

**TECHNOLOGY SOFTWARE-AS-A-SERVICE (SaaS)  
AGREEMENT BETWEEN THE CITY OF CUPERTINO  
AND AVOLVE SOFTWARE CORPORATION  
FOR SOFTWARE-AS-A-SERVICE**

THIS AGREEMENT ("Agreement"), by and between the CITY OF CUPERTINO, a California municipal corporation ("City"), and Avolve Software Corporation, a Delaware corporation with offices at 21001 N Tatum Blvd. Suite 1630-503, Phoenix, AZ, 85050 ("Avolve" or "Software Provider") (City and Avolve collectively referred to as the "Parties").

**RECITALS:**

The following Recitals are a substantive portion of this Agreement:

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California.
- B. Software Provider has experience providing municipalities with a hosted software-as-a-service (SaaS) electronic plan review and project information management, collaboration and review system, including all software applications, application program interfaces, modules, databases, hardware, infrastructure, documentation and system administration, management and monitoring (collectively, and as more particularly described in **Schedule 1**, the "Avolve SaaS Solution"), and also provides professional services to assist customers with among other things, implementation of the Avolve SaaS Solutions and training (collectively, and as more particularly described in **Schedule 2**, the "Services").
- C. City, for the prior 11 plus years (pursuant to prior agreements with Avolve dating back to 2012), has been using a non-hosted, on premises version of the same Avolve software system, and through this Agreement desires to convert and migrate to a hosted version of the Avolve SaaS Solutions, with the prior on-premises licenses (and support for same) terminating upon completion of the conversion and migration described in this Agreement and its Exhibits and Schedules.
- D. City and Software Provider desire to enter into an agreement for Software Provider's provision of the Avolve SaaS Solutions in support of certain of the City's online systems. Through this Agreement, Software Provider shall provide to City the Avolve SaaS Solutions specifically described in the attached **Schedule 1**. The full scope of other Services to be provided by Software Provider in support of the onboarding and support of the Avolve SaaS Solutions is described in the attached **Schedule 2**: The Avolve SaaS Solutions will be provided in connection with Software Provider's Service Level Agreement (the "SLA") attached as **Exhibit A**.

NOW, THEREFORE, the Parties mutually agree as follows:

**1. TERM**

The term of this Agreement shall commence on the last date signed below ("Effective Date") and shall continue in effect for the subscription term set forth in **Schedule 1**, unless the Agreement is terminated prior thereto under the provisions of Section 16, below. The subscription fee for the Avolve SaaS Solutions is payable annually in advance. the subscription will auto-renewal as set forth in **Schedule 1**, but any extension of the subscription term beyond the original term or requiring additional contract funds are subject to the City's purchasing policy.

**2. SCOPE OF SERVICES AND CONDITIONS THEREOF**

Subject to the terms and conditions set forth in this Agreement, Software Provider shall use commercially reasonable efforts to provide the Avolve SaaS Solutions and Support for same to the schedule of performance set forth in the SLA, as described below.

**A. Responsibilities of Software Provider.** Software Provider shall provide the Avolve SaaS Solutions as further described in Schedule 1 and the SLA, which shall include (a) any software, plug-ins, or extensions related to the Avolve SaaS Solutions typically made available to other hosted municipal users in Santa Clara County, California, including any and all updates, upgrades, bug fixes, dot releases, version upgrades, or any similar changes, (b) end user technical documentation for use of the Avolve SaaS Solutions, in hard copy form or online (the "Documentation"), (c) regular maintenance of Software Provider's system, and (d) other APIs and tools typically provided by Avolve to other hosted licensees in conjunction with the Avolve SaaS Solutions.

**B. Equipment.** Other than as may be necessary in connection with the initial onboarding, conversion and migration Services, as described in **Schedule 2**, Avolve will not be providing any facilities, on-site personnel or equipment to City in connection with this Agreement. Except to the extent otherwise set forth in **Schedule 2**, the Parties anticipate and agree that all Services should be provided remotely rather than on-site.

**C. Registration.** Prior to using the Services, City shall identify the administrative users for its account ("**Administrators**"). Each Administrator will be provided an administrator ID and password. Use of the Avolve SaaS Solutions is subject to the limits and restrictions set forth below and in **Schedule 1**.

**D. License Grant.** Subject to **Schedule 1**, Software Provider hereby grants City a license to access and use the Avolve SaaS Solutions for the City's internal use purposes.

**E. Reservation of Rights and Data Ownership.** City shall own all right, title, and interest in its data that is related to the services provided by this contract. Software Provider shall not access City user accounts or City data, except (1) as necessary to fulfillment of the objectives of this Agreement, (2) in response to service or technical issues, or (3) at City's written request.

**F. Data Protection; Confidential Information.** In carrying out the Services, Software Provider shall endeavor to protect the confidentiality of all confidential, non-public City data ("City Data") as follows:

1. Implement and maintain appropriate security measures to safeguard against unauthorized access, disclosure, or theft of City Data in accordance with recognized industry practice.
2. City Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, Software Provider is responsible for encryption of the City Data residing on Service Provider's systems. For clarity, Service Provider is not responsible for overseeing the security practices of the employees or contractors working for the City.
3. Software Provider shall not use any City Data collected by it in connection with the Service for any purpose other than fulfilling the obligations under this Agreement.

Without limiting the foregoing, each Party shall use commercially reasonable efforts to hold confidential information ("Confidential Information") of the other in confidence. All Confidential Information (including but not limited to City data) shall (i) remain the sole property of the disclosing Party and (ii) be used by the receiving Party only as authorized herein. Information will not be considered to be Confidential Information if (i) available to the public other than by a breach of this agreement; (ii) rightfully received from a third Party not in breach of any obligation of confidentiality, (iii) independently developed by or for a Party without use of or access to Confidential Information of the other; (iv) lawfully known to the receiving Party at the time of disclosure, (v) produced in compliance with applicable law, securities reporting requirement or a government or court order, provided the other Party is given notice and an opportunity to intervene; or (vi) (exclusive of PIII) it does not constitute a trade secret and more than three (3) years have elapsed from the date of disclosure.

The City is subject to the provisions of the California Public Records Act (Govt. Code § 6250 et seq.) (the "Act"). If the City receives a request of disclosure for items that Avolve believes are its Confidential Information and exempt from disclosure under the Act, and requests in writing that the City refuse the requested disclosure then Avolve agrees to indemnify, defend, and hold harmless the City against any third party claim seeking disclosure of such Confidential Information.

**G. Software Ownership.** Software Provider and its licensors own the Avolve SaaS Solutions, Documentation, and any underlying infrastructure provided by Service Provider in connection with this Agreement. City acknowledges and agrees that (a) the Avolve SaaS Solutions and Documentation are protected by United States and international copyright, trademark, patent, trade secret, and other intellectual property or proprietary rights laws, (b) Software Provider and its licensors retain all right, title, and interest (including, without limitation, all patent, copyright, trade secret, and other intellectual property rights) in and to the Avolve SaaS Solutions, any Documentation, any other deliverables, any and all related and underlying technology and any derivative works or modifications of any of the foregoing, including, without limitation, all derivatives or improvements thereof (including those based on any suggestions, enhancements requests, feedback, recommendations or other information provided by the City or any of its users relating to the Avolve SaaS Solutions), (c) the Avolve SaaS Solutions are licensed on a subscription basis, not sold, and City acquires no ownership or other interest in or to the Avolve SaaS Solutions, or the Documentation other than the license rights expressly stated herein, and (d) the Avolve SaaS Solutions are offered as an on-line,

hosted solution, and that City has no right to obtain a copy of the Avolve SaaS Solutions under this Agreement.

**H. Restrictions.** City agrees not to, directly or indirectly,: (i) modify, translate, copy, or create derivative works based on the Avolve SaaS Solutions or any element thereof, (ii) interfere with or disrupt the integrity or performance of the Avolve SaaS Solutions or the data contained therein or block or disrupt any use or enjoyment of the Avolve SaaS Solutions by any third party, (iii) attempt to gain unauthorized access to the Avolve SaaS Solutions or their related systems or networks or (iv) remove or obscure any proprietary or other notice contained in the Avolve SaaS Solutions, including on any reports or data printed from the Avolve SaaS Solutions.

**I. Security Incident.** In the event a data breach occurs with respect to City Data residing within the Avolve SaaS Solutions or any Software Provider systems, Software Provider shall immediately notify the appropriate City contact by telephone in accordance with the agreed upon security plan or security procedures if it reasonably believes there has been a security incident. Software Provider shall (1) cooperate with City to investigate and resolve the data breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the data breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

**J. Notification of Legal Requests.** Software Provider shall contact City upon receipt of any electronic discovery, litigation holds, discovery searches, and expert testimonies related to City Data. Software Provider shall not respond to subpoenas, service of process, and other legal requests related to City without first notifying City, unless prohibited by law from providing such notice.

**K. Access to Security Logs and Reports.** To the extent provided for in the SLA, Software Provider shall provide reports to City in a format as specified in the SLA agreed to by both Software Provider and City. The Avolve SaaS Solutions may also allow for a number of user-generated reports that City may run for itself. Reports requested or available may include latency statistics, user access, user access IP address, user access history, and security logs for City files related to this Agreement.

**L. Responsibilities and Uptime Guarantee.** Software Provider shall be responsible for the acquisition and operation of all hardware, software, and network support needed on Avolve's side in order to provide the Avolve SaaS Solutions. The technical and professional activities required for establishing, managing and maintaining such Avolve-side environments are the responsibilities of Software Provider. The system shall be available for City's use on a 24/7/365 basis (subject to maintenance downtime described in the SLA).

**M. Subcontractor Disclosure.** Software Provider shall identify any subcontractors who will be used to provide Services directly in support of the City under this Agreement.

**N. Business Continuity and Disaster Recovery.** Software Provider shall provide to City a summary of its written business continuity and disaster recovery plan prior to or at the time of

execution of this agreement that includes a commercially reasonable recovery time objective (RTO). In the case of Azure Site Recovery, the data image is updated every 5-10 minutes, so if an outage requiring ASR for recovery occurs, the system will have retained all data in the ASR system up until ten minutes prior to the outage. Recovery Time Objective (RTO) is understood as the amount of down time an organization can tolerate before it must return to operations after an outage. Avolve customer environment using Azure Site Recovery should be operational within two (2) hours of a disaster recovery event. The RTO time is also dependent on Avolve's 3rd party DNS provider's ability to distribute the updated DNS address within North America and to the rest of the world. Avolve has tested the DNS change can occur within 2 hours in the United States.

**O. Compliance with Accessibility Standards.** Software Provider shall use commercially reasonable efforts to comply with and maintain any industry accessibility standards for SaaS programs similar to the Avolve SaaS Solutions. As Avolve makes additional accessibility improvements or functionality available to other municipal customers it will also make them available to the Customer as part of the Avolve SaaS Solution.

In the event the City receives a third party claim based on the Avolve SaaS Solution not being compliant with any laws applicable to City and concerning the accessibility of the disabled, Software Provider will engage a third party accessibility vendor and collaborate with the City to determine what reasonable modifications Software Provider can make to the Avolve SaaS Solution to address accessibility issues and prioritize any mutually agreed upon accessibility modifications within a defined documented timeframe based on severity (critical, high, low). The determination of "critical", "high" and "low" shall be based on the ability of a user with a disability to successfully navigate the Avolve SaaS Solution according to the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines (WCAG) 2, Level AA, as amended. Software Provider will remediate defects based on a documented plan with critical and high priority within a mutually agreed upon reasonable time, and will provide a documented plan in consultation with the City to fix any defects with low priority that do not have a suitable work around.

**P. Web Services.** Software Provider shall use Web services exclusively to interface with City Data in near real time when possible.

**Q. Encryption of Data at Rest.** Software Provider shall ensure hard drive encryption consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all personal data, unless City approves the storage of personal data on Software Provider's portable device in order to accomplish work as defined in the statement of work.

### **3. COMPENSATION TO SOFTWARE PROVIDER**

Software Provider shall be compensated for the Avolve SaaS Solutions provided and any separate Services performed pursuant to this Agreement plus a 10% contingency in the amount of \$44,425.50 for a total amount not to exceed \$488,680.50, as detailed in **Schedule 1** and **Schedule 2** (unless and until an automatic renewal or an amendment to this Agreement provides for additional compensation payable to Software Provider (for clarity, the contingency will only

be paid based on actual additional services rendered). The payments specified in this section shall be the only payments to be made to Software Provider for the Avolve SaaS Solutions and other services rendered pursuant to this Agreement. Software Provider shall invoice City according to the schedules set forth in **Schedule 1** and **Schedule 2**.

City shall pay Contractor within thirty (30) days after receipt of Service Provider's invoice. City shall return to Contractor any payment request determined not to be a proper payment request as soon as practicable, but not later than seven (7) days after receipt, and shall explain in writing the reasons why the payment request is not proper.

**4. TIME IS OF THE ESSENCE**

Each of Software Provider and City will use commercially reasonable efforts to provide resources and perform their obligations so as to meet any agreed timelines and schedules.

**5. LICENSES; PERMITS; ETC.**

Software Provider represents and warrants to City that it has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required to carry out the purposes of this Agreement.

**6. ASSIGNMENTS.** Software Provider may assign, sublease, or transfer this Agreement, or any interest therein, to a third party with the prior written consent of City. Such consent shall not be unreasonably withheld. City's withholding of consent shall be deemed reasonable if it appears that the intended assignee in question is not financially or technically capable of performing Software Provider's obligations under this Agreement, or if City has reason to conclude that the proposed assignee is otherwise incapable of fulfilling Software Provider's duties hereunder. Notwithstanding the foregoing, Software Provider may assign its complete rights and obligations under this Agreement (upon notice to City but without the need for City's prior consent) to a successor by way of merger or acquisition, including the acquisition of substantially all of Software Provider's assets, provided the successor agrees to comply with all of Software Provider's obligations hereunder.

**7. INDEPENDENT PARTIES**

City and Software Provider intend that the relationship between them created by this Agreement is that of independent contractor. No civil service status or other right of employment will be acquired by virtue of Software Provider's services. None of the benefits provided by City to its employees, including but not limited to unemployment insurance, workers' compensation plans, vacation, and sick leave are available from City to Software Provider, its employees, or agents. Software Provider is not a "public official" for purposes of Government Code §§ 87200 et seq.

**8. IMMIGRATION REFORM AND CONTROL ACT (IRCA)**

Software Provider assumes any and all responsibility for verifying the identity and employment authorization of all of his/her employees performing work hereunder, pursuant to all applicable IRCA or other federal or state rules and regulations. Per the procedures set forth in Section 12, Software Provider shall defend (and have the right and obligation to defend) and indemnify and hold City harmless from and against any loss, damage, liability, costs, or expenses arising from any noncompliance of this provision by Software Provider.

## **9. NON-DISCRIMINATION**

Consistent with City's policy prohibiting harassment and discrimination, Software Provider agrees that neither it nor its employee or subcontractors shall harass or discriminate against a job applicant, a City employee, or a citizen on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, pregnancy, sex, age, sexual orientation, or any other protected class status. Software Provider agrees that any and all violations of this provision shall constitute a material breach of this Agreement. Software Provider agrees to provide reasonable records and documentation to the City on request necessary to monitor compliance with provision.

## **10. DUTY TO INDEMNIFY AND HOLD HARMLESS<sup>1</sup>**

A. To the fullest extent permitted by law, the Software Provider shall defend the City and the City's officers, and employees (the "Indemnified Parties") from any third party claims, including, but not limited to, third party claims of personal injury, property damage, and death, to the extent such third party claims arise from the Software Provider or the Software Provider's contractors, subcontractors, agents, or employees' breach of this Agreement, and indemnify the Indemnified Parties from any liability or damages awarded by court of competent final jurisdiction or agreed to in a settlement entered into in accordance with this subsection 10(A). The City shall cooperate reasonably in the defense of any action and provide the Software Provider sole control over the defense, and the Software Provider shall employ competent counsel, reasonably acceptable to the City Attorney, and not enter into any settlement without the prior approval of the City Attorney, not to be unreasonably withheld or conditioned. For clarity, a breach of Software Provider's performance warranty for the Avolve SAAS Solution will not give rise to the indemnification remedy described above (the exclusive remedy for such a breach is set forth in Section 17).

B. If a third party makes a claim against the City that any City's use of the Avolve SAAS Solution in accordance with the terms of this Agreement infringes such third party's intellectual property rights, Software Provider, at its sole cost and expense, will defend City against the claim and indemnify City from the damages, losses, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by Software Provider, provided that City: (i) notifies Software Provider promptly in writing of the claim; (ii) gives Software Provider sole control of the defense and any settlement negotiations; and (iii) gives Software Provider reasonable assistance in the defense of such claim. If Software Provider believes or it is determined that the Avolve SAAS Solution has violated a third party's intellectual property rights, Software Provider may choose to either modify the Avolve SAAS Solution to be non-infringing or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, Software Provider may terminate City's use rights and refund any unused, prepaid fees City may have paid to Software Provider. Software Provider will not indemnify the City to the extent that the alleged infringement arises from (1) the combination, operation, or use of the Avolve SAAS Solution with products, services, information, materials, technologies, business methods or processes not furnished by Software Provider; (2) modifications to the Avolve SAAS Solution, which modifications are not made by

Software Provider; (3) failure to use updates to the Avolve SAAS Solution provided by Software Provider; or (4) use of Avolve SAAS Solution except in accordance with any applicable Documentation or specifications. This subsection 10(B) provides THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY OF AVOLVE AND ITS LICENSORS TO CITY, AND IS CITY'S SOLE REMEDY, WITH RESPECT TO THE INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS.

The provisions of this Section 10 survive the completion of the Services or termination of this Agreement.

## **11. LIABILITY LIMITATIONS**

With the exception of claims for which Software Provider receives payment under an insurance policy and only for the amount actually received from the insurance company ("Insured Claims"), in no event will Software Provider be liable for special, indirect, incidental, consequential, or exemplary damages, including, without limitation, any damages resulting from loss of use, loss of data, interruption of business activities, or failure to realize savings arising out of or in connection with this agreement, including without limitation use of the Avolve SAAS Solution and the provision of the professional Services. Except for Insured Claims and direct damages and expenses associated with Avolve's obligation to indemnify City pursuant to Section 10(B) for infringement or misappropriation, Software Provider's aggregate, cumulative liability for damages and expenses arising out of this Agreement, whether based on a theory of contract or tort, including negligence and strict liability, will be limited to five (5) times the amount of fees received by Software Provider under this Agreement in the preceding twelve (12) months. Such fees reflect and are set in reliance upon this limitation of liability. The limited remedies set forth in this Agreement shall apply notwithstanding the failure of their essential purpose.

## **12. INSURANCE:**

**A. General Requirements.** On or before the commencement of the term of this Agreement, Software Provider shall furnish City with certificates showing the type, amount, class of operations covered, effective dates, and dates of expiration of insurance coverage in compliance with the requirements listed in Exhibit B. Software Provider shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement.

**B. Subrogation Waiver.** Software Provider agrees that in the event of loss due to any of the perils for which it has agreed to provide comprehensive general and automotive liability insurance, Software Provider shall look solely to its insurance for recovery. Software Provider hereby grants to City, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Software Provider or City with respect to the services of Software Provider herein, a waiver of any right to subrogation which any such insurer of said Software Provider may acquire against City by virtue of the payment of any loss under such insurance.

## **13. RECORDS**



Software Provider shall maintain internal records reflecting that the Services were performed by Software Provider hereunder in accordance with customary recordkeeping practices in the software development industry. Software Provider shall provide free access to such records to the representatives of City or its designee at all reasonable and proper times, and gives City the right to examine and audit same, and to make transcripts therefrom as necessary. No such examination and audit shall give City the right to access records relating to other Software Provider customers, or absent findings of non-compliance perform an audit more than once in a calendar year, and all audits shall be handled (to the extent feasible) remotely through paper or electronic responses. Such records shall be maintained for a period of four (4) years after Software Provider receives final payment from City for all services required under this Agreement.

#### **14. NONAPPROPRIATION**

This Agreement is subject to the fiscal provisions of the Cupertino Municipal Code, and this Agreement will terminate without any penalty (a) at the end of any fiscal year (or, if different, an annual prepaid subscription period) in the event that funds are not appropriated for the following fiscal year (or, if different, the next annual renewal period), or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for this Agreement are no longer available (unless and except to the extent subscription or other fees were prepaid in advance in which case the Agreement will continue through the pre-paid period). This Section shall take precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement.

#### **15. NOTICES**

All notices, requests, and approvals must be sent to the persons below in writing to the persons below, and will be considered effective on the date of personal delivery, the delivery date confirmed by a reputable overnight delivery service, on the fifth (5th) calendar day after deposit in the United States Mail, postage prepaid, registered or certified, or the next business day following electronic submission:

**TO CITY:**

City of Cupertino 10300 Torre Ave.  
Cupertino CA 95014 Attention: Bill Mitchell

**TO SOFTWARE PROVIDER:**

Avolve Software Corporation  
21001 N. Tatum Blvd, Suite 1630-503  
Phoenix, AZ 85050  
Attn: Mr. Jay Mayne, CFO

#### **16. TERMINATION**

**A. Basis for Termination.** In the event either Party fails or refuses to perform or violates any of the provisions hereof at the time and in the manner required hereunder, it shall be deemed in default in the performance of this Agreement. If the Party in default fails to cure the default

within the time specified (not to be less than 15 days from receipt of notice) and according to the breach described in the other Party's written notice of default, then in addition to any other remedy available to the noticing Party by law, the noticing Party may terminate the Agreement by giving the Party in default written notice thereof, which shall be effective immediately. Upon receipt of any notice of termination, Software Provider shall immediately discontinue performance.

Further, City may terminate this Agreement in its entirety, for convenience, upon at least ninety (90) days' prior written notice to Software Provider. If City exercises its termination for convenience right during the initial 12 months of the Subscription Term reflected in the Implementation, no refund will be paid for any prepaid annual subscription or other fees. For any termination for convenience after the initial 12 months of the Subscription Term, Software Provider will promptly refund a pro-rated portion of any prepaid annual subscription or other fees.

**B. *Pro Rata Payments.*** City shall pay Software Provider for professional Services satisfactorily performed up to the effective date of termination. In such event, a calculation of the amounts due shall be deemed correct as computed on a *pro rata* basis with compensation provided for the period of professional Services paid as a percentage of the total contract amount. For clarity, this part B does not apply to subscription fees for the Avolve SaaS Solutions.

**C. *Handling of City Data.*** In the event of a termination of this Agreement, Software Provider shall for a period of 30 days allow for the download of City data in a mutually agreeable format at a time agreed to by the parties and the subsequent secure disposal of City data. If the Parties are unable to mutually agree upon the format or the media supplied by Customer is not acceptable to Avolve, Avolve will use commercially reasonable efforts to still provide a copy of the City data, but Avolve may charge a reasonable professional Services fee for increased costs incurred. After the 30-day time period has expired, Avolve has no further obligation to retain the City data. If City requests assistance in downloading, formatting, or converting the City data, the parties will execute a reasonable SOW to provide for such Services with reasonable compensation paid to Software Provider. During any period of service suspension, Software Provider shall not take any action to intentionally erase any City data for a period of thirty (30) days after the effective date of termination, unless authorized by City. Software Provider shall securely dispose of all requested data in all of its forms, including disk, CD/DVD, backup tape, and paper, when requested by City. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to City upon request.

## **17. WARRANTY AND WARRANTY DISCLAIMER**

Software Provider warrants that, (i) any professional Services shall be provided in a diligent, professional, and workmanlike manner in accordance with industry standards, (ii) the Avolve SaaS Solutions and other Services provided under this Agreement do not infringe or misappropriate any intellectual property rights of any third party, and (iii) the Avolve SaaS Solutions shall substantially perform in all material respects as described in the Documentation. In the event of any breach of section (iii), above, Software Provider shall, as its sole liability

and as City's sole remedy, repair or replace the Avolve SaaS Solutions that are subject to the warranty claim at no cost to City, or if Software Provider is unable to repair or replace, then the City may terminate the relevant subscription and Avolve will refund a pro rata amount of any pre-paid fees for such Avolve SaaS Solutions based on the date of termination of the subscription. Except for the warranty described in this section, the Avolve SaaS Solutions and any professional Services are provided without warranty of any kind, express or implied, including, but not limited to, the implied warranties or conditions of design, merchantability, fitness for a particular purpose, and any warranties of title and non-infringement, each of which is expressly disclaimed by Avolve.

**18. COMPLIANCE**

Software Provider shall comply with all state or federal laws and all ordinances, rules, policies, and regulations enacted or issued by City.

**19. CONFLICT OF LAW**

This Agreement shall be interpreted under, and enforced by the laws of the State of California excepting any choice of law rules which may direct the application of laws of another jurisdiction. Any suits brought pursuant to this Agreement shall be filed with the Superior Court for the County of Santa Clara, State of California.

**20. ADVERTISEMENT**

Software Provider shall not post, exhibit, or display, or allow to be posted, exhibited, or displayed, any signs, advertising, show bills, lithographs, posters, or cards of any kind pertaining to the services performed under this Agreement unless prior written approval has been secured from City to do otherwise.

**21. INTEGRATED CONTRACT**

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the Parties, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by written execution signed by both City and Software Provider. In the event that any Service Level Agreement, Exhibit, associated instrument, or agreement executed by the Parties in conjunction with this Agreement or prior thereto contains a term that conflicts with the terms of this Agreement, the terms of this Agreement shall govern and supersede any other document or Exhibit.

**22. FORCE MAJEURE**

Any delay or nonperformance of any provision of this Agreement caused by acts of nature; war; epidemic or pandemic; riots; civil insurrection; acts of civil or military authority taken to protect public health and safety; fires; floods; earthquakes or other natural phenomena; labor strikes, accidents or incidents; changes in Laws; or other cause of the same or other character, any of which are beyond the reasonable control of the performing Party, shall not constitute a breach of this Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.

**23. AUTHORITY**

The individual(s) executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed.

**SOFTWARE PROVIDER  
APPROVED AS TO FORM:**

**Avolve Software Corporation**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**CITY OF CUPERTINO A**  
Municipal Corporation

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Christopher D. Jensen City Attorney

**ATTEST:**

\_\_\_\_\_  
City Clerk

DATE: \_\_\_\_\_

**Schedule and Exhibits:**

Schedule 1      Avolve SaaS Solutions / Term / Restrictions / Pricing

Schedule 2      Onboarding and Other Services / SOW / Pricing

Exhibit A:      Service Level Agreement ("SLA")

Exhibit B:      Insurance Requirements and Proof of Insurance

## Schedule 1: Avolve SaaS Solutions / Term / Restrictions / Pricing

### CUSTOMER INFORMATION

Customer Name: City of Cupertino  
Customer Mailing Address: 10300 Torre Avenue  
Cupertino, CA Zip: 95014

### CUSTOMER CONTACT

#### PRIMARY

Name: Bill Mitchell  
Phone: (408) 777-1333  
E-mail: [BillM@cupertino.org](mailto:BillM@cupertino.org)

#### SECONDARY

Name: Nidhi Mathur  
Phone: (408) 777-3377  
E-mail: [NidhiM@cupertino.org](mailto:NidhiM@cupertino.org)

### LICENSES AND SERVICES FEES (USD)\*

Avolve SaaS Solutions: ProjectDox SaaS Subscription (five years, with automatic renewal as provided below, subject to the City obtaining annual funding approval)

- \$86,376 – Initial Year (see notes)
- \$86,376 (Year Two)
- \$86,376 (Year Three)
- \$86,376 (Year Four)
- \$86,376 (Year Five)

**Plus a 10% contingency in the amount of \$44,425.50 for a total amount not to exceed \$488,680.50.**

Maintenance / Support (included in annual subscription fees / no extra charge)

#### Implementation Services

- \$12,375 (T&M estimate; Services to be provided remotely – See Schedule 2 for details)

Total Fees for Initial year: \$98,751 (includes estimated T&M Services)

Total SaaS Fees Invoiced on Signing: \$86,376

Services Fees -- due per Schedule 2

Payment Method: EFT

\*Fees do not include applicable sales, withholdings or value-added taxes. The Parties do not believe that any such fees will be applicable.

NOTES: the Initial year of the subscription will commence on the SaaS Test Environmental Install (rather than Go Live Date). Each subsequent renewal year will commence on the anniversary of that commencement date: After the initial five-year subscription, any renewal date will also be calculated from the SaaS Test Environment Install. The SLA provisions (including available of credits) will become

effective on the Go Live Date, which is defined as the date that the Avolve SaaS Solutions are first made available by Avolve to the Customer to release and use in a live, production mode.

#### AUTHORIZED CUSTOMER BUSINESS UNITS / USERS FOR USE OF AVOLVE SaaS SOLUTIONS /' LICENSE LIMITS

The City's package of Avolve SaaS Solutions has been priced based on the following included components and limits.

| Product Name                                                        | Product Code   | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Qty                         | Unit Price | Total Price |
|---------------------------------------------------------------------|----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|------------|-------------|
| Production Environment Light-Level Capacity ProjectDox SaaS License | SAAS.PD OX-P.L | <p>Software as a Service (SaaS) for ProjectDox on a Production Environment. Designed for organizations who have approximately 50 concurrent users and 3,000 permits per year.</p> <p>Software included for SaaS Production:</p> <ul style="list-style-type: none"> <li>• ProjectDox Software Subscription</li> <li>• Unlimited Workflow license</li> </ul> <p>Services included for SaaS Production:</p> <ul style="list-style-type: none"> <li>• Set up and installation of ProjectDox</li> <li>• Managed services</li> <li>• Annual ProjectDox upgrades</li> <li>-Technical Support</li> </ul> <p>Production Environment Safeguard: Avolve security policy limits access to the Production environment. External users including the customer's IT will not be allowed direct access to the Production servers and database. Any development or testing can be performed on the Test environment.</p> | 12 months per annual period | \$6,300    | \$75,600    |
| Test Environment Light-Level Capacity ProjectDox SaaS License       | SAAS.PD OX-T.L | <p>Software as a Service (SaaS) for ProjectDox on a Test Environment. Designed for organizations who plan to use the system for development and/or testing with approximately 5 concurrent users and approximately 500 permits per year.</p> <p>Software included for Production:</p> <ul style="list-style-type: none"> <li>• ProjectDox Software Subscription</li> <li>• Unlimited Workflow license</li> </ul> <p>Services included for SaaS Production:</p>                                                                                                                                                                                                                                                                                                                                                                                                                                          | 12 months per annual period | \$1,029    | \$12,348    |

| Product Name                                         | Product Code          | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Qty                     | Unit Price | Total Price       |
|------------------------------------------------------|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|------------|-------------------|
|                                                      |                       | <ul style="list-style-type: none"> <li>• Set up and installation of ProjectDox</li> <li>• Managed services</li> <li>• Annual ProjectDox upgrades</li> </ul> <p>Test Environment Safeguard: Avolve security policy limits access to the Test environment. External users including the customer's IT can be provided limited VPN access to the Test servers and database such as creation and testing of custom reports. VPN access will be made available upon request at additional cost.</p> |                         |            |                   |
| SaaS Additional vCore/RAM for Web & Job Processors   | SaaS-AvCore.RAM-WS.JP | <p>Additional 4 vCores and 8 GBs of RAM.</p> <p>Used for adding vCores and RAM to existing Web Server or Job Processor resources.</p>                                                                                                                                                                                                                                                                                                                                                          | Annual                  | \$5,250    | \$5,250           |
| TES-Video License Subscription                       | TES-VLS               | TES-Video License Subscription                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | annual                  | \$5,400    | \$5,400           |
| Avolve Cloud Additional Storage                      | Host-Store            | Additional File and Database Storage per GB per month.                                                                                                                                                                                                                                                                                                                                                                                                                                         | 2,000 GB added annually | \$1.51     | \$3,020.00        |
| <b>SaaS Sub-Total (per annual period):</b>           |                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                         |            | \$101,618         |
| <b>Annual Credit for perpetual software trade-in</b> |                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                         |            | <b>-\$15,242*</b> |
| <b>Adjusted SaaS Total per annual period:</b>        |                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                         |            | <b>\$86,376</b>   |

\* Note: for the initial five years, the City will receive an annual trade in credit of \$15,242 for previously procured Avolve software. This credit is reflected in the annual SaaS cost listed above.

#### SUBSCRIPTIONS FOR PREPAID SERVICES HOURS

| Product Name                                  | Product Code | Description                                                                                                                                                                                                                                           | Qty    | Unit Price | Total Price       |
|-----------------------------------------------|--------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|------------|-------------------|
| Client Success Services Subscription 3 Months | SPS-225      | <p>Provides for 18 hours to be used over a 3-month period for additional services post go-live assisting in overall customer success. Prepayment required, remaining hours at end of term are not refundable. Recommend use of 6 hours per month.</p> | 18 hrs | \$225.00   | \$4,050.00        |
| <b>Subscriptions Sub-Total:</b>               |              |                                                                                                                                                                                                                                                       |        |            | <b>\$4,050.00</b> |

PROFESSIONAL SERVICES FOR ON-BOARDING, CONVERSION AND MIGRATION

| Product Name                | Product Code | Description                                                | Qty    | Unit Price |  | Total Price (estimate) |
|-----------------------------|--------------|------------------------------------------------------------|--------|------------|--|------------------------|
| Avolve Cloud Data Migration | PS-DATA-MIG  | Migration of existing customer data onto the Avolve Cloud. | 37 hrs | \$225.00   |  | \$8,325.00             |
| <b>Hosting Sub-Total:</b>   |              |                                                            |        |            |  | <b>\$8,325.00</b>      |

The City will be invoiced each month for the number of Professional Services hours at the hourly rate (\$225) consumed during the previous month. A short description of each time entry and a time tracking spreadsheet will accompany the invoice each month and the number of hours remaining in the project budget.

**ADDITIONAL RESTRICTIONS ON USE:**

City will not, and will ensure that its Users do not: (i) use the Avolve SaaS Solution or any other Avolve materials to provide services to third parties (e.g., business process outsourcing, service bureau applications or third party training); (ii) assign, sublicense, sell, lease, loan, resell, sublicense or otherwise distribute or transfer or convey the Avolve SaaS Solution or any other Avolve materials, or pledge as security or otherwise encumber City's rights under this Agreement; (iii) use the Avolve SaaS Solution components other than those specifically identified in this Schedule and then only as part of Avolve SaaS Solutions as a whole, even if it is also technically possible for City to access other Avolve SaaS components; (iv) allow use of the Avolve SaaS Solution or any other Avolve materials by anyone other than authorized Users; or (v) input, upload, transmit or otherwise provide to or through Avolve SaaS Solution or any systems used by Avolve anything that is unlawful, injurious, or contains, transmits or activates any harmful code. City acknowledges that nothing herein will be construed to grant City any right to obtain or use the source code from which Avolve SaaS Solution is delivered. City shall not tamper with or attempt to disable any security device or protection used by Avolve SaaS Solution or any other Avolve materials, nor shall City damage, destroy, disrupt or otherwise impede or harm in any manner the Avolve SaaS Solution or any systems used by Avolve. City agrees to take all commercially reasonable steps to ensure that Users abide by the terms of this Agreement.

**Storage.** The Avolve SaaS Solutions will include for the subscription term the amount of storage set forth above. City acknowledges that should City exceed the included storage limits after Avolve has sent notice to City in accordance with Avolve's then-current standard storage limits and data backup and patch practices (available upon request), additional charges will be incurred by City. Avolve shall invoice City for any such additional incurred charges, and City shall pay such invoices, in accordance with the provisions of the Agreement. Avolve may, in its discretion, increase the amount of standard storage included at no additional charge with the Avolve SAAS Solution, with such modification to become effective upon the date set forth in Avolve's written notice.

**City Connection.** During the subscription, City is responsible for obtaining and maintaining connection to the Avolve SAAS Solutions, including the Internet connection. Avolve shall not be responsible for any inadequacy or lack of functionality of City's connection to the Avolve SAAS Solutions or the inability of the City's computer, telecommunications provider, or other equipment and capabilities to access or use the Avolve SAAS Solutions.

**Third Party Service Providers and Components.** Notwithstanding anything to the contrary in this Agreement or any other documents between Avolve and City, City acknowledges and agrees that the Avolve SAAS Solution and its component parts are protected by copyright and other propriety rights of



Avolve and one or more third Party software vendors (including Oracle and Open Text Corporation ("OTC")) (all such third Party vendors, including without limitation Oracle and OTC, shall be referred to herein as "third Party vendors" or "third Party software vendors"). City may be held directly responsible by such third-Party vendors for acts relating to the Avolve SAAS Solutions component parts that are not authorized by this Agreement. City's use of such third-Party software is limited to only in conjunction with the Avolve SAAS Solutions and City acknowledges that it is not allowed to modify such third-Party software or use it independent from the Avolve SAAS Solutions. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE CITY WAIVES, AND WILL CAUSE ITS USERS TO WAIVE, ALL CLAIMS AND CAUSES OF ACTION AGAINST SUCH THIRD-PARTY SOFTWARE VENDORS THAT ARISE UNDER THIS AGREEMENT.

**Compatibility Updates.** As part of its Support, Avolve will make commercially reasonable efforts to update the Avolve SAAS Solution, if and as required, to cause it to operate under new versions or releases of current operating systems and internet browsers, within fifteen (15) months of general availability.

**Passwords, Access.** City may designate and add Users and shall provide and assign unique passwords and user names to each authorized User pursuant to Avolve's then-current protocols. At Avolve's discretion, Users may be added either by Avolve or directly by City. City shall ensure that multiple Users do not share a password or user name. City further acknowledges and agrees that it is prohibited from sharing passwords and/or user names with unauthorized users. City will be responsible for the confidentiality and use of its Users passwords and user names. Avolve will act as though any electronic communications it receives under such passwords, user names, and/or account numbers have been sent by City. City agrees to immediately notify Avolve if it becomes aware of any loss or theft or unauthorized use of any of passwords, user names, and/or account numbers. City agrees not to access Avolve Cloud by any means other than through the interfaces that are provided by Avolve.

**Transmission Of Data.** City understands that the technical processing and transmission of City Data is necessary to use of the Avolve SAAS Solution, and consent to Avolve's interception and storage of City Data. City understands that its Users or Avolve may be transmitting City Data over the Internet, and over various networks, only part of which may be owned by Avolve. Avolve is not responsible for any portions of City Data that are lost, altered, intercepted or stored without authorization during the transmission of City Data across networks not owned by Avolve.

**City Responsibilities.** City will (a) be responsible for Users' compliance with this Agreement, (b) be responsible for the accuracy, quality and legality of City data and the means by which it acquired City data, (c) be responsible for cooperating and assisting Avolve as reasonably requested by Avolve to facilitate performance of its obligations and exercising of its rights under this Agreement, (d) use the Avolve SAAS Solutions and any other materials provided by Avolve only in accordance with the Documentation and applicable laws and government regulations, including complying with all applicable legal requirements regarding privacy and data protection so as to not violate the intellectual property, privacy or any other rights of any third Parties, and (e) use commercially reasonable efforts to prevent any security breach, including any unauthorized access to or use of the Avolve SAAS Solution. Should City become aware of any actual or threatened security breach, City shall promptly notify Avolve and take all reasonable and lawful measures within its control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Avolve SAAS Solutions). City shall provide sufficient notice to, and obtain sufficient consent from, its Users and any other Party providing personal data to Avolve and its suppliers to permit the processing of data by Avolve and its licensors/suppliers, and their respective affiliates, subsidiaries, and service providers solely to the extent such processing of data is expressly allowed for under this Agreement, including for the purpose of disclosing it to law enforcement or other governmental authorities as directed by Avolve solely to the extent Avolve is required to do so by law, or otherwise mutually agreed to in writing by the Parties.

City Data Backup. The Avolve SAAS Solution is programmed to perform data backups of City data stored within the Avolve SAAS Solutions in accordance with Avolve's then-current standard storage limits and data backup practices (available upon request, with current disaster recovery and backup processes as described in Schedule 1A).

Additional data backups may be purchased for an additional fee from Avolve, and such additional data backup services shall be documented in a separate signed order under this Agreement. In the event of any loss, destruction, damage or corruption of City data caused by Avolve or the Avolve SAAS Solutions, Avolve, as its sole obligation and liability and as City's sole remedy, will use commercially reasonable efforts to restore City data from Avolve's most current backup of City data.

## Schedule 2: Onboarding and Other Services / SOW / Pricing

Contract No.

### Executive Summary

This Statement of Work focuses on the migration and deployment of the current Production and Test Environments from the customer's on-premises environment to Avolve's SaaS Infrastructure and includes the overall time and cost required to migrate the system including setup, testing, and initial support.

### High Level Scope of Work

#### SETUP (ON PREMISE TO AVOLVE SAAS MIGRATION 9.2 to 9.2)

The project includes 10 (ten) 30-minute weekly status meetings to cover the length of this 10 week project.

#### Production Environment Setup

- Provision and configure Production environment
- Avolve shall request a backup of any Avolve product databases and installation directories to be shared using one of the following methods: Avolve's encrypted OneDrive shared file server solution, SyncThing or Azure Migrate.
  - o The customer is responsible for providing a copy of the requested databases and installation directories utilizing one of the agreed upon methods listed above. Installation directories are listed below.
    - ProjectDox Web Server (folders below will vary per customer)
      - \ProjectDox
      - \ProjectDox.Web.UI
      - \ProjectDox.Web.API
      - \ProjectDox.Portal.Web.UI
      - \ProjectDox.Portal.Web.API
      - \ProjectDox.Permitting.Web.API
      - \PDSF\WFlowDllCache (if NOT over 50GB in size compressed)
      - \Program Files (x86)\Avolve
    - ProjectDox Application Server (all ProjectDox Services installation folders)
      - \Program Files (x86)\Avolve
    - ProjectDox Database Server (latest Full Backup of databases listed below which will vary per customer)
      - ProjectDox Database
      - Portal Database
      - WorkflowPersistenceStore Database
      - FTM Database
- SyncThing shall be installed and configured on the Avolve SaaS file server for the customer's new environment and the Customer will install SyncThing on their on-premises system with assistance from Avolve Software. This will create a point-to-point network between two servers and environments for the transfer.
  - o ProjectDox Share Folders shall be configured within the SyncThing application on the customer's side.
    - UserFilesSource
    - UserFilesPublish
    - WFlowDLLCache (only if over 50GB in size compressed)
  - o The same ProjectDox Share Folders are configured within the SyncThing application on the in the Avolve SaaS environment.

- UserFilesSource
  - UserFilesPublish
  - WFlowDLLCache (only if over 50GB in size compressed)
- o SyncThing application has a unique GUID created upon installation and configured in each corresponding application so that communication can only occur between those two servers.
- Azure Migrate requires the installation of the Azure Migrate Agent on a temporary dedicated VM (Virtual Machine) server/workstation which will create a exact copy of the source server () where the ProjectDox File Share folders exist. This could be one or more servers depending on the customer's hardware configuration.

#### **Production Environment Data Migration and Configuration**

- Avolve shall install the matching SaaS Solution major version of the software to the Customer's current on-premises version with upgrade to the latest point release available (latest current release of 9.2).
- Avolve shall restore copies of system databases to the new SaaS server environments.
- Avolve shall make necessary site configuration updates for the new SaaS environments.
- Avolve shall restore the ProjectDox integrations (including with Accela and Laserfiche).
- Avolve with assistance from the customer, will initiate the SyncThing/Azure Migrate file transfer providing a gradual transfer of copies of the files from the customer's on-premises installation to the new Avolve SaaS environment in the background.
- o Once all files have been copied from each of the folders, SyncThing will continually monitor real-time any changes that occur in the folders keeping the production environment up to date until the cut-over date.
- o Customer may be requested to restart SyncThing/Azure Recovery Agent as required for the on-premises environment.

#### **Customer Tasks**

- Provide final copy of Production databases after system lockout to Avolve provided Storage Account in Azure
  - o ProjectDox Database
  - o Portal Database
  - o WorkflowPersistenceStore Database
  - o FTM Database
- Send notification of System outage of up to 1 business day for SaaS Migration cutover date to Customer's ProjectDox Users (
- Update any documentation relevant to the move to SaaS (i.e., new website URL)
- Update integration URLs as required
- Verify all files have been transferred via SyncThing/Azure Migrate to the SaaS Cloud environment for items below and upon verification, PAUSE all active Folder Syncs.
  - o UserFilesPublish (UFP)
  - o UserFilesSource (UFS)
  - o WorkflowDLLCache (only if over 50GB in size compressed)
- Apply redirect of DNS for existing site URL to point to new Avolve Production SaaS URL
- Install IE11/Edge in IE Mode Brava Viewer Components as required for internal or external staff members of the Customer requiring the use of IE11/Edge in IE Mode for file viewing and markup functionality
- Refreshed SaaS Production Environment Signoff
- Uninstall SyncThing/Azure Migrate
- Decommission on-premises ProjectDox Production environment after 2 weeks of cut-over to SaaS

#### **User Acceptance Testing**

Upon completion of the setup and configuration of the production environment the Customer will be provided

access to provide end-to-end testing to validate the system setup and functionality (system configuration, emails, integration) and document any identified issues into the issues log located on the Avolve sponsored SharePoint site for the project. Avolve will resolve any identified issues to allow the customer retest to gain acceptance. UAT (User Acceptance Testing) is allocated for a 10-business day period

- Test both new and existing projects for ProjectFlow and Standard/Legacy for each type of workflow
- Test integration both new and existing projects for ProjectFlow and Standard/Legacy for each type of workflow, as applicable
- Test Export and Import Process, as applicable

### **SaaS Production Launch**

The on-premises system will be placed in maintenance mode and allow the final preparations and data transfers for the Avolve SaaS Production Environment to be conducted, including all configuration updates. After the final data cutover, the customer will conduct a final end-to-end test leading into final launch/go-live.

- Customer will provide new backups of the production system databases for the Avolve team to apply for the scheduled production cutover date to the SaaS environment.
- Avolve will restore the provided backups in the new SaaS environment.
- The ProjectDox configurations will be updated to match the new server environment for SaaS.
- ProjectDox integrations will be restored.
- The customer is responsible for redirecting the existing on-premises URL DNS for the production site to point to the new Avolve SaaS URL and disabling of the on-premises environment.
- SyncThing/Azure Migrate will be disabled on both the on-premises file server and the Avolve SaaS file server.
- Customer will be responsible for the disabling/removing of SyncThing/Azure Migrate from their on-premises environment.

### **Launch**

The Avolve project manager will assist the customer with any product-related errors or questions about the software for 30 days post-go-live. After the 30 days go-live period the project will be considered complete, and the customer shall be introduced and transitioned to the Avolve support team. The extension of support from the project manager can be extended with the purchase of post go live subscription services program.

- Go-Live
- Transition to Support

### **Test Environment Setup**

- Avolve shall provision new servers in the Avolve SaaS Environment for the Test Environment.
  - o Includes setup of the process to take a backup file of the test database and restore nightly to the TEST SQL environment for reporting.
  - o Setup of single County user to use Remote N-Central Account access to Test SQL.
  - o The customer is responsible for providing a copy of the required Test system databases per the request utilizing Avolve's encrypted OneDrive shared file server solution.
    - ProjectDox Installation Folder/Directory
    - Project Creator Service Installation Folder/ Directory
    - ProjectDox Utility Service Installation Folder/ Directory
    - ProjectDox.Web.UI
    - ProjectDox.Web.API
    - WWF Service Installation Folder/ Directory
    - WCF Service Installation Folder/ Directory

- ProjectDox Database
  - Portal Database
  - WorkflowPersistenceStore Database
- ProjectDox Share Folders shall be configured within the SyncThing/Azure Recovery Agent application on the customer's side.
  - o WFlowDLLCache
- The same ProjectDox Share Folders are configured within the SyncThing/Azure Recovery Agent application on the in the Avolve SaaS environment.
  - o WFlowDLLCache
- Both SyncThing/Azure Migrate applications have a unique GUID that is created upon installation and the GUID is configured in each of the corresponding applications so that communication can only occur between those two servers.

### **Test Environment Data Migration and Configuration**

- Avolve shall install the matching SaaS Solution major version of the software to the Customer's current on-premises version with upgrade to the latest point release available (latest current release of 9.2).
- There will be no files transfer for the test environment for files (drawing plans/supporting documents) from UserFilesSource and UserFilesPublish
- Avolve shall restore copies of system databases to the new SaaS server environments.
- Avolve shall make necessary site configuration updates for the new SaaS environments.
- Avolve shall restore ProjectDox integrations.
- There will be no files transfer for the test environment for drawing plans (UserFilesSource and UserFilesPublish)
- Customer may be requested to restart SyncThing/Azure Migrate as required for the on-premises environment, if applicable.
- Customer is responsible for updating and redirecting the existing on-premises URL DNS for the test site to point to the new Avolve SaaS URL and disabling the on-premises environment.
- SyncThing/Azure Migrate will be disabled on both the on-premises file server and the Avolve SaaS file server for the test environments, if applicable.
- The Customer will be responsible for disabling/removing SyncThing/Azure Migrate from their on-premises test environment, if applicable.

### **User Acceptance Testing**

Upon completion of the setup and configuration of the test environment the Customer will be provided access to provide end-to-end testing to validate the system setup and functionality. UAT (User Acceptance Testing) is allocated for a 5-business day period.

### **Project Close Out**

The Avolve project manager will be engaged to assist the customer with any product-related errors or questions about the software for 30 days post-live. After the 30 day go-live period, the project will be considered complete, and the customer shall resume using the support portal for assistance. The project manager's support extension can be extended with assurance service hours on a time and material basis.

### **ACCEPTANCE PROCESS**

There will be Key Deliverables, as identified in the Project Activities/Deliverable Payment Schedule, which will be subject to acceptance by the Customer ("Acceptance"). Upon completion of each Key Deliverable, Avolve will request from the Customer a written response within five (5) business days after receipt thereof. Notwithstanding the foregoing or anything to the contrary in the Purchase Agreement, all other Deliverables provided under this Statement of Work shall be deemed to have been accepted by the Customer upon delivery. If Customer does not approve, reasons for

rejection must be clearly noted. Avolve will then work with the Customer to come to agreement on obtaining approval. The Customer shall be deemed to accept any such Key Deliverable which the Customer does not accept or reject within such period. This acceptance will initiate the invoice of the applicable milestone.

#### **PROJECT ASSUMPTIONS AND CAVEATS**

1. Avolve will have full access to all Project team members from the customer as needed to complete the successful implementation and roll out of ProjectDox. This access may require the team members of the customer to dedicate specific time to specific detailed tasks within the Project Plan. Team member tasks will be more clearly defined during the kickoff and planning sessions and documented in the Project Plan.
2. Customer and its third parties and/or subcontractors will fulfill any hardware/software requirements, as identified to allow communication between Avolve Software and the Customer's permitting system in a timely fashion to keep the Project Plan on schedule.
3. Customer and its third parties and/or subcontractors will fulfill the hardware and network requirements, as outlined in the ProjectDox/OAS Implementation Guide (a standard end user document that accompanies each version of the Software) in a timely fashion to keep the Project Plan on schedule.
4. This best approach package to implementation relies on partnership with the jurisdiction to achieve desired go-live goals. To that end, a Not-to-Exceed 37 hours have been allocated to services and training on this project. Should the customer cause or contribute to the delay of any Deliverable, extend scope of schedule, a Change Request(s) may be issued for the incremental costs associated with delay or expansion.
5. Cancellation or reschedule requests within 72 hours (about 3 days) of the upgrade/training date may result in a 20% cancellation fee. The 20% fee will be calculated on the total services for the project minus any Assurance Services.
6. All parties will prioritize their efforts to meet the Project Plan schedule to achieve a rapid roll out model. It is understood by all parties that multiple tasks may be in process at one time and Avolve may have more than one Professional Services team member working on the project at one time.
7. Client will provide adequate Project management for their own resources, and/or third parties, to collaborate with Avolve's project manager. Client subject matter experts and applicable users will be accessible and available in a timely fashion and for adequate and reasonable durations. Avolve will ensure that meeting scheduling is adequately before these resource allocations.
8. Any optional items chosen in the Purchase Agreement/Sales Order are not included here and would require a modification to this Statement of Work.
9. Avolve and Customer agree to cooperate in good faith to complete the Services and Deliverables quickly and efficiently.
10. A list of decommissioned features and integration touch points associated to the upgrade to ProjectDox 9.2 is available for review upon request. The customer assumes responsibility for reviewing and notifying the appropriate internal and third-party persons about said changes.
11. Formatting, data and/or alterations to customized reports are not covered under this Statement of Work unless explicitly identified in the scope of work.
12. Workflow, Project template, and/or Report enhancements are not covered under this Statement of Work unless explicitly identified in the scope of work.
13. In the event the Customer delays the progression of the implementation and Avolve Software resources are placed on-hold and/or removed from the project a Change Request will be issued and all hours that have been completed to that point will be invoiced. Avolve Software will not guarantee Project Managers and/or Technical Avolve resources will be available to re-deploy immediately upon resolution of the issue. Avolve requires 4 weeks' notice

of intent to restart the project, to assess available resources to determine the next available timeframe and communicate any restart costs to restart the project.

#### CHANGE CONTROL PROCESS

The “Change Control Process” is that process which shall govern changes to the scope of the Project during the life of the Project. The Change Control Process will apply to new components and to enhancements of existing components. The Change Control Process will commence at the start of the Project and will continue throughout the Project's duration. Additional procedures and responsibilities may be outlined by the Project Manager identified on the signature page to the Agreement and will be included in the Project Plan if mutually accepted.

Under the Change Control Process, a written “Change Request” (attached) will be the vehicle for communicating any desired changes to the Project. It will describe the proposed change; the reason for the change and the effect the change may have on the Project. The Project Manager of the requesting party will submit a written Change Request to the Project Manager for the other parties.

All parties must sign the approval portion of the Change Request to authorize the implementation of any change that affects the Project's scope, schedule, or price. Furthermore, any such changes that affect the scope of this SOW, schedule or price will require an amendment to the SOW and/or any other part of the Purchase Agreement.

#### PRICING, TRAVEL AND EXPENSE

Pricing and payment terms are as set forth in the Purchase Agreement/Sales Order.

- Professional Service hours will be invoiced monthly as time and materials based on the rate for the applicable resources.
- Training will be invoiced as courses are completed at the identified fixed price provided in the Purchase Agreement/Sales Order.
- No Travel and Expenses are estimated for this project. If onsite work is requested by the customer will be invoiced as incurred for trips to the Customer offices. Customer will only be invoiced for actual expenses incurred.

#### PROJECT ACTIVITIES / DELIVERABLES PAYMENT SCHEDULE

This is a preliminary deliverable and payment schedule that is subject to change based on discussions to occur post the kick-off of the project, provided that both the City and Avolve Software agree to the new terms in writing. This scope of work is based on a 10 week implementation schedule.

| Week     | Phase                                 | Deliverable                                                                                          | Deliverable/Acceptance Criteria |
|----------|---------------------------------------|------------------------------------------------------------------------------------------------------|---------------------------------|
| Week 1   | Kickoff                               | <ul style="list-style-type: none"> <li>• Project Kick Off Meeting</li> <li>• Project Plan</li> </ul> |                                 |
| Week 2 * | Setup SaaS Production Environment     |                                                                                                      |                                 |
| Week 3*  | Configure SaaS Production Environment | Deliver Functional SaaS Production System                                                            |                                 |
| Week 4-5 | UAT SaaS Production Environment       |                                                                                                      | Sign off Acceptance Document    |
| Week 6   | Setup SaaS Test Environment           | Deliver Functional SaaS Test System                                                                  |                                 |
| Week 7   | Cutover SaaS Production Environment   | Deliver Functional SaaS Production System                                                            |                                 |
| Week 7   | Go Live SaaS Production Environment   | Production SaaS Live                                                                                 | Sign off Acceptance Document    |



|         |                                     |                               |                              |
|---------|-------------------------------------|-------------------------------|------------------------------|
| Week 8  | Configuration SaaS Test Environment | Deliver Functional ProjectDox |                              |
| Week 9  | UAT SaaS Test Environment           |                               | Sign off Acceptance Document |
| Week 10 | Project Completion                  |                               | Sign off Acceptance Document |
|         | Client Success Services             |                               |                              |

\* Note: the data migration is part of weeks 2 & 3 in the setup and configuration of the production environment. A final sync is done in Week 7.

#### CHANGE CONTROL PROCESS

The “Change Control Process” is that process which shall govern changes to the scope of the Project during the life of the Project. The Change Control Process will apply to new components and to enhancements of existing components. The Change Control Process will commence at the start of the Project and will continue throughout the Project's duration. Additional procedures and responsibilities may be outlined by the Project Manager identified on the signature page to the Agreement and will be included in the Project Plan if mutually accepted.

Under the Change Control Process, a written “Change Request” (attached) will be the vehicle for communicating any desired changes to the Project. It will describe the proposed change; the reason for the change and the effect the change may have on the Project. The Project Manager of the requesting party will submit a written Change Request to the Project Manager for the other parties.

All parties must sign the approval portion of the Change Request to authorize the implementation of any change that affects the Project's scope, schedule, or price. Furthermore, any such changes that affect the scope of this SOW, schedule or price will require an amendment to the SOW and/or any other part of the Purchase Agreement.

#### STATEMENT OF WORK ACCEPTANCE

Once fully executed, this document will become the Statement of Work for the Project defined in this document. Avolve and Customer's signatures below authorizes Avolve to begin the services described above and indicates Customer's agreement to pay the invoices associated with these services delivered as described.

-end of Schedule

## Exhibit A: Service Level Agreement ("SLA")

### SUPPORT PROCESS AND SERVICE LEVEL AGREEMENT

Avolve's current support process (Support) and service level agreement (SLA) commitments are defined below.

**Support Portal.** Avolve provides Support through its Support Portal (<https://support.avolvesoftware.com>). All issues can be logged using the portal or through an on-call support number. City personnel receive Support Portal login credentials promptly following purchase of rights to use the Avolve SaaS Solution. After a login is received, the City may enter, track, update, and report on trouble ticket, as well as communicate with Avolve helpdesk staff via phone, email, web meeting, and/or ticket notes. Help, FAQs, Documentation, and a Knowledge-base are also available at the Avolve support portal.

**Support Hours.** 8 AM – 5 PM MST, Monday through Friday (excluding standard holidays).

**Planned Downtime.** Avolve or its third-party agent may render the Avolve SaaS Solution unavailable in order to perform upgrades, updates, patches, enhancements and routine maintenance activities, so long as the Avolve SaaS Solution is only unavailable to City and its City Users outside of the hours of 7 AM through 9 PM East Coast Time on business days during the Subscription Term. Avolve shall provide no less than five (5) days advance notice to City of any planned downtime. City acknowledges that in the case of emergencies, Avolve or its third-party agents may render the Avolve SaaS Solution unavailable in order to address the emergency. In such situations, if reasonably feasible, Avolve will provide notice to City in advance of rendering the Avolve SaaS Solution unavailable or, if not reasonably feasible, notice to City promptly following the rendering of the Avolve SaaS Solution unavailable. City understands and agrees that Avolve shall not be liable for any such interruption in access to the Avolve SaaS Solution for downtime occurring pursuant to this paragraph (collectively, referred to herein as "Planned Downtime").

**On-Site Emergency Support.** City may request on-site emergency operational support services as a separate and distinct billable service. In such cases and at its discretion, Avolve will dispatch appropriate technical staff to deliver on-site technical services.

**Problem Determination and Resolution.** Avolve resources are allocated to resolve reported problems based on the severity level as described in the following table. Avolve uses commercially reasonable efforts to provide a prompt acknowledgement, acceptable resolution, workaround, or a plan for the provision of a resolution or acceptable workaround in the timeframe set forth below:

| Incident Response, Resolution, and Restoration Times |             |                  |                   |                        |                        |
|------------------------------------------------------|-------------|------------------|-------------------|------------------------|------------------------|
| Severity Level                                       | System Down | Critical         | High              | Medium                 | Low                    |
| Response Time                                        | 1 hour      | 4 business hours | 12 business hours | 24 business hours      | 48 business hours      |
| Resolution Time                                      | 4 hours     | 6 hours          | 24 hours          | Reasonable Best Effort | Reasonable Best Effort |
| Incident Reports                                     | 24 Hours    | n/a              | n/a               | n/a                    | n/a                    |

\*Normal Business Hours: 8:00 a.m. through 5:00 p.m. Mountain Standard Time, Monday through Friday (excluding standard holidays).

### **Support Classification Definitions:**

- **Response Time.** Once a problem has been reported, the City receives an acknowledgement by email, chat, phone or the through the support portal. Avolve will begin the process of problem determination and resolution at this point. The time the ticket is submitted, and the response time will be logged to ensure SLA is met.
- **Status Updates.** During the problem determination and resolution process, City may receive regular communications, via email, chat, phone, or the support portal, as to the status of the problem determination and resolution. All communications should be logged in Avolve's support system including date, time, and contact name. This helps Avolve and the City determine the status and duration of the issue reported. Any communications outside the support portal, unless scheduled by Avolve Support such as an online conference (e.g., Zoom or Teams), will not be considered as part of Avolve's SLA. Tickets forwarded to Avolve Development/QA or 3rd Party Software company for further analysis or patch development, may result to delayed updates to the City.
- **Resolution Time.** It is the time the issue should be resolved. In some instances, a resolution may still be a temporary fix beyond the viable workaround. This incident occurs if the solution requires a product patch and/or product upgrade that result to a longer resolution schedule.
- **Severity Re-classification.** Avolve and the City can reclassify the severity of a ticket if required.

### **Severity Type Definitions:**

- **System Down:** A complete system failure impacting City's ability to use the system that affects their business operations. From a time management perspective, it is urgent and important. Examples of a system down severity is when all users are unable to login or various errors occur simultaneously for all users. Avolve Support will respond to the ticket within 1 hour and try to restore the system within 4 hours. City's administrators, IT, and/or users experiencing the issue may need to be available to help address specific tickets. If it requires further investigation and longer resolution time, a temporary workaround (i.e., restoration) will be determined with the City to allow operations to proceed during business or non-business hours. Status updates will be provided periodically, on a System Down tickets 24x7 until resolution. Infrastructure issues are often resolved quickly by service or system restart. Any potential system alerts will be promptly addressed in an effort to avoid issues from reoccurring. Avolve will create a new ticket with a low severity rating if the issue has been resolved but require further root-cause analysis.
- **Critical:** An application failure impacting 1 or more end-users' ability to use the system and affects critical operations that need to be addressed immediately. From a time management perspective, it is urgent and important for some users. Examples of a critical severity is when 1 or more users are unable to upload files, batch stamp approved plans, open several files, or run reports after several attempts. Avolve Support will respond to the issue within 4 hours and try to resolve the issue within 6 hours. City's administrators, IT, and/or users experiencing the issue may need to be available to help address specific issues. If it requires further investigation and longer resolution time, a temporary workaround (i.e., restoration) will be determined with the City to allow operations to proceed during business hours. Critical tickets will be immediately worked on until restoration from Monday to Friday (excluding US holidays) and within business hours. Any issue that requires work beyond work hours will be addressed on

the following workday and within business hours. Avolve will create a new ticket with a low severity rating if the issue has been resolved but require further root-cause analysis.

- **High:** An error that causes Avolve product to fail with minimal business impact. From a time management perspective, it is not urgent but important. Examples of a high severity are intermittent but frequent operational errors that need to be addressed. Avolve Support will respond to the issue within 12 business hours and try to resolve the issue within 24 business hours. If it requires further investigation and longer resolution time, a temporary workaround will be determined with the City to allow operations to proceed during business hours. Support will work on the issue from Monday to Friday (excluding US holidays) and within business hours. Any issue that requires work beyond business hours will be addressed on the following workday and within business hours. Avolve will create a new ticket with a low severity rating if the issue has been resolved but require further root-cause analysis.
- **Medium:** An error that causes Avolve product to fail with no significant business impact. From a time management perspective, it is not urgent and slightly important to some users. Examples of a medium severity are how-to questions, or specific issues only occurring to a single end-user. Avolve Support will respond to the issue within 24 business hours and resolve the issue within reasonable best efforts. Support will work on the issue from Monday to Friday (excluding US holidays) and within business hours. Any issue that requires work beyond business hours will be addressed on the following workday and within business hours.
- **Low:** A service request for a new feature, additional documentation, or an explanation of product functionality that does not impact business operations. From a time management perspective, it is not urgent with low importance. Avolve Support will respond to the issue within 48 business hours and resolve the issue within reasonable best efforts. Support will work on the issue from Monday to Friday (excluding US holidays) and within business hours. Any issue that requires work beyond business hours will be addressed on the following workday and within business hours.

**Unsupported Issues.** Avolve does not cover under Support, and the SLA does not include the following conditions (collectively, the "Unsupported Issues").

- Any Avolve SaaS Solution use not covered by an active support contract and/or not in compliance with a valid agreement with Avolve. Authorized users of the Avolve SaaS Solution are entitled to Support as part of their use fee.
- End-user's computer hardware/software configurations such as OS (e.g., Linux or older Windows versions) or browser versions not supported by Avolve.
- Problems caused by misuse or misapplication of the Avolve SaaS Solution, including any anomalies and/or failures in test or production operating environments that impact the Avolve SaaS Solution and are determined to have their cause due to unwarranted City decisions, actions, system configuration/ modification, policies and/or procedures.
- Problems caused by City's custom application code authorized to be developed using Avolve APIs as set forth in the documentation accompanying such API and the City's Agreement.
- Problems caused by updates or upgrades of City-used (rather than Software Provider-provisioned) 3rd party applications that are integrated with Avolve products and/or services.

- All Training programs, regardless of software version updates and/or upgrades.
- On-premises type of support including but not limited to: (a) End-user's Windows configuration issues; (b) On-prem firewall or other security device configuration; (c) On-prem VPN, proxy servers, or other internal devices that connect to the Avolve SaaS solution; (d) City DNS, SSL certifications, or Azure AD configurations and updates if used for the Avolve SaaS solution; (d) On-prem or end-user's network performance monitoring and updates; (e) End-User browser support; (f) User-modified and new workflows or eforms. Additional services may be purchased for an additional fee.
- Any other reasons set forth in the City's Agreement, including without limitation any downtime due to Microsoft Corporation.

Avolve, in its sole discretion, shall determine whether any of the foregoing exclusions are applicable to City. Any services provided for exclusions shall be paid by City at Avolve's then-current rates, as well as all travel and other expenses incurred by Avolve in providing such services.

**City's Obligations for Operational Support.** To facilitate clear and consistent communication and timely issue resolution, City shall designate up to two contact persons for technical support processes. These individuals are responsible for initiating support requests, communicating with Avolve technical support personnel, and monitoring the support process with Avolve. Timely City response to Avolve requests for information during issue resolution is a necessary pre-requisite to Avolve's providing Support. Avolve also requires remote access to the City system for the purpose of problem determination and analysis. Where reasonably necessary to provide Support, City shall provide Avolve's technical support personnel reasonable, remote access capabilities into City's systems. Upon Avolve's request, City will also provide reasonable supporting data to aid in the identification and resolution of the issue.

### **Service Level Commitments**

**Uptime commitment.** Per Avolve's SaaS agreement, Avolve will use commercially reasonable efforts to make the Avolve SaaS Solution available. The Annual Uptime Percentage has 2 components: The infrastructure uptime, which is dependent on Microsoft's SLA; Avolve software, which is 99.5%, excluding Planned Downtime. In the event that Avolve does not meet this uptime commitment, City will be eligible to receive a service credit for 1% of the monthly fee for each one (1) hour of downtime during City's normal business hours, up to 50% of City's Pro-Rated Monthly Subscription Fee.

### **Definitions**

- "Annual Uptime Percentage" is calculated by subtracting from 100% the percentage of 10-minute periods during a calendar month in which the Avolve SaaS Solutions was Unavailable to City.
- "Availability" means the ability to log into the Avolve SaaS Solution.
- "Claim" means a claim for a service credit City submits by opening a support case with Avolve, on the basis that the hosted Avolve SaaS Product infrastructure has been Unavailable to City during a service month.
- "Pro-Rated Monthly Subscription Fee" is calculated by dividing the City's applicable annual Avolve SaaS Solution subscription fee by twelve.

- "Unavailability" means the inability to log into the Avolve SaaS Solution.

### **Service Credit Requests**

To receive a service credit, City must notify Avolve and submit a Claim within thirty (30) days from the incident that would be the basis for the claim. To be eligible, the Claim must include (a) the dates, times, description and duration of each incident experienced; and (b) the City's event logs or any other system telemetry that document the errors and corroborate the claimed Unavailability (any confidential or sensitive information should be removed). Failure to provide a timely Claim, which includes all the required information, will disqualify the Claim and City from receiving a service credit. If Avolve validates the Claim, then Avolve will promptly issue the service credit.

### **Service Credit Provisions**

Service credits are City's sole and exclusive remedy for any failure of Avolve to provide the Avolve SaaS Solution in accordance with the terms of the Agreement. Service credits shall be a credit toward future services only and do not entitle City to any refund or other payment from Avolve. Service credits may not be transferred, applied to another account, exchanged for, or converted to monetary amounts.

The maximum service credits awarded with respect to Claims the City submits in any calendar month shall not, under any circumstance, exceed in the aggregate 50% of the City's Pro-Rated Monthly Subscription Fee for such month. Avolve will use all information reasonably available to it to validate Claims and make a good faith judgment on whether a service credit should be applied to the Claim.

### **SLA Exclusions**

This SLA does not apply to any Availability or Unavailability of the Avolve SaaS Solution:

- During Planned Downtime;
- Caused by Unsupported Issues;
- Caused by factors outside of Avolve's control, including any force majeure event or interruption or impediment to City-side Internet access or other related City-side problems;
- That result from City's equipment, software or other technology and/or third party equipment, software or other technology, including any third party hosting providers;
- That resulted from Planned Maintenance or associated to beta, evaluation, non-production systems, and trial services accounts;
- That result from any actions or inactions from City or any third party, including employees, Users, agents, contractors, or vendors, or anyone gaining access to the hosted Avolve SaaS Product infrastructure by means of City's (and its Users') passwords or equipment;
- Arising from Avolve's suspension and termination of City's right to use the hosted infrastructure in accordance with the Agreement; and
- That result from Avolve application software implementation errors caused by the City's configuration, customization, or installation, or other City-side human errors.

- Avolve, in its sole discretion, shall determine whether any of the foregoing exclusions are applicable to City. Avolve may, but is not obligated to, issue a Service Credit in Avolve's sole discretion where City's use of the Avolve SaaS Solution may be Unavailable due to factors other than expressly provided here in this SLA.

End of Schedule 2.

## **Exhibit B: Insurance Requirements and Proof of Insurance**

Proof of insurance coverage described below is attached to this Exhibit, with City named as additional insured.

### **1. MINIMUM SCOPE AND LIMITS OF REQUIRED INSURANCE POLICIES**

#### **Additional Insureds:**

The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers ("Additional Insureds") are to be covered as additional insureds on Consultant's Commercial General Liability and Cyber Liability policies. General Liability coverage can be provided in the form of an endorsement to Consultant's insurance (at least as broad as ISO Form CG 20 10 (11/ 85) or both CG 20 10 and CG 20 37 forms, if later editions are used).

#### **Primary Coverage:**

Coverage afforded to City/Additional Insureds shall be primary insurance. Any insurance or self- insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Software Provider's insurance and shall not contribute to it.

#### **Notice of Cancellation:**

Each insurance policy shall state that coverage shall not be canceled or allowed to expire, except with written notice to City 30 days in advance or 10 days in advance if due to non-payment of premiums.

#### **Workers' Compensation:**

As required by the State of California, with Statutory Limits and Employer's Liability Insurance of no less than **\$1,000,000** per occurrence for bodily injury or disease.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of City for all work performed by Software Provider, its employees, agents, and subconsultants.

#### **General Liability:**

For bodily injury, property damage, personal injury liability for premises operations, products and completed operations, contractual liability, and personal and advertising injury with limits no less than **\$2,000,000** per occurrence (ISO Form CG 00 01). If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO Form CG 25 03 or 25 04) or it shall be twice the required occurrence limit.

a It shall be a requirement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be made available to the Additional Insured and shall be (i) the minimum coverage/limits specified in this agreement; or (ii) the broader coverage and maximum limits of coverage of any insurance policy, whichever is greater.

b Additional Insured coverage under Software Provider's policy shall be "primary and non-contributory," will not seek contribution from City's insurance/self-insurance, and shall be



at least as broad as ISO Form CG 20 01 (04/13).

c. The limits of insurance required may be satisfied by a combination of primary and umbrella or excess insurance, provided each policy complies with the requirements set forth in this Agreement. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect City as a named insured.

**Automobile Liability**

ISO CA 00 01 covering any auto (including owned, hired, and non-owned autos) with limits no less than **\$1,000,000** per accident for bodily injury and property damage.

**Cyber Liability:**

Insurance, with limits not less than:

\$2,000,000 each occurrence

\$2,000,000 aggregate - all other

Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Software Provider in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

If the Software Provider maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by the Software Provider . Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

**2. ABSENCE OF INSURANCE COVERAGE.**

City may direct Software Provider to immediately cease all activities with respect to this Agreement if it determines that Software Provider fails to carry, in full force and effect, all insurance policies with coverages at or above the limits specified in this Agreement.

**3. PROOF OF INSURANCE COVERAGE AND COVERAGE VERIFICATION.**

A Certificate of Insurance, on an Accord form, and completed coverage verification shall be provided to City by each of Software Provider's insurance companies as evidence of the stipulated coverages prior to the Commencement Date of this Agreement, and annually thereafter for the term of this Agreement. All of the insurance companies providing insurance for Software Provider shall be licensed to do insurance business in the State of California and shall have, and provide evidence of, a Best Rating Service rate of A:VII or above.

**4. SUBCONTRACTORS**

Software Provider agrees to be responsible for the performance of any subcontractors the same as if the individual performing or assisting in the performance of services were employees of Software Provider. Third-party software vendors and hosted service providers, including Microsoft, are not considered subcontractors of Software Provider for the purposes of this Agreement.

**5. HIGHER INSURANCE LIMITS**

If Software Provider maintains broader coverage and/or higher limits than the minimums shown above, City shall be entitled to coverage for the higher insurance limits maintained by Software Provider while the higher limits are maintained but Provider will not be required to maintain insurance above the minimums shown above.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/22/2023

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

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

|                                                                                                                    |                                                                                                                                      |                                    |
|--------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|
| <b>PRODUCER</b><br>Brown & Brown Insurance of AZ, Inc<br>2800 North Central Avenue, Suite 1100<br>Phoenix AZ 85004 | <b>CONTACT NAME:</b> Marie Puetz, CISR<br><b>PHONE (A/C, No, Ext):</b> 602-664-7043<br><b>E-MAIL ADDRESS:</b> marie.puetz@bbrown.com | <b>FAX (A/C, No):</b> 602-287-6743 |
| <b>INSURER(S) AFFORDING COVERAGE</b>                                                                               |                                                                                                                                      | <b>NAIC #</b>                      |
| <b>INSURER A:</b> Travelers Insurance Company of Canada                                                            |                                                                                                                                      |                                    |
| <b>INSURER B:</b> Travelers Property Casualty Co of AM                                                             |                                                                                                                                      | 25674                              |
| <b>INSURER C:</b> Travelers Indemnity Company                                                                      |                                                                                                                                      | 25658                              |
| <b>INSURER D:</b>                                                                                                  |                                                                                                                                      |                                    |
| <b>INSURER E:</b>                                                                                                  |                                                                                                                                      |                                    |
| <b>INSURER F:</b>                                                                                                  |                                                                                                                                      |                                    |

**COVERAGES****CERTIFICATE NUMBER:** 1602883842**REVISION NUMBER:**

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

| INSR LTR | TYPE OF INSURANCE                                                                                                                                                                                                                                                                                                                                                                                                        | ADDL INSD | SUBR WVD | POLICY NUMBER             | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS                                                                                                                                                                                                                                                                |
|----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|----------|---------------------------|-------------------------|-------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| B<br>A   | <input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b><br><input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR<br><input checked="" type="checkbox"/> Dec = \$0<br>GEN'L AGGREGATE LIMIT APPLIES PER:<br><input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC<br><input checked="" type="checkbox"/> OTHER: Foreign Liab | Y         | Y        | ZLP41M23114<br>UXTRV30797 | 1/2/2023<br>1/2/2023    | 1/2/2024<br>1/2/2024    | EACH OCCURRENCE \$ 1,000,000<br>DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000<br>MED EXP (Any one person) \$ 10,000<br>PERSONAL & ADV INJURY \$ 1,000,000<br>GENERAL AGGREGATE \$ 2,000,000<br>PRODUCTS - COMP/OP AGG \$ 2,000,000<br>Aggregate \$ 2,000,000 |
| C<br>A   | <b>AUTOMOBILE LIABILITY</b><br><input type="checkbox"/> ANY AUTO<br><input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS<br><input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY<br><input checked="" type="checkbox"/> Foreign <input checked="" type="checkbox"/> HNOA                                                          | Y         | Y        | BA9J542207<br>UXTRV30797  | 1/2/2023<br>1/2/2023    | 1/2/2024<br>1/2/2024    | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000<br>BODILY INJURY (Per person) \$<br>BODILY INJURY (Per accident) \$<br>PROPERTY DAMAGE (Per accident) \$<br>Any One Accident \$ 2,000,000                                                                            |
| B        | <input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR<br><input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE<br><input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000                                                                                                                                           | Y         | Y        | CUP3L995642               | 1/2/2023                | 1/2/2024                | EACH OCCURRENCE \$ 4,000,000<br>AGGREGATE \$ 4,000,000<br>\$                                                                                                                                                                                                          |
| C        | <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b><br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> Y <input checked="" type="checkbox"/> N<br>(Mandatory in NH)<br>If yes, describe under DESCRIPTION OF OPERATIONS below                                                                                                                                             |           | Y        | UB8J755123                | 1/2/2023                | 1/2/2024                | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER<br>E.L. EACH ACCIDENT \$ 1,000,000<br>E.L. DISEASE - EA EMPLOYEE \$ 1,000,000<br>E.L. DISEASE - POLICY LIMIT \$ 1,000,000                                                             |
| B<br>A   | Domestic Tech E&O/Cyber Liab<br>Canadian Tech E&O/Cyber Liab                                                                                                                                                                                                                                                                                                                                                             | N<br>N    | N<br>N   | ZPL21P05221<br>UXTRV30797 | 1/2/2023<br>1/2/2023    | 1/2/2024<br>1/2/2024    | Per Claim/ Aggregate Retention Aggregate/Deductible<br>5,000,000<br>10,000<br>5,000,000/10,000                                                                                                                                                                        |

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

Blanket Additional Insured applies where required by written contract to General Liability per attached form CG D4 17 02 19 including Blanket Waiver of Subrogation. Blanket Primary & Non-Contributory applies to General Liability per attached form CG T1 00 02 19. Blanket Additional Insured applies to Auto Liability per attached form CA T4 37 02 15. Blanket Automobile Liability Waiver of Subrogation applies per form CA T3 40 20 15. Excess Liability is Following Form for both General Liability and Automobile Liability.  
Blanket Waiver of Subrogation applies to Workers' Compensation per attached form WC000313 (00)-01. Privacy Liability is added to the Network and Information Security Coverage Form #PR T1 03 01 17.

Professional Liability/Cyber Liability Retroactive Date: 1/2/2015  
See Attached...

**CERTIFICATE HOLDER****CANCELLATION**

City of Cupertino  
10300 Torre Avenue  
Cupertino CA 95014

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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ACORD 25 (2016/03)

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THIS CERTIFICATE SUPERSEDES PREVIOUSLY ISSUED CERTIFICATE

**ADDITIONAL REMARKS SCHEDULE**Page 1 of 1

|                                              |           |                                                                                                                                |
|----------------------------------------------|-----------|--------------------------------------------------------------------------------------------------------------------------------|
| AGENCY<br>Brown & Brown Insurance of AZ, Inc |           | NAMED INSURED<br>Avolve Holdco Corporation, Avolve Software Corporation<br>21001 N Tatum Blvd STE 1630-503<br>Phoenix AZ 85050 |
| POLICY NUMBER                                |           |                                                                                                                                |
| CARRIER                                      | NAIC CODE | EFFECTIVE DATE:                                                                                                                |

**ADDITIONAL REMARKS**

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,  
FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

City of Cupertino, its City Council, Officers, Officials, Employees, Agents, Servants, Volunteers as Additional Insured where required by written contract.

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

## **XTEND ENDORSEMENT FOR TECHNOLOGY**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

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

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>A.</b> Non-Owned Watercraft - 75 Feet Long Or Less</p> <p><b>B.</b> Who Is An Insured - Unnamed Subsidiaries</p> <p><b>C.</b> Who Is An Insured - Employees - Supervisory Positions</p> <p><b>D.</b> Who Is An Insured - Newly Acquired Or Formed Limited Liability Companies</p> <p><b>E.</b> Who Is An Insured - Liability For Conduct Of Unnamed Partnerships Or Joint Ventures</p> <p><b>F.</b> Blanket Additional Insured - Persons Or Organizations For Your Ongoing Operations As Required By Written Contract Or Agreement</p> <p><b>G.</b> Blanket Additional Insured - Broad Form Vendors</p> | <p><b>H.</b> Blanket Additional Insured - Controlling Interest</p> <p><b>I.</b> Blanket Additional Insured - Mortgagees, Assignees, Successors Or Receivers</p> <p><b>J.</b> Blanket Additional Insured - Governmental Entities - Permits Or Authorizations Relating To Premises</p> <p><b>K.</b> Blanket Additional Insured - Governmental Entities - Permits Or Authorizations Relating To Operations</p> <p><b>L.</b> Medical Payments - Increased Limit</p> <p><b>M.</b> Blanket Waiver Of Subrogation</p> <p><b>N.</b> Contractual Liability - Railroads</p> <p><b>O.</b> Damage To Premises Rented To You</p> |
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### **PROVISIONS**

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

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

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

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

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

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

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

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

**B. WHO IS AN INSURED - UNNAMED SUBSIDIARIES**

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

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

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

## COMMERCIAL GENERAL LIABILITY

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

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

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

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

- a. A limited liability company;
- b. An organization other than a partnership, joint venture or limited liability company; or
- c. A trust;

as indicated in its name or the documents that govern its structure.

### C. WHO IS AN INSURED - 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" to a co-"employee" while 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.

### D. WHO IS AN INSURED - NEWLY ACQUIRED OR FORMED LIMITED LIABILITY COMPANIES

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

- 3. Any organization you newly acquire or form, other than a partnership or joint venture, and of which you are the sole owner or in which you maintain an ownership interest of more than 50%, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only:

- (1) Until the 180th day after you acquire or form the organization or the end of

the policy period, whichever is earlier, if you do not report such organization in writing to us within 180 days after you acquire or form it; or

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

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

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

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

- a. A limited liability company;
- b. An organization, other than a partnership, joint venture or limited liability company; or
- c. A trust;

as indicated in its name or the documents that govern its structure.

### E. 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.

### F. 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. Occurs subsequent to the signing of 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 minimum limits that you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.

#### **G. 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. Occurs subsequent to the signing of that contract or agreement; and
- b. Arises out of "your products" that 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 minimum limits that you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.
- b. The insurance provided to such vendor does not apply to:
  - (1) Any express warranty not authorized by you or any distribution or sale for a purpose 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" that, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or 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 ingredient, 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.

#### **H. BLANKET ADDITIONAL INSURED - CONTROLLING INTEREST**

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

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

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

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

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

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

**I. BLANKET ADDITIONAL INSURED – MORTGAGEES, ASSIGNEES, SUCCESSORS OR RECEIVERS**

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

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

- a. Is "bodily injury" or "property damage" that occurs, or is "personal and advertising injury" caused by an offense that is committed, subsequent to the signing of that contract or agreement; and
- b. Arises out of the ownership, maintenance or use of the premises for which that mortgagee, assignee, successor or receiver is required under that contract or agreement to be included as an additional insured on this Coverage Part.

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

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

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

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

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

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

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

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

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

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

**L. MEDICAL PAYMENTS – INCREASED LIMIT**

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

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



and will be the higher of:

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

**M. 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" that occurs; or
- b. "Personal and advertising injury" caused by an offense that is committed;

subsequent to the execution of the contract or agreement.

**N. CONTRACTUAL LIABILITY – RAILROADS**

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

**O. DAMAGE TO PREMISES RENTED TO YOU**

The following replaces the definition of "premises damage" in 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.

# 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 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.

- 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.
- 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" or "property damage" 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 that 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 attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured will be deemed to be damages because of "bodily injury" or "property damage", provided that:
  - (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 attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which

damages to which this insurance applies are alleged.

### c. Liquor Liability

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

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

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages. For the purposes of this exclusion, permitting a person to bring alcoholic beverages on your premises, for consumption on your premises, whether or not a fee is charged or a license is required for such activity, is not by itself considered the business of 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 whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by 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 produced by or originating from equipment that is used to heat, cool or dehumidify the building, or produced by or originating from equipment that is used to heat water for personal use by the building's occupants or their guests;

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

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";

(b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

(c) If such "pollutants" are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:

(i) Any insured; or

(ii) Any person or organization for whom you may be legally responsible;

(d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:

(i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;

(ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or

- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or
  - (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are or were at any time performing operations 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 any governmental authority or any other person or organization because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

**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) 50 feet long or less; and
  - (b) Not being used to carry any person 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;
- (5) "Bodily injury" or "property damage" arising out of:
  - (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify as "mobile equipment" under the definition of "mobile equipment" if such land vehicle were not subject to a compulsory or financial responsibility law, or other motor vehicle insurance law, where it is licensed or principally garaged; or
  - (b) The operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment"; or
- (6) 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.

**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 pre-

arranged racing, speed, demolition, or stunting activity.

**i. War**

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

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

**j. 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 "premises damage". A separate limit of insurance applies to "premises damage" as described in Paragraph 6.

of 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".

**p. Electronic Data**

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

However, this exclusion does not apply to liability for damages because of "bodily injury".

**q. Unsolicited Communication**

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

**r. Access Or Disclosure Of Confidential Or Personal Information**

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

**s. Asbestos**

(1) "Bodily injury" or "property damage" arising out of the actual or alleged presence or actual, alleged or threatened dispersal of asbestos, asbestos fibers or products containing asbestos, provided that the "bodily injury" or "property damage" is caused or contributed to by the hazardous properties of asbestos.

(2) "Bodily injury" or "property damage" arising out of the actual or alleged presence or actual, alleged or threatened dispersal of any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, chemicals and waste, and that are part of any claim or "suit" which also alleges any "bodily injury" or "property damage" described in Paragraph (1) above.

(3) 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, asbestos, asbestos fibers or products containing asbestos; or

(b) Claim or suit by or on behalf of any governmental authority or any other person or organization because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, asbestos, asbestos fibers or products containing asbestos.

**t. Employment-Related Practices**

"Bodily injury" to:

(1) A person arising out of any:

(a) Refusal to employ that person;

(b) Termination of that person's employment; or

(c) Employment-related practice, policy, act or omission, such as coercion, demotion, evaluation, reassignment, discipline, failure to promote or advance, harassment, humiliation, discrimination, libel, slander, violation of the person's right of privacy, malicious prosecution or false arrest, detention or imprisonment applied to or directed at that person, regardless of whether such practice, policy, act or omission occurs, is applied or is committed before, during or after the time of that person's employment; or

(2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any of the employment-related practices described in Paragraph (a), (b), or (c) above is directed.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or

repay someone else who must pay damages because of the "bodily injury".

Exclusions c. through n. do not apply to "premises damage". A separate limit of insurance applies to "premises damage" as described in Paragraph 6. of 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.

- 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".

This exclusion does not apply to "personal injury" caused by malicious prosecution.

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

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

#### **c. Material Published Or Used Prior To Policy Period**

(1) "Personal and advertising injury" arising out of oral or written publication, including publication by electronic means, of material whose first publication took place before the beginning of the policy period; or

(2) "Advertising injury" arising out of infringement of copyright, "title" or "slogan" in your "advertisement" whose first infringement in your "advertisement" was committed before the beginning of the policy period.

#### **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:

(1) That the insured would have in the absence of the contract or agreement; or

(2) Because of "personal injury" assumed by you in a contract or agreement that is an "insured contract", provided that the "personal injury" is caused by an offense committed subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed by you in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured will be deemed to be damages because of "personal injury", provided that:



(a) Liability to such party for, or for the cost of, that party's defense has also been assumed by you in the same "insured contract"; and

(b) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

**f. Breach Of Contract**

"Advertising injury" arising out of a breach of contract.

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

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

**h. Wrong Description Of Prices**

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

**i. Intellectual Property**

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

- (1) Copyright;
- (2) Patent;
- (3) Trade dress;
- (4) Trade name;
- (5) Trademark;
- (6) Trade secret; or
- (7) Other intellectual property rights or laws.

This exclusion does not apply to:

- (1) "Advertising injury" arising out of any actual or alleged infringement or violation of another's copyright, "title" or "slogan" in your "advertisement"; or
- (2) Any other "personal and advertising injury" alleged in any claim or "suit" that also alleges

any such infringement or violation of another's copyright, "title" or "slogan" in your "advertisement".

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

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

- (1) Advertising, "broadcasting" or publishing;
- (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 a.(1), (2) and (3) of the definition of "personal injury".

For the purposes of this exclusion:

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

**k. Electronic Chatrooms Or Bulletin Boards**

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts or 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, 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
- (2) Claim or suit by or on behalf of any governmental authority or any other person or organization because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

**o. War**

"Personal and advertising injury" arising out of:

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

**p. Unsolicited Communication**

"Personal and advertising injury" arising out of any actual or alleged violation of any law that restricts or prohibits the sending, transmitting or distributing of "unsolicited communication".

**q. Access Or Disclosure Of Confidential Or Personal Information**

"Personal and advertising injury" arising out of any access to or disclosure of any person's or organization's confidential or personal information.

**r. Asbestos**

- (1) "Personal and advertising injury" arising out of the actual or alleged presence or actual, alleged or threatened dispersal of asbestos,

asbestos fibers or products containing asbestos, provided that the "personal and advertising injury" is caused or contributed to by the hazardous properties of asbestos.

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

**s. Employment-Related Practices**

"Personal injury" to:

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

person, regardless of whether such practice, policy, act or omission occurs, is applied or is committed before, during or after the time of that person's employment; or

- (2) The spouse, child, parent, brother or sister of that person as a consequence of "personal injury" to that person at whom any of the employment-related practices described in Paragraph (a), (b), or (c) above is directed.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the "personal injury".

## 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:
    - (a) The accident takes place in the "coverage territory" and during the policy period;
    - (b) The expenses are incurred and reported to us within one year of the date of the accident; and
    - (c) 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 practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.

### f. Products—Completed Operations Hazard

Included within the "products-completed operations hazard".

### g. Coverage A Exclusions

Excluded under Coverage A.

## SUPPLEMENTARY PAYMENTS

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 \$2,500 for the 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 \$500 a day because of time off from work.

- e. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
- 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 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" or offense 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 - Coverages - Coverage A - Bodily Injury And Property Damage Liability or Paragraph 2.e. of Section I - Coverages - Coverage B - Personal And Advertising Injury Liability, such payments will not be deemed to be damages for "bodily injury", "property damage" or "personal injury", 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, settlements or medical expenses; 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.
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 injury":
      - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
      - (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer

worker" as a consequence of Paragraph (1)(a) above;

- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph (1)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

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

(2) "Property damage" to property:

- (a) Owned, occupied or used by;
- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by;

you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

- b. 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.
  - e. Any person or organization that, with your express or implied consent, either uses or is responsible for the use of a watercraft that you do not own that is:
    - (1) 50 feet long or less; and
    - (2) Not being used to carry any person or property for a charge.
3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and of which you are the sole owner or in which you maintain an ownership interest of more than 50%, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
  - b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
  - c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

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

- a. An organization, other than a partnership, joint venture or limited liability company; or
  - b. A trust;
- as indicated in its name or the documents that govern its structure.
4. Any person or organization that is a premises owner, manager or lessor 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", "property damage" or "personal and advertising injury" that:

- a. Is "bodily injury" or "property damage" that occurs, or is "personal and advertising injury" caused by an offense that is committed, subsequent to the signing of that contract or agreement; and
- b. Arises 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 is subject to the following provisions:

- a. The limits of insurance provided to such premises owner, manager or lessor will be the minimum limits that you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.
  - b. The insurance provided to such premises owner, manager or lessor does not apply to:
    - (1) Any "bodily injury" or "property damage" that occurs, or "personal and advertising injury" caused by an offense that is committed, after you cease to be a tenant in that premises; or
    - (2) Structural alterations, new construction or demolition operations performed by or on behalf of such premises owner, manager or lessor.
5. Any person or organization that is an equipment lessor 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", "property damage", or "personal and advertising injury" that:
- a. Is "bodily injury" or "property damage" that occurs, or is "personal and advertising injury" caused by an offense that is committed, subsequent to the signing of that contract or agreement; and
  - b. Is caused, in whole or in part, by your acts or omissions in the maintenance, operation or use of equipment leased to you by such equipment lessor.

The insurance provided to such equipment lessor is subject to the following provisions:

- a. The limits of insurance provided to such equipment lessor will be the minimum limits that you agreed to

## COMMERCIAL GENERAL LIABILITY

provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.

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

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. This paragraph does not apply to any such partnership, joint venture or limited liability company that otherwise qualifies as an insured under Section II - Who Is An Insured.

### 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 Paragraph 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 injury" and "advertising injury" sustained by any one person or organization.
5. Subject to Paragraph 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".

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

6. Subject to Paragraph 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 in the Declarations of this Coverage Part; or

b. \$300,000 if no amount is shown for the Damage To Premises Rented To You Limit in the Declarations of this Coverage Part.

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

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 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.
- e. The following provisions apply to Paragraph a. above, but only for 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 "executive officers" or directors (if you are an organization other than a partnership, joint venture, or limited liability company), any of your trustees who is an individual (if you are a 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) An executive officer or director of any other organization; or
- (iv) A trustee of any trust;

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.

- (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 Paragraph e.(1) or (2) above discovers 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.

### 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 valid and collectible other 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 described in Paragraphs a. and b. below.

As used anywhere in this Coverage Part, other insurance means insurance, or the funding of losses, that is provided by, through or on behalf of:

- (i) Another insurance company;
- (ii) Us or any of our affiliated insurance companies, except when the Non cumulation of Each Occurrence Limit provision of Paragraph 5. of Section III - Limits Of Insurance or the Non cumulation of Personal and Advertising Injury Limit provision of Paragraph 4. of Section III - Limits of Insurance applies because the Amendment - Non Cumulation Of Each Occurrence Limit Of Liability And Non Cumulation Of Personal And Advertising Injury Limit endorsement is included in this policy;

(iii) Any risk retention group; or

(iv) Any self-insurance method or program, in which case the insured will be deemed to be the provider of other insurance.

Other insurance does not include umbrella insurance, or excess insurance, that was bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

As used anywhere in this Coverage Part, other insurer means a provider of other insurance. As used in Paragraph c. below, insurer means a provider of insurance.

#### a. Primary Insurance

This insurance is primary except when Paragraph 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 Paragraph c. below, except when Paragraph d. below applies.

#### b. Excess Insurance

(1) This insurance is excess over:

- (a) Any of the other insurance, whether primary, excess, contingent or on any other basis:
  - (i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
  - (ii) That is insurance for "premises damage";
  - (iii) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to any exclusion in this Coverage Part that applies to aircraft, "autos" or watercraft;
  - (iv) That is insurance available to a premises owner, manager or lessor that qualifies as an insured under Paragraph 4. of Section II - Who Is An Insured, except when Paragraph d. below applies; or
  - (v) That is insurance available to an equipment lessor that qualifies as an insured under Paragraph 5. of Section

**II - Who Is An Insured,**  
except when Paragraph d.  
below applies.

(b) Any of the other insurance, whether primary, excess, contingent or on any other basis, that is available to the insured when the insured is an additional insured, or is any other insured that does not qualify as a named insured, under such other insurance.

(2) 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.

(3) 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:

(a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(b) The total of all deductible and self-insured amounts under all that other insurance.

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

#### **d. Primary And Non-Contributory Insurance If Required By Written Contract**

If you specifically agree in a written contract or agreement that the insurance afforded to an insured under this Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such insured which covers such insured as a named insured, and we will not share with that other insurance, provided that:

(1) The "bodily injury" or "property damage" for which coverage is sought occurs; and

(2) The "personal and advertising injury" for which coverage is sought is caused by an offense that is committed;

subsequent to the signing of that contract or agreement by you.

#### **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.

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.

## 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 websites, 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. "Advertising injury":

- a. Means injury caused by one or more of the following offenses:

- (1) Oral or written publication, including publication by electronic means, of material in your "advertisement" that slanders or libels a person or organization or disparages a person's or organization's goods, products or services, provided that the claim is made or the "suit" is brought by a person or organization that claims to have been slandered or libeled, or that claims to have had its goods, products or services disparaged;

- (2) Oral or written publication, including publication by electronic means, of material in your "advertisement" that:

- (a) Appropriates a person's name, voice, photograph or likeness; or

- (b) Unreasonably places a person in a false light; or

- (3) Infringement of copyright, "title" or "slogan" in your "advertisement", provided that the claim is made or the "suit" is brought by a person or organization that claims ownership of such copyright, "title" or "slogan".

- b. Includes "bodily injury" caused by one or more of the offenses described in Paragraph a. above.

## 3. "Auto" means:

- a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
- b. Any other land vehicle that is subject to a compulsory or financial responsibility law, or other motor vehicle insurance law, where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

## 4. "Bodily injury" means:

- a. Physical harm, including sickness or disease, sustained by a person; or
- b. Mental anguish, injury or illness, or emotional distress, resulting at any time from such physical harm, sickness or disease.

5. "Broadcasting" means transmitting any audio or visual material for any purpose:
  - a. By radio or television; or
  - b. In, by or with any other electronic means of communication, such as the Internet, if that material is part of:
    - (1) Radio or television programming being transmitted;
    - (2) Other entertainment, educational, instructional, music or news programming being transmitted; or
    - (3) Advertising transmitted with any of such programming.
6. "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 Paragraph 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 Paragraph a. above;
    - (2) The activities of a person whose home is in the territory described in Paragraph a. above, but is away for a short time on your business; or
    - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication;

provided the insured's responsibility to pay damages is determined in a "suit" on the merits in the territory described in Paragraph a. above, or in a settlement we agree to.
7. "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.
8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.
10. "Good Samaritan services" means any emergency medical services for which no compensation is demanded or received.
11. "Hostile fire" means a fire which becomes uncontrollable or breaks out from where it was intended to be.
12. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
  - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
  - b. You have failed to fulfill the terms of a contract or agreement;if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.
13. "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 "premises damage" 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", "property damage" or "personal injury" 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, roadbeds, 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 Paragraph (2) above and supervisory, inspection, architectural or engineering activities.
14. "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".
15. "Loading or unloading" means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
  - b. While it is in or on an aircraft, watercraft or "auto"; or
  - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

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

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

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

**17. "Occurrence" means:**

- a. An accident, including continuous or repeated exposure to substantially the same general harmful conditions; or
- b. An act or omission committed in providing or failing to provide first aid or "Good Samaritan services" to a person, unless you are in the business or occupation of providing professional health care services.

**18. "Personal and advertising injury" means "personal injury" or "advertising injury".**

**19. "Personal injury":**

- a. Means injury, other than "advertising injury", caused by one or more of the following offenses:
  - (1) False arrest, detention or imprisonment;
  - (2) Malicious prosecution;
  - (3) The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, provided that the wrongful eviction, wrongful entry or invasion of the right of private occupancy is committed by or on behalf of the owner, landlord or lessor of that room, dwelling or premises;
  - (4) Oral or written publication, including publication by electronic means, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services, provided that the claim is made or the "suit" is brought by a person or organization that claims to have been slandered or libeled, or that claims to have had its goods, products or services disparaged; or
  - (5) Oral or written publication, including publication by electronic means, of material that:
    - (a) Appropriates a person's name, voice, photograph or likeness; or

- (b) Unreasonably places a person in a false light.

- b. Includes "bodily injury" caused by one or more of the offenses described in Paragraph a. above.

**20. "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.**

**21. "Premises damage" means:**

- a. With respect to the first paragraph of the exceptions in Exclusion j. of Section I - Coverage A - Bodily Injury And Property Damage Liability, "property damage" to any premises while rented to you for a period of seven or fewer consecutive days, including the contents of such premises; or
- b. With respect to the exception to Exclusions c. through n. in the last paragraph of Paragraph 2. of Section I - Coverage A - Bodily Injury And Property Damage Liability, "property damage" to any premises while rented to you for a period of more than seven consecutive days, or while temporarily occupied by you with permission of the owner, caused by:
  - (1) Fire;
  - (2) Explosion;
  - (3) Lightning;
  - (4) Smoke resulting from fire, explosion or lightning; or
  - (5) Water.

But "premises damage" under this Paragraph b. does not include "property damage" to any premises caused by:

- (1) Rupture, bursting, or operation of pressure relief devices;
- (2) Rupture or bursting due to expansion or swelling of the contents of any building or structure caused by or resulting from water; or
- (3) Explosion of steam boilers, steam pipes, steam engines or steam turbines.

**22. "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 subcontractor working on the same project.

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

- b. Does not include "bodily injury" or "property damage" arising out of:
  - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
  - (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
  - (3) Products or operations for which the classification, listed in the Declarations or in a policy Schedule, states that products-completed operations are subject to the General Aggregate Limit.

**23. "Property damage" means:**

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use will be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use will be deemed to occur at the

time of the "occurrence" that caused it.

For the purposes of this insurance, "electronic data" is not tangible property.

**24. "Slogan":**

- a. Means a phrase that others use for the purpose of attracting attention in their advertising.
- b. Does not include a phrase used as, or in, the name of:
  - (1) Any person or organization, other than you; or
  - (2) Any business, or any of the premises, goods, products, services or work, of any person or organization, other than you.

**25. "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.

**26. "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.**

**27. "Title" means a name of a literary or artistic work.**

**28. "Unsolicited communication" means any communication, in any form, that the recipient of such communication did not specifically request to receive.**

**29. "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.**

**30. "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.

**31. "Your work":**

**a. Means:**

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

**b. Includes:**

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



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

## **BLANKET ADDITIONAL INSURED**

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM**

The following is added to the Paragraph **A.1.c., Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage"

occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Covered Autos Liability Coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in **SECTION II**.

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

## **BLANKET WAIVER OF SUBROGATION**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM  
BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

The following replaces Paragraph **A.5., Transfer of Rights Of Recovery Against Others To Us**, of the **CONDITIONS** Section:

**5. Transfer Of Rights Of Recovery Against Others To Us**

We waive any right of recovery we may have against any person or organization to the extent

required of you by a written contract executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of the operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.

# CYBERFIRST NETWORK AND INFORMATION SECURITY LIABILITY COVERAGE FORM

**THIS INSURANCE PROVIDES CLAIMS-MADE COVERAGE.  
DEFENSE EXPENSES WILL BE APPLIED AGAINST THE RETENTION.  
DEFENSE EXPENSES ARE PAYABLE WITHIN, AND ARE NOT IN  
ADDITION TO, THE LIMITS OF INSURANCE. PAYMENT OF  
DEFENSE EXPENSES WILL REDUCE, AND MAY EXHAUST, THE  
LIMITS OF INSURANCE.**

## **PLEASE READ THE ENTIRE FORM CAREFULLY.**

Various provisions in this coverage form restrict coverage. Your CyberFirst General Provisions Form also contains provisions that apply to this form, including provisions explaining who is insured under this form and the limits of insurance and retention that apply to the insurance provided under this form. 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 CyberFirst Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "first Named Insured" refer to the Named Insured listed first in Item 1. of the CyberFirst Declarations. 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 in your CyberFirst General Provisions Form.

The words "policy period" mean the Policy Period for the CyberFirst Network And Information Security Liability Coverage Form shown in the CyberFirst Declarations.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section II - Definitions in this form and Section VII - Definitions in your CyberFirst General Provisions Form.

### **SECTION I - NETWORK AND INFORMATION SECURITY LIABILITY COVERAGE**

#### **1. Insuring Agreement**

The amount we will pay for "damages" and "defense expenses" is limited as described in Section III - Limits Of Insurance in your CyberFirst General Provisions Form.

- a. We will pay those sums that the insured becomes legally obligated to pay as "damages" because of loss to

which this insurance applies that exceed the applicable retention, only if:

- (1) The loss is caused by a "network and information security wrongful act" committed anywhere in the world;
- (2) The "network and information security wrongful act" was committed on or after the Network And Information Security Retroactive Date shown in the CyberFirst Declarations and before the end of the policy period; and
- (3) A "claim" or "suit" that seeks "damages" because of the loss is first made or brought against any insured, in accordance with Paragraph d. below, during the policy period or any Extended Reporting Period we provide under Section VI - Extended Reporting Periods in your CyberFirst General Provisions Form.
  - b. Each "network and information security wrongful act" in a series of "related" "network and information security wrongful acts" will be deemed to have been committed on the date the first "network and information security wrongful act" in that series is committed.
  - c. If no Network And Information Security Retroactive Date is shown in the CyberFirst Declarations, the Network And Information Security Retroactive Date will be deemed to be the first day of the policy period.
  - d. A "claim" or "suit" that seeks "damages" will be deemed to have been first made or brought at the earlier of the following times:
    - (1) When any "described authorized person" first receives written

notice of such "claim" or "suit"; or

(2) When we first receive written notice:

(a) Of such "claim" or "suit"; or

(b) From any insured of a specific "network and information security wrongful act" that caused the loss which resulted in such "claim" or "suit".

All "claims" or "suits" that seek "damages" because of loss caused by the same "network and information security wrongful act" or "related" "network and information security wrongful acts" will be deemed to have been first made or brought at the time the first of those "claims" or "suits" is made or brought against any insured.

e. A "claim" or "suit" that seeks "damages" will be deemed to have been first made or brought at the time we receive written notice from any insured of a specific "network and information security wrongful act" only if that notice contains all of the following information:

(1) How, when and where the "network and information security wrongful act" was committed;

(2) A description of what happened;

(3) A description of what "damages" may result;

(4) The identity of the person or organization that may make a "claim" or bring a "suit"; and

(5) The identity of each insured that committed the "network and information security wrongful act".

Notice to us that:

(1) All or part of one or more of any insured's acts or omissions may in the future be discovered to be a "network and information security wrongful act"; or

(2) Any insured may in the future receive written notice of a "network and information security wrongful act", "claim" or "suit";

is not notice of a specific "network and information security wrongful act".

## 2. Exclusions

The following exclusions apply to the

coverage provided under this form. These exclusions apply in addition to the exclusions in Paragraphs 2. and 3. of Section I - Coverage in your CyberFirst General Provisions Form.

This insurance does not apply to:

### a. Bodily Injury

Loss arising out of physical harm, including sickness or disease, sustained by a person.

### b. Claims Or Suits By Insureds Against Insureds

Loss for which a "claim" is made or "suit" is brought by or on behalf of any current or former insured against any current or former insured.

This exclusion does not apply to any "claim" made or "suit" brought by:

(1) Any person or organization that:

(a) Is an insured under Paragraph 5. of Section II - Who Is An Insured in your CyberFirst General Provisions Form; or

(b) Has been added as an additional insured by attachment of an endorsement under this policy; or

(2) Your current or former "employee" for failure to prevent unauthorized access to, or use of, data containing private or confidential information of such "employee", but only if such "employee" did not commit or participate in the failure to prevent such unauthorized access or use.

### c. Expected Or Intended Failure To Provide Access

Loss arising out of any failure to provide access to your web-site or "your computer or communications network" that was expected or intended by the insured.

This exclusion does not apply if the failure to provide access occurred because you suspended your web-site or "your computer or communications network" to mitigate loss arising out of:

(1) A "computer virus" that infected your web-site or "your computer or communications network";

(2) A "denial of service attack"; or

(3) An unauthorized breach of your

web-site or "your computer or communications network" that prevented "authorized users" from accessing such web-site, or computer or communications network.

**d. Intellectual Property**

Loss arising out of any actual or alleged infringement or violation of any of the following rights or laws:

- (1) Copyright;
- (2) Patent;
- (3) Trade dress;
- (4) Trade name;
- (5) Trade secret;
- (6) Trademark; or
- (7) Other intellectual property rights or laws.

**e. Internet Service Interruption**

Loss arising out of an Internet service interruption or failure.

This exclusion does not apply if such interruption or failure was caused by you.

**f. Privacy Related**

Loss arising out of disclosure or use of material that:

- (1) Appropriates a person's name, voice, photograph or likeness; or
- (2) Unreasonably places a person in a false light.

**g. Property Damage**

Loss arising out of physical damage to tangible property of others, including all resulting loss of use of that property.

For the purposes of this insurance, data, including information, facts or programs in any electronic or other format, is not tangible property.

**SECTION II – DEFINITIONS**

1. "Authorized user" includes your customer, supplier or supporter.
2. "Computer virus" means malicious code that is introduced through your web-site or "your computer or communications network". Once introduced, such code may destroy, alter, contaminate or degrade the integrity, quality or performance of data of any computer application software, computer network,

or computer operating system or related network.

3. "Denial of service attack" means an intentional attack on a web-site or a computer or communications network for the purpose of nuisance, sabotage or malicious tampering that has the effect of:

- a. Depleting system resources available through the Internet to "authorized users" of your web-site or "your computer or communications network"; or
- b. Impeding access of "authorized users" to your web-site or "your computer or communications network".

4. "Identity information" means any of the following information concerning a person:

- a. Nonpublic personal information as defined in the Gramm-Leach Bliley Act of 1999, or any of its amendments, or any regulation issued pursuant to such Act;
- b. Medical or health care information, including protected health information as defined in the Health Insurance Portability and Accountability Act of 1996, or any of its amendments, or any regulation issued pursuant to such Act;
- c. Personal information that is protected from unauthorized access or acquisition under any other local, state, federal or foreign law or regulation; or
- d. A driver's license or state identification number; social security number; unpublished telephone number; or credit, debit or charge card number, or other financial account number and any security code, access code, password or PIN number associated with such credit, debit or charge card number or other financial account number.

5. "Identity information provision" means any provision in your "privacy policy" that:

- a. Prevents or prohibits wrongful or improper collection of "identity information";
- b. Requires notice to a person of the collection or use of "identity information";
- c. Provides a person the ability to agree to or withhold permission for

- the collection or use of "identity information";
- d. Prohibits or restricts the disclosing, sharing or selling of "identity information";
  - e. Requires the correction of incomplete or inaccurate "identity information" after such request is made to you; or
  - f. Mandates procedures and requirements to prevent the loss of "identity information".
6. "Network and information security wrongful act" means any of the following committed by or on behalf of an insured in the conduct of your business:
- a. Failure to prevent the transmission of a "computer virus".
  - b. Failure to provide any "authorized user" of your web-site or "your computer or communications network" with access to such web-site or such computer or communications network.
  - c. Failure to prevent unauthorized access to, or use of, data containing private or confidential information of others, including such data which is stored, maintained or processed on an insured's behalf pursuant to a written contract or agreement.
  - d. Failure to provide notification of any actual or potential unauthorized access to, or use of, data containing private or confidential information of others as required by any "security breach notification law" that applies to you.
  - e. Failure to comply with any "identity information provision" in your "privacy policy".
7. "Privacy policy" means any publicly available written document that sets forth your policies, standards, or procedures for the collection, use and disclosure of "identity information".
8. "Security breach notification law" means any law or regulation that requires an organization to notify persons that their nonpublic personal information was or may have been accessed or acquired without their authorization.
9. "Your computer or communications network" means any computer or communications network that you:
- a. Rent, lease, license or borrow from others; or
  - b. Own or operate.



**WORKERS COMPENSATION  
AND  
EMPLOYERS LIABILITY POLICY**

**ENDORSEMENT WC 00 03 13 (00)-01**

**POLICY NUMBER: (UB8J755123)**

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT**

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

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

**SCHEDULE**

**DESIGNATED PERSON:**

**DESIGNATED ORGANIZATION:**

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

**DATE OF ISSUE: 1-2-23**

**ST ASSIGN:**

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

## **WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

**Name Of Person Or Organization:**

THE CITY OF CUPERTINO, ITS CITY COUNCIL, OFFICERS, OFFICIALS, EMPLOYEES, AGENTS,  
SERVANTS AND VOLUNTEERS.

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

The following is added to Paragraph 8.  
**Transfer Of Rights Of Recovery Against Others  
To Us of Section IV - Conditions:**

We waive any right of recovery we may  
have against the person or organization  
shown in the Schedule above because of  
payments we make for injury or damage

arising out of your ongoing operations or  
"your work" done under a contract with  
that person or organization and included in  
the "products-completed operations hazard".  
This waiver applies only to the person or  
organization shown in the Schedule above.



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

## **ADDITIONAL INSURED (CONTRACTORS)**

This endorsement modifies insurance provided under the following:  
COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

#### **NAME OF PERSON(S) OR ORGANIZATIONS(S):**

THE CITY OF CUPERTINO, ITS CITY COUNCIL, OFFICERS, OFFICIALS, EMPLOYEES, AGENTS, SERVANTS AND VOLUNTEERS.

#### **PROJECT/LOCATION OF COVERED OPERATIONS:**

TO BE DETERMINED

1. WHO IS AN INSURED - (Section II) is amended to include the person or organization shown in the Schedule above, but:
  - a) Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and
  - b) If, and only to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" on or for the project, or at the location, shown in the Schedule. The person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.
2. The insurance provided to the additional insured by this endorsement is limited as follows:
  - a) In the event that the Limits of Insurance of this Coverage Part shown in the Declarations exceed the limits of liability required by a "written contract requiring insurance" for that additional insured, the insurance provided to the additional insured shall be limited to the limits of liability required by that "written contract requiring insurance". This endorsement shall not increase the limits of insurance described in Section III - Limits Of Insurance.
  - b) The insurance provided to the additional insured does not apply to "bodily injury", "property damage" or "personal injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services, including:
    - i. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders or change orders, or the preparing, approving, or failing to prepare or approve, drawings and specifications; and
    - ii. Supervisory, inspection, architectural or engineering activities.

- c) The insurance provided to the additional insured does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless a "written contract requiring insurance" specifically requires you to provide such coverage for that additional insured, and then the insurance provided to the additional insured applies only to such "bodily injury" or "property damage" that occurs before the end of the period of time for which the "written contract requiring insurance" requires you to provide such coverage or the end of the policy period, whichever is earlier.
3. The insurance provided to the additional insured by this endorsement is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover under this endorsement. However, if a "written contract requiring insurance" for that additional insured specifically requires that this insurance apply on a primary basis or a primary and non-contributory basis, this insurance is primary to "other insurance" available to the additional insured which covers that person or organization as a named insured for such loss, and we will not share with that "other insurance". But the insurance provided to the additional insured by this endorsement still is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured under such "other insurance".
  4. As a condition of coverage provided to the additional insured by this endorsement:
    - a) The additional insured must give us written notice as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, such notice should include:
      - i. How, when and where the "occurrence" or offense took place;
      - ii. The names and addresses of any injured persons and witnesses; and
    - iii. 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 the additional insured, the additional insured must:
      - i. Immediately record the specifics of the claim or "suit" and the date received; and
      - ii. Notify us as soon as practicable.

The additional insured must see to it that we receive written notice of the claim or "suit" as soon as practicable.
    - c) The additional insured must immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.
    - d) The additional insured must tender the defense and indemnity of any claim or "suit" to any provider of "other insurance" which would cover the additional insured for a loss we cover under this endorsement. However, this condition does not affect whether the insurance provided to the additional insured by this endorsement is primary to "other insurance" available to the additional insured which covers that person or organization as a named insured as described in paragraph 3. above.
  5. The following definition is added to SECTION V. - DEFINITIONS:
 

"Written contract requiring insurance" means that part of any written contract or agreement under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs and the "personal injury" is caused by an offense committed:

    - a. After the signing and execution of the contract or agreement by you;
    - b. While that part of the contract or agreement is in effect; and
    - c. Before the end of the policy period.