

**Attachment 1**  
**SHI Reseller Agreement & Insurance Documentation**

Reseller Agreement  
between  
SHI International Corp.  
and  
County of Monterey, on behalf of  
Natividad Medical Center

Reseller Agreement  
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## Reseller Agreement

This reseller agreement, made this 1<sup>st</sup> day of May 2012 (the "Effective Date"), together with the Exhibits attached hereto and incorporated herein which may be added hereto from time to time by mutual agreement of the Parties, (collectively, the "Agreement") by and between SHI International Corp., having an office and place of business at 290 Davidson Avenue, Somerset, NJ 08873 ("Reseller"), and County of Monterey, a political subdivision of the State of California, on behalf of Natividad Medical Center, an acute care hospital, having an office and place of business at 1141 Constitution Boulevard, Salinas, CA 93906 ("Customer") (hereinafter collectively referred to as "the Parties", or individually as a "Party").

WHEREAS, Reseller is in the business of, and has expertise in, providing certain third party software, computer peripherals, computer hardware, and associated third party IT services (collectively, "Product") and Services, as hereinafter described; and

WHEREAS, Customer wishes to obtain through Reseller and Reseller wishes to provide to Customer such Product as hereinafter described.

NOW THEREFORE, in consideration of the mutual covenants and promises set forth herein, the Parties agree as follows:

### Article 1 - Definition of Terms

The following terms, wherever used in any documents which form part of this Agreement, shall have the meanings indicated below unless the context otherwise requires. Additional definitions may be contained elsewhere in this Agreement.

- A. "Affiliate" means any entity which controls, is Controlled by or is under common control with one of the Parties to this Agreement. "Control" or "Controlled" means beneficial ownership (direct or indirect) of the subject entity.
- B. "Commercially Reasonable" means taking all such steps and performing in such a manner as a well managed company would undertake where it was acting in a determined, prudent and reasonable manner to achieve a particular desired result for its own benefit.
- C. "Cost" means Reseller's total cost of goods, including freight, handling fees and/or order fees that have been charged to Reseller by the OEM or distributor providing the Product, and any third Party fees associated with the transaction, such as credit card fees or other transaction fees charged to Reseller. Reseller does not initiate or add any self-imposed fees to the transaction.
- D. "Deliverables" means those reports, documentation, and schedules to be developed and provided by Reseller to Customer in regard to the Services provided by Reseller hereunder.
- E. "Price" means the price specified in the Purchase Order for the Product.
- F. "Services" means the reseller services provided by Reseller under this Agreement; i.e. sourcing and fulfilling the Product and/or providing Deliverables identified in an Purchase Order.
- G. "Site" means the facility or office or other location, as designated in this Agreement or the Purchase Order, for which the Product and/or Deliverable is to be delivered.
- H. "OEM" means the original equipment manufacturer, or in the case of software, the software publisher/licensor.
- I. "Purchase Order" means the Customer's form of purchase order or other document used for the purpose of ordering Product and/or Deliverables pursuant to this Agreement.

### Article 2 - Rules

The following rules shall be used to interpret this Agreement:

- A. The term "including" means "including, but not limited to" and shall be interpreted as broadly as possible.
- B. All references to "days" shall be calendar days, not business days, unless otherwise explicitly stated.
- C. The captions and titles to articles and paragraphs of this Agreement are only provided for convenience and have no effect on the nature, extent, construction and meaning of this Agreement.
- D. In the event of any inconsistency between the provisions of the following documents, the inconsistency shall be resolved by giving precedence in the following order:
  - E.
    - 1. Amendments to this Agreement, if any;
    - 2. This Agreement;
    - 3. Purchase Order;

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4. Documents incorporated into the Purchase Order in the order in which they are listed
  5. and
  6. Documents incorporated into this Agreement in the order in which they are listed.
- F. This Agreement shall govern and supersede any preprinted terms and conditions stated on or attached to any Purchase Order, invoice or other document submitted by Customer or Reseller, which are null and void with respect to this Agreement.
- G. If copies of documents are referenced or incorporated in this Agreement, they shall be read as originals. Attachments, schedules, appendices and addenda shall be considered part of the documents in which they are referenced. Documents that are referenced shall have the same force and effect as if contained in their entirety.
- H. Notwithstanding the general rules of construction, both Customer and Reseller acknowledge that both Parties were given an equal opportunity to negotiate the terms and conditions contained in this Agreement, and agree that the identity of the drafter of this Agreement is not relevant to any interpretation of the terms and conditions of this Agreement.

### Article 3 - Attachments

The following documents are attached and are hereby incorporated into this Agreement by reference:

- Attachment 1: Documentation from the following OEMs which verifies Reseller Authorization to resell and/or distribute their products and/or services: Cisco Systems, Inc., RSA Security Inc., VMware, Inc., BMC Software, Symantec, Solarwinds, LANDesk, Citrix and Fontware Ltd.

### Article 4 - Term of Agreement

This Agreement shall be effective on the Effective Date stated above and continue in effect for until June 30, 2015, unless otherwise mutually extended by the Parties, or if terminated in accordance with this Agreement.

### Article 5 - Scope of Agreement, Purchase Order

- A. This Agreement is not a commitment on the part of Customer to purchase Product from Reseller. Product will be purchased on an "as ordered" basis through the execution of one or more Purchase Orders, directing Reseller to deliver the Product, if any, for the benefit of Customer.
- B. The Product and any Deliverables to be provided shall be determined in such Purchase Order, including all attachments thereto. Each Purchase Order that refers to this Agreement shall be deemed a separate agreement that incorporates the terms and conditions of this Agreement by reference.
- C. Any Purchase Order issued hereunder shall, at a minimum, contain the following:
1. The incorporation by reference of this Agreement;
  2. The location where Product will be delivered;
  3. A detailed description of the Product, including, but not limited to, SKU, Manufacturer's part number, and any applicable designation and/or specifications which will avoid confusion regarding the Product to be delivered;
  4. A detailed description of Deliverable(s) to be provided by Reseller;
  5. Price, including any applicable fees, and payment terms;
  6. The scheduled delivery date;
  7. Reseller shall not be required to deliver any Product and/or Deliverable unless and until an Purchase Order has been provided to Reseller.
- D. If notice of rejection of an Purchase Order is not received by Customer within two business days from the date of its receipt by Reseller, then such Purchase Order shall be deemed to have been accepted by Reseller.
- E. Third Party IT services resold under an Purchase Order are provided by third Parties, and Customer acknowledges that Reseller shall have no liability for such third Party IT services beyond the processing of invoices and payment therefor.

### Article 6 - Rights in Deliverables

- A. Unless otherwise specifically agreed to in an Purchase Order, any and all Deliverables created, developed, or prepared by Reseller, its employees or Subcontractors shall be deemed a "work for hire" for the sole benefit of

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and belonging exclusively to Customer. All other intellectual property rights and other proprietary rights in and to the Services, and information, know-how and processes developed by Reseller, or anyone acting on Reseller's behalf, arising from the Services performed hereunder shall be the sole and exclusive property of Reseller and shall not be claimed to be owned by Customer or their employees.

- B. To the extent any Deliverable is not deemed a "work for hire" by operation of law, Reseller hereby irrevocably assigns, transfers and conveys to Customer all of its right, title and interest in all Deliverables under the Purchase Order, including, but not limited to, all rights of patent, copyright, trade secret or other proprietary rights in such Deliverable.
- C. Reseller shall provide to Customer all Commercially Reasonable assistance, execute such documents, and take all such other actions, which may be reasonably required to perfect the foregoing rights to the Deliverable (including, but not limited to, directing its employees to execute all applications for patents and/or copyrights, assignments, and other papers necessary to secure and enforce Customer's rights to such Deliverable).
- D. Notwithstanding the foregoing, Reseller shall retain ownership rights to (1) all of its previously existing intellectual property, including any systems, derivatives, modifications and enhancements thereto, (2) Confidential Information of Reseller, and (3) any tools or scripting applications used, developed or created by Reseller or its third Party licensors during the performance of this Agreement.

### Article 7 - Invoicing, Terms of Payment, Price and Tax

- A. All invoices shall be submitted to the remit-to address specified in an Purchase Order, submitted as specified in this Agreement, and shall reference the Purchase Order number and related Purchase Order number. The invoice shall set forth the amounts claimed by Reseller for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice as the County may require. The Contract Administrator or his or her designee shall certify the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment.
- B. Subject to reconciliation with the terms of this Agreement and the Purchase Order, including verification that the Product was delivered, the invoice shall be paid ("paid" being defined as "issuance of payment from Customer's Accounts Payable Department") net 30 days after receipt by the County Auditor-Controller of a certified invoice.
- C. Any invoice or portion thereof that is subject to a good faith dispute will not be paid; in such case, Customer will promptly notify Reseller of any rejected invoice or portion thereof, with reasons for such rejection. The rejected costs, adjusted to the extent as mutually agreed to, shall then be re-invoiced on a separate invoice.
- D. Invoices shall call for payments in U.S. Dollars, and shall accurately reflect the amount(s) of the Price set forth in the Purchase Order.
- E. Price
  - 1. The Price to be paid by Customer to Reseller for the Product shall be specified in the Purchase Order and shall represent Customer's sole financial liability and obligation to Reseller for the delivery of the Product and/or Deliverable.
  - 2. The Price shall be provided in quotations submitted by the Reseller from time to time.
- F. Tax
  - 1. Customer will be responsible for payment of any federal, state, and local sales, use, withholding tax, duties or similar taxes imposed or based on the sale of Products under this Agreement. Taxability will be calculated based on the ship-to location provided on the Purchase Order.  
When Reseller is authorized to collect such taxes, they will be separately stated on Reseller's invoices and reported and paid to appropriate taxing authorities by Reseller. For destinations where Reseller is not authorized to collect such taxes, no tax will be shown on Reseller's invoice, and, if applicable, customer will be responsible for remitting such tax payments directly to the appropriate taxing authority.
  - 2. At Customer's request, Reseller will file any certificate or other document which may cause any such tax to be avoided or reduced, and cooperate with Customer in contesting any such tax or in claiming, on Customer's behalf, refunds of any such taxes paid by or on behalf of Customer.
  - 3. Reseller shall be responsible for the payment of all taxes that apply to Reseller's operations, such as payroll or income taxes.

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## Article 8 - Title, Risk of Loss, Returns

A. Reseller shall transfer to Customer good and merchantable title to the Deliverables and Product, free from all liens, encumbrances and claims of others, upon delivery of the Deliverables and Product to and its receipt by Customer, at which time title and risk of loss shall vest fully in Customer, unless notice of rejection is provided to Reseller's authorized representative within 24 hours after such delivery.

### B. Returns

#### 1. General

Subject to Sections 2, 3, 4, 5 and 6, below,

- a. for a Product to be eligible for return, it must be in Resale Condition (one hundred percent (100%) complete, including all original boxes, packing materials, manuals, blank warranty cards, and other accessories provided by the OEM), received within the time periods described in this policy, and not designated as "non-cancellable" or "non-returnable" ("Special Purchase Order") when quoted.
- b. If the Product is a Special Purchase Order item or not in Resale Condition, then Reseller will accept the return only if the OEM/distributor will accept the return.
- c. shipping, and if imposed by OEM/distributor, restocking fees, shall be at Customer's cost.
- d. if return is due to Reseller's error, and the return request is made by Customer within thirty (30) calendar days of receipt of Product, then Reseller will accept the return at no additional cost to Customer.
- e. if Customer ordered the incorrect Product or has decided that it no longer wants the Product, then Reseller will accept the return from Customer, provided the OEM/distributor will accept the return.

#### 2. Non-Conforming Product

- a. If Customer determines in its reasonable discretion that Products are not in conformance with the description in the Purchase Order, then Customer may at its option, either:
  - 1) Request that Reseller promptly initiate an order to replace the non-conforming Product at no cost to Customer, in which case Reseller will order a replacement unit within one (1) business day of notice of nonconformance from Customer. Customer shall return the Product to Reseller, at no cost to Customer; or
  - 2) Terminate the non-conforming portion of the applicable Purchase Order. Customer shall return the Product to Reseller at no cost to Customer, and Reseller, upon receipt of the Product, shall promptly refund to Customer any payments made to Reseller therefor, provided that the request for such return was made within thirty (30) calendar days of receipt of Product by Customer, and that the return will be made in accordance with Reseller's RMA process, described below.

#### 3. Software License Returns

The OEM's return policy will govern license returns.

#### 4. Damage, Defects and DOA

If the Product has concealed damage (i.e. there is no evident damage to external packaging), is defective, or dead on arrival (DOA), Reseller will accept the return from Customer, provided the OEM/distributor will accept the return from Reseller; in any event, the OEM's/distributor's policies (which may include processing as a warranty claim) will apply. Reseller will order a replacement unit within one (1) business day of notice of damage, defect or DOA from Customer.

#### 5. Shipping Damage

- a. If a package containing Product purchased from Reseller arrives at Customer Purchase Order's ship-to address with external damage, Customer should refuse to accept delivery from the carrier. If Customer does accept delivery of such a package, Customer must:
  - 1) note the damage on the carrier's delivery record so that Reseller may file a claim;
  - 2) save, as is, the Product and the original box and packaging it arrived in; and
  - 3) notify Reseller in writing within five (5) calendar days of delivery acceptance to arrange for carrier's inspection and pickup of the damaged merchandise.

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- b. If Customer does not comply with the above requirements, Customer will be deemed to have accepted the Product as if it had arrived undamaged, and Reseller's regular return policy, as described herein, and all OEM warranties and restrictions will apply.

### 6. RMA Process

In order for Reseller to accept any returns, Customer must first obtain from Reseller and apply an RMA (Returned Merchandise Authorization) to the returned Product. If a Product is shipped directly to the OEM, distributor, or Reseller without an RMA, then Reseller shall not be responsible for accepting such return, Product replacement or refund, and such return may void any Customer claims on the Product.

### Article 9 - Packaging, Labeling, and Shipping

- A. Products shipped to Customer's facilities shall be packaged in such a manner as to preclude all reasonably anticipated in-transit damage and in accordance with commercial standards. All shipments of Products will be clearly labeled with the shipping address stated on the order, the applicable Purchase Order number, recipient's name and if applicable, building and room number.
- B. Shipment Terms are FOB Destination, freight pre-paid and added.

### Article 10 - Contractual Relationships, Relations

- A. Customer/Reseller Relationship: It is the intent of the Parties that the relationship of Customer and Reseller be that of the "customer" and "independent contractor", respectively. As an independent contractor, Reseller shall not act as or be an agent or employee of Customer in performing the Services, and shall determine the means and methods for satisfactorily providing the Services.
- B. Customer/OEM Relationship: Reseller has no privity of contract in any license agreement between Customer and OEM.
- C. Any provision herein referring to Reseller's subcontractors or OEM shall not create privity of contract between Customer and such Parties under this Agreement.

### Article 11 - Representations and Warranties

- A. Reseller hereby represents and warrants to Customer that for the term of this Agreement:
  - 1. Reseller shall perform the Services in a timely manner and with a high degree of professional skill and care using customarily accepted good and sound professional practices and procedures in the industry.
  - 2. Reseller will maintain all necessary local, state, and federal licenses and certifications that may be required in order to legally deliver the Product and Deliverables described in the Purchase Order(s). Reseller understands and acknowledges that Reseller is wholly responsible for ensuring compliance with all federal, state, and local laws associated with the delivery of all Services associated with this Agreement and associated Purchase Order(s).
  - 3. Reseller has all rights, approvals, and/or authorizations necessary to perform the Services hereunder, and provide the Product and/or Deliverables. Reseller represents and warrants that the documents attached as Attachment 1 to this Agreement authorize Reseller to resell and/or distribute products and/or services of the following OEMs: Cisco Systems, Inc., RSA Security Inc., VMware, Inc., BMC Software, Symantec, Solarwinds, LANDesk, Citrix and Fontware Ltd. to Customer.
  - 4. Reseller is authorized to execute this Agreement, is qualified to perform the Services, and has good title to the materials, supplies and equipment constituting the Services, free from all liens, encumbrances and claims of others.
  - 5. The Services and any Deliverables will not contain any computer instructions, circuitry or other technological means whose purpose is to disrupt, damage or interfere with Customer's use of the Services, Deliverables or its computer and telecommunications facilities.
- B. Remedy  
If a defect occurs or appears in the Deliverables or Services provided hereunder, it shall be presumed that Reseller failed to meet such standards, and Reseller shall promptly and at its own expense, correct or re-perform any such Services which fail to meet such standards within a reasonable time frame acceptable to Customer at no additional cost.
- C. Warranty of Product



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1. Reseller is a value added reseller ("VAR") of Product, not the OEM or licensor, and therefore disclaims any warranty responsibility regarding Product provided under this Agreement. Reseller shall forward the warranties to Customer which are provided to Reseller from the OEM of the Product, and to the extent granted by the OEM, Customer shall be the beneficiary of the OEM's warranties with respect to the Product. Reseller is not a Party to any such terms between Customer and OEM and Customer agrees to look solely to the OEM for satisfaction of any and all warranty claims related to that OEM's Product.
2. Customer has made and will make its own selection of the Products to be ordered hereunder based on its own evaluation of the character of such Product and its use needs.
3. Reseller shall forward to Customer all associated documentation provided or made available by the OEM at no additional cost, such as operator/user manuals, training materials, guides, and functional/technical specifications, whether in writing, electronic means or otherwise, (collectively "Documentation").

EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT AND/OR ANY ORDER ISSUED HEREUNDER, RESELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTY OF NONINFRINGEMENT, OR ANY WARRANTY RELATING TO THIRD PARTY SERVICES. THE DISCLAIMER CONTAINED IN THIS PARAGRAPH DOES NOT AFFECT THE TERMS OF ANY WARRANTY PROVIDED BY AN OEM.

### Article 12 - Indemnification

- A. Reseller agrees to defend, indemnify and hold Customer and its officers, directors, employees and agents harmless from and against any and all damages, liabilities, costs and expenses (including but not limited to attorneys' fees) incurred by Customer and its officers, directors, employees and agents as a result of any claim, judgment or proceeding against Customer or its officers, directors, employees and agents based on the negligent acts or omissions or willful misconduct of anyone acting under the direction or control or on the behalf of Reseller, arising out of the performance of the Services or the provision of the Products in the course of this Agreement hereunder.
- B. Customer shall promptly notify Reseller of all such claims, judgments or proceedings in writing and tender to SHI the opportunity to settle such claim, judgment or proceeding at SHI's expense, shall furnish Reseller all information, authority and assistance needed to enable it to defend the same, and shall cooperate with SHI in settling such claim, judgment or proceeding.
- C. SHI hereby waives any defense it may otherwise have under applicable Workers Compensation laws.
- D. Customer shall have the right, at its sole discretion, on its own behalf and at its own cost, to participate in such defense to whatever extent it deems necessary to protect its own interest and shall cooperate fully with Reseller in any such participation.
- E. Reseller's defense shall be through counsel selected by it.

### Article 13 - Software License

Software Products resold under this Agreement, as well as related maintenance or support services, will be governed by either the license/support agreement between Customer and the OEM or, if no such agreement exists, the OEM's standard license/support agreement, which Reseller shall forward to Customer at the time of delivery of the Products, when provided to Reseller by the manufacturer. Reseller is not a Party to any such terms between Customer and manufacturer and Customer agrees to look solely to the OEM for satisfaction of any and all license and support claims or obligations related to that OEM's Product.

### Article 14 - Limitation of Liability

- A. NEITHER PARTY WILL BE LIABLE FOR ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF OR DAMAGE TO DATA, LOSS OF ANTICIPATED REVENUE OR PROFITS, WORK STOPPAGE OR IMPAIRMENT OF OTHER ASSETS, WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- B. EXCEPT IN THE CASE OF BREACH OF EACH PARTY'S LIABILITY FOR PERSONAL INJURY/PROPERTY DAMAGE UNDER ARTICLE ENTITLED, "INDEMNIFICATION", EITHER PARTY'S TOTAL CUMULATIVE LIABILITY TO THE OTHER IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHER THEORY, WILL NOT EXCEED THE TOTAL AMOUNT OF FEES ACTUALLY PAID OR PAYABLE BY CUSTOMER TO RESELLER UNDER THIS AGREEMENT FOR THE YEAR PREVIOUS TO THE INCIDENT WHICH GAVE CAUSE FOR SUCH LIABILITY. CUSTOMER ACKNOWLEDGES THAT SUCH

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AMOUNT REFLECTS THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT RESELLER WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY.

### Article 15 - Confidential Information

- A. If a Party to this Agreement, its subcontractors and agents (the "Receiving Party") obtains access to Confidential Information (as defined below) of the other Party (the "Disclosing Party") in connection with the negotiation of or performance under this Agreement, the Receiving Party agrees that:
1. The Disclosing Party shall retain ownership of the Confidential Information and that the Receiving Party shall not acquire any rights therein, except the right to use such Confidential Information to the extent provided in this Agreement.
  2. The Receiving Party is hereby granted a limited, irrevocable, non-exclusive, royalty-free, non-transferable, worldwide right and license to use the Disclosing Party's Confidential Information according to the terms of this Agreement.
  3. Except as otherwise provided in this Agreement, no Confidential Information disclosed pursuant to this Agreement shall be made available by the Receiving Party to any third party for any purpose, except to an affiliate or subcontractor, where such disclosure is necessary for the performance of this Agreement and provided, further, however, that such disclosure shall not be made without an express written agreement of such affiliate or subcontractor to substantially comply with all restrictions on the use of such Confidential Information as are imposed upon the Receiving Party pursuant to this Agreement. The Receiving Party agrees to indemnify the Disclosing Party for any violation or breach of such restrictions.
- B. "Confidential Information" shall mean: (1) information which is (a) in tangible form, clearly and conspicuously identified by the Disclosing Party or a third party as proprietary and/or confidential (by stamp, legend or otherwise) when disclosed or, (b) in intangible form, if its proprietary and/or confidential nature is first announced, and then reduced to writing ("Summary") and furnished to the Receiving Party within thirty (30) days of the initial disclosure, in which case the Confidential Information contained in such Summary shall be subject to the restrictions herein; (2) all information about or belonging to the Disclosing Party that is disclosed or otherwise becomes known to the Receiving Party in connection with this Agreement and that is not a matter of public knowledge; (3) all trade secrets and intellectual property owned or licensed by the Disclosing Party; and (4) all personal information about individuals contained in the Disclosing Party's records (including, without limitation, names, addresses, social security numbers, and credit card and other financial information).
- C. In the event this Agreement is terminated, the Receiving Party shall cease to make use of the Confidential Information received from the Disclosing Party and, upon the Disclosing Party's written request, shall promptly destroy or return such Confidential Information. In the event that the Disclosing Party requests destruction, the Receiving Party shall provide written certification of the destruction within thirty (30) days of such request.
- D. Each Party agrees not to use the Confidential Information received from the other during the term of this Agreement, either directly or indirectly, to solicit business from any individual, company, agency or institute, or to interfere with, impair or hinder any relationship between the Disclosing Party and any of its customers, prospective customers, suppliers, strategic partners, affiliates or investors, or in any other manner to compete against the Disclosing Party.
- E. The Receiving Party shall use at least the same degree of care to protect the Confidential Information of the Disclosing Party from unauthorized disclosure or access that the Receiving Party uses to protect its own Confidential Information, but not less than reasonable care, including measures to protect against the unauthorized use, access, destruction, loss or alteration of such records.
- F. Each Party shall endeavor to keep to a minimum the amount of Information that is furnished to the other upon which restrictions are imposed.
- G. Information of the Disclosing Party shall not be considered Confidential Information to the extent that the Receiving Party can demonstrate that such information:
1. was previously rightfully known by the Receiving Party free of any obligation to keep it confidential;
  2. is or becomes publicly known through no wrongful act of the Receiving Party;
  3. is independently developed by the Receiving Party without reference to the Confidential Information of the Disclosing Party; or

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4. is subject to disclosure pursuant to a subpoena, judicial or governmental requirement, or order, or the California Public Records Act. Except in connection with a failure in the discharge of responsibilities set forth in the preceding sentence, the Receiving Party shall not be liable in damages for any disclosure of Confidential Information pursuant to judicial decree or government regulation.
- H. Confidential Information of the Parties does not include the terms of this Agreement, any Documents attached to this Agreement, any Purchase Orders issued pursuant to this Agreement, or the fact of the existence of the Parties' Agreement, any Documents attached thereto, or any Purchase Orders issued pursuant to the Parties' Agreement. The Parties' Agreement, any Documents attached thereto, or any Purchase Orders issued pursuant to the Parties' Agreement shall be deemed public records pursuant to the California Public Records Act.
- I. The confidentiality obligations of each Party under this Agreement will survive any expiration or termination of this Agreement for a period of three years after receipt of such Confidential Information.
- J. The rights, duties and obligations of the Parties with respect to all Confidential Information disclosed before the date of this Agreement in contemplation of the execution of this Agreement shall be as set forth in this Article.

### Article 16 - Publicity

- A. During or after the term of this Agreement, the Reseller shall not release any information (other than to its subcontractors on a need to know basis for purposes of performance under this Agreement and subject to the terms of this Agreement), including news releases, publicity, promotional, marketing, or other materials, media, or activities, any name, trade name, trademark, service mark, logo, or any other designation relating to the Customer, its Affiliates, or this Agreement, without the Customer's prior written approval and compliance with any terms and conditions related to such use which the owner of the mark provides to the other Party.
- B. Except as specifically set out in this Agreement, nothing in this Agreement shall grant, suggest or imply any authority for one Party to use the name, trademarks, service marks or trade names of the other for any purpose whatsoever.

### Article 17 - Insurance

- A. Reseller represents that it now carries, and agrees it will continue during the term of the Purchase Order to carry, as a minimum, insurance as listed below:

Type of Coverage	Limits of Liability
1. Worker's Compensation	Statutory
2. Employers' Liability	\$1,000,000 Bodily Injury by Accident or Disease, per person
3. Commercial General Liability including:	
• General Aggregate-Other than Prod/Completed Operations	\$2,000,000
• Products/Completed Operations Aggregate	\$2,000,000
• Bodily Injury and Property Damage	\$1,000,000 Per Occurrence
• Personal and Advertising Injury	\$1,000,000 Per Person/Organization
4. Automobile Liability Insurance (owned, hired, and non owned)	
Bodily Injury and Property Damage	\$1,000,000 Each Accident Single Limit
5. Excess/Umbrella Liability	\$10,000,000 Each Occurrence \$10,000,000 Aggregate
6. Errors & Omissions Technology & Internet	\$5,000,000 Aggregate \$5,000,000 Each Erroneous Act
7. Commercial Crime Policy, including:	
• Employee Theft	\$500,000
• Outside the Premises	\$10,000
• Computer Fraud	\$100,000

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- B. Prior to the start of on-site Services, and at each subsequent policy renewal date, Reseller shall furnish one (1) insurance certificate to Customer for the foregoing coverages as proof of such insurance. The certificate shall include:
1. Name of insurance carrier, policy number and expiration date;
  2. This Agreement number, or statement of blanket applicability;
  3. The coverages required, whether on the basis of claims made or per occurrence, and the limits on each, including the amount of deductibles or self-insured retentions (which shall be for the account of Reseller);
  4. A statement that Customer and their respective officers, directors, employees and agents are additional insureds on Commercial General Liability; and
  5. All policies required by this Agreement shall be written by insurance carriers licensed to do business in the state in which the service is performed.
- C. The coverage may not be canceled, altered or permitted to lapse or expire without thirty (30) days' advance written notice to Customer, except in the case of cancellation for insurance premium non-payment, in which case Customer shall be notified ten (10) calendar days prior to such cancellation.
- D. Simultaneously with the execution of this Agreement, annually thereafter during the Term of this Agreement, and each time a change is made in any insurance policy or insurance carrier, Reseller will furnish to Customer a certificate of insurance evidencing compliance with this Article (including evidence of renewal of insurance) and the listed insured and additional insureds.

### Article 18 - Laws, Regulations and Permits

- A. Reseller shall at all times comply with all applicable federal, state and local laws, ordinances, statutes, rules or regulations including but not limited to those relating to wages, taxes, hours, environmental, fair employment practices, equal opportunity, antidiscrimination, safety, fire prevention and working conditions.
- B. Export of Products by Customer is subject to applicable US export regulations and Customer shall be solely responsible for compliance thereof.

### Article 19 - Assignment and Subcontracting

- A. Neither Party may assign, subcontract, or transfer the Agreement or any part thereof without the other Party's prior written consent, and any such assignment or transfer without such consent shall be null and void. However, either Party will have the right to assign this Agreement and its rights and obligations under it, in whole or in part, to any present or future Affiliate or to any entity which acquires from it the operating assets to fulfill its obligations under this Agreement.
- B. Notwithstanding Customer's written consent to a proposed subcontract, Reseller shall remain responsible for all subcontracted Product and the payment therefor, and Reseller shall be fully liable to Customer for the acts and omissions of any subcontracted entity, their agents, representatives and persons directly or indirectly employed by them as Reseller is for the acts and omissions of Reseller's own employees.
- C. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns permitted by this Agreement.

### Article 20 - Authorized Representatives and Notices

#### A. Contract Representatives, Notices

1. Any notice or demand under the terms of this Agreement which must be made in writing shall be sent by facsimile, certified or registered mail, delivered by hand via a nationally recognized overnight carrier, or sent by Email with receipt confirmation addressed to the Contract Representatives named below. The effective dates of such notice shall be (1) upon evidence of successful facsimile or Email transmission, or (2) five days following the date mailed for certified or registered letters and two days following the date mailed for overnight letters, or (3) when delivered, if in person or by overnight carrier.
2. The Contract Representatives are designated as follows:

Customer:	Reseller
County of Monterey d/b/a Natividad Medical Center Contracts/Purchasing 1441 Constitution Boulevard	Contracts Department SHI International Corp. 290 Davidson Avenue Somerset, NJ 08873

## Reseller Agreement

Customer:	Reseller
Salinas, CA 93906	Email: contracts@shi.com

3. The Contract Representatives shall have the authority to accept service of commercial notices and other contractual correspondence that a Party desires to give or is required to be given under this Agreement. Either Party may change its Contract Representative designee by giving the other Party prior written notice thereof

### Article 21 - Force Majeure

- A. Neither Party to this Agreement shall be liable to the other for any failure or delay in performing its obligations hereunder, or for any loss or damage resulting therefrom, due to: (1) acts of God or public enemy, acts of government, riots, terrorism, fires, floods, strikes, lock outs, epidemics, act or failure to act by the other Party, or unusually severe weather affecting Customer, Reseller or its subcontractors, or (2) causes beyond their reasonable control and which are not foreseeable (each a "Force Majeure Event"). In the event of any such Force Majeure Event, the date of delivery or performance shall be extended for a period equal to the time lost by reason of the delay. The Party experiencing the delay shall be prompt in restoring normal conditions, establishing new schedules and resuming operations as soon as the event causing the failure or delay has ceased. Reseller shall notify Customer promptly of any such delay and shall specify the effect on the Product as soon as practical.
- B. Notwithstanding any of the foregoing to the contrary, neither Party shall be excused from those obligations not directly affected by a Force Majeure Event, and if the Force Majeure Event is caused by a Party's failure to comply with any of its obligations under this Agreement or by such Party's negligence or omission, there shall be no relief for such Party from any of its obligations under this Agreement. Notwithstanding anything to the contrary in this Agreement, if the delay or interruption of performance resulting from a Force Majeure Event exceeds thirty (30) days, then the Party receiving the delayed performance may terminate this Agreement upon ten (10) business days' notice to the other Party.

### Article 22 - Termination

- A. Termination for Convenience
1. Either Party may terminate this Agreement, without cause and for its own convenience, by giving the other Party a written "Notice of Termination for Convenience," specifying the extent to which this Agreement is terminated and the date upon which such termination becomes effective. Such notice shall provide a minimum of thirty (30) days' notification before the termination is effective.
  2. After receiving such a "Notice of Termination for Convenience" and except as otherwise directed by Customer's Contract Representative, Reseller shall:
    - a. stop the Services on the date and to the extent specified in the termination notice; and
    - b. place no further purchase orders for Products, except as may be necessary for completing such portions of the Purchase Orders which have not been terminated.
- B. Termination for Default
- C. In the event that Customer or Reseller: (a) breaches a material provision of this Agreement and fails to cure such breach within thirty (30) days after it has been notified by the other Party thereof; (b) becomes insolvent; (c) files a petition in bankruptcy or has such a petition filed against it (and fails to lift any stay imposed thereby within thirty (30) days after such stay becomes effective); (d) has a receiver appointed with respect to all or substantially all of its assets; (e) makes an assignment for the benefit of creditors; or (f) ceases to do business in the ordinary course, the other Party may terminate this Agreement immediately upon written notice thereof.
- D. Non-Appropriations. Notwithstanding anything contained in this Agreement to the contrary, if insufficient funds are appropriated, or funds are otherwise unavailable in the budget for County for any reason whatsoever in any fiscal year, for payments due under this Agreement, County will immediately notify Reseller of such occurrence, and this Agreement shall terminate after the last day during the fiscal year for which appropriations shall have been budgeted for County or are otherwise available for payments.
- E. An Purchase Order may be cancelled as follows:
1. Customer shall have the right to cancel or postpone, in whole or in part, any Purchase Order, without penalty, provided that notice of such cancellation or postponement is received by Reseller prior to shipment of the ordered Products.

## Reseller Agreement

2. If Customer cancels an Purchase Order following shipment of the Products but prior to delivery, Customer shall pay all freight and handling charges for shipment and return shipment of such Products to Reseller. All returns shall be made in accordance with Reseller Return Policy.

3. Notwithstanding the foregoing, any such cancellations shall be subject to charges imposed by the OEM/Distributor associated with cancellation.

provided the Purchase Order or some part thereof has not been designated "non-cancellable" or "non-returnable", in which case the Purchase Order, or the part thereof which is non-cancellable or non-returnable may not be cancelled, once the Purchase Order is received by Reseller.

F. Termination of this Agreement shall not affect the obligations of Customer or Reseller under any existing Purchase Order issued under this Agreement, and such Purchase Order shall continue in effect as though this Agreement had not been terminated, and was still in effect with respect to such Purchase Order.

G. The Parties' rights and remedies set forth in this Article are not exclusive, and are in addition to any other rights and remedies provided at law, in equity, or under this Agreement.

### **Article 23 - Notice of Changes to Documents**

The Parties represent that neither Party has made any change to any documents constituting the Agreement that have not been brought to the attention of other Party via a redlined document, e-mail correspondence nor other means reasonably calculated to put the other Party on notice of the change. Any such change shall render this Agreement terminable for breach by the other Party, at that Party's discretion, even if that Party has executed the Agreement.

### **Article 24 - No Waiver**

Any failure by either Party to insist upon observance or performance by the other of the provisions of this Agreement shall not be deemed a "course of dealing" waiver of any such provision or a waiver of the right of the Parties to enforce any and all provisions in the future. No waiver shall be binding unless it is in writing and signed by the Parties' Contract Representative. Any written waiver shall apply only to the specific default or to the instance specified, and a waiver of any default shall not be deemed a waiver of any other default, whether or not similar to the default waived.

### **Article 25 - Severance**

Should any of these terms and conditions be declared unenforceable in law for whatever reason, all other terms and conditions shall survive and the unenforceable provision(s) will be severed from these terms and conditions and the balance of the terms and conditions shall be binding on both Parties as if the severed provision(s) had never existed, unless performance thereof is rendered legally impractical and no longer fulfills the intentions this Agreement.

### **Article 26 - Claims/Disputes/Governing Laws**

A. This Agreement, any Purchase Order thereunder, and any claims or disputes arising out of or relating thereto shall be governed by the laws of California, excluding: (1) conflict of law principles; (2) the United Nations Convention on Contracts for the International Sale of Goods; and, (3) the Uniform Computer Information Transactions Act ("UCITA"). The Parties hereby consent to the exclusive jurisdiction of the state and federal courts of the State of California and venue in Monterey County in connection with any dispute or other matter arising out of this Agreement.

B. Any claim or dispute which either Party may have against the other, arising out of this Agreement shall be presented by the claimant in writing to the other Party not later than ninety (90) calendar days after circumstances which gave rise to the claim or dispute have taken place or become known to the claimant, whichever is later. The claim or dispute shall contain a concise statement of the question or dispute, together with relevant facts and data to fully support the claim.

C. In the event of any such claim or dispute, the Parties' Contract Representatives shall use their best efforts to negotiate a settlement.

D. Except as expressly stated in this Agreement, the Parties' rights and remedies hereunder shall be cumulative and not exclusive of each other, shall be in addition to all other rights and remedies at law or in equity, and may be pursued separately or concurrently as the aggrieved Party determines.

E. The exercise of any one remedy shall not be construed to prohibit either Party from pursuing any and all other remedies that may be available at law, in contract, or in equity.

Reseller Agreement

Article 27 - Survival of Obligations

The obligations of the Parties in the following Articles herein shall survive termination, cancellation or expiration of this Agreement:

- Article 6 - Rights in Deliverables
- Article 11 - Representations and Warranties
- Article 12 - Indemnification

- Article 14 - Limitation of Liability
- Article 15 - Confidential Information
- Article 26 - Claims/Disputes/Governing Laws

Article 28 - Execution

This Agreement may be executed in two or more identical counterparts, each of which shall be deemed to be an original and all of which taken together will be deemed to constitute the Agreement when a duly authorized representative of each Party has signed a counterpart.

Article 29 - Entire Agreement

- A. This Agreement and fully executed Purchase Order(s) pursuant to this Agreement shall constitute the entire agreement between the Parties with respect to the subject matter of this Agreement. This Agreement and the Purchase Order(s) shall not be modified or rescinded, except by a writing signed by Reseller and Customer.
- B. The provisions of this Agreement supersede all contemporaneous oral agreements and all prior oral and written communications and understandings of the Parties with respect to the subject matter of this Agreement.

Authorization

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives, effective as of the date first above written.

COUNTY OF  
MONTEREY, on behalf  
of NATIVIDAD MEDICAL  
CENTER

SHI International Corp.

By: [Signature]  
 Authorized Signature  
Henry Wris  
 Name  
CEO  
 Title  
4/18/13  
 Date

By: [Signature]  
 Authorized Signature  
Natalie Slowik  
 Name  
Contract Specialist  
 Title  
3/13/13  
 Date

Reviewed as to fiscal provisions

[Signature]  
 Auditor-Controller  
 County of Monterey  
4-24-13

APPROVED AS TO FORM AND LEGALITY  
[Signature]  
 DEPUTY COUNTY COUNSEL  
 COUNTY OF MONTEREY

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 10/04/2012

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.

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

PRODUCER: Marsh & McLennan Agency LLC
CONTACT NAME: Marsh & McLennan Agency LLC
PHONE: 732 469-3000
FAX: 866-795-0981
E-MAIL: somersetclsupport@niagroup.com
INSURER(S) AFFORDING COVERAGE: Charter Oak Fire Insurance Comp, Travelers Property Casualty Co, Hartford Fire Insurance Company, Capitol Specialty Insurance Cor

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

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

Table with columns: INSR LTR, TYPE OF INSURANCE, POLICY NUMBER, POLICY EFF, POLICY EXP, LIMITS. Rows include General Liability, Automobile Liability, Umbrella Liability, Workers Compensation, Crime, and Errors & Omissions.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Evidence of Insurance

CERTIFICATE HOLDER: SHI International Corp.
CANCELLATION: SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.



## COMMERCIAL GENERAL LIABILITY COVERAGE FORM

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

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

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

### SECTION I – COVERAGES

#### COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

##### 1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
- (2) The "bodily injury" or "property damage" occurs during the policy period; and
- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

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

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
- (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

## COMMERCIAL GENERAL LIABILITY

- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

### 2. Exclusions

This insurance does not apply to:

#### a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

#### b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
  - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
  - (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

#### c. Liquor Liability

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

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or

- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

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

#### d. Workers' Compensation And Similar Laws

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

#### e. Employer's Liability

"Bodily injury" to:

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

This exclusion applies:

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

This exclusion does not apply to liability assumed by the insured under an "insured contract".

#### f. Pollution

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
  - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
    - (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot from equipment used to heat that building;
    - (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such

premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
- (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
  - (i) Any insured; or
  - (ii) Any person or organization for whom you may be legally responsible; or
- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
  - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the

"bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;

- (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".
- (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
  - (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
  - (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

## COMMERCIAL GENERAL LIABILITY

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

### g. Aircraft, Auto Or Watercraft

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

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

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
  - (a) Less than 26 feet long; and
  - (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

### h. Mobile Equipment

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

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

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

### i. War

"Bodily injury" or "property damage" due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution. This exclusion applies only to liability assumed under a contract or agreement.

### j. Damage To Property

"Property damage" to:

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

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

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

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

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

**k. Damage To Your Product**

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

**l. Damage To Your Work**

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

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

**m. Damage To Impaired Property Or Property Not Physically Injured**

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

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

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

**n. Recall Of Products, Work Or Impaired Property**

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

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

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

**o. Personal And Advertising Injury**

"Bodily injury" arising out of "personal and advertising injury".

Exclusions c. through n. do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III – Limits Of Insurance.

**COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**

**1. Insuring Agreement**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:
  - (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
  - (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

**2. Exclusions**

This insurance does not apply to:

**a. Knowing Violation Of Rights Of Another**

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

COMMERCIAL GENERAL LIABILITY

**b. Material Published With Knowledge Of Falsity**

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

**c. Material Published Prior To Policy Period**

"Personal and advertising injury" arising out of oral or written publication of material whose first publication took place before the beginning of the policy period.

**d. Criminal Acts**

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

**e. Contractual Liability**

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

**f. Breach Of Contract**

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

**g. Quality Or Performance Of Goods – Failure To Conform To Statements**

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

**h. Wrong Description Of Prices**

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

**i. Infringement Of Copyright, Patent, Trademark Or Trade Secret**

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights.

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

**j. Insureds In Media And Internet Type Businesses**

"Personal and advertising injury" committed by an insured whose business is:

(1) Advertising, broadcasting, publishing or telecasting;

(2) Designing or determining content of websites for others; or

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

However, this exclusion does not apply to Paragraphs 14.a., b. and c. of "personal and advertising injury" under the Definitions Section.

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

**k. Electronic Chatrooms Or Bulletin Boards**

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

**l. Unauthorized Use Of Another's Name Or Product**

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

**m. Pollution**

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

**n. Pollution-Related**

Any loss, cost or expense arising out of any:

(1) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

(2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding

to, or assessing the effects of, "pollutants".

**COVERAGE C MEDICAL PAYMENTS**

**1. Insuring Agreement**

a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
- (2) On ways next to premises you own or rent; or
- (3) Because of your operations;

provided that:

- (1) The accident takes place in the "coverage territory" and during the policy period;
- (2) The expenses are incurred and reported to us within one year of the date of the accident; and
- (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

**2. Exclusions**

We will not pay expenses for "bodily injury":

**a. Any Insured**

To any insured, except "volunteer workers".

**b. Hired Person**

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

**c. Injury On Normally Occupied Premises**

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

**d. Workers Compensation And Similar Laws**

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

**e. Athletics Activities**

To a person injured while taking part in athletics.

**f. Products-Completed Operations Hazard**

Included within the "products-completed operations hazard".

**g. Coverage A Exclusions**

Excluded under Coverage A.

**h. War**

Due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution.

**SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

- a. All expenses we incur.
- b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- e. All costs taxed against the insured in the "suit".
- f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment

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interest based on that period of time after the offer.

- g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

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

- a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- b. This insurance applies to such liability assumed by the insured;
- c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
- e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- f. The indemnitee:

(1) Agrees in writing to:

- (a) Cooperate with us in the investigation, settlement or defense of the "suit";
- (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
- (c) Notify any other insurer whose coverage is available to the indemnitee; and
- (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

(2) Provides us with written authorization to:

- (a) Obtain records and other information related to the "suit"; and
- (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of Section I – Coverage A – Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

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

- a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- b. The conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

### SECTION II – WHO IS AN INSURED

- 1. If you are designated in the Declarations as:

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



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2. Each of the following is also an insured:
- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:
    - (1) "Bodily injury" or "personal and advertising injury":
      - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
      - (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
      - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
      - (d) Arising out of his or her providing or failing to provide professional health care services.
    - (2) "Property damage" to property:
      - (a) Owned, occupied or used by,
      - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose byyou, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).
- b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
- c. Any person or organization having proper temporary custody of your property if you die, but only:
  - (1) With respect to liability arising out of the maintenance or use of that property; and
  - (2) Until your legal representative has been appointed.
- d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
3. With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:
- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
  - b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.
4. 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, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
  - b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
  - c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

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

### SECTION III – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. Claims made or "suits" brought; or
  - c. Persons or organizations making claims or bringing "suits".
2. The General Aggregate Limit is the most we will pay for the sum of:
  - a. Medical expenses under Coverage C;
  - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
  - c. Damages under Coverage B.
3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
4. Subject to 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
5. Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
  - a. Damages under Coverage A; and
  - b. Medical expenses under Coverage C because of all "bodily injury" and "property damage" arising out of any one "occurrence".
6. Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
7. Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

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

### SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

#### 1. Bankruptcy

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

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

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

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

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

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

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

c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person

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or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

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

### 3. Legal Action Against Us

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

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

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

### 4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

#### a. Primary Insurance

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

#### b. Excess Insurance

This insurance is excess over:

- (1) Any of the other insurance, whether primary, excess, contingent or on any other basis:
  - (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
  - (b) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;

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

- (d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I – Coverage A – Bodily Injury And Property Damage Liability.

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

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

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

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

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

#### c. Method Of Sharing

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

If any of the other insurance does not permit contribution by equal shares, we will contrib-

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ute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

### 5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

### 6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

### 7. Separation Of Insureds

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

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

### 8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

### 9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

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

## SECTION V – DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
  - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
  - b. Regarding web-sites, only that part of a website that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.
2. "Auto" means a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".
3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
4. "Coverage territory" means:
  - a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
  - b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above; or
  - c. All other parts of the world if the injury or damage arises out of:
    - (1) Goods or products made or sold by you in the territory described in a. above;
    - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
    - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

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provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in a. above or in a settlement we agree to.

5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
  - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
  - b. You have failed to fulfill the terms of a contract or agreement;if such property can be restored to use by:
  - a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
  - b. Your fulfilling the terms of the contract or agreement.
9. "Insured contract" means:
  - a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
  - b. A sidetrack agreement;
  - c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
  - d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
  - e. An elevator maintenance agreement;
  - f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property

damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

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

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
  - (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
    - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
    - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
  - (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.
10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
  11. "Loading or unloading" means the handling of property:
    - a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
    - b. While it is in or on an aircraft, watercraft or "auto"; or
    - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;but "loading or unloading" does not include the movement of property by means of a mechanical

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device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - (1) Power cranes, shovels, loaders, diggers or drills; or
  - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1) Equipment designed primarily for:
  - (a) Snow removal;
  - (b) Road maintenance, but not construction or resurfacing; or
  - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

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

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
- d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
- f. The use of another's advertising idea in your "advertisement"; or
- g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

15. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

16. "Products-completed operations hazard":

- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
  - (1) Products that are still in your physical possession; or
  - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
    - (a) When all of the work called for in your contract has been completed.
    - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
    - (c) When that part of the work done at a job site has been put to its intended

use by any person or organization other than another contractor or sub-contractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- b. Does not include "bodily injury" or "property damage" arising out of:
    - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
    - (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
    - (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.
17. "Property damage" means:
- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
  - b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.
- For the purposes of this insurance, electronic data is not tangible property.
- As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:
- a. An arbitration proceeding in which such damages are claimed and to which the insured

must submit or does submit with our consent; or

- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
19. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
20. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.
21. "Your product":
- a. Means:
    - (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
      - (a) You;
      - (b) Others trading under your name; or
      - (c) A person or organization whose business or assets you have acquired; and
    - (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
  - b. Includes:
    - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
    - (2) The providing of or failure to provide warnings or instructions.
  - c. Does not include vending machines or other property rented to or located for the use of others but not sold.
22. "Your work":
- a. Means:
    - (1) Work or operations performed by you or on your behalf; and
    - (2) Materials, parts or equipment furnished in connection with such work or operations.

COMMERCIAL GENERAL LIABILITY

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work", and
- (2) The providing of or failure to provide warnings or instructions.



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

## TECHNOLOGY XTEND ENDORSEMENT

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li>A. Reasonable Force Property Damage – Exception To Expected Or Intended Injury Exclusion</li> <li>B. Non-Owned Watercraft Less Than 75 Feet</li> <li>C. Aircraft Chartered With Pilot</li> <li>D. Damage To Premises Rented To You</li> <li>E. Increased Supplementary Payments</li> <li>F. Who Is An Insured – Employees And Volunteer Workers – First Aid</li> <li>G. Who Is An Insured – Employees – Supervisory Positions</li> <li>H. Who Is An Insured – Newly Acquired Or Formed Organizations</li> <li>I. Blanket Additional Insured – Owners, Managers Or Lessors Of Premises</li> </ul> | <ul style="list-style-type: none"> <li>J. Blanket Additional Insured – Lessors Of Leased Equipment</li> <li>K. Blanket Additional Insured – Persons Or Organizations For Your Ongoing Operations As Required By Written Contract Or Agreement</li> <li>L. Blanket Additional Insured – Broad Form Vendors</li> <li>M. Who Is An Insured – Unnamed Subsidiaries</li> <li>N. Who Is An Insured – Liability For Conduct Of Unnamed Partnerships Or Joint Ventures</li> <li>O. Contractual Liability – Railroads</li> <li>P. Knowledge And Notice Of Occurrence Or Offense</li> <li>Q. Unintentional Omission</li> <li>R. Blanket Waiver Of Subrogation</li> </ul> |
|---|--|

### PROVISIONS

**A. REASONABLE FORCE PROPERTY DAMAGE – EXCEPTION TO EXPECTED OR INTENDED INJURY EXCLUSION**

The following replaces Exclusion a., **Expected Or Intended Injury**, in Paragraph 2., of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

- a. **Expected Or Intended Injury Or Damage**  
"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect any person or property.

**B. NON-OWNED WATERCRAFT LESS THAN 75 FEET**

The following replaces Paragraph (2) of Exclusion g., **Aircraft, Auto Or Watercraft**, in Paragraph 2.

of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

- (2) A watercraft you do not own that is:
  - (a) Less than 75 feet long; and
  - (b) Not being used to carry any person or property for a charge.

**C. AIRCRAFT CHARTERED WITH PILOT**

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

This exclusion does not apply to an aircraft that is:

- (a) Chartered with a pilot to any insured;
- (b) Not owned by any insured; and
- (c) Not being used to carry any person or property for a charge.

COMMERCIAL GENERAL LIABILITY

**D. DAMAGE TO PREMISES RENTED TO YOU**

1. The first paragraph of the exceptions in Exclusion j., **Damage To Property**, in Paragraph 2. of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY** is deleted.
2. The following replaces the last paragraph of Paragraph 2., **Exclusions**, of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

Exclusions c., g. and h., and Paragraphs (1), (3) and (4) of Exclusion j., do not apply to "premises damage". Exclusion f.(1)(a) does not apply to "premises damage" caused by fire unless Exclusion f. of Section I – Coverage A – Bodily Injury And Property Damage Liability is replaced by another endorsement to this Coverage Part that has Exclusion – All Pollution Injury Or Damage or Total Pollution Exclusion in its title. A separate limit of insurance applies to "premises damage" as described in Paragraph 6. of Section III – Limits Of Insurance.

3. The following replaces Paragraph 6. of **SECTION III – LIMITS OF INSURANCE**:
  6. Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "premises damage" to any one premises.

The Damage To Premises Rented To You Limit will be:

- a. The amount shown for the Damage To Premises Rented To You Limit on the Declarations of this Coverage Part; or
  - b. \$100,000 if no amount is shown for the Damage To Premises Rented To You Limit on the Declarations of this Coverage Part.
4. The following replaces Paragraph a. of the definition of "insured contract" in the **DEFINITIONS** Section:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for "premises damage" is not an "insured contract";

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

"Premises damage" means "property damage" to:

- a. Any premises while rented to you or temporarily occupied by you with permission of the owner; or
- b. The contents of any premises while such premises is rented to you, if you rent such premises for a period of seven or fewer consecutive days.

6. The following replaces Paragraph 4.b.(1)(b) of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

(b) That is insurance for "premises damage"; or

7. Paragraph 4.b.(1)(c) of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** is deleted.

**E. INCREASED SUPPLEMENTARY PAYMENTS**

1. The following replaces Paragraph 1.b. of **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** of **SECTION I – COVERAGES**:

- b. Up to \$2,500 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

2. The following replaces Paragraph 1.d. of **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** of **SECTION I – COVERAGES**:

- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.

**F. WHO IS AN INSURED – EMPLOYEES AND VOLUNTEER WORKERS – FIRST AID**

1. The following is added to the definition of "occurrence" in the **DEFINITIONS** Section:

Unless you are in the business or occupation of providing professional health care services, "occurrence" also means an act or omission committed by any of your "employees" or "volunteer workers", other than an employed

COMMERCIAL GENERAL LIABILITY

or volunteer doctor, in providing or failing to provide first aid or "Good Samaritan services" to a person.

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

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

3. The following is added to Paragraph 5. of **SECTION III – LIMITS OF INSURANCE:**

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

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

"Good Samaritan services" means any emergency medical services for which no compensation is demanded or received.

**G. WHO IS AN INSURED – EMPLOYEES – SUPERVISORY POSITIONS**

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

Paragraphs (1)(a), (b) and (c) above do not apply to "bodily injury" or "personal injury" to a co-"employee" in the course of the co-"employee's" employment by you arising out of work by any of your "employees" who hold a supervisory position.

**H. WHO IS AN INSURED – NEWLY ACQUIRED OR FORMED ORGANIZATIONS**

The following replaces Paragraph 4. of **SECTION II – WHO IS AN INSURED:**

4. Any organization you newly acquire or form, other than a partnership or joint venture, of which you are the sole owner

or in which you maintain the majority ownership interest, will qualify as a Named Insured if there is no other insurance which provides similar coverage to that organization. However:

- a. Coverage under this provision is afforded only:

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

- (2) Until the end of the policy period, when that date is later than 180 days after you acquire or form such organization, if you report such organization in writing to us within 180 days after you acquire or form it, and we agree in writing that it will continue to be a Named Insured until the end of the policy period;

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

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

**I. BLANKET ADDITIONAL INSURED – OWNERS, MANAGERS OR LESSORS OF PREMISES**

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

Any person or organization that is a premises owner, manager or lessor is an insured, but only with respect to liability arising out of the ownership, maintenance or use of that part of any premises leased to you.

The insurance provided to such premises owner, manager or lessor does not apply to:

- a. Any "bodily injury" or "property damage" caused by an "occurrence" that takes place, or "personal injury" or "advertising injury" caused by an offense that is committed, after you cease to be a tenant in that premises; or

COMMERCIAL GENERAL LIABILITY

- b. Structural alterations, new construction or demolition operations performed by or on behalf of such premises owner, manager or lessor.

**J. BLANKET ADDITIONAL INSURED – LESSORS OF LEASED EQUIPMENT**

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

Any person or organization that is an equipment lessor is an insured, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" caused, in whole or in part, by your acts or omissions in the maintenance, operation or use by you of equipment leased to you by such equipment lessor.

The insurance provided to such equipment lessor does not apply to any "bodily injury" or "property damage" caused by an "occurrence" that takes place, or "personal injury" or "advertising injury" caused by an offense that is committed, after the equipment lease expires.

**K. BLANKET ADDITIONAL INSURED – PERSONS OR ORGANIZATIONS FOR YOUR ONGOING OPERATIONS AS REQUIRED BY WRITTEN CONTRACT OR AGREEMENT**

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

Any person or organization that is not otherwise an insured under this Coverage Part and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury" or "property damage" that:

- a. Is caused by an "occurrence" that takes place after you have signed and executed that contract or agreement; and
- b. Is caused, in whole or in part, by your acts or omissions in the performance of your ongoing operations to which that contract or agreement applies or the acts or omissions of any person or organization performing such operations on your behalf.

The limits of insurance provided to such insured will be the limits which you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.

**L. BLANKET ADDITIONAL INSURED – BROAD FORM VENDORS**

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

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

- a. Is caused by an "occurrence" that takes place after you have signed and executed that contract or agreement; and
- b. Arises out of "your products" which are distributed or sold in the regular course of such vendor's business.

The insurance provided to such vendor is subject to the following provisions:

- a. The limits of insurance provided to such vendor will be the limits which you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.
- b. The insurance provided to such vendor does not apply to:
  - (1) Any express warranty not authorized by you;
  - (2) Any change in "your products" made by such vendor;
  - (3) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
  - (4) Any failure to make such inspections, adjustments, tests or servicing as vendors agree to perform or normally undertake to perform in the regular course of business, in connection with the distribution or sale of "your products";
  - (5) Demonstration, installation, servicing or repair operations, except such operations performed at such vendor's premises in connection with the sale of "your products"; or
  - (6) "Your products" which, after distribution or sale by you, have been labeled or re-labeled or used as a container, part or ingredient of any other thing or substance by or on behalf of such vendor.

Coverage under this provision does not apply to:

- a. Any person or organization from whom you have acquired "your products", or any ingre-

- dent, part or container entering into, accompanying or containing such products; or
- b. Any vendor for which coverage as an additional insured specifically is scheduled by endorsement.

**M. WHO IS AN INSURED – UNNAMED SUBSIDIARIES**

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

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

- a. You maintain an ownership interest of more than 50% in such subsidiary on the first day of the policy period; and
- b. Such subsidiary is not an insured under similar other insurance.

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

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

**N. WHO IS AN INSURED – LIABILITY FOR CONDUCT OF UNNAMED PARTNERSHIPS OR JOINT VENTURES**

The following replaces the last paragraph of **SECTION II – WHO IS AN INSURED**:

No person or organization is an insured with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations. This paragraph does not apply to any such partnership or joint venture that otherwise qualifies as an insured under Section II – Who Is An Insured.

**O. CONTRACTUAL LIABILITY – RAILROADS**

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

**P. KNOWLEDGE AND NOTICE OF OCCURRENCE OR OFFENSE**

The following is added to Paragraph 2., **Duties In The Event of Occurrence, Offense, Claim or Suit**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

- e. The following provisions apply to Paragraph a. above, but only for the purposes of the insurance provided under this Coverage Part to you or any insured listed in Paragraph 1. or 2. of Section II – Who Is An Insured:

- (1) Notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known to you (if you are an individual), any of your partners or members who is an individual (if you are a partnership or joint venture), any of your managers who is an individual (if you are a limited liability company), any of your trustees who is an individual (if you are a trust), any of your "executive officers" or directors (if you are an organization other than a partnership, joint venture, limited liability company or trust) or any "employee" authorized by you to give notice of an "occurrence" or offense.

- (2) If you are a partnership, joint venture, limited liability company or trust, and none of your partners, joint venture members, managers or trustees are individuals, notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known by:

- (a) Any individual who is:
  - (i) A partner or member of any partnership or joint venture;
  - (ii) A manager of any limited liability company;
  - (iii) A trustee of any trust; or
  - (iv) An executive officer or director of any other organization;

that is your partner, joint venture member, manager or trustee; or

- (b) Any "employee" authorized by such partnership, joint venture, limited liability company, trust or other organization to give notice of an "occurrence" or offense.

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- (3) Notice to us of such "occurrence" or offense will be deemed to be given as soon as practicable if it is given in good faith as soon as practicable to your workers' compensation insurer. This applies only if you subsequently give notice to us of the "occurrence" or offense as soon as practicable after any of the persons described in Paragraphs e. (1) or (2) above discover that the "occurrence" or offense may result in sums to which the insurance provided under this Coverage Part may apply.

However, if this policy includes an endorsement that provides limited coverage for "bodily injury" or "property damage" or pollution costs arising out of a discharge, release or escape of "pollutants" which contains a requirement that the discharge, release or escape of "pollutants" must be reported to us within a specific number of days after its abrupt commencement, this Paragraph e. does not affect that requirement.

**Q. UNINTENTIONAL OMISSION**

The following is added to Paragraph 6., Representations, of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

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

**R. BLANKET WAIVER OF SUBROGATION**

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

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

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

subsequent to the execution of the contract or agreement.



ONE TOWER SQUARE  
HARTFORD, CT 06183

**WORKERS COMPENSATION  
AND  
EMPLOYERS LIABILITY POLICY  
ENDORSEMENT WC 29 03 06 ( B)**

POLICY NUMBER: (HC2JUB-8375R57-7-12)

**NEW JERSEY PART TWO EMPLOYERS LIABILITY ENDORSEMENT**

This endorsement applies only to the insurance provided by Part Two (Employers Liability Insurance) because New Jersey is shown in Item 3.A. of the Information Page.

With respect to Exclusion C5, this insurance does not cover any and all intentional wrongs within the exception allowed by N.J.S.A. 34:15-8 including but not limited to, bodily injury caused or aggravated by an intentional wrong committed by you or your employees, or bodily injury resulting from an act or omission by you or your employees, which is substantially certain to result in injury.

With respect to Exclusion C7, we will defend any claim, proceeding or suit for damages where bodily injury is alleged. We have the right to investigate and settle. We will not defend or continue to defend after the applicable limits of insurance have been paid. Such policy limits include any legal costs assessed against you on behalf of your employee(s).

We may not limit our liability to pay damages for which we become legally liable to pay because of bodily injury to an infant under the age of 18 years in a proceeding made pursuant to Article 2 as provided in N.J.S.A. 34:15-10.

This insurance does not provide for the payment of any common law negligence damages or other damages when the provisions of Article 2 of the New Jersey Workers Compensation Law have been rejected by you and your employee(s) as provided in N.J.S.A. 34:15-9.

With respect to paragraph F, the "Other Insurance" provision is replaced with the following:

**F. Other Insurance**

We will not pay more than our share of damages and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance and self-insurance will be equal until the loss is paid.

This insurance, however, is excess over any other applicable insurance with respect to claims for bodily injury arising out of employer practices, policies, acts or omissions enumerated in C7 above, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

**(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)**

Endorsement Effective  
Insured

Policy No.

Endorsement No.  
Premium \$

Insurance Company

Countersigned by \_\_\_\_\_

DATE OF ISSUE: 11-08-12

ST ASSIGN: