Coverage is primary to and will not seek contribution from any other insurance available to an "insured" under your policy provided that:

1. Such "insured" is a Named Insured under such other insurance; and
2. You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to such "insured".



Hamilton Managing General Agency Americas LLC  
Lloyds Syndicate 4000 Managed by  
Hamilton Managing Agency Limited  
(formerly Pembroke Managing Agency)  
UMR# B6081UB005275H

## **PROFESSIONAL LIABILITY COVERAGE FORM**

### **TABLE OF CONTENTS**

#### **SECTION I. - INSURING CLAUSES**

- A. Architects and Engineers Professional Liability Coverage**
- B. Technology Based Services Coverage**
- C. Technology Products Coverage**
- D. Computer Network Security Coverage**
- E. Multimedia and Advertising Coverage**
- F. Privacy Liability Coverage**

#### **SECTION II. - SUPPLEMENTARY PAYMENTS**

#### **SECTION III. - DEFENSE, SETTLEMENT, AND INVESTIGATION OF CLAIMS**

#### **SECTION IV. - EXCLUSIONS**

#### **SECTION V. - WHO IS AN INSURED**

#### **SECTION VI. - LIMIT OF LIABILITY**

#### **SECTION VII. - DEDUCTIBLE OR SELF-INSURED RETENTION**

#### **SECTION VIII.- CONDITIONS**

#### **SECTION IX. – EXTENDED REPORTING PERIODS**

#### **SECTION X. - DEFINITIONS**

## **ARCHITECTS AND ENGINEERS PROFESSIONAL LIABILITY, TECHNOLOGY BASED SERVICES, TECHNOLOGY PRODUCTS, COMPUTER NETWORK SECURITY, MULTIMEDIA AND ADVERTISING AND PRIVACY LIABILITY**

**THIS COVERAGE IS PROVIDED ON A CLAIMS MADE AND REPORTED BASIS. EXCEPT AS OTHERWISE PROVIDED, CLAIMS-MADE AND REPORTED COVERAGE REQUIRES THAT A "CLAIM" BE FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED TO US IN WRITING DURING THE POLICY PERIOD OR ANY APPLICABLE EXTENDED REPORTING PERIOD, PURSUANT TO THE TERMS OF THIS INSURANCE POLICY.**

**VARIOUS PROVISIONS IN THIS POLICY MAY RESTRICT OR EXCLUDE COVERAGE. PLEASE READ THE-ENTIRE POLICY CAREFULLY TO DETERMINE THE INSURED'S RIGHTS AND DUTIES AND WHAT IS AND IS NOT COVERED.**

**THE LIMIT OF LIABILITY AVAILABLE TO PAY DAMAGES SHALL BE REDUCED AND MAY BE COMPLETELY EXHAUSTED BY PAYMENT OF CLAIMS EXPENSES.**

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 **Insured** under this policy. The words "we", "us" and "our" refer to the Underwriters providing this insurance.

The word **Insured** means any person or organization qualifying as such under **V. WHO IS AN INSURED**.

Words that appear in bold face type have special meaning. See Section **X. DEFINITIONS**.

### **I. INSURING CLAUSES**

We will pay on behalf of the **Insured, Damages and Claims Expenses**, in excess of the Each **Claim** Deductible or Each Claim Self-Insured Retention, which the **Insured** shall become legally obligated to pay because of any **Claim** first made against the **Insured** during the **Policy Period** or any applicable **Extended Reporting Period** and reported in writing to the Underwriters either during the **Policy Period**, within sixty (60) days after the expiration of the **Policy Period**, or during the Optional **Extended Reporting Period** arising out of one or more of the following acts or events committed or taking place on or after the Retroactive Date, if any set forth in the Declarations and before the end of the **Policy Period**. The amount we will pay is limited as described in Section

#### **VI. LIMITS OF INSURANCE:**

##### **A. Architects and Engineers Professional Liability Coverage**

Any negligent act, error or omission in rendering or failing to render **Professional Services** for others to which this insurance applies.

The following Insuring Clauses **I.B., I.C., I.D., I.E I.F. and I.F.** apply only if indicated by an "X" in the Declarations.

##### **B. Technology Based Services Coverage**

Any negligent act, error or omission, or any unintentional breach of contract, in rendering or failing to render **Technology Based Services** for others to which this insurance applies;

##### **C. Technology Products Coverage**

Any negligent act, error or omission, or any unintentional breach of contract, by the **Insured** that results in the failure of **Technology Products** to perform the function or serve the purpose intended.

**D. Computer Network Security Coverage**

Any act, error or omission in the course of providing or managing **Computer Systems** security by the **Insured** that results in:

1. The inability of a third party, who is authorized to do so, to gain access to **Computer Systems** or your **Technology Based Services**;
2. The failure to prevent Unauthorized Access to **Computer Systems** that results in:
  - a. The destruction, deletion or corruption of electronic data on **Computer Systems**;
  - b. Theft of Data from **Computer Systems**; or
  - c. Denial of service attacks against Internet sites or computers; or
3. The failure to prevent transmission of **Malicious Code** from **Computer Systems** to third party computers and systems;

**E. Multimedia and Advertising Coverage**

Liability imposed by law or **Assumed Under Contract** arising out of:

1. Defamation, libel, slander, product disparagement, prima facie tort, infliction of emotional distress, outrageous conduct, or other tort related to disparagement or harm to the reputation or character of any person or organization;
2. Invasion of or interference with any right to privacy or of publicity;
3. Misappropriation of any name or likeness for commercial advantage;
4. False arrest, detention or imprisonment or malicious prosecution;
5. Invasion of or interference with any right to private occupancy, including trespass, wrongful entry, eviction or eavesdropping;
6. Plagiarism, piracy or misappropriation of ideas under implied contract;
7. Infringement of copyright;
8. Infringement of trade dress, domain name, title or slogan, or the dilution or infringement of trademark or service mark;
9. Negligence regarding the content of any **Media Communication**, including harm caused through any reliance or failure to rely upon such content; or
10. Misappropriation of trade secret

in the course of the **Named Insured's** performance of **Professional Services, Media Activities** or **Technology Based Services**;

**F. Privacy Liability Coverage**

1. Theft or misuse of **Personally Identifiable Non-Public Information** or **Third Party Corporate Information** that is in the care, custody or control of the **Named Insured**, or an independent contractor that is holding or processing such information on behalf of the **Named Insured**;
2. The **Named Insured's** failure to timely disclose a **Security Breach** in violation of any **Breach Notice Law**;
3. Failure by the **Insured** to comply with that part of a **Privacy Policy** that specifically:
  - a. Prevents or prohibits improper or intrusive collection of **Personally Identifiable Non-Public Information** from a person;
  - b. Requires notice to a person of the **Named Insured's** collection or use of, or the nature of the collection or use of his or her **Personally Identifiable Non-Public Information**;
  - c. Provides a person with the ability to consent to or withhold consent for (e.g. opt-in or opt-out) the **Named Insured's** collection or use his or her **Personally Identifiable Non-Public Information**;
  - d. Prohibits or restricts the **Named Insured's** disclosure, sharing or selling of a person's **Personally Identifiable Non-Public Information**;
  - e. Requires the **Named Insured** to provide access to **Personally Identifiable Non-Public Information** or to correct incomplete or inaccurate **Personally Identifiable Non-Public Information** after a request is made by a person; or

f. Mandates procedures and requirements to prevent the loss of **Personally Identifiable Non-Public Information**;

provided the **Named Insured** must, at the time of such acts, errors or omissions have in force a **Privacy Policy** that addresses those subsections above that are relevant to such **Claim**.

Provided, however, this Insuring Clauses **I.A., I.B., I.C., I.D., I.E., and I.F.** shall not apply to any **Claim** for or arising out of the disclosure, misuse or misappropriation of any ideas, trade secrets or confidential information that came into the possession of any person prior to the date he or she became an employee, officer, director, principal or partner of the **Named Insured**.

## II. SUPPLEMENTARY PAYMENTS

All payments made under this Section are not subject to the Each **Claim** Deductible and are payable by the Underwriters in addition to the Limits of Liability.

### A. Defendants Reimbursement

Upon the Underwriters request, the **Insured** shall attend mediation meetings, arbitration proceedings, hearings, depositions, and trials relative to the defense of a **Claim**. After the first three (3) days' attendance required for each **Claim**, the Underwriters shall reimburse the **Insured**, upon written request, for actual loss of earnings and reasonable expenses due to such attendance up to \$500 for each day in the aggregate for all **Insureds** subject to a maximum amount of \$10,000 for each **Claim**.

### B. ADA, FHA, OSHA Regulatory / Administrative Actions Reimbursement

The Underwriters will reimburse the **Insured**, upon written request, for legal fees and expenses up to \$25,000 in the aggregate for the **Policy Period**, incurred by the **Insured** with the prior written consent of the Underwriters, in responding to a regulatory or administrative action brought directly against the **Insured** during the **Policy Period** by a government agency under the Americans with Disabilities Act of 1990 (ADA), the Fair Housing Act (FHA) or the Occupational Safety and Health Act (OSHA) or any similar law or legislation of any state provided that the regulatory or administrative action:

1. Arises out of the rendering of or failure to render **Professional Services**; and
2. Is reported to the Underwriters during the **Policy Period**.

After the Underwriters have paid \$25,000 under this Clause **II.B.**, the Underwriters shall not be obligated to pay any further legal fees and expenses.

### C. Disciplinary Proceedings Reimbursement

The Underwriters will reimburse the **Insured**, upon written request, for legal fees and expenses up to \$10,000 in the aggregate for the **Policy Period**, incurred by the **Insured** with the prior written consent of the Underwriters, in responding to a disciplinary proceeding brought directly against the **Insured** during the **Policy Period** provided that the disciplinary proceeding:

1. Arises out of the rendering of or failure to render **Professional Services**; and
2. Is reported to the Underwriters during the **Policy Period**.

After the Underwriters have paid \$10,000 under this Clause **II.C.**, the Underwriters shall not be obligated to pay any further legal fees and expenses.

### D. Reputational Damage Cost

The Underwriters will reimburse the **Named Insured** fifty percent (50%) of the first \$100,000 in **Reputational Damage Expenses** incurred by the **Named Insured** for Reputational Damage consulting services which are incurred in connection with a **Claim** covered under this Policy that the **Named Insured** reasonably believes will have a material adverse effect upon the **Named Insured's** reputation.

After the Underwriters have paid \$50,000 under this Clause **II.D.**, the Underwriters shall not be obligated to pay any further **Reputational Damage Expenses**.

### III. DEFENSE, SETTLEMENT, AND INVESTIGATION OF CLAIMS

- A. The Underwriters shall have the right and duty to defend, subject to the Limit of Liability, exclusions and other terms and conditions of this Policy, any **Claim** against the **Insured** seeking **Damages** which are payable under the terms of this Policy, even if any of the allegations of the **Claim** are groundless, false or fraudulent.
- B. The Underwriters shall have the right and duty to defend, subject to the Limit of Liability, exclusions, and other terms and conditions of this Policy, any **Claim** in the form of a civil suit against the **Insured** that seeks injunctive relief (meaning a temporary restraining order or a preliminary or permanent injunction) for one or more of the acts listed in Insuring Clause I.F. if:
  - 1. the **Claim** is first made during the **Policy Period** or any applicable **Extended Reporting Period** and reported to the Underwriters pursuant to the terms of this Policy; and
  - 2. the act or acts were committed on or after the Retroactive Date set forth in the Declarations and before the end of the **Policy Period** in the course of the **Named Insured's** performance of **Professional Services, Media Activities** or **Technology Based Services**.
- C. When the Underwriters defend a **Claim**, it will pay **Claims Expenses** incurred with its prior written consent. The Limit of Liability available to pay **Damages** shall be reduced and may be completely exhausted by payment of **Claims Expenses**. **Damages** and **Claims Expenses** shall be applied against the Each **Claim** Deductible. or Each Claim Self-Insured Retention.
- D. The Underwriters shall have the right to make any investigation it deems necessary, including, without limitation, any investigation with respect to the **Application** and statements made in the **Application** and with respect to coverage.

However, notwithstanding the above, the **Insured's** rights under this Policy shall not be prejudiced by any refusal to disclose the identity of any confidential source of information, or to produce any documentation or information obtained in the course of **Media Activities** in respect of which the **Insured** has asserted a claim of reporter's privilege or any other privilege regarding the protection of news-gathering activities.

- E. If the **Insured** shall refuse to consent to any settlement or compromise recommended by the Underwriters and acceptable to the Claimant and elects to contest the **Claim**, the Underwriters liability for any **Damages** and **Claims Expenses** shall not exceed the amount for which the **Claim** could have been settled, less the remaining Each **Claim** Deductible, plus the **Claims Expenses** incurred up to the time of such refusal, or the applicable Limit of Liability, whichever is less, and the Underwriters shall have the right to withdraw from the further defense thereof by tendering control of said defense to the **Insured**. The portion of any proposed settlement or compromise that requires the **Insured** to cease, limit or refrain from actual or alleged infringing or otherwise injurious activity or is attributable to future royalties or other amounts that are not **Damages** shall not be considered in determining the amount for which a **Claim** could have been settled.
- F. It is further provided that the Underwriters shall not be obligated to pay any **Damages** or **Claims Expenses**, or to undertake or continue defense of any suit or proceeding after the applicable Limit of Liability has been exhausted by payment of **Damages** and/or **Claims Expenses** or after deposit of the applicable Limit of Liability in a court of competent jurisdiction, and that upon such payment, the Underwriters shall have the right to withdraw from the further defense thereof by tendering control of said defense to the **Insured**.

## IV. EXCLUSIONS

### A. APPLICABLE TO ALL COVERAGES UNDER THIS INSURANCE

The coverage under this Insurance does not apply to **Damages** or **Claims Expenses** in connection with or resulting from any **Claim**:

#### 1. Criminal, Dishonest, Intentional, Fraudulent, Malicious, Willful or Knowing Acts

Arising out of or resulting from any criminal, dishonest, intentional, fraudulent, malicious, willful or knowing act, error or omission committed by any **Insured**; however, this Policy shall apply to **Claims Expenses** incurred in defending any such **Claim** alleging the foregoing until such time as there is a final adjudication, judgment, binding arbitration decision or conviction against the **Insured**, or admission by the **Insured**, establishing such criminal, dishonest, intentional, fraudulent, malicious willful or knowing conduct, or a plea of *nolo contendere* or no contest regarding such conduct, at which time the **Named Insured** shall reimburse the Underwriters for all **Claims Expenses** incurred defending the **Claim** and the Underwriters shall have no further liability for **Claims Expenses**.

Provided, that this exclusion shall not apply to any **Claim** based upon or arising from the **Insured's** unintentional breach of a written agreement to refrain from disclosing confidential or proprietary information in rendering or failure to render **Professional Services**.

#### 2. Prior Knowledge, Prior Notice and Prior Acts

- a. Arising out of or resulting from any actual or alleged act, error or omission committed or arising prior to the inception date of this Insurance:
  - (i) If any director, officer, principal, partner, insurance manager or any member of the risk management or legal department of the **Named Insured** on or before the inception date knew or could have reasonably foreseen that such act, error, or omission might be expected to be the basis of a **Claim**; or
  - (ii) In respect of which any **Insured** has given notice of a **Circumstance** to the insurer of any other policy in force prior to the inception date of this Policy; or
- b. Arising out of related or continuing acts, errors or omissions where the first such act, error or omission was committed or arose prior to the Retroactive Date set forth in the Declarations.

#### 3. Insured versus Insured

Any **Claim** made by or on behalf of any **Insured** against any other Insured.

#### 4. Ownership Interest and Outside Positions

- a. Arising out of or resulting from any **Insured's** activities as a trustee, partner, officer, director or employee of any employee trust, charitable organization, corporation, company, or business other than that of the **Named Insured**; or
- b. Made by any entity, arising out of **Professional Services**, **Media Activities** or **Technology Based Services** performed for such entity, or **Technology Products** provided to such entity which:
  - (i) Is operated, managed, or controlled by an **Insured** or in which any **Insured** has an ownership interest which cumulatively exceeds twenty-five percent (25%), or in which any **Insured** is an officer or director; or
  - (ii) Operates, controls, or manages the **Named Insured**, or has an ownership interest of more than fifteen percent (15%) in the **Named Insured**.

#### 5. Discrimination, Humiliation, Harassment and Misconduct

Arising out of or resulting from any actual or alleged discrimination, humiliation, harassment or misconduct because of age, color, race, sex, creed, national origin, marital status, sexual preference or orientation, religion, disability, pregnancy or other class protected by law; provided, that this

exclusion shall not apply to any Claim arising out of the Insured's rendering or failure to render Professional Services based upon the Americans with Disabilities Act of 1990 (ADA), as amended, or any state or local version of such act.

**6. Assumption of Contractual Liability of Others**

Arising out of or resulting from the liability of others assumed by the **Insured** under any contract or agreement, except:

- a. With respect to Insuring Clause I.F. for liability **Assumed under Contract**; or
- b. To the extent the **Insured** would have been liable in the absence of such contract or agreement.

**7. Express Warranties, Representations, Guarantees and Promises**

For or arising out of or resulting from:

- a. Breach of any express warranty or representation except for an agreement to perform within a reasonable standard of care or skill consistent with applicable industry standards; or
- b. A demand for satisfaction of or breach of guarantee or any promises including, without limitation, cost savings, cost of construction, maximum construction price, **financing**, profits, or return on investment.

**8. Faulty Workmanship**

Under Insuring Clause **I.A.** arising out of the cost to repair or replace any faulty workmanship performed in whole or in part by any **Insured** on any construction, erection, fabrication, installation, assembly, manufacture, or remediation, including any materials, parts, labor or equipment furnished in connection with such repair or replacement.

**9. Employers Liability and Workers Compensation**

For or arising out of or resulting from:

- a. **Injury** to any employee of the **Insured** arising out of and in the course of employment by the **Insured**; or
- b. The **Insured's** employment obligations, decisions, practices, or policies as an employer.
- c. Any obligation which the **Insured** or any carrier as insurer may be liable under any workers compensation, unemployment compensation or disability benefits law or similar law.

**10. Property Liability**

Arising out of or resulting from the **Insured's** ownership, rental, lease, maintenance, operation, use, repair, voluntary or involuntary sale, transfer, exchange, gift, abandonment, or condemnation of any real or personal property including without limitation, automobiles, aircraft, watercraft and other kinds of conveyances.

**11. Products Liability**

Arising out of or resulting from the design or manufacture of any goods or products for multiple sales or mass distribution which are sold or supplied by the **Insured** or by others under license from the **Insured**; provided, that this exclusion shall not apply to any **Claim** which is covered pursuant to Insuring Clause **I.C.** of this Policy.

**12. Patent Infringement**

For or arising out of actual or alleged infringement of patent or patent rights or misuse of patent.

**15. Failure to Maintain Insurance**

Arising out of or resulting from the advising or requiring of, or failure to advise or require, or failure to maintain any form of insurance, suretyship, or bond, either with respect to the **Insured** or any other person or entity.

#### **16. Insolvency and Bankruptcy**

Arising out of or resulting from the insolvency or bankruptcy of any **Insured** or of any other entity including but not limited to the failure, inability, or unwillingness to pay **Claims**, losses, or benefits due to the insolvency, liquidation, or bankruptcy of any such individual or entity.

#### **17. War and Terrorism**

Directly or indirectly caused by, resulting from or in connection with:

- a.** Any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss;
  - (i)** War, invasion, acts of foreign enemies, hostilities or warlike operations (whether war is declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
  - (ii)** Any act of terrorism.
- b.** Any action taken in controlling, preventing, suppressing or in any way relating to **(i)** or **(ii)** above.

For the purpose of this exclusion, an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

If the Underwriters allege that by reason of this exclusion, any **Damages** or **Claims Expenses** are not covered by this Insurance, the burden of proving the contrary shall be upon the **Insured**.

In the event any portion of this exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

#### **18. Radioactive Contamination Exclusion Clause-Liability Direct (U.S.A.)**

For attachment (in addition to the appropriate Nuclear Incident Exclusion Clause-Liability-Direct) to liability insurances affording worldwide coverage.

In relation to liability arising outside the U.S.A., its Territories or Possessions, Puerto Rico or the Canal Zone, this Policy does not cover any liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.

#### **19. Nuclear Incident Exclusion Clause Liability Direct (Broad) (U.S.A)**

For attachment to insurances of the following classifications in the U.S.A., its Territories and Possessions, Puerto Rico and the Canal Zone:

Owners, Landlords and Tenants Liability, Contractual Liability, Elevator Liability, Owners or Contractors (including railroad) Protective Liability, Manufacturers and Contractors Liability, Product Liability, Professional and Malpractice Liability, Storekeepers Liability, Garage Liability, Automobile Liability (including Massachusetts Motor Vehicle or Garage Liability),

Not being insurances of the classifications to which the Nuclear Incident Exclusion Clause-Liability-Direct (Limited) applies.

This Policy\* does not apply:

- I.** Under any Liability Coverage, to injury, sickness, disease, death or destruction

- a. With respect to which an insured under the Policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
  - b. Resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) the insured is, or had this Policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
- II. Under any Medical Payments Coverage, or under any Supplementary Payments Provision relating to immediate medical or surgical relief, to 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.
- III. Under any Liability Coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if
  - a. The nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of, an insured or (2) has been discharged or dispersed therefrom;
  - b. The nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
  - c. The injury, sickness, disease, death or destruction arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (c) applies only to injury to or destruction of property at such nuclear facility.
- IV. As used in this endorsement:
 

"Hazardous properties" include radioactive, toxic or explosive properties; "nuclear material" means source material, special nuclear material or by-product material; "source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act 1954 or in any law amendatory thereof; "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 by-product material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof; "nuclear facility" means

  - a. Any nuclear reactor,
  - b. Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste,
  - c. Any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,
  - d. Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste,

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations; "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. With respect to injury to or destruction of property, the word "injury" or "destruction" includes all forms of radioactive contamination of property.

It is understood and agreed that, except as specifically provided in the foregoing to the contrary, this clause is subject to the terms, exclusions, conditions and limitations of the Policy to which it is attached.

\* NOTE: As respects policies which afford liability coverages and other forms of coverage in addition, the words underlined should be amended to designate the liability coverage to which this clause is to apply.

## 20.. Communicable Disease

**Claims** due to a communicable disease, which means an illness, sickness, physical condition, or an interruption or disorder of bodily functions, systems, or organs

## B. APPLICABLE TO INSURING CLAUSE I.B., I.C., I.D., I.E., AND I.F.

The coverage under Insuring Clause **I. B, I.C., I.D., I.E.,** and/or **I.F.** of this Policy does not apply to **Damages or Claims Expenses** in connection with or resulting from any **Claim**:

### 1. Contractual Liability

Arising out of or resulting from:

**A.** Any contractual liability or obligation, or arising out of or resulting from breach of contract or agreement either oral or written, except:

(i) With respect to:

(a) Insuring Clause **I.B.** for breach of an agreement by the **Named Insured** to perform **Technology Based Services**; or

(b) Insuring Clause **I.C.** for breach of an agreement by the **Named Insured** to manufacture, develop, create, distribute, license, lease or sell **Technology Products**;

This exclusion shall not apply to breach of any hold harmless or indemnity agreement;

(ii) With respect to Insuring Clause **I.E.** for liability:

(a) **Assumed under Contract**; or

(b) Misappropriation of ideas under an implied contract;

(iii) With respect to Insuring Clause **I.F.** for liability or any obligation under a confidentiality or non-disclosure agreement with regards to **Personally Identifiable Non-Public Information** or **Third Party Corporate Information**; or

(iv) To the extent the **Insured** would have been liable in the absence of such contract or agreement; or

**B.** Breach of any contractual obligation which goes beyond an express or implied duty to exercise a degree of care or skill as is consistent with applicable industry standards.

### 2. Business Risks

Arising out of or resulting from:

**a.** Inaccurate, inadequate or incomplete description of the price of goods, products or services;

**b.** Cost guarantees, cost representations, or contract price estimates of probable costs or cost estimates actually or allegedly being exceeded;

**c.** The failure of goods, products, or services to conform with any represented quality or performance contained in **Advertising**; or

**d.** Any actual or alleged gambling, contest, lottery, promotional game, or other game of chance.

**3. Licensing Fees and Royalty Payments**

Arising out of or resulting from any actual or alleged obligation to make licensing fee or royalty payments, including but not limited to the amount or timeliness of such payments.

**4. Reprinting, Recall, Removal, Disposal, Withdrawal, Inspection, Repair, Replacement, Reproduction Costs and Expenses**

Arising out of or resulting from any costs or expenses incurred or to be incurred by the **Insured** or others for:

- A. The reprinting, recall, removal or disposal of any **Media Material**, including any media or products containing such **Media Material**; or
- B. The withdrawal, recall, inspection, repair, replacement, reproduction, removal or disposal of:
  - (i) **Technology Products**, including any products or other property of others that incorporate **Technology Products**;
  - (ii) Work product resulting from or incorporating the results of **Technology Based Services**; or
  - (iii) Any products or other property on which **Technology Based Services** are performed;

Provided, that this exclusion shall not apply to **Claims** for the resulting loss of use of such **Media Material** or **Technology Products**, or loss of use of the work product resulting from such **Technology Based Services**.

**5. Electrical and Telecommunications Failure and Malfunction and Force Majeure**

Arising out of, resulting from or alleging:

- a. Any failure or malfunction of electrical or telecommunications infrastructure or services, unless under the **Named Insured's** operational control; or
- b. Fire, flood, earthquake, volcanic eruption, explosion, lightning, wind, hail, tidal wave, landslide, act of God or other physical or force majeure event.

**6. Antitrust**

Arising out of any actual or alleged antitrust violation, restraint of trade, unfair competition, violation of the Sherman Antitrust Act, the Clayton Act, the Robinson-Patman Act, as amended, or any similar law or legislation of any state, province or other jurisdiction, false, deceptive or unfair trade practices, violation of consumer protection laws or false or deceptive or misleading advertising.

**7. Federal Trade Commission and Federal Communications Commission**

Brought by or on behalf of the Federal Trade Commission, the Federal Communications Commission, or any similar governmental entity.

**8. Copyright and Trade Secret Infringement of Technology Products**

Arising out of actual or alleged infringement of copyright or misappropriation of trade secret arising out of or related to **Technology Products**.

**9. Electromagnetic Fields and Radiation**

Arising out of or resulting from the existence, emission, or discharge of any electromagnetic field, electromagnetic radiation or electromagnetism that actually or allegedly affects the health, safety or condition of any person or the environment, or that affects the value, marketability, condition or use of any property.

**10. Delay in Delivery or Performance**

Arising out of or resulting from delay in delivery or performance, or failure to deliver or perform at or within an agreed upon period of time.

## V. WHO IS AN INSURED

### A. **Insured** shall mean:

- a. The **Named Insured**;
- b. A director or officer of the **Named Insured**, but only with respect to the performance of his or her duties as such on behalf of the **Named Insured**;
- c. An employee or **Temporary Employee** of the **Named Insured**, but only for work done while acting within the scope of his or her employment and related to the conduct of the **Named Insured's** business;
- d. A principal if the **Named Insured** is a sole proprietorship, or a partner if the **Named Insured** is a partnership, but only with respect to the performance of his or her duties as such on behalf of the **Named Insured**;
- e. Any person who previously qualified as an **Insured** under a., b. and c. above prior to the termination of the required relationship with the **Named Insured**, but only with respect to the performance of his or her duties as such on behalf of the **Named Insured**;
- f. The estate, heirs, executors, administrators, assigns and legal representatives of any **Insured** in the event of such **Insured's** death, incapacity, insolvency or bankruptcy, but only to the extent that such **Insured** would otherwise be provided coverage under this Insurance;
- g. The **Named Insured** with regard to its participation in a joint venture, but solely for the **Named Insured's** liability that arises out of a negligent act, error or omission in rendering or failing to render **Professional Services** by the **Named Insured**; and

### B. **Named Insured** means only those persons, partnerships, corporations or entities specified in the Declarations.

The term **Named Insured** shall include any corporate entity while more than fifty percent (50%) of the outstanding securities representing the present right to vote for the election of such entity's directors are owned by the **Named Insured** if such entity becomes so owned after the inception date of the Policy, subject to the terms and conditions of Section VIII, Item 8.a.

## VI. LIMIT OF LIABILITY

- A. The Limit of Liability stated in the Declarations for "Each **Claim**" is the limit of the Underwriters liability for all **Damages** and **Claims Expenses** arising out of each **Claim**.
- B. The "Aggregate for the **Policy Period**" stated in the Declarations is the Underwriters combined total Limit of Liability for all **Damages** and **Claims Expenses** arising out of all **Claims** which are covered under the terms and conditions of this Policy, and neither the inclusion of more than one **Insured** under this Policy, nor the making of **Claims** by more than one person or entity shall increase the Limit of Liability.
- C. The Underwriters' maximum aggregate Limit of Liability with respect to all **Claims** brought by or on behalf of or in the name or right of or involving the same claimant on a single project or related projects shall not exceed the Each **Claim** Limit of Liability stated in the Declarations.
- D. The Limit of Liability for any **applicable Extended Reporting Period** shall be part of and not in addition to the Limit of Liability of the Underwriters for the **Policy Period**.

## VII. DEDUCTIBLE OR SELF-INSURED RETENTION

### A. **DEDUCTIBLE**

The following applies only if Deductible is selected in the Declarations:

The "Each **Claim** Deductible" stated the Declarations applies separately to each **Claim**. The Each **Claim** Deductible shall be satisfied by monetary payments by the **Named Insured** of **Damages** and

**Claims Expenses** resulting from **Claims** first made during the **Policy Period** and any applicable **Extended Reporting Period** and reported to the Underwriters pursuant to the terms of this Policy. Satisfaction of the Each **Claim** Deductible is a condition precedent to the payment by the Underwriters of any amounts hereunder, and the Underwriters shall be liable only for the amounts in excess of the Each **Claim** Deductible subject to the Underwriters total liability not exceeding the Limits of Liability stated in the Declarations. The **Named Insured** shall make direct payments within the Each **Claim** Deductible to appropriate other parties designated by the Underwriters.

Any payments by the **Named Insured** in satisfaction of its deductible obligations under any other valid and collectible insurance shall not satisfy the Each **Claim** Deductible under this Policy.

#### **B. SELF-INSURED RETENTION**

The following applies only if Self-Insured Retention is selected in the Declarations:

1. The **Insured** agrees to assume the Self-Insured Retention the Declarations. Underwriters obligation to pay **Damages** and **Claims Expenses** under this insurance and the applicable limit shown in the Declarations will apply in excess of the self-insured retention.
2. Regardless of whether or not there is any other insurance, whether or not collectible, applicable to any **Claims** within the self-insured retention, the **Insured** must make actual payment of the full self-insured retention before the limits of insurance will apply. Compliance with this clause is a condition precedent for coverage under this insurance. Underwriters will make no payments of any type in the event the **Insured** fails to comply with this clause.
3. The **Insured** must not incur costs other than adjusting expenses without the Underwriters written consent in the event of any **Claims** which appears likely to exceed the self-insured retention.
4. Underwriters have the right and duty in all cases to assume control of the investigation, defense and settlement of any act, error or omission or "claim" to which this insurance applies. When we exercise this right, the following apply:
  - a. The **Insured** will remain responsible for the cost of all **Damages** and **Claims Expenses** within the self-insured retention,
  - b. At Underwriters request, you will advance to us any portion of the applicable self-insured retention that we deem reasonable to pay for any **Damages** and **Claims Expenses**,
  - c. If the **Insured** has paid to the Underwriters all or part of the applicable self-insured retention and the total amount of **Damages** and **Claims Expenses** that we pay for that **Claim** is less than the applicable self-insured retention, then we will reimburse the **Insured** the amount paid in excess of the amount we pay; and
  - d. Underwriters will have the sole and absolute right to settle the "claim" for any amount we deem reasonable, including any amount within the self-insured retention. Although we agree to attempt to advise and consult with the **Named Insured** prior to making any settlement, we will have no obligation to obtain your consent or the consent of any other **Insured**, to any settlement we make that requires payment from any **Insured** of any amount within the self-insured retention. The **Named Insured** and any other insured hereby waive any claim or defense against us resulting from our entering into any such settlement without your approval.

### **VIII. CONDITIONS**

#### **1. ACTION AGAINST THE UNDERWRITERS**

No action shall lie against the Underwriters unless, as a condition precedent thereto, the **Insured** shall have fully complied with all of the terms of this Policy, nor until the amount of the **Insured's** obligation to pay shall have been fully and finally determined either by judgment against them or by written agreement between them, the claimant and the Underwriters. Nothing contained herein shall give any person or organization any right to join the Underwriters as a party to any **Claim** against the **Insured** to

determine their liability, nor shall the Underwriters be impleaded by the **Insureds** or their legal representative in any **Claim**.

## 2. ASSISTANCE AND COOPERATION OF THE INSURED

The **Insured** shall cooperate with the Underwriters in all investigations, including investigations regarding the **Application** for and coverage under this Policy. The **Insured** shall execute or cause to be executed all papers and render all assistance as is requested by the Underwriters. The **Insured** agrees not to take any action which in any way increases the Underwriters exposure under the Policy.

Upon the Underwriters request, the **Insured** shall assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **Insured** because of acts, errors or omissions with respect to which insurance is afforded under this Policy; and the **Insured** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

The **Insured** shall not admit liability, make any payment, assume any obligations, incur any expense, enter into any settlement, stipulate to any judgment or award or dispose of any **Claim** without the written consent of the Underwriters.

Except as provided for in Section **II.B.**, expenses incurred by the **Insured** in assisting and cooperating with the Underwriters, as described above, do not constitute **Claims Expenses** and are not reimbursable under the Policy.

## 3. AUTHORIZATION

By acceptance of this Policy, the **Insureds** agree that the **Named Insured** will act on their behalf with respect to the giving and receiving of any notice provided for in this Policy, the payment of premiums and the receipt of any return premiums that may become due under this Policy, and the agreement to and acceptance of endorsements.

## 4. BANKRUPTCY

Bankruptcy or insolvency of the **Insured** shall not relieve the Underwriters of their obligations nor deprive the Underwriters of its rights or defenses under this Policy.

## 5. ENTIRE AGREEMENT

By acceptance of this Policy, all **Insureds** agree that this Policy embodies all agreements existing between them and the Underwriters relating to this Insurance. Notice to any agent or knowledge possessed by any agent or by any other person shall not affect a waiver or a change in any part of this Policy or estop the Underwriters from asserting any right under the terms of this Policy; nor shall the terms of this Policy be waived or changed, except by written endorsement issued to form a part of this Policy, signed by the Underwriters.

## 6. HEADINGS

The descriptions in the headings and subheadings of this Policy are solely for convenience and form no part of the terms and conditions of coverage.

## 7. INNOCENT INSURED

Whenever coverage under this Insurance would be excluded, suspended, or lost because of **A.1.** of Section **IV. Exclusions** relating to criminal, dishonest, intentional, fraudulent, malicious, willful or knowing acts, errors or omissions by any **Insured**, and with respect to which any other **Insured** did not personally participate or personally acquiesce or remain passive after having personal knowledge thereof, then the Underwriters agree that such insurance as would otherwise be afforded under this Policy shall cover and be paid with respect to those **Insureds** who did not personally commit or personally participate in committing or personally acquiesce in or remain passive after having personal knowledge of one or more of the acts, errors or omissions described in **A.1.** of Section **IV. Exclusions**.

This provision is inapplicable to any **Claim** or **Circumstance** against the **Named Insured** arising from acts, errors or omissions known to any present or former principal, partner, director, or officer of the **Named Insured**.

With respect to this provision, the Underwriters obligation to pay in such event shall only be in excess of the full extent of any recoverable assets of any **Insured** to whom Exclusion **A.1.** of Section **IV. Exclusions** applies and shall be subject to the terms, conditions and limitations of this Policy.

## 8. MERGERS AND ACQUISITIONS

a. If during the **Policy Period**, if the **Named Insured** acquires another entity for whom more than fifty percent (50%) of the outstanding securities representing the present right to vote for the election of such entity's directors are owned by the **Named Insured**, then no **Insured** shall have coverage under this Policy for any **Claim** that arises out of any act, error, or omission, whether committed or arising either before or after such acquisition:

- (i) By the acquired entity or any person employed by the acquired entity; or
- (ii) Involving or relating to the assets, liabilities, or **Computer Systems** of the acquired entity.

The foregoing provision shall not apply if the **Named Insured** gives the Underwriters written notice within sixty (60) days after the effective date of the acquisition, obtains the written consent of the Underwriters to extend coverage to such additional entities, assets, or exposures, and agrees to pay any additional premium required by the Underwriters.

b. If during the **Policy Period** the **Named Insured** consolidates or merges with another entity such that the **Named Insured** is not the surviving entity, is acquired by another entity, or sells substantially all of its assets to any other entity, then coverage under this Policy shall not apply to acts, errors, omissions or other breach committed or arising subsequent to such consolidation, merger or acquisition. The **Named Insured** shall provide written notice of such consolidation, merger or acquisition to the Underwriters as soon as practicable, together with such information as the Underwriters may require.

c. All notices and premium payments made under this section shall be directed to the Underwriters through the entity named in the Environmental Common Policy Declarations.

## 9. NOTICE OF CLAIM OR CIRCUMSTANCE

a. If any **Claim** is made against an **Insured**, the **Insured** shall forward as soon as practicable to the Underwriters written notice of such **Claim** in the form of a facsimile, email or express or certified mail together with every demand, notice, summons or other process received by the **Insured** or the **Insured's** representative, but in no event later than sixty (60) days after the expiration of the **Policy Period** or during the optional **Extended Reporting Period**, if purchased.

b. If during the **Policy Period** any director, officer, principal, partner, insurance manager or any member of the risk management or legal department of the **Named Insured** first becomes aware of any **Circumstance** and gives written notice to the Insurer in the form of a facsimile, email or express or certified mail as soon as practicable during the **Policy Period** of:

- (i) The specific details of the act, error or omission in the provision of **Professional Services, Media Activities** or **Technology Based Services** or relating to **Technology Products** that gave rise to the **Circumstance**;
- (ii) The injury or damage which may result or has resulted from the **Circumstance**; and
- (iii) The facts by which such director, officer, principal, partner, insurance manager or any member of the risk management or legal department of the **Named Insured** first became aware of the act, error or omission.

Then any subsequent **Claim** made against the **Insured** arising directly out of such **Circumstance** which is the subject of the written notice will be deemed to have been made at the time written notice complying with the above requirements was first given to the Underwriters.

- c. **Claim** shall be considered to be reported to the Underwriters when written notice is first received by the Underwriters in the form of a facsimile, email or express or certified mail of the **Claim** or of a **Circumstance** if provided in compliance with Clause **b.** above.
- d. If any **Insured** shall make any **Claim** under this Policy knowing such **Claim** to be false or fraudulent, as regards amount or otherwise, this Policy shall become null and void and all coverage hereunder shall be forfeited.

## 10. OTHER INSURANCE

This Insurance shall apply in excess of:

- 1. Any other valid and collectible insurance available to any **Insured**, including, but not limited to, any project specific professional liability; and
  - 2. Any self-insured retention or deductible portion thereof
- Unless such other insurance is written only as specific excess insurance over the Limit of Liability of this Policy.

## 11. REPRESENTATIONS

By acceptance of this Policy, all **Insureds** agree that the statements contained in the **Application** are their agreements and representations, that they shall be deemed material to the risk assumed by the Underwriters, and that this Policy is issued in reliance upon the truth thereof.

The misrepresentation or non-disclosure of any matter by the **Insured** or its agent in the **Application** will render the Policy null and void and relieve the Underwriters from all liability under the Policy.

## 12. SUBROGATION

In the event of any payment under this Insurance, the Underwriters shall be subrogated to all the **Insureds'** rights of recovery therefore against any person or organization, and the **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insured** shall do nothing to prejudice such rights. Any recoveries shall be applied first to subrogation expenses, second to **Damages** and **Claims Expenses** paid by the Underwriters, and third to the Each **Claim** Deductible. Any additional amounts recovered shall be paid to the **Named Insured**.

## 13. TERRITORY

This Policy applies to **Claims** made and acts, errors or omissions committed or arising anywhere in the world.

## 13. VALUATION AND CURRENCY

All premiums, limits, deductibles, **Damages** and other amounts under this Policy are expressed and payable in the currency of the United States. If judgment is rendered, settlement is denominated or another element of **Damages** under this Policy is stated in a currency other than United States dollars or if **Claims Expenses** are paid in a currency other than United States dollars, payment under this Policy shall be made in United States dollars at the rate of exchange published in the *Wall Street Journal* on the date the judgment becomes final or payment of the settlement or other element of **Damages** is due or the date such **Claims Expenses** are paid.

## IX. EXTENDED REPORTING PERIODS

- 1. We will provide one or more extended reporting periods, as described below, if:
  - a. This Coverage Form is cancelled or not renewed; or
  - b. We renew or replace this Coverage Form with insurance that:
    - (1) Has a retroactive date later than the date shown in the Declarations; or
    - (2) Does not apply to **Claims** that result from acts, errors or omissions in the rendering of or the failure to render **Professional Services** on a claims made basis.
- 2. Extended reporting periods do not extend the policy period or change the scope of coverage provided. They apply only to **Claims** that result from acts, errors, or omissions in the rendering of or failure to render

**Professional Services** that occurs before the end of the policy period but not before the Retroactive Date, if any, shown in the Declarations, provided the **Claim** is first made during the policy period and reported to us during the extended reporting period.

Once in effect, extended reporting periods may not be cancelled.

3. Extended reporting periods do not reinstate or increase the limits of insurance.
4. A Basic Extended Reporting Period is automatically provided without additional charge. This period starts with the end of the policy period and lasts for 60 days.

The Basic Extended Reporting Period does not apply to **Claims** that are covered under any subsequent insurance you purchase, or that would be covered but for exhaustion of the amount of insurance applicable to such **Claims**.

5. An Optional Extended Reporting Period is available, subject to Paragraph 6. below, but only by an endorsement for an extra charge. This Optional Extended Reporting Period starts when the Basic Extended Reporting Period, set forth in Paragraph 4. above, ends.

You must give us a written request for the endorsement within 30 days after the end of the policy period. The Optional Extended Reporting Period will not go into effect unless you pay the additional premium promptly when due.

We will determine the additional premium in accordance with our rules and rates. In doing so we may take into account the following:

- a. The exposures insured;
- b. Previous types and amounts of insurance;
- c. Limits of Liability available under this Coverage Form for future payment of **Claims**; and
- d. Other related factors,

This endorsement will set forth the terms, not inconsistent with this section, applicable to the Optional Extended Reporting Period, including a provision to the effect that the insurance afforded for **Claims** first received during such period is excess over any other valid and collectible insurance available under policies in force after the Optional Extended Reporting Period starts.

6. We do not have to provide an Optional Extended Reporting Period if:
  - a. There is any failure to pay any outstanding premiums when due;
  - b. You fail to repay any self-insured retention or deductible amount we have paid;
  - c. You have purchased any other insurance to replace the insurance provided under this endorsement; or
  - d. The application for this Coverage Form, including any addenda thereto, contains any material misrepresentation of fact.

## X. DEFINITIONS

Wherever used in this Policy in bold face type, the following definitions shall apply.

1. "**Advertising**" means material which promotes the product, service or business of the **Named Insured** or others.
2. "**Application**" means all signed applications, including all attachments and other materials submitted therewith or incorporated therein, and any other such documents submitted in connection with the underwriting of this Policy including any endorsement or other part thereof, or any other policy issued by the Underwriters, of which this Policy is a renewal, replacement or which it succeeds in time.
3. "**Assumed Under Contract**" means liability assumed by the **Named Insured** under a written hold harmless or indemnity agreement regarding the content of **Media Material** used in a **Media Communication**, but only as respects acts for which insurance is afforded under Insuring Clause **I.E.**

4. **“Breach Notice Law”** means any state, federal or foreign statute or regulation that requires notice to persons whose **Personally Identifiable Non-Public Information** was accessed or may reasonably have been accessed by an unauthorized person.
5. **“Circumstance”** means any fact, event or situation that could reasonably be the basis for a **Claim**.
6. **“Claim”** means a demand received by any **Insured** for money or services including the service of suit or institution of arbitration proceedings. **“Claim”** shall also mean a threat or initiation of a suit seeking injunctive relief (meaning a temporary restraining order or a preliminary or permanent injunction).

Multiple **Claims** arising from the same or a series of related or repeated acts, errors, omissions shall be considered a single **Claim** for the purposes of this Policy, irrespective of the number of Claimants or **Insureds** involved in the **Claim**. All such **Claims** shall be deemed to have been made at the time of the first such **Claim**.

7. **“Claims Expenses”** means:

- a. Reasonable and necessary fees charged by an attorney designated or consented to by the Underwriters;
- b. All other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim**, suit or proceeding arising in connection therewith, if incurred by the Underwriters, or by the **Insured** with the prior written consent of the Underwriters; and
- c. Premiums for appeal bonds for covered judgments or bonds to release property used to secure a legal obligation, if required for a **Claim** against any **Insured** for a covered act, error, or omission, provided, however, that the Underwriters shall have no obligation to appeal or to obtain such bonds.

Claims Expenses do not include any salary, overhead or other charges of or by the Insured for any time spent in cooperating in the defense and investigation of any Claim notified under this Insurance, or costs to remediate an act, error or omission without the prior written consent of the Underwriters.

8. **“Computer Systems”** means computers and associated input and output devices, data storage devices, networking equipment, and back up facilities:

- a. Operated by and either owned by or leased to the **Named Insured**; or
- b. Operated by a third party service provider and used for the purpose of providing hosted computer application services to the **Named Insured** or for processing, maintaining, hosting, or storing the **Named Insured’s** electronic data, pursuant to written contract with the **Named Insured** for such services.

9. **“Damages”** means a monetary judgment, award or settlement of compensatory damages, including any pre-judgment and/or post judgment interest thereon.

The term **Damages** shall not include or mean:

- a. Future profits, restitution, disgorgement of unjust enrichment or profits by an **Insured**, or the costs of an **Insured** to comply with orders granting injunctive or equitable relief;
- b. Return or offset of fees, charges, or commissions for goods or services already provided or contracted to be provided;
- c. Costs incurred by the **Insured** to correct, re-perform or complete any **Media Activities or Technology Based Services**;
- d. Any damages which are a multiple of compensatory damages;
- e. Fines, taxes or loss of tax benefits, sanctions or penalties assessed against the **Insured**;
- f. Punitive or exemplary damages, unless insurable by law under the law under which this Policy is construed;
- g. Discounts, coupons, prizes, awards or other incentives offered to the **Insured’s** customers or clients;

- h. Liquidated damages to the extent that such damages exceed the amount for which the **Insured** would have been liable in the absence of such liquidated damages agreement;
  - i. Any amounts for which the **Insured** is not liable, or for which there is no legal recourse against the **Insured**; or
  - j. Matters deemed uninsurable under the law pursuant to which this Policy shall be construed.
10. “**Malicious Code**” means any virus, Trojan Horse, worm or other similar software program, code or script intentionally designed to insert itself into computer memory or onto a computer disk and spread itself from one computer to another.
11. “**Media Communication**” means the display, broadcast, dissemination, distribution, or release of **Media Material** to the public by the **Named Insured**.
12. “**Media Material**” means information in the form of words, sounds, numbers, images, or graphics in electronic, print or broadcast form, including **Advertising**, but does not mean computer software.
13. “**Media Activities**” means **Media Communication** and/or the gathering, collection or recording of **Media Material** for inclusion in any **Media Communication** in the ordinary course of the **Named Insured’s** business.
14. “**Extended Reporting Period**” means the period of time after the end of the **Policy Period** for reporting **Claims** as provided in Section **IX.** of this Policy.
15. “**Personally Identifiable Non-Public Information**” means an individual’s name in combination with one or more of the following:
- a. Information concerning the individual that constitutes “non-public personal information” as defined in the Gramm-Leach Bliley Act of 1999, as amended, and regulations issued pursuant to the Act;
  - b. Medical or health care information concerning the individual, including “protected health information” as defined in the Health Insurance Portability and Accountability Act of 1996, as amended, and regulations issued pursuant to the Act; or
  - c. The individual’s social security number, driver’s license or state identification number, credit, debit or other financial account numbers and associated security codes, access codes, passwords or pins that allows access to the individual’s financial account information.
16. “**Policy Period**” means the period of time between the inception date shown in the Declarations and the effective date of termination, expiration or cancellation of this Insurance and specifically excludes any **Extended Reporting Period** or any prior policy period or renewal period.
17. “**Privacy Policy**” means the internal or publicly accessible written documents that set forth the **Named Insured’s** policies, standards and procedures for collection, use, disclosure, sharing, dissemination and correction or supplementation of, and access to, **Personally Identifiable Non-Public Information**.
18. “**Professional Services**” means those services performed for others by or on behalf of the **Named Insured** in the capacity as an architect, engineer, land surveyor, landscape architect, interior designer, construction manager, project manager, forensic consultant, environmental consultant or design, construction or project consultant or planner.
19. “**Reputational Damage consultant**” means a professional firm or consultant that provides Reputational Damage services and has been approved in writing by us, the approval for which will not be unreasonably withheld.

**20. "Reputational Damage Expenses"** means those reasonable and necessary fees and expenses:

- a. Incurred by the **Named Insured** for reputational damage consulting services in connection with a **Claim** covered under this policy, or thereafter as approved by us in writing; and
- b. For services provided to you by a **Reputational Damage Consultant** for the sole purpose of assisting you with:
  1. Managing the media in direct response to a reputational damage event to which this insurance applies; or
  2. Minimizing the economic harm to you caused by a reputational damage event to which this insurance applies by consulting with you with respect to maintaining and restoring your company's public image or reputation.

You must take reasonable steps to minimize **Reputational Damage Expenses**

**21. "Security Breach"** means **Unauthorized Access of Computer Systems**, infection of **Computer Systems** by **Malicious Code** or transmission of **Malicious Code** from **Computer Systems**, whether any of the foregoing is specifically targeted attack or a generally distributed attack. A series of continuing **Security Breaches** or related or repeated **Security Breaches** shall be considered a single **Security Breach** and be deemed to have occurred at the time of the first such **Security Breach**.

**22. "Technology Based Services"** means computer and electronic technology services, including data processing, Internet services, data and application hosting, computer systems analysis, technology consulting and training, custom software programming for a specific client of the **Named Insured**, computer and software systems installation and integration, computer and software support, and network management services performed by the **Insured**, or by others acting under the **Named Insured's** trade name, for others for a fee, but shall not mean **Technology Products**.

**23. "Technology Products"** means a computer or telecommunications hardware or software product, or related electronic product that is created, manufactured or developed by the **Named Insured** for others, or distributed, licensed, leased or sold by the **Named Insured** to others, for compensation, including software updates, service packs and other maintenance releases provided for such products.

**24. "Temporary Employee"** means a natural person furnished or leased to the **Named Insured** to meet short term or project specific workloads and for whom the **Named Insured** has the right to direct and control the means of performance.

**25. "Theft of Data"** means the unauthorized taking, misuse or disclosure of information on **Computer Systems**, including but not limited to charge, debit, and credit card information, banking, financial, and investment services account information, proprietary information, and personal, private, and confidential information.

**26. "Third Party Corporate Information"** means any trade secret, data, design, interpretation, forecast, formula, method, practice, process, record, report or other item of information of a third party not insured under this Policy which is not available to the general public and is provided to the **Insured** subject to a mutually executed written confidentiality agreement or marked "confidential" in writing by such third party.

**27. "Unauthorized Access"** means:

- b. The use of or access to **Computer Systems** by a person not authorized to do so by the **Named Insured**; or

- c. The authorized use of or access to **Computer Systems** in a manner not authorized by the **Named Insured**.

SPECIMEN