

STATE OF TEXAS §  
§  
COUNTY OF FORT BEND §

**AMENDMENT NO. 1 TO AGREEMENT FOR  
APPLICATION SERVICES AGREEMENT**

**THIS AMENDMENT**, is made and entered into by and between Fort Bend County (hereinafter "County or Licensee"), a body corporate and politic under the laws of the State of Texas, and Caseworthy, (hereinafter "Licensor"), a company authorized to conduct business in the State of Texas.

WHEREAS, the parties executed and accepted that certain Application Services Agreement on February 4, 2014, (hereinafter "Agreement"), attached hereto as Exhibit A and incorporated by reference herein for all purposes; and

WHEREAS, the parties desire to amend the Agreement, to reflect the following;

**NOW, THEREFORE**, the parties do mutually agree:

1. **Use.** Section 2, D. Use and Access, will be amended to read "Licensor will provide 50 Gigabytes of disk space on the application server for Licensee to use for storage of data necessary for use by the Application. If Licensee's use exceeds eighty percent (80%) of the base storage allotted, then Licensor will notify County within fifteen (15) days. If Licensee's use exceeds the base storage space allotted, Licensee will pay a rate of \$20 per Gigabyte per month and purchase additional space in blocks of 2 Gigabytes. Licensor understands that no changes in the Maximum Compensation set in the Agreement can be made without an approved change order from the County."
2. **Taxes.** County is a body corporate and politic under the laws of the State of Texas and claims exemption from sales and use taxes. A copy of a tax-exempt certificate will be furnished upon request.
3. **Non-appropriation.** It is specifically understood and agreed that in the event no funds or insufficient funds are appropriated by Fort Bend County under this Agreement, Fort Bend County shall notify all necessary parties that this Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were made without penalty, liability or expense to Fort Bend County.
4. **Confidential Information.** Licensor expressly acknowledges that Licensee is a governmental entity subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Contractor

shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.

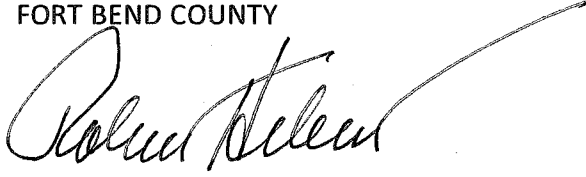
5. **Privacy.** Licensor in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act including the Health Insurance Portability and Accountability Act (HIPAA) and the Texas Medical Privacy Act.
6. **Indemnity.** The parties agree that under the Constitution and laws of the State of Texas, County cannot enter into an agreement whereby County agrees to indemnify or hold harmless another party; therefore, all references of any kind to County defending, indemnifying, holding or saving harmless Licensor for any reason are hereby deleted.
7. **Liability.** Any references to limits placed on licensor's total liability under this Agreement with respect to the Software, regardless of cause or theory of recovery will be removed. Any references to a maximum amount of damages will be removed.
8. **LICENSOR SHALL INDEMNIFY AND DEFEND COUNTY AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF CONTRACTOR, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENCE, ACT, ERROR, OR OMISSION OF LICENSOR OR ANY OF LICENSOR'S AGENTS, SERVANTS OR EMPLOYEES.**
9. **Attorney Fees.** County does not agree to pay any and/or all attorney fees incurred by Licensor in any way associated with the Agreement.
10. **Arbitration.** County does not agree to submit disputes arising out of the Agreement to binding arbitration. Therefore, any references to binding arbitration or the waiver of a right to litigate a dispute are hereby deleted.
11. **Applicable Law.** The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.

Except as provided herein, all terms and conditions of the Agreement shall remain unchanged.

*Execution Page Follows*

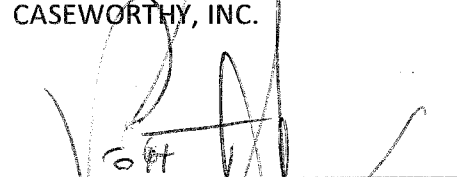
IN WITNESS WHEREOF, the parties put their hands to this Amendment on the dates indicated below.

FORT BEND COUNTY

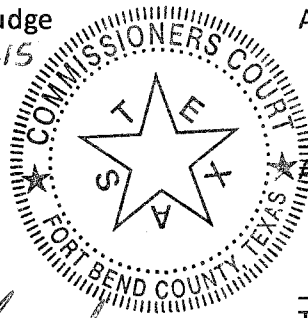


Robert E. Hebert, County Judge  
10-13-2015

CASEWORTHY, INC.



Authorized Agent - Signature





Authorized Agent - Printed Name

ATTEST:



Laura Richard, County Clerk



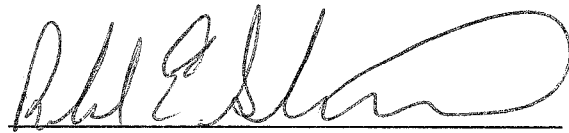
Title



Date

**AUDITOR'S CERTIFICATE**

I hereby certify that funds are available in the amount of \$ 70,745.<sup>00</sup> to accomplish and pay the obligation of Fort Bend County under this contract.



Robert Edward Sturdivant, County Auditor

## **EXHIBIT A**



Empowered Solutions Group, Inc. (Licensor)

LICENSEE NAME:  
Fort Bend County

CONTRACT DATE:

CONTRACT NUMBER:  
FBC 12312013

RENEWAL DATE:

CONTRACT Execution Process:  
Licensee sign contract  
Licensor sign contract  
Licensee submit initial payment on  
creation of data base  
Licensor introduce Account Manager  
Licensor set up databases  
Account Manager & Project Manager  
agree on training schedule

Proposed Dates:



## APPLICATION SERVICES AGREEMENT

THIS AGREEMENT ("Agreement") is entered into on February 4, 2014, between Empowered Solutions Groups, Inc. (ESG) ("Licensor"), A Utah "C" Corporation, with its principal place of business located at 740 East 3900 South Suite 301, Salt Lake City, UT 84107 and Fort Bend County ("Licensee"), with its principal place of business located at 4520 Reading Road, Suite 900-A, Rosenberg, TX 77471 and shall be effective as of February 4, 2014 (the "Effective Date"). Licensor shall be deemed to include all parents, subsidiaries, licensees, and affiliates.

### RECITALS

WHEREAS, Licensor is engaged in the business of developing, marketing and selling Licensee case management operational collaboration and reporting applications (ECM™) and providing, via license grant, access to the ECM™ application Solution (Application) and Licensor's application servers;

WHEREAS, Licensee desires to retain Licensor to perform the services provided for in this agreement.

WHEREAS, this Agreement includes the Exhibits A-G attached hereto:

Exhibit A: Service Level Agreement

Exhibit B: ECM Data Security Plan

Exhibit C: Statement of Work (SOW)

Exhibit D: ECM Professional Services

Exhibit E: Fort Bend County Implementation Timeline

Exhibit F: Business Associate Addendum

Exhibit G: Fort Bend County Travel Policy

NOW THEREFORE, this AGREEMENT grants the Licensee software and specific services as outlined below in consideration of payment terms and conditions set forth herein.

#### 1. Grant of License



Subject to the terms and conditions herein, Licensor hereby grants Licensee a nonexclusive license to (i) execute Empowered Case Management™ (ECM™) (the "Software") on Licensor's application server and/or Licensee's server as approved by Licensor.

## 2. Use and Access

A. Subject to the restrictions on use as set forth herein, Licensee will have access to the Software for the purpose of using the software for its intended purpose and in accordance with the specifications set forth in Special Terms identified in section (3) Price, Payment, and Special Terms documentation as it relates to the Software provided by Licensor. Such use and access will be continuous on a 24 hour basis except for interruptions by reason of maintenance or downtime beyond Licensor's reasonable control. If service interruptions are scheduled due to maintenance or other purposes, Licensor shall notify Licensee at least 24 hours in advance regarding the planned outage, including the expected duration. All features and functions of ECM™ will be available to Licensee as part of the Annual Maintenance.

B. Licensee will use the Software only for its internal business operations and will not permit the Software to be used by or for the benefit of anyone other than Licensee. Licensee will not have the right to re-license or sell rights to access and/or use the Licensed Software or to transfer or assign rights to access or use the Software, except as expressly provided herein. Licensee agrees to use the Software in a manner that complies with all applicable laws including intellectual property and copyright laws. Licensor expressly reserves all rights not expressly granted to Licensee herein.

C. Licensee will not: (i) transmit or share identification or password codes to persons other than authorized users (ii) permit the identification or password codes to be cached in proxy servers and accessed by individuals who are not authorized users, or (iii) permit access to the software through a single identification or password code being made available to multiple users on a network.

D. Licensor will provide 20 Gigabytes of space on the application server for Licensee to use for storage of data necessary for use of the Application. If Licensee's use exceeds the base storage space allotted, Licensee will pay a rate of \$20 per Gigabyte per month and purchase additional space in blocks of 2 Gigabytes. Such incremental fees will be calculated on the average monthly storage overage and invoiced quarterly.

E. Licensee will be responsible for providing all Licensee equipment to establish a connection to the World Wide Web, and for paying for any fees (including, but not limited to telephone service, or other telecommunications service, computers and modems) associated with such services. Licensor recommends a minimum connection method/speed of a DSL line. Licensor *does not* recommend using a dial-up modem as an Internet connectivity method in the use of ECM™.



### 3. Price, Payment and Special Terms

Payments are due within 30 days of the delivery schedule identified in the SOW. An invoice will be prepared identifying the payment Phase to assist with accounting records. Payments are tied to the delivery of functionality identified in Exhibit C SOW and may be withheld if said functionality is not delivered at the described Dates. To withhold phase payment Licensee must inform Licensor of said breach in writing within 5 business days of Phase delivery date. Licensor will respond with remedy approach and delivery date within 5 business days of receipt. Upon resolution Licensee will pay Licensor within 5 days.

- A. Up to 13 concurrent users within the Licensee's network.
- B. Continued compliance updates with a current maintenance contract.
- C. Continued application enhancements for the entire ECM™ offering with a current maintenance contract.
- D. Licensee owns their data hosted by Licensor.

Licensor clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that Licensee shall have available the total maximum sum of seventy thousand seven hundred and forty-five dollars and no/100 (\$70,745), specifically allocated to fully discharge any and all liabilities Licensee may incur.

Licensor does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Licensor may become entitled to and the total maximum sum that Licensee may become liable to pay to Licensor shall not under any conditions, circumstances, or interpretations thereof exceed seventy thousand seven hundred and forty-five dollars and no/100 (\$70,745).

### 4. Technical Support

Technical support is described in detail on the attached Exhibit A (Service Level Agreement). The cost of Technical Support is included in the Annual Maintenance Fees. Licensee shall have unlimited access to Licensor online technical support including continuous e-mail and World Wide Web services.

### 5. Software Maintenance

Licensor will maintain the Software during the term of this agreement. In the event the Software has been modified or customized, and Licensor personnel performed those



modifications, Licensor will agree to maintain Software as modified. The cost of Software Maintenance is included in the purchase price.

#### **6. Software Updates/Point Releases**

Licensee will be offered, as part of the Annual Maintenance, all Software Upgrades, including point releases. All custom(s) forms, workflows, reports, etc. will require client testing and approval before software updates are applied.

#### **7. Term and Termination**

A. The term of this Agreement shall be in effect from the Effective Date stated above and run for 36 months. Thereafter, this Agreement will be automatically renewed for a successive one (1) year period thereafter. Licensee shall have thirty days to notify Licensor of its intent not to renew, unless terminated earlier under the terms contained within this Agreement.

B. It is specifically understood and agreed that in the event no funds or insufficient funds are appropriated by Licensee under this Agreement, Licensee shall notify all necessary parties that this Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were made without penalty, liability or expense to Licensee.

C. This agreement shall be subject to termination based on the terms and conditions of section 14 "Resolution of Disputes." In the event of termination of this agreement, a database export of all Licensee's data will be promptly provided to Licensee in an industry standard format.

#### **8. Ownership of Intellectual Property**

A. Licensor represents and warrants that it has all right, title and interest in and to the Software to fulfill its obligations under this Agreement and that it has the authority to enter into this Agreement and to grant the rights and license provided herein and that this Agreement violates no previous agreement between Licensor and any third party.

#### **9. Confidentiality**

A. Licensee acknowledges that the Software and other data on Licensor's application server embodies logic, design and coding methodology that constitute valuable confidential information that is proprietary to Licensor. Licensee will safeguard the right to



access the Software and other software installed on Licensor's application server using the same standard of care that Licensee uses for its own confidential materials.

B. All data pertaining to Licensee disclosed to Licensor in connection with the performance of this Agreement and will be held as confidential by Licensor and will not, without the prior written consent of Licensee, be disclosed or be used for any purposes other than the performance of this Agreement. Licensor will safeguard the confidentiality of such data using the same standard of care that Licensor uses for its own confidential materials. This obligation does not apply to data that: (i) is or becomes, through no act or failure to act on the part of Licensor, generally known or available; (ii) is known by Licensor at the time of receiving such information as evidenced by its written records; (iii) is hereafter furnished to Licensor by a third party, as a matter of right and without restriction on disclosure; (iv) is independently developed by Licensor as evidenced by its written and dated records and without any breach of this Agreement; or (v) is the subject of a written permission to disclose provided by Licensee. Further notwithstanding the forgoing, disclosure of data will not be precluded if such disclosure: (i) is in response to a valid order of a court or other governmental body of the United States; (ii) is otherwise required by law; or (iii) is otherwise necessary to establish rights or enforce obligations under this Agreement, but only to the extent that any such disclosure is necessary.

C. As part of the registration process for service, each Licensee user will be given a password. Each Licensee user will be responsible for maintaining the confidentiality of any password used to access the service. Licensee users will be fully responsible for any and all activities that occur under Licensee's account and passwords.

#### 10. **Warranty and Disclaimer**

Licensor warrants the Software is developed and will be provided in conformity with generally prevailing industry standards. Licensee must report any material deficiencies in the Software to Licensor in writing within thirty (30) days of Licensee's discovery of the defect. Licensor's exclusive remedy for the breach of the above warranty will be for Licensor to provide access to replacement Software within a commercially reasonable time. THIS WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY ORAL OR WRITTEN REPRESENTATIONS, PROPOSALS OR STATEMENTS MADE ON OR PRIOR TO THE EFFECTIVE DATE OF THIS AGREEMENT. LICENSOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES.

#### 11. **Limitation of Liability, Indemnification**

Neither party will be liable to the other for special, indirect or consequential damages incurred or suffered by the other arising as a result of or related to the use of the Software, whether in contract, tort or otherwise, even if the other has been advised of the possibility of



such loss or damages. Licensor's total liability under this Agreement with respect to the Software, regardless of cause or theory of recovery, will not exceed the total amount of fees paid by Licensee to Licensor during the twelve month period immediately preceding the occurrence or act or omission giving rise to the claim.

## 12. Insurance

A. Prior to commencement of the Services, Licensor shall furnish Licensee with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to Licensee. Licensor shall provide certified copies of insurance endorsements and/or policies if requested by Licensee. Licensor shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Licensor shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

i. Workers' Compensation insurance in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

ii. Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.

iii. Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.

iv. Professional Liability insurance with limits not less than \$1,000,000.

B. Licensee and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation. All Liability policies including Workers' Compensation written on behalf of Licensor shall contain a waiver of subrogation in favor of Licensee and members of Commissioners Court.

C. If required coverage is written on a claims-made basis, Licensor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will



be exercised for a period of 2 years beginning from the time that work under the Agreement is completed.

**13. Relation of Parties**

Nothing in this Agreement will create or imply an agency relationship between the parties, nor will this Agreement be deemed to constitute a joint venture or partnership between the parties.

**4. Non-assignment**

Neither party will assign this Agreement, in whole or in part, without the prior written consent of the other party, and such consent will not be unreasonably withheld. This Agreement will inure to the benefit of, and be binding upon the parties hereto, together with their respective legal representatives, successors, and assigns, as permitted herein.

**15. Resolution of Disputes**

In any dispute between the parties arising out of the duties and obligations of this agreement, the parties shall take all reasonable steps to resolve such disputes prior to the initiation of formal action. Such steps shall include, but are not limited to, clear notification by one party to the other of any perceived failure to perform under this agreement and a reasonable time period for cure. Upon the occurrence of an Event to Default, a party shall deliver to the defaulting party a Notice of Intent to Terminate that identifies in detail the Event of Default. If the Event of Default remains uncured for thirty (30) days, the party may terminate this Agreement and the license granted herein by delivering to the defaulting party a Notice of Termination that identifies the effective date of the termination, which date shall not be less than thirty (30) days after the date of delivery of the Notice of Intent to Terminate.

Parties agree the maximum amount of damages will not exceed the smaller of either the original contract amount or monies paid to date.

**16. Attorneys' Fees**

In the event of dispute proceedings between the parties regarding this agreement each party agrees to bear its own cost.

**17. Severability**

If any term of this Agreement is found to be unenforceable or contrary to law, it will be modified to the least extent necessary to make it enforceable, and the remaining portions of this Agreement will remain in full force and effect.



**18. Force Majeure**

Neither party will be held responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay is caused by events or circumstances beyond the delayed party's reasonable control. Such events or circumstances may include power outages and hardware outages, due to, but not limited to, such acts as storms, riots, failure of the mails and acts of war.

**19. Waiver and Modification**

The waiver by any party of any breach of covenant will not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be in writing, and signed by the party waiving its rights. This Agreement may be modified only by a written instrument executed by authorized representatives of the parties hereto.

**20. Survivorship**

Any provisions of the Agreement that are to take effect or continue in effect, as stated or indicated in such provisions, after the termination of the Agreement including, without limitation, any provisions hereof relating to nondisclosure of information, shall survive the termination hereof.

**21. Notices**

Any notices required to either of the Parties shall be sent via registered or certified U.S. mail to the other party at the last known address.

**22. Entire Agreement**

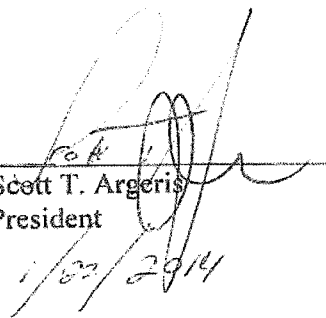
This Agreement constitutes the entire agreement between the parties with respect to its subject matter, and supersedes all prior agreements, proposals, negotiations, representations or communications relating to the subject matter. Both parties acknowledge that they have not been induced to enter into this Agreement by any representations or promises not specifically stated herein.



IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives.

Licensor: Empowered Solutions Group, Inc.

Licensee: Fort Bend County

Signature:   
By: Scott T. Argeris  
Title: President  
Date: 1/22/2014

Signature: \_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



## **EXHIBIT A: SERVICE LEVEL AGREEMENT - Licensor**

This Service Level Agreement ("SLA") sets forth the details regarding the levels of service and technical support for ECM™, including related new releases, "Point Releases" (as defined below), updates, bug fixes, and enhancements (the "Application"). Support will be limited to ECM baseline application and Lawson interface. There could be additional charges for support to client developed custom forms, workflows, etc. that require Licensor intervention.

### **1. Technical Support**

- A. A member of our technical support help desk staff will be available to assist you with problems and questions regarding the Application. We will supply telephone and/or email support to you regarding the Application Monday – Friday, between the hours of 7:00am and 6:00pm Mountain Standard Time. All technical issues will be logged in and responded to in a timely manner, but in no case more than twenty-four (24) hours of receipt.
- B. As part of your Annual Maintenance fees you will receive unlimited support for the entire contract period. You may contact our technical support help desk via email at [support@myecm.net](mailto:support@myecm.net) or by telephone at 877-347-0877. We may, from time to time, develop additional methods for you to contact the help desk, and will make information regarding such methods available at our website.
- C. Licensor also provides an issues tracking system for reporting and recording issues & suggestions in our Application. These issues are responded to within no more than twenty-four (24) hours of receipt.

### **2. Online Help**

Licensee shall have limited (as defined in section 1) access to Licensor online technical support.

### **3. Application Updates/Point Releases**

Licensee will be offered, as part of the annual maintenance, all Major Updates of Application as such releases become available.

All updates will be scheduled with the Licensee to minimize downtime in the production environment. Licensor will notify and receive written approval prior to introducing any updates into the live production environment.



Scheduled Maintenance will be handled in a similar manner as updates defined above. In addition to the notification Licensor will attempt to provide these Maintenance items in off peak hours to further reduce the impact on the production environment.

#### **4. Privacy & Security**

- A. Licensor will take all action to reasonably safeguard the Application, including, but not limited to, encryption, firewalls, and proprietary security level protection to ensure that Licensee's data and information is secure and only disclosed to those designated by Licensee. Licensor is responsible for adhering to Licensor's Data Security Plan (Exhibit B) throughout the term of this agreement.
- B. Licensee is responsible for implementing and maintaining processes to ensure Licensee confidentiality in the use of the Application.
- C. Licensee is responsible for implementing and maintaining processes to ensure agency confidentiality in the use of the ECM™ Application.

#### **5. Databases**

Licensor will maintain up to two databases for the use of Application for Licensee. The two databases will include production and test / training. This will ensure a level of QA prior to introducing new functionality into the Production environment.

##### **Usage:**

1. **Test / Training** – The test / training database is used for training staff as well as new development of features and / or new released enhancements by Licensor. New development may include new features in the form of workflows, forms, business rules and reports that either the Licensor or Licensee has implemented based on changing or new requirements. It is also the environment that is updated with new releases and enhancements so that they can be tested and user trained prior to releasing new and changed functionality into production. Since licensee has a fair number of customized features, these features are re-tested once a new release has been applied. When new enhancements and or releases are approved by licensee, a synchronization process is scheduled to move these enhancements from training to production.
2. **Production** - This is the actual live environment for the day to day case management activities. New development and new releases are only updated into production, once they have been QA'd first in Test/Training.



**6. Implementation and ongoing application administration**

Licensee agrees to assign a project manager to the ECM™ application project and to have one primary point of contact with Licensor.

**7. Professional Services/Fees**

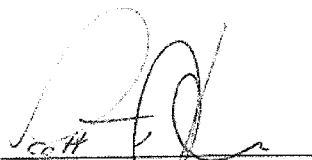
Professional services may be purchased based on the original proposal rates for each professional service category. These professional service fees will not be incurred unless agreed to in advance and in writing by Licensee and Licensor.

Services Description	Rate per hour
Administrative & Tools Training	\$125.00
Project Management	\$125.00
Report Training	\$125.00
Customization – ECM™	\$125.00
Customization - Reporting	\$125.00
Travel Related Expenses	As incurred

IN WITNESS WHEREOF, the parties have executed this Agreement on 2/4/2014

Licensor: Empowered Solutions Group, Inc.

Licensee: Fort Bend County

Signature:   
 Name: Scott T. Argeris  
 Title: President  
 Date: 1/22/2014

Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_



## EXHIBIT B: ECM Data Security Plan

EMPOWERED SOLUTIONS GROUP



## Data Security Plan

Version 5.3

1/1/2013

Empowered Solutions Group  
740 East 3900 South, Suite 301  
Salt Lake City, Utah 84107  
(877) 347-0877

### Abstract

Empowered Solutions Group (abbreviated to "ESG" for this document) is dedicated to providing its clients with premium service and maximum data availability. This document outlines the various threats to client data and ESG's plan to prevent disasters and correct errors that cause the loss or corruption of customer data.



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## ***DISASTER RECOVERY***

### **POLICY STATEMENT**

It is the Policy of ESG to maintain a comprehensive Business Continuity Plan for all critical organization functions. Each department head is responsible for ensuring compliance with this policy. Empowered Solution Group's disaster recovery efforts exercise reasonable measures to protect employees, safeguard assets, and client accounts.

### **DEFINED SCENARIO**

A disaster is defined as an incident which results in the loss of computer processing at ESG. A disaster impacts ESG's ability to maintain customer commitments and regulatory compliance. A disaster can result from a number of natural or human induced occurrences and can occur at hardware, software, user, and environmental levels.

### **OBJECTIVES**

The principal objective of the disaster recovery program is to develop and document a well-structured and easily understood plan which will help the company recover as quickly and effectively as possible from an unforeseen disaster or emergency which interrupts information systems and business operations. Additional objectives include the following:

- The need to ensure that all employees fully understand their duties in implementing such a plan
- The need to ensure that operational policies are adhered to within all planned activities
- The need to ensure that proposed contingency arrangements are cost-effective
- The need to consider implications on other company sites
- Disaster recovery capabilities as applicable to key customers



This plan was specifically designed to guide ESG through a recovery effort of specifically identified organization functions. At the onset of an emergency condition, ESG employees and resources will respond quickly to any condition which could impact ESG's ability to perform its critical organization functions. The procedures contained within have been designed to provide clear, concise and essential directions to recover from varying degrees of organization interruptions and disasters and therefore mitigate the impact to ESG's customers through the rapid implementation of effective recovery strategies as defined herein.

### **Disaster Management Team**

The Disaster Management Team is responsible for the following:

- Making decisions about restoring the computer processing environment in order to provide the identified level of operational service to users.
- Managing all the recovery teams and liaising with Client Company's management, headquarters, and users, as appropriate.
- Maintaining audit and security control during the recovery from disaster.
- Controlling and recording emergency costs and expenditure.
- Initiating disaster recovery procedures.
- Evaluating the extent of the problem and potential consequences.
- Notifying senior management of the disaster, recovery progress and problems.
- Coordinating recovery operations
- Monitoring recovery operations and ensuring that the schedule is met.
- Documenting recovery operations.
- Recording emergency extraordinary costs and expenditure
- Making a detailed accounting of the damage to aid in insurance claims.



- Monitoring computer security standards.
- Ensuring that appropriate arrangements are made to restore the site and return to the status quo within the time limits allowed for emergency mode processing.
- Declaring that the Disaster recovery Plan is no longer in effect when computer processing is restored at the primary site

#### **Emergency Alert, Escalation and Disaster Recovery Plan Activation**

This policy and procedure has been established to ensure that in the event of a disaster or crisis, personnel will have a clear understanding of who should be contacted. Procedures have been addressed to ensure that communications can be quickly established while activating disaster recovery.

The Disaster Recovery plan will rely principally on key members of management and staff who will provide the technical and management skills necessary to achieve a smooth technology and business recovery. Suppliers of critical goods and services will continue to support recovery of business operations as the company returns to normal operating mode.



### Disaster Recovery Event Recording Form

- All key events that occur during the disaster recovery phase must be recorded.
- An event log shall be maintained by the disaster recovery team leader.
- This event log should be started at the commencement of the emergency and a copy of the log passed on to the business recovery team once the initial dangers have been controlled.
- The following event log should be completed by the disaster recovery team leader to record all key events during disaster recovery, until such time as responsibility is handed over to the business recovery team.

Description of Disaster: Input Output failure of MPIO driver
Commencement Date: Sometime on Sunday, September 25,2099 around 10 pm
Date/Time DR Team Mobilized: Sunday, September 25,2099 10:30 PM MST

Activities Undertaken by DR Team	Date and Time	Outcome	Follow-On Action Required
Alert Customers	9/26/2099 6:00 AM	Customers On hold	Customers contacted after their system was brought back online.
Move prod activities to alternative server	9/26/2099 5:30 AM	Successful start of report server and database server	Observe –Contact Dell for replacements
Restore all databases	9/26/2099 6:00 AM	Successful recovery of databases	Observe— document effects of restoration



## ***DATA RECOVERY***

The focus of this section of the document will be dedicated to a description of ESG's plan to protect client data from various sources of threats. The threats are first described, and ESG's strategy for prevention or correction is then outlined.

### **THREATS**

#### ***Hardware Failure***

ESG has invested in and owns web and database servers in order to maintain optimum control of the services offered to clients. These servers are subject to Hard Drive failures, Input / Output component failures, CPU malfunctions or even total server collapses. To insure against data loss from a potential server failure, ESG employs a data-redundancy strategy by backing up client data to independent and separate storage devices. A more detailed explanation of ESG's back-up policies is described in the Backup Strategy section on page 5.

To reduce the likelihood of a hardware failure, ESG physically stores its servers at ViaWest (<http://www.viawest.com/>), an enterprise class datacenter that is staffed 24x7x365 by experienced engineers who operate the center under top-of-class availability standards for: continuous power delivery, surge protection, cooling and environmental controls, fire and smoke detection systems, redundant networks, cabling, and grounding. The datacenter also guarantees 100% power and network service availability to servers and has maintained 100% infrastructure uptime over many years.

#### ***Theft***

To eliminate the risk of hardware being stolen, ESG has contracted ViaWest's datacenter security team. In order to obtain physical access to the ESG's servers, an individual must first pass state-of-the-art biometrics and dual-token authentication tests. Then, the servers are under multiple video camera surveillance and further protected by being in individually-locked cages and cabinets.

#### ***Security Breach***



In the event that Licensor's equipment or devices which contain Licensee's data have been subject to unauthorized (e.g., hacker, malware, etc.) activity, Licensor will immediately notify Licensee of any such unauthorized or unlawful destruction, loss, alteration, disclosure of or access to the Licensee's data files. Licensor will also employ all reasonable efforts to resolve the threat and take action to further secure the computer system and related data storage for collection of evidence.

#### *Human Error*

Users and Database Administrators are also sources of potential error. Specifically, incorrect updates, accidental deletions, or accidentally dropped objects can damage the database. The following backup strategies are implemented by ESG to quickly correct accidents.

### **BACKUP STRATEGIES**

The following sections describe the backup strategies assigned to differing database types. All database files are stored on a RAID 10 Storage Area Network (SAN).

#### *Production Databases*

For databases that are constantly being updated by the client's transactions, each transaction is important and the cost of losing information is high. In consideration of the value of client information, ESG has scheduled Full and Differential backups to occur on all client databases both during and after business hours using MS SQL 2008 R2 maintenance plans.

In ESG's backup strategy, several backups are made daily. The full backup of the production database is done every night at midnight and stored on the SAN. The full backup file is stored on the SAN for eight days and deleted after the 8 days of storage.

Furthermore, a differential backup (which backs up any changes that have been made to the database since the last full backup) will be made every 2 hours between 04:00 AM MST and 20:00 MST and maintained on the SAN for 8 days.



From backup files, a database restoration can be performed to restore the damage potentially caused by natural or human-induced disasters. Before performing any ECM database restoration, a full backup will be made manually of the database prior to being overwritten in the restore process. The manually generated backup will be named for easy identification and saved for 8 days.

To test ESG's restoration procedure, Productions databases are selected, restored as a training database, and analyzed for accuracy and functionality upon Customer request.

#### *Development, Read Only, Training, Testing, and Stage Databases*

For databases that are not being updated with numerous records minute by minute, a less intensive backup strategy is employed called the "Full, Simple" strategy. In this strategy, a full backup of the database is done on Sunday night at midnight. The full backup is saved for 8 days. Monday-Saturday, a differential backup is taken of non-production databases and saved for 8 days. This allows ESG to restore any non-production database to the state it was in as at the start of business that day.

#### *System Databases*

A full backup of system databases (eg. ReportServer) is done nightly at 02:30 AM MST.

#### **Data Security Goals and Outcomes**

The entire purpose of this document is to provide a simple and effective plan for the Empowered Solutions Group to follow in event of a disaster. By following the plan, ESG aims to maintain the long-term trust and confidence of customers by professionally and efficiently responding to and dealing with calamities.

Furthermore, ESG aims to maintain—in conjunction with ViaWest and other supporting partners—the following service level goals:

- Minimum turnaround time as influenced by individual contingencies,
- Same hour Response Team organization and mobilization,
- Top-of-class data security,
- 24x7 monitoring of servers, and



- Five-Nines (99.999%) network and power uptime for active servers



## **EXHIBIT C: Statement of Work (SOW)**

December 5, 2013

Fort Bend County Department of Social Services  
4520 Reading Road, Suite 900-A  
Rosenberg, TX 77471

### *Introduction*

Fort Bend County Department of Social Services (Licensee) has requested Empowered Solutions Group (Licensor) to develop and automate their case management needs. The application will automate the Licensee's collection, analysis, and reporting of client information for each of the services provided by the Case Management, Food Assistance, Medication Assistance, Pauper Burial, Rent/Mortgage Assistance, Emergency Shelter, Utility Assistance, Walk with Pride, Benefits Assistance, and Share your Christmas programs. The goal is to automate the desired functionality as articulated by Fort Bend County Department of Social Services in a set of requirements included in a final Statement of Work (to be included as an amendment to this document). Empowered Solutions Group will deliver this functionality utilizing the ECM™ apBuilders framework. The solution will be delivered via a SaaS (ASP) environment on the ECM™ software application for up to 13 staff users and include a SQL database conversion. The Database conversion is anticipated to include Fort Bend County Department of Social Services providing a single data set in the ECM™ expected staging table format. This project will also include a uni-directional interface to Lawson.

The overall purpose of this project is to improve Fort Bend County Department of Social Service's ability to serve its clients. To accomplish this we need to streamline the collection, analysis, and reporting of client information. An important part of this process will be for the system to assist agency personnel with determining all the services from which the client may benefit. The system will also need to provide for logging and reviewing all contacts with the clients and all activities taken with or on behalf of the clients.

The system will also need to provide outcome/results statistics for the various reporting requirements of the agency.

The professional services to be performed by Licensor will include, but not be limited to, the categories listed in Licensor's Professional Services document (Exhibit D).



**TABLE OF CONTENTS**

Preamble  
 2.0 Price and Payment  
 3.0 Invoices  
 4.0 Payment  
 5.0 Expenses and Taxes

**PREAMBLE**

This Statement of Work accompanies an Agreement that has been executed by the parties. All statements of fact contained in this Statement of Work are subject to the terms and conditions set forth in such Agreement. The terms and conditions set forth in the Agreement control in the event of any inconsistency between such terms and conditions and the matters set forth in this Statement of Work.

**2.0 Price and Payment**

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1st year Contract amount as stated below	\$ 51,380.00
<u><i>Years 2 and beyond will be billed annually (as reflected in the ECM ASP Pricing Model below)</i></u>	

**3.0 Invoices**

Services will be invoiced according to the following payment schedule:

1. Deposit upon contract execution	\$ 25,690.00
2. Requirements document completed and signed off	\$ 12,845.00
3. 1 Week after successful Go-Live, upon Licensee acknowledgement	\$ 12,845.00

**4.0 Payment**

Payment is due thirty (30) days after receipt of invoice by Licensee. Licensee may withhold payment in accordance with Section 3 of the Agreement. Licensor reserves the right to cease work without prejudice if amounts are not paid when due. Any late payment will be subject to any costs of collection (including reasonable legal fees) and will bear interest at the rate of one (1) percent per month or fraction thereof until paid.

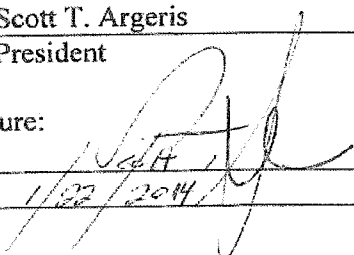
**5.0 Expenses and Taxes (if required)**

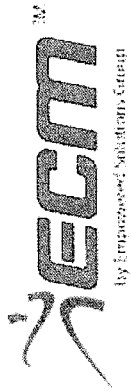
Prices quoted for Services include two licensee visits. Additional onsite meetings will require



reimbursement to Licensor for its reasonable and necessary cost of travel and out-of-pocket costs for photocopying, overnight courier, unusual long distance telephone and the like. All non-local trips must be approved by Licensee before commencing.

Licensor agrees to adhere to Fort Bend County Travel Policy (Exhibit G) related to all reimbursable expenses.

<b>Licensor – Empowered Solutions Group, Inc.</b>	<b>Licensee – Fort Bend County</b>
By: <b>Scott T. Argeris</b>	By:
Title: <b>President</b>	Title:
Signature: 	Signature:
Date: <b>1/22/2014</b>	Date:



Description	Year 1		Year 2		Year 3		Total
	Year 1	Year 2	Year 3	Total	Year 1	Year 2	
<b>Setup Fees</b>							
One Time Setup Fee per Server	1,000						1,000
<b>Total Setup Fees</b>	<b>1,000</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1,000</b>
<b>Monthly Service Fees</b>							
	Quantity	Rate					
Users Per Month for 12 Months	13	30	4,493	4,673	4,673		10,245
Annual Maintenance Support	13	200	5,000	5,200	5,200		11,100
<b>Total Monthly Service Fees</b>			<b>1,990</b>	<b>9,493</b>	<b>9,873</b>		<b>21,345</b>
<b>Services - Implementation</b>							
	Hours	Rate					
Administration & Tools Training	16	125	2,000				2,000
Data Conversion* (SQL DB)	40	125	5,000				5,000
Interface (1-way export to Lawson)	40	125	5,000				5,000
Needs Analysis / Discovery	24	125	3,000				3,000
End User / Train-the-Trainer Training	16	125	2,000				2,000
Project Management	60	125	7,500				7,500
SSRS MS Report Training	12	125	1,500				1,500
Streamline ECM Application	100	125	12,500				12,500
Customization - Reporting	60	125	7,500				7,500
Travel-Related Expenses	2	1200	2,400				2,400
<b>Subtotal Services</b>	<b>368</b>		<b>48,400</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>48,400</b>
<b>Total Investment - SaaS Model</b>			<b>51,380</b>	<b>9,493</b>	<b>9,873</b>		<b>70,745</b>



## **EXHIBIT D: ECM Professional Services**

Once the contract has been executed, Empowered Solutions Group will perform the services identified below. These services have been incorporated into a projected timeline for Fort Bend County (Exhibit E). Given that Fort Bend County provides the appropriate resources to this project Empowered Solutions Group will assure the planned Go-Live on ECM™ will occur no later than 6 months from contract execution.

### Professional Services

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#### Project Management

An ECM™ certified professional will be your main point of contact for all things going forward with the implementation. This person will make sure all Empowered Solutions Group team members are on task and adhering to the approved delivery schedule, as well as being heavily involved in every aspect of the documentation, training and post live monitoring. The Project Manager creates and maintains the team's implementation plan, reviews all proposed configuration and custom development, project meetings and status reports.

#### Needs Analysis

Empowered Solutions Group's Professional Services staff will work with your team to review the specific requirements on a program by program basis. This discovery process will be accomplished onsite and will take a minimum of two days (more depending on the number of programs and complexity).

- The analysis process will include suggested efficiencies in the areas of each program and operational processes.
- The end result of this process will produce a Requirements Document that clearly defines the implementation schedule, program(s) and all the unique deliverables. This document is approved by your staff before any work begins.

#### Configuration of ECM™ Application

- This refers to the configuration of ECM™ based on the Statement of Work as confirmed and approved through the Requirements Document.



- This process will include tailoring specific roles (Menus, forms, workflows and rules) based on the program and operational needs. This process will provide for all identified deliverables as outlined in the Requirements Document.

### Administration & Tools Training

This training will involve your super/technical user(s) and may be conducted onsite, via the web, or both. This foundational training sets the application behavior to match your desired results.

- Create organizations and related data sharing agreements
- Create users and passwords
- Create programs and services
- Create facilities, classrooms, rooms, beds, etc.
- Create providers and provider services

This training will also include the apBuilders™ framework. The apBuilders™ allow you to maintain and develop custom screens, data, and workflows. This training will give your organization autonomy for daily changes that affect your business.

- Create and enhance specific use in the areas of Menus, Roles, Forms, Queries, Rules, Alerts, Workflows and Reports.

### Data Conversions

Our systematic approach to database conversions is well defined. We work with your technical team to provide the best possible results.

- Empowered Solutions Group uses defined staging tables to map the existing data structures into the ECM™ solution.
  - Map / Gap Analysis between the existing database and ECM™
  - Develop translation tables
- A first pass data import will give both organizations a true view of the data being migrated. We will identify cleansing techniques that must be included for the final data conversion. This may include duplicated record rules, program mappings, services mappings, etc.
- Empowered Solutions Group will then plan the final data import just before go live to ensure we include the latest data possible.



## Interfaces

Interfaces can be accomplished in a variety of ways depending on the end goal. These techniques truly depend on the abilities of both parties and how the data needs to be communicated.

- The first option supports a real-time interface that utilizes Web Services - this will accomplish immediate data syncing between two systems.
- The second option will support a batch interface, meaning end of day/week/ month uploads are required.
- Either option can support one-way or bi-directional interfaces, depending on the overall objective.

## Customization – Reporting

- All identified reporting needs over and above the standard reporting and cubes that ship with ECM™.

## SSRS MS Report Training

This service is available for technical staff with a working knowledge of SQL Server Reporting Services and at least some past experience in designing Report Definition Language (.rdl) files using either Visual Studio (VS 2008 or later) or Microsoft Report Writer. This training will equip your technical staff with the skills they will need to properly integrate reports that they write with the Parameterized ECM™ Report Automation Application. At the end of the training, your staff will demonstrate familiarity with the following:

- ECM™ Reporting Standards
- ECM™ Data Structures
- ECM™ Parameterized Data Connection Strings
- End-User ECM™ Form Integration Strategies
- Custom Report Maintenance Procedures

The training will empower your team to create custom reports which interact with ECM™ to the same level and with the same functionality that the baseline reports demonstrate.



### **End user Training and Train the Trainer**

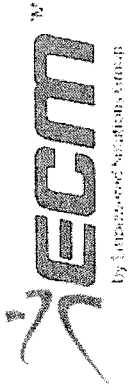
Empowered Solutions Group's Professional Services staff will provide a combination of onsite and web training as identified in the Requirements Document. We will customize the best approach that works with your team and the specific topics being trained. Training will include:

- Each configured role and program
- Basic input of client data creation and maintenance
- MyECM™ functionality
- Specialty services implemented within your environment

### **Travel Related Expenses**

Either option below is acceptable.

- We find that most of our clients like the fixed trip cost for budgeting. This a fixed cost and not to exceed number
- The other option is travel approval following the IRS guidelines

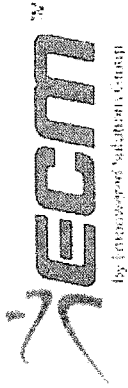


**Exhibit E: Fort Bend County Baseline Implementation  
Project Managers - TBD (ESG), TBD (Customer)**



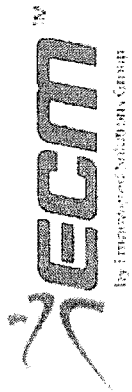
Phase	Milestone - key activity	Start Date	Finish Date	Resource
Phase 1 - Organize and Manage the Project	Team Assignments	2/10/2014	2/10/2014	ESG
	Assign PM	2/10/2014	2/10/2014	ESG
	Assign Project Team	2/10/2014	2/10/2014	ESG
	Initial Site Contact	2/10/2014	2/10/2014	PM
	Create ECM project and tasks	2/10/2014	2/10/2014	PM
	Internal Call	2/10/2014	2/10/2014	ESG Sales, PM
	Review Order - special considerations	2/10/2014	2/10/2014	ESG Sales, PM
	Discuss Project Scope	2/10/2014	2/10/2014	ESG Sales, PM
	Kick Off Call	2/18/2014	2/18/2014	PM, Customer PM
	Introductions	2/18/2014	2/18/2014	PM, Customer PM
	Review Order	2/18/2014	2/18/2014	PM, Customer PM
	Custom Requirements	2/18/2014	2/18/2014	PM, Customer PM
	Discuss Resources and Time Constraints	2/18/2014	2/18/2014	PM, Customer PM
	Schedule Kick Off Visit	2/18/2014	2/18/2014	PM, Customer PM
	Send Pre-Implementation Documents - DropBox invites, onsite discovery agenda(s)	2/18/2014	2/18/2014	PM
Kick Off Meeting		3/12/2014	ESG Team, Customer Team	
Discuss Project Scope		3/12/2014	ESG Team, Customer Team	





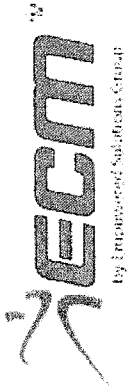
Test Database configured  
 Back up configured and tested  
 Connectivity tested for all sites  
 Database Conversions  
 Consolidated SQL DB provided to ESG  
 Translations and Mappings  
 Run ETL scripts - test conversion  
 Test data reviewed by Customer  
 Revise ETL scripts based on Customer feedback - run ETL scripts again  
 Test data reviewed by Customer  
 Final consolidated SQL DB provided to ESG  
 Run ETL scripts - final conversion  
 Final data reviewed by Customer  
 System Build Out

3/3/2014	3/10/2014	ESG Team
3/3/2014	3/10/2014	ESG Team
3/3/2014	4/14/2014	ESG Team, Customer IT
3/3/2014	6/16/2014	ESG Dev, Customer IT
3/3/2014	3/3/2014	Customer IT
3/3/2014	4/14/2014	ESG Dev, Customer IT
4/21/2014	5/5/2014	ESG Dev, Customer IT
5/12/2014	5/23/2014	ESG Dev, Customer IT
5/23/2014	6/6/2014	ESG Dev, Customer IT
6/9/2014	6/20/2014	ESG Dev, Customer IT
8/4/2014	8/4/2014	ESG Dev, Customer IT
8/4/2014	8/8/2014	ESG Dev, Customer IT
8/8/2014	8/8/2014	ESG Dev, Customer IT
5/5/2014	7/14/2014	PM, Trainer, Sys Admin Team



Administration workspace	5/5/2014	7/14/2014	PM, Trainer, Sys Admin Team
Organization workspace	5/5/2014	7/14/2014	PM, Trainer, Sys Admin Team
Roles	5/5/2014	7/14/2014	PM, Trainer, Sys Admin Team
Forms	5/5/2014	7/14/2014	PM, Trainer, Sys Admin Team
Workflows - written, tested, accepted by work group	5/5/2014	7/14/2014	PM, Trainer, Sys Admin Team
Assessments	5/5/2014	7/14/2014	PM, Trainer, Sys Admin Team
Housing Setup	5/5/2014	7/14/2014	PM, Trainer, Sys Admin Team
Report set up, Mapping	5/5/2014	7/14/2014	PM, Trainer, Sys Admin Team
Dashboards	5/5/2014	7/14/2014	PM, Trainer, Sys Admin Team
Reports	5/5/2014	7/14/2014	PM, Trainer, Sys Admin Team
Lawson Interface	5/5/2014	7/14/2014	ESG Dev, Customer IT
Customer Functional Acceptance	7/14/2014	7/18/2014	ESG Team, Sys Admin Team
System Administration Training	3/18/2014	5/13/2014	PM, Trainer, Sys Admin Team

Phase 1  
 6.4  
 Training  
 10



by International Solutions Group

	Classroom Prep - reserve SU dates, reserve EU dates and determine EU schedule	5/13/2014	5/16/2014	PM, Customer PM
	Super User Training	7/29/2014	7/31/2014	Trainer, Super Users
	End User Training	8/4/2014	8/8/2014	Super Users, Customer Team
Phase 5 - Go Live	Report and Query Training	7/23/2014	7/24/2014	Trainer, Sys Admin Team
	Pre Go Live Meeting	8/11/2014	8/11/2014	ESG Team, Customer PM
	Go Live	8/12/2014	8/15/2014	ESG Team, Customer Team
	Post Go Live Meetings	8/18/2014	8/29/2014	PM, Trainer, Customer PM
	Transition to Support	9/1/2014	9/1/2014	PM, Customer PM
Phase 6	Schedule weekly, then bi-weekly meetings	9/1/2014	9/1/2014	PM, Customer PM
	Reconcile project hours	9/1/2014	9/1/2014	PM



## EXHIBIT F:

### BUSINESS ASSOCIATE ADDENDUM ("HIPAA EXHIBIT")

The parties to the Agreement are committed to complying with the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated there under (collectively "HIPAA"). In order to ensure such compliance this HIPAA Exhibit sets forth the terms and conditions pursuant to which Protected Health Information that is provided to, or created or received by, Business Associate from or on behalf of Covered Entity will be handled.

#### I. Definitions.

- A. Business Associate. "Business Associate" shall mean Empowered Solutions Group, Inc..
- B. Covered Entity. "Covered Entity" shall mean Fort Bend County
- C. Designated Record Set. The phrase "Designated Record Set" shall have the same meaning as the phrase "designated record set" set forth within the Privacy and Security Rule, as may be amended from time to time.
- D. Individual. The term "Individual" shall have the same meaning as the term "individual" in the Privacy and Security Rule and shall include a person who qualifies as a personal representative in accordance with the Privacy and Security Rule.
- E. Privacy and Security Rule. The phrase "Privacy and Security Rule" shall mean the Standards for Privacy of Individually Identifiable Information and the Security Standards for the Protection of Electronic Health Information at 45 C.F.R. part 160 and part 164, as amended from time to time.
- F. Protected Health Information. The phrase "Protected Health Information" shall have the same meaning as the phrase "protected health information" set forth within the Privacy and Security Rule, as may be amended from time to time, to the extent such information is provided to, or created or received by, Business Associate from or on behalf of Covered Entity.
- G. Secretary. The term "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his/her designee.



Terms or phrases used, but not otherwise defined, in this HIPAA Exhibit shall have the same meaning as those terms in the Privacy and Security Rule.

2. Scope. This HIPAA Exhibit applies to all actions, relationships and transactions between Covered Entity and Business Associate pursuant to the Agreement and through which Covered Entity provides Protected Health Information to the Business Associate in any form or medium whatsoever.
3. Purpose; General Rules Regarding Protected Health Information. This HIPAA Exhibit sets forth the terms and conditions pursuant to which Protected Health Information that is held, transmitted, disclosed, received or created by Business Associate from or on behalf of Covered Entity will be handled. Except as otherwise specified herein, Business Associate may make all uses and disclosures of Protected Health Information necessary to perform its obligations to Covered Entity under the Agreement or pursuant to Covered Entity's written instruction, provided that such uses or disclosures would not violate the Privacy and Security Rule. All other uses and disclosures not required by law, authorized by this HIPAA Exhibit or authorized by any other written agreement with Covered Entity or Covered Entity's written instructions are prohibited.
4. Business Activities of the Business Associate. Unless otherwise limited herein, Business Associate may:
  - A. Use and/or disclose Protected Health Information in its possession for the proper management and administration of Business Associate as it relates to the services provided to Covered Entity, provided that such uses and/or disclosures are permitted by federal and state laws;
  - B. Disclose Protected Health Information in its possession to third parties for the proper management and administration of Business Associate or to fulfill any present or future legal responsibilities of Business Associate, provided that the disclosures are required by law or Business Associate represents to Covered Entity, in writing, that Business Associate has obtained reasonable assurances from the third party that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the third party and the third party notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;
  - C. Use Protected Health Information to provide data aggregation services to Covered Entity as permitted by 45 C.F.R. Section 164.504(e)(2)(i)(B), except as otherwise limited in this HIPAA Exhibit; and



- D. Use Protected Health Information to report violations of law to appropriate federal and state authorities, consistent with 45 C.F.R. Section 164.502(j)(1).
5. Responsibilities of Business Associate. With regard to its use and/or disclosure of Protected Health Information, Business Associate hereby agrees to do the following:
- A. Use and/or disclose the Protected Health Information in its possession only as permitted by this HIPAA Exhibit or otherwise permitted or required by federal and state laws;
  - B. Ensure that all of its employees, representatives, subcontractors or agents that receive, use or have access to Protected Health Information under this HIPAA Exhibit agree to adhere to the same terms and conditions on the use and/or disclosure of Protected Health Information that apply herein, including the obligation to return, destroy or maintain the confidentiality of, Protected Health Information as provided under Section 8(B)(2) of this HIPAA Exhibit;
  - C. Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Health Information that it creates, receives, maintains or transmits on behalf of the Covered Entity, as required by the Privacy and Security Rule;
  - D. Establish procedures for mitigating improper use and/or disclosure of Protected Health Information in the event Business Associate discloses Protected Health Information to any third party for purposes other than "treatment," "payment" or "health care operations" as those terms are used and defined within the Privacy and Security Rule. Business Associate shall provide prompt notice of the date and purpose of each disclosure as well as the name and address of the recipient, to the Covered Entity at the address set forth herein.
  - E. Report to the designated Privacy Officer of Covered Entity, in writing, any use and/or disclosure of the Protected Health Information that is not permitted or required by this HIPAA Exhibit or a security incident of which Business Associate becomes aware within ten (10) days of Business Associate's discovery of such unauthorized use and/or disclosure or security incident;
  - F. Upon written request, make available during normal business hours at Business Associate's offices, all records, books, agreements, policies and procedures relating to the use and/or disclosure of Protected Health Information to Covered Entity within ten (10) days of receiving the request for purposes of enabling



Covered Entity to determine Business Associate's compliance with the terms of this HIPAA Exhibit;

- G. Make available all records, books, agreements, policies and procedures relating to the use and/or disclosure of Protected Health Information to the Secretary for purposes of determining Covered Entity's compliance with the Privacy and Security Rule, subject to attorney-client privilege and other applicable legal privileges; and
- H. Within thirty (30) days of receiving a written request from Covered Entity, provide to Covered Entity such information as is requested by Covered Entity to permit Covered Entity to respond to a request by an Individual to account for disclosures of the Individual's Protected Health Information or to amend the Individual's Protected Health Information in accordance with Section 7 of this HIPAA Exhibit.

6. Responsibilities of Covered Entity

- A. Provide Business Associate with a copy of the notice of privacy practices that it utilizes in accordance with the Privacy and Security Rule, as well as inform Business Associate of any changes in said notice;
- B. Inform Business Associate of any changes in, or revocation of, permission by the Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses or disclosures; and
- C. Notify Business Associate, in writing and in a timely manner, of any restrictions on the use and/or disclosure of Protected Health Information agreed to by Covered Entity in accordance with the Privacy and Security Rule.

7. Handling of Designated Record Sets. In the event that the Protected Health Information received or created by the Business Associate on behalf of the Covered Entity constitutes a Designated Record Set:

- A. Business Associate agrees to make any amendments to the Protected Health Information that the Covered Entity directs pursuant to the Privacy and Security Rule and at the request of the Covered Entity or the Individual and in the time and manner reasonably designated by Covered Entity.
- B. Covered Entity agrees to:



1. Notify Business Associate, in writing, of any Protected Health Information Covered Entity seeks to make available to an Individual pursuant to the Privacy and Security Rule and the time and manner in which Business Associate should provide such access; and
2. Notify Business Associate, in writing, of any amendments to the Protected Health Information in the possession of Business Associate that Business Associate should make and the time and manner in which such amendments should be made.

8. Term and Termination.

- A. Term: The provisions of this HIPAA Exhibit shall remain in effect for the term of the Agreement, unless otherwise provided in this HIPAA Exhibit.
- B. Termination. Unless otherwise provided herein, this HIPAA Exhibit shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy the Protected Health Information, protections are extended to such information in accordance with the provisions of this Section.
  1. As provided under the Privacy and Security Rule, upon Covered Entity's knowledge of a material breach of the terms of this HIPAA Exhibit by Business Associate, Covered Entity shall provide Business Associate with an opportunity to cure said material breach in accordance with the terms of the Agreement. Covered Entity shall make any reports deemed necessary, in its sole discretion, to the Secretary.
  2. Unless Business Associate has an independent legal right to the Protected Health Information provided to, or created or received by, Business Associate on behalf of Covered Entity, Business Associate shall return to Covered Entity or destroy, as requested by Covered Entity, within sixty (60) days of the termination of the Agreement, Protected Health Information in Business Associate's possession and retain no copies or back up files or tapes. If Business Associate retains Protected Health Information, the terms of this HIPAA Exhibit shall remain in effect for so long as Business Associate remains in possession of any Protected Health Information provided to, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health



Information that is in the possession of agents or subcontractors of Business Associate.

3. In the event Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction is infeasible, Business Associate shall extend the protections of this HIPAA Exhibit to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

9. Miscellaneous.

- A. No Third Party Beneficiaries. There are no intended third party beneficiaries to the provisions of this HIPAA Exhibit. Without in any way limiting the foregoing, it is the parties' specific intent that nothing contained in this HIPAA Exhibit give rise to any right or cause of action, contractual or otherwise, in or on behalf of any Individual whose Protected Health Information is used or disclosed pursuant to this HIPAA Exhibit.
- B. References. A reference in this HIPAA Exhibit to a section in the Privacy and Security Rule means the section as in effect or as amended, and for which compliance is required.
- C. Amendment. The parties agree to take such action as is necessary to amend this HIPAA Exhibit from time to time in order for Covered Entity to comply with the requirements of the Privacy and Security Rule. No amendment to this HIPAA Exhibit shall be effective until reduced to writing and signed by the parties.
- D. Survival. The respective rights and obligations of Business Associate and Covered Entity set forth in this HIPAA Exhibit shall survive the termination of the Agreement.



**EXHIBIT G: Fort Bend County Travel Policy**

## **Fort Bend County Travel Policy**

Approved in Commissioners' Court on November 3, 2009

Effective November 4, 2009

Revised September 7, 2010

The Commissioners' Court allocates funds annually for the payment of travel expenditures for county employees and officials within the individual departmental budgets. Travel expenditures paid from these budgets must serve a public purpose for Fort Bend County. These expenditures may be paid directly to the vendor or provided as a reimbursement to the employee/official upon completion of their travel. Advance payments to vendors may be accommodated by issuance of a check or use of a County procurement card. Eligible expenditure categories under this policy include: Lodging, meals, transportation, registration fees, and other fees (with justification). Each category is further defined below.

### **CONTRACT RATES:**

Fort Bend County is a 'Cooperative Purchasing Participating Entity' with the State of Texas. This program is also known as TPASS (Texas Procurement and Support Services) State Travel Management Program (STMP). This gives County employees and officials access to the contract rates negotiated by the State for hotels and rental cars. Procurement procedures for these contract services are explained within the categories below.

### **OUT OF STATE TRAVEL:**

**Authorization:** The traveler must obtain Commissioners' Court approval for out-of-state travel before departure. The duration must include travel days along with the event scheduled days. To prevent delays in processing travel reimbursement, ensure that the travel duration is accurately defined when submitting the agenda request.

**Documentation:** The traveler must provide an excerpt from the Commissioners' Court minutes (<http://www.co.fort-bend.tx.us/getSitePage.asp?sitePage=7269>) with the travel reimbursement form.

### **LODGING:**

#### **Hotel:**

**Texas:** Hotel reimbursements are limited to contract hotel rates near the event site.

Participating contract hotels are listed at

[http://portal.cpa.state.tx.us/hotel/hotel\\_directory/index.cfm](http://portal.cpa.state.tx.us/hotel/hotel_directory/index.cfm). When making a reservation the traveler must ask for the State of Texas Contract rate and be prepared to provide the



County's agency #: C0790. Contract hotels must be used unless a non-contract hotel provides a lower total cost or no contract hotel is available. If the organizer of a conference/seminar has negotiated discount rates with a hotel(s), the traveler may choose these lodging services without penalty. The traveler will be responsible for the excess charge over the contract hotel rates near the event site if they choose not to stay at a contract hotel or a conference sponsored discounted hotel. The traveler may choose any hotel that is less than the contract hotel rates near the event site to save additional county funds. If no contract hotels are listed for the destination city, the traveler is required to choose lodging services near the event site that meet their needs at an economical rate.

**Out-of-State:** The traveler is required to choose lodging services near the event site that meet their needs at an economical rate.

**Travel Days:** If the traveler must leave before 7:00AM to arrive at the start of the event and/or return to the County after 6:00PM after the event concludes, an additional night's lodging is allowable before and/or after the event.

**Additional fees:** Fees for additional services (internet, telephone, valet, parking...) require justification to be allowable.

**Gratuities:** Gratuities are not reimbursable for any lodging services.

**Overpayments by County:** Any lodging overpayment by the County must be reimbursed by the hotel before processing a reimbursement to the traveler for any of the categories addressed in this policy. Prepaid lodging services should be accurately calculated or underestimated by excluding the taxes to prevent delays in processing travel reimbursements.

**Procurement Card:** The traveler may use the procurement card to make lodging reservations. Contact Purchasing to arrange or use the procurement card assigned to the department or traveler.

**Documentation:** The original itemized hotel statement must be submitted with the travel reimbursement claim showing a zero balance. A copy of the itemized hotel statement must be submitted with the travel reimbursement claim if the traveler used a County procurement card to purchase lodging services or prepaid by County check. Event agenda/documentation or a letter from the traveler describing the event/meeting is required. If utilizing conference negotiated hotel rates, documentation of rates is required.

#### **MEALS:**

**Texas:** Meals including gratuities will be reimbursed to the traveler at a flat rate of \$36/day. If a traveler departs after 2:00PM or returns by 12:00PM the reimbursement rate will be \$18/day for that day.

**Out-of-state:** Meals including gratuities will be reimbursed to the traveler at a flat rate of \$48/day. If a traveler departs after 2:00PM or returns by 12:00PM the reimbursement rate will be \$24/day for that day.



**Day trips:** Meals will not be reimbursed for trips that do not require an overnight stay.  
**Procurement Card:** No meal purchases are allowed on any County procurement card.  
**Documentation:** No meal receipts are required for reimbursement. Event agenda/documentation or a letter from the traveler describing the event/meeting is required.

#### **TRANSPORTATION:**

**Personal Vehicle:** Use of personal vehicle will be reimbursed at the current rate/mile set by Commissioners' Court. Mileage should be calculated using the County office location of the traveler and the event location. Mileage may not be calculated using the traveler's home. Mileage should be calculated using an employee's vehicle odometer reading or by a readily available online mapping service for travel out of Fort Bend County. If using the mileage of an online mapping service, state which mapping service was used or provide a printout of your route detailing the mileage. For local travel, odometer readings or mapping service details are not required. Departments should develop a mileage guide for employees for local travel points, if a department does not have a mileage guide, the Auditor's Office will determine if the mileage listed is reasonable.

**County Vehicle:** Fuel purchases when using a County vehicle must be made with the County fuel card. Original receipts must be provided with reimbursement request.

**Airfare:** Airfare is reimbursable at the lowest available rate based on 14 day advance purchase of a discounted coach/economy full-service seat. The payment confirmation and itinerary must be presented with the travel reimbursement form. Trip insurance is not an allowable expense.

**Rental Car:** Rental cars are limited to the negotiated TPASS rates listed at:

<http://www.window.state.tx.us/procurement/prog/stmp/stmp-rental-car-contract/vendor-comparison/>. The contact information for Avis is listed here:

<http://www.window.state.tx.us/procurement/prog/stmp/stmp-rental-car-contract/Avis/>.

The contact information for Enterprise is listed here:

<http://www.window.state.tx.us/procurement/prog/stmp/stmp-rental-car-contract/Enterprise/>. You will need to make your reservations at least 14 days in advance and provide the County's agency #: C0790. The instructions for reserving with each agency are explained at the individual web sites above. The traveler will not be reimbursed for any amount over the negotiated contract rates if a non-contract company is used at a higher rate. The traveler may use a non-contract vendor at a rate lower than the contract rates with no penalty. The original contract/receipt must be presented with the travel reimbursement form or a copy if a County procurement card is used. Optional rental car fees are not reimbursable such as GPS, prepaid fuel, premium radio, child safety seats and additional insurance.



**Other Transportation:** Other forms of transit (bus, taxi, train) are reimbursable with an original receipt.

**Additional fees:** Fees for additional services (tolls, parking...) require justification to be allowable. Optional rental car fees are not reimbursable (GPS, prepaid fuel, premium radio, additional insurance, child safety seats...). Original receipts or documentation are required for allowable fees.

**Gratuities:** Gratuities are not reimbursable for any transportation services.

**Procurement Card:** The traveler may use a County procurement card to make transportation reservations for air travel and rental car services. Contact Purchasing to arrange or use the procurement card assigned to the department or traveler.

**Documentation:** Original receipts are required for all transportation reimbursements paid by the traveler. Transportation services obtained with a County procurement card require a copy of the receipt. Additional requirements are noted within each category above. Event agenda/documentation or a letter from the traveler describing the event/meeting is required.

#### **REGISTRATION:**

**Registration fees:** Registration fees are reimbursable for events that serve a Fort Bend County purpose.

**Procurement Card:** The traveler may use a County procurement card to register for an event. Contact Purchasing to arrange or use the procurement card assigned to the department or traveler.

**Documentation:** An original receipt must be obtained upon registration and submitted with the reimbursement request if paid by the traveler. A copy of the receipt must be provided if registration is paid on a County procurement card. Event agenda/documentation or a letter from the traveler describing the event/meeting is required.

#### **GRANTS:**

Travel expenditures from Federal and State grants must also conform to the granting agency's funding requirements.

#### **PACKAGE AND GROUP TRAVEL RATES:**

The traveler may obtain a package travel rate for airfare, hotel, and/or rental car services for a combined rate of less than the individual rates pursuant to the category requirements above without penalty. The traveler may also participate in group lodging or rental car services for a combined rate of less than the individual per person rates pursuant to the category requirements without penalty.

#### **TRAVEL REIMBURSEMENT FORM:**



The traveler must use the current travel reimbursement form (<http://econnect/index.aspx?page=55>) for all travel related services addressed in this policy. No other expenditures may be submitted for reimbursement on the travel reimbursement form. After completing all required information, the travel form must be signed/dated by the traveler and the department head/elected official.



**EXHIBIT B: ECM Data Security Plan**

EMPOWERED SOLUTIONS GROUP



**Data Security Plan**

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Version 5.3

1/1/2013

Empowered Solutions Group  
740 East 3900 South, Suite 301  
Salt Lake City, Utah 84107  
(877) 347-0877

**Abstract**

Empowered Solutions Group (abbreviated to "ESG" for this document) is dedicated to providing its clients with premium service and maximum data availability. This document outlines the various threats to client data and ESG's plan to prevent disasters and correct errors that cause the loss or corruption of customer data.



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Disaster recovery

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    Disaster Recovery Record Form

    3

Data Recovery

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    4

    Backup Strategies

    5

Outcomes and Objectives .....6



## ***DISASTER RECOVERY***

### **POLICY STATEMENT**

It is the Policy of ESG to maintain a comprehensive Business Continuity Plan for all critical organization functions. Each department head is responsible for ensuring compliance with this policy. Empowered Solution Group's disaster recovery efforts exercise reasonable measures to protect employees, safeguard assets, and client accounts.

### **DEFINED SCENARIO**

A disaster is defined as an incident which results in the loss of computer processing at ESG. A disaster impacts ESG's ability to maintain customer commitments and regulatory compliance. A disaster can result from a number of natural or human induced occurrences and can occur at hardware, software, user, and environmental levels.

### **OBJECTIVES**

The principal objective of the disaster recovery program is to develop and document a well-structured and easily understood plan which will help the company recover as quickly and effectively as possible from an unforeseen disaster or emergency which interrupts information systems and business operations. Additional objectives include the following:

- The need to ensure that all employees fully understand their duties in implementing such a plan
- The need to ensure that operational policies are adhered to within all planned activities
- The need to ensure that proposed contingency arrangements are cost-effective
- The need to consider implications on other company sites
- Disaster recovery capabilities as applicable to key customers



This plan was specifically designed to guide ESG through a recovery effort of specifically identified organization functions. At the onset of an emergency condition, ESG employees and resources will respond quickly to any condition which could impact ESG's ability to perform its critical organization functions. The procedures contained within have been designed to provide clear, concise and essential directions to recover from varying degrees of organization interruptions and disasters and therefore mitigate the impact to ESG's customers through the rapid implementation of effective recovery strategies as defined herein.

#### **Disaster Management Team**

The Disaster Management Team is responsible for the following:

- Making decisions about restoring the computer processing environment in order to provide the identified level of operational service to users.
- Managing all the recovery teams and liaising with Client Company's management, headquarters, and users, as appropriate.
- Maintaining audit and security control during the recovery from disaster.
- Controlling and recording emergency costs and expenditure.
- Initiating disaster recovery procedures.
- Evaluating the extent of the problem and potential consequences.
- Notifying senior management of the disaster, recovery progress and problems.
- Coordinating recovery operations
- Monitoring recovery operations and ensuring that the schedule is met.
- Documenting recovery operations.
- Recording emergency extraordinary costs and expenditure
- Making a detailed accounting of the damage to aid in insurance claims.



- Monitoring computer security standards.
- Ensuring that appropriate arrangements are made to restore the site and return to the status quo within the time limits allowed for emergency mode processing.
- Declaring that the Disaster recovery Plan is no longer in effect when computer processing is restored at the primary site

#### **Emergency Alert, Escalation and Disaster Recovery Plan Activation**

This policy and procedure has been established to ensure that in the event of a disaster or crisis, personnel will have a clear understanding of who should be contacted. Procedures have been addressed to ensure that communications can be quickly established while activating disaster recovery.

The Disaster Recovery plan will rely principally on key members of management and staff who will provide the technical and management skills necessary to achieve a smooth technology and business recovery. Suppliers of critical goods and services will continue to support recovery of business operations as the company returns to normal operating mode.



**Disaster Recovery Event Recording Form**

- All key events that occur during the disaster recovery phase must be recorded.
- An event log shall be maintained by the disaster recovery team leader.
- This event log should be started at the commencement of the emergency and a copy of the log passed on to the business recovery team once the initial dangers have been controlled.
- The following event log should be completed by the disaster recovery team leader to record all key events during disaster recovery, until such time as responsibility is handed over to the business recovery team.

<b>Description of Disaster:</b> Input Output failure of MPIO driver
<b>Commencement Date:</b> Sometime on Sunday, September 25,2099 around 10 pm
<b>Date/Time DR Team Mobilized:</b> Sunday, September 25,2099 10:30 PM MST

Activities Undertaken by DR Team	Date and Time	Outcome	Follow-On Action Required
Alert Customers	9/26/2099 6:00 AM	Customers On hold	Customers contacted after their system was brought back online.
Move prod activities to alternative server	9/26/2099 5:30 AM	Successful start of report server and database server	Observe –Contact Dell for replacements
Restore all databases	9/26/2099 6:00 AM	Successful recovery of databases	Observe— document effects of restoration



## ***DATA RECOVERY***

The focus of this section of the document will be dedicated to a description of ESG's plan to protect client data from various sources of threats. The threats are first described, and ESG's strategy for prevention or correction is then outlined.

### **THREATS**

#### ***Hardware Failure***

ESG has invested in and owns web and database servers in order to maintain optimum control of the services offered to clients. These servers are subject to Hard Drive failures, Input / Output component failures, CPU malfunctions or even total server collapses. To insure against data loss from a potential server failure, ESG employs a data-redundancy strategy by backing up client data to independent and separate storage devices. A more detailed explanation of ESG's back-up policies is described in the Backup Strategy section on page 5.

To reduce the likelihood of a hardware failure, ESG physically stores its servers at ViaWest (<http://www.viawest.com/>), an enterprise class datacenter that is staffed 24x7x365 by experienced engineers who operate the center under top-of-class availability standards for: continuous power delivery, surge protection, cooling and environmental controls, fire and smoke detection systems, redundant networks, cabling, and grounding. The datacenter also guarantees 100% power and network service availability to servers and has maintained 100% infrastructure uptime over many years.

#### ***Theft***

To eliminate the risk of hardware being stolen, ESG has contracted ViaWest's datacenter security team. In order to obtain physical access to the ESG's servers, an individual must first pass state-of-the-art biometrics and dual-token authentication tests. Then, the servers are under multiple video camera surveillance and further protected by being in individually-locked cages and cabinets.

#### ***Security Breach***



In the event that Licensor's equipment or devices which contain Licensee's data have been subject to unauthorized (e.g., hacker, malware, etc.) activity, Licensor will immediately notify Licensee of any such unauthorized or unlawful destruction, loss, alteration, disclosure of or access to the Licensee's data files. Licensor will also employ all reasonable efforts to resolve the threat and take action to further secure the computer system and related data storage for collection of evidence.

#### *Human Error*

Users and Database Administrators are also sources of potential error. Specifically, incorrect updates, accidental deletions, or accidentally dropped objects can damage the database. The following backup strategies are implemented by ESG to quickly correct accidents.

### **BACKUP STRATEGIES**

The following sections describe the backup strategies assigned to differing database types. All database files are stored on a RAID 10 Storage Area Network (SAN).

#### *Production Databases*

For databases that are constantly being updated by the client's transactions, each transaction is important and the cost of losing information is high. In consideration of the value of client information, ESG has scheduled Full and Differential backups to occur on all client databases both during and after business hours using MS SQL 2008 R2 maintenance plans.

In ESG's backup strategy, several backups are made daily. The full backup of the production database is done every night at midnight and stored on the SAN. The full backup file is stored on the SAN for eight days and deleted after the 8 days of storage.

Furthermore, a differential backup (which backs up any changes that have been made to the database since the last full backup) will be made every 2 hours between 04:00 AM MST and 20:00 MST and maintained on the SAN for 8 days.



From backup files, a database restoration can be performed to restore the damage potentially caused by natural or human-induced disasters. Before performing any ECM database restoration, a full backup will be made manually of the database prior to being overwritten in the restore process. The manually generated backup will be named for easy identification and saved for 8 days.

To test ESG's restoration procedure, Productions databases are selected, restored as a training database, and analyzed for accuracy and functionality upon Customer request.

#### *Development, Read Only, Training, Testing, and Stage Databases*

For databases that are not being updated with numerous records minute by minute, a less intensive backup strategy is employed called the "Full, Simple" strategy. In this strategy, a full backup of the database is done on Sunday night at midnight. The full backup is saved for 8 days. Monday-Saturday, a differential backup is taken of non-production databases and saved for 8 days. This allows ESG to restore any non-production database to the state it was in as at the start of business that day.

#### *System Databases*

A full backup of system databases (eg. ReportServer) is done nightly at 02:30 AM MST.

### **Data Security Goals and Outcomes**

The entire purpose of this document is to provide a simple and effective plan for the Empowered Solutions Group to follow in event of a disaster. By following the plan, ESG aims to maintain the long-term trust and confidence of customers by professionally and efficiently responding to and dealing with calamities.

Furthermore, ESG aims to maintain—in conjunction with ViaWest and other supporting partners—the following service level goals:

- Minimum turnaround time as influenced by individual contingencies,
- Same hour Response Team organization and mobilization,
- Top-of-class data security,
- 24x7 monitoring of servers, and



- Five-Nines (99.999%) network and power uptime for active servers



## **EXHIBIT C: Statement of Work (SOW)**

December 5, 2013

Fort Bend County Department of Social Services  
4520 Reading Road, Suite 900-A  
Rosenberg, TX 77471

### ***Introduction***

Fort Bend County Department of Social Services (Licensee) has requested Empowered Solutions Group (Licensor) to develop and automate their case management needs. The application will automate the Licensee's collection, analysis, and reporting of client information for each of the services provided by the Case Management, Food Assistance, Medication Assistance, Pauper Burial, Rent/Mortgage Assistance, Emergency Shelter, Utility Assistance, Walk with Pride, Benefits Assistance, and Share your Christmas programs. The goal is to automate the desired functionality as articulated by Fort Bend County Department of Social Services in a set of requirements included in a final Statement of Work (to be included as an amendment to this document). Empowered Solutions Group will deliver this functionality utilizing the ECM™ apBuilders framework. The solution will be delivered via a SaaS (ASP) environment on the ECM™ software application for up to 13 staff users and include a SQL database conversion. The Database conversion is anticipated to include Fort Bend County Department of Social Services providing a single data set in the ECM™ expected staging table format. This project will also include a uni-directional interface to Lawson.

The overall purpose of this project is to improve Fort Bend County Department of Social Service's ability to serve its clients. To accomplish this we need to streamline the collection, analysis, and reporting of client information. An important part of this process will be for the system to assist agency personnel with determining all the services from which the client may benefit. The system will also need to provide for logging and reviewing all contacts with the clients and all activities taken with or on behalf of the clients.

The system will also need to provide outcome/results statistics for the various reporting requirements of the agency.

The professional services to be performed by Licensor will include, but not be limited to, the categories listed in Licensor's Professional Services document (Exhibit D).



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- Preamble
- 2.0 Price and Payment
- 3.0 Invoices
- 4.0 Payment
- 5.0 Expenses and Taxes

**PREAMBLE**

This Statement of Work accompanies an Agreement that has been executed by the parties. All statements of fact contained in this Statement of Work are subject to the terms and conditions set forth in such Agreement. The terms and conditions set forth in the Agreement control in the event of any inconsistency between such terms and conditions and the matters set forth in this Statement of Work.

**2.0 Price and Payment**

1st year Contract amount as stated below	\$ 51,380.00
------------------------------------------	--------------

*Years 2 and beyond will be billed annually (as reflected in the ECM ASP Pricing Model below)*

**3.0 Invoices**

Services will be invoiced according to the following payment schedule:

- |                                                                   |              |
|-------------------------------------------------------------------|--------------|
| 1. Deposit upon contract execution                                | \$ 25,690.00 |
| 2. Requirements document completed and signed off                 | \$ 12,845.00 |
| 3. 1 Week after successful Go-Live, upon Licensee acknowledgement | \$ 12,845.00 |

**4.0 Payment**

Payment is due thirty (30) days after receipt of invoice by Licensee. Licensee may withhold payment in accordance with Section 3 of the Agreement. Licensor reserves the right to cease work without prejudice if amounts are not paid when due. Any late payment will be subject to any costs of collection (including reasonable legal fees) and will bear interest at the rate of one (1) percent per month or fraction thereof until paid.

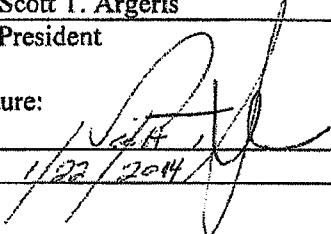
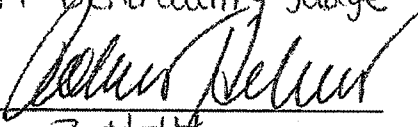
**5.0 Expenses and Taxes (if required)**

Prices quoted for Services include two licensee visits. Additional onsite meetings will require



reimbursement to Licensor for its reasonable and necessary cost of travel and out-of-pocket costs for photocopying, overnight courier, unusual long distance telephone and the like. All non-local trips must be approved by Licensee before commencing.

Licensor agrees to adhere to Fort Bend County Travel Policy (Exhibit G) related to all reimbursable expenses.

<b>Licensor – Empowered Solutions Group, Inc.</b>	<b>Licensee – Fort Bend County</b>
By: Scott T. Argeris	By: Robert E. Hebert
Title: President	Title: Fort Bend County Judge
Signature: 	Signature: 
Date: 1/22/2014	Date: 2-4-14



Description	Year 1	Year 2	Year 3	Total
<b>Setup Fees</b>				
One Time Setup Fee per Server	1,000			1,000
<b>Total Setup Fees</b>	<b>1,000</b>	<b>0</b>	<b>0</b>	<b>1,000</b>
<b>Monthly Service Fees</b>				
Users Per Month for 12 Months	1,080	4,493	4,673	10,245
Annual Maintenance Support	900	5,000	5,200	11,100
<b>Total Monthly Service Fees</b>	<b>1,980</b>	<b>9,493</b>	<b>9,873</b>	<b>21,345</b>
<b>Services - Implementation</b>				
Administration & Tools Training	2,000			2,000
Data Conversion* (SQL DB)	5,000			5,000
Interface (1-way export to Lawson)	5,000			5,000
Needs Analysis / Discovery	3,000			3,000
End User / Train-the-Trainer Training	2,000			2,000
Project Management	7,500			7,500
SSRS MS Report Training	1,500			1,500
Streamline ECM Application	12,500			12,500
Customization - Reporting	7,500			7,500
Travel-Related Expenses	2,400			2,400
<b>Subtotal Services</b>	<b>48,400</b>	<b>0</b>	<b>0</b>	<b>48,400</b>
<b>Total Investment - SaaS Model</b>	<b>51,380</b>	<b>9,493</b>	<b>9,873</b>	<b>70,745</b>



## **EXHIBIT D: ECM Professional Services**

Once the contract has been executed, Empowered Solutions Group will perform the services identified below. These services have been incorporated into a projected timeline for Fort Bend County (Exhibit E). Given that Fort Bend County provides the appropriate resources to this project Empowered Solutions Group will assure the planned Go-Live on ECM™ will occur no later than 6 months from contract execution.

### **Professional Services**

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#### **Project Management**

An ECM™ certified professional will be your main point of contact for all things going forward with the implementation. This person will make sure all Empowered Solutions Group team members are on task and adhering to the approved delivery schedule, as well as being heavily involved in every aspect of the documentation, training and post live monitoring. The Project Manager creates and maintains the team's implementation plan, reviews all proposed configuration and custom development, project meetings and status reports.

#### **Needs Analysis**

Empowered Solutions Group's Professional Services staff will work with your team to review the specific requirements on a program by program basis. This discovery process will be accomplished onsite and will take a minimum of two days (more depending on the number of programs and complexity).

- The analysis process will include suggested efficiencies in the areas of each program and operational processes.
- The end result of this process will produce a Requirements Document that clearly defines the implementation schedule, program(s) and all the unique deliverables. This document is approved by your staff before any work begins.

#### **Configuration of ECM™ Application**

- This refers to the configuration of ECM™ based on the Statement of Work as confirmed and approved through the Requirements Document.



- This process will include tailoring specific roles (Menus, forms, workflows and rules) based on the program and operational needs. This process will provide for all identified deliverables as outlined in the Requirements Document.

### **Administration & Tools Training**

This training will involve your super/technical user(s) and may be conducted onsite, via the web, or both. This foundational training sets the application behavior to match your desired results.

- Create organizations and related data sharing agreements
- Create users and passwords
- Create programs and services
- Create facilities, classrooms, rooms, beds, etc.
- Create providers and provider services

This training will also include the apBuilders™ framework. The apBuilders™ allow you to maintain and develop custom screens, data, and workflows. This training will give your organization autonomy for daily changes that affect your business.

- Create and enhance specific use in the areas of Menus, Roles, Forms, Queries, Rules, Alerts, Workflows and Reports.

### **Data Conversions**

Our systematic approach to database conversions is well defined. We work with your technical team to provide the best possible results.

- Empowered Solutions Group uses defined staging tables to map the existing data structures into the ECM™ solution.
  - Map / Gap Analysis between the existing database and ECM™
  - Develop translation tables
- A first pass data import will give both organizations a true view of the data being migrated. We will identify cleansing techniques that must be included for the final data conversion. This may include duplicated record rules, program mappings, services mappings, etc.
- Empowered Solutions Group will then plan the final data import just before go live to ensure we include the latest data possible.



## **Interfaces**

Interfaces can be accomplished in a variety of ways depending on the end goal. These techniques truly depend on the abilities of both parties and how the data needs to be communicated.

- The first option supports a real-time interface that utilizes Web Services - this will accomplish immediate data syncing between two systems.
- The second option will support a batch interface, meaning end of day/week/ month uploads are required.
- Either option can support one-way or bi-directional interfaces, depending on the overall objective.

## **Customization – Reporting**

- All identified reporting needs over and above the standard reporting and cubes that ship with ECM™.

## **SSRS MS Report Training**

This service is available for technical staff with a working knowledge of SQL Server Reporting Services and at least some past experience in designing Report Definition Language (.rdl) files using either Visual Studio (VS 2008 or later) or Microsoft Report Writer. This training will equip your technical staff with the skills they will need to properly integrate reports that they write with the Parameterized ECM™ Report Automation Application. At the end of the training, your staff will demonstrate familiarity with the following:

- ECM™ Reporting Standards
- ECM™ Data Structures
- ECM™ Parameterized Data Connection Strings
- End-User ECM™ Form Integration Strategies
- Custom Report Maintenance Procedures

The training will empower your team to create custom reports which interact with ECM™ to the same level and with the same functionality that the baseline reports demonstrate.



### **End user Training and Train the Trainer**

Empowered Solutions Group's Professional Services staff will provide a combination of onsite and web training as identified in the Requirements Document. We will customize the best approach that works with your team and the specific topics being trained. Training will include:

- Each configured role and program
- Basic input of client data creation and maintenance
- MyECM™ functionality
- Specialty services implemented within your environment

### **Travel Related Expenses**

Either option below is acceptable.

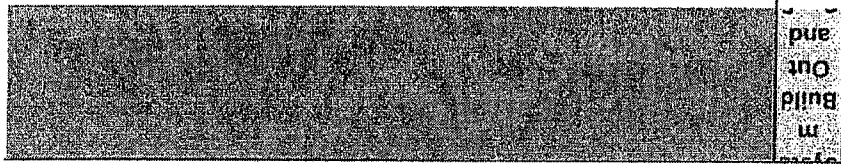
- We find that most of our clients like the fixed trip cost for budgeting. This a fixed cost and not to exceed number
- The other option is travel approval following the IRS guidelines



**Exhibit E: Fort Bend County Baseline Implementation  
Project Managers - TBD (ESG), TBD (Customer)**



Phase	Milestone - key activity	Start Date	Finish Date	Resource
Phase 1 - Organize and Manage the Project	Team Assignments	2/10/2014	2/10/2014	ESG
	Assign PM	2/10/2014	2/10/2014	ESG
	Assign Project Team	2/10/2014	2/10/2014	ESG
	Initial Site Contact	2/10/2014	2/10/2014	PM
	Create ECM project and tasks	2/10/2014	2/10/2014	PM
	Internal Call	2/10/2014	2/10/2014	ESG Sales, PM
	Review Order - special considerations	2/10/2014	2/10/2014	ESG Sales, PM
	Discuss Project Scope	2/10/2014	2/10/2014	ESG Sales, PM
	Kick Off Call	2/18/2014	2/18/2014	PM, Customer PM
	Introductions	2/18/2014	2/18/2014	PM, Customer PM
	Review Order	2/18/2014	2/18/2014	PM, Customer PM
	Custom Requirements	2/18/2014	2/18/2014	PM, Customer PM
	Discuss Resources and Time Constraints	2/18/2014	2/18/2014	PM, Customer PM
	Schedule Kick Off Visit	2/18/2014	2/18/2014	PM, Customer PM
	Send Pre-Implementation Documents - DropBox invites, onsite discovery agenda(s)	2/18/2014	2/18/2014	PM
	Kick Off Meeting	3/12/2014	3/13/2014	ESG Team, Customer Team
	Discuss Project Scope	3/12/2014	3/13/2014	ESG Team, Customer Team



Define Implementation Strategy	3/12/2014	3/13/2014	ESG Team, Customer Team
Discovery	3/12/2014	3/13/2014	ESG Team, Customer Team
Site Walk Through	3/12/2014	3/13/2014	ESG Team, Customer Team
Program Break Out Sessions	3/12/2014	3/13/2014	ESG Team, Customer Team
Collect all forms used by the programs	3/12/2014	3/13/2014	ESG Team, Customer Team
Confirm Requirements Document delivery schedule	3/12/2014	3/13/2014	PM, Sys Admin Team
Confirm Implementation Schedule - training, go live	3/12/2014	3/13/2014	PM, Sys Admin Team
Schedule System Admin training sessions - 3 times/week	3/12/2014	3/13/2014	PM, Sys Admin Team
Requirements Document	3/24/2014	4/28/2014	ESG Team, Customer PM
First Pass	3/24/2014	4/7/2014	ESG Team, Customer PM
Second Pass	4/10/2014	4/17/2014	ESG Team, Customer PM
Third Pass	4/21/2014	4/25/2014	ESG Team, Customer PM
Customer Acceptance	4/28/2014	4/28/2014	ESG Team, Customer PM
SaaS Server Setup and Testing	3/3/2014	4/14/2014	ESG Team, Customer IT



Test Database configured  
 Back up configured and tested  
 Connectivity tested for all sites  
 Database Conversions  
 Consolidated SQL DB provided to ESG  
 Translations and Mappings  
 Run ETL scripts - test conversion  
 Test data reviewed by Customer  
 Revise ETL scripts based on Customer feedback - run ETL scripts again  
 Test data reviewed by Customer  
 Final consolidated SQL DB provided to ESG  
 Run ETL scripts - final conversion  
 Final data reviewed by Customer  
 System Build Out

3/3/2014	3/10/2014	ESG Team
3/3/2014	3/10/2014	ESG Team
3/3/2014	4/14/2014	ESG Team, Customer IT
3/3/2014	6/16/2014	ESG Dev, Customer IT
3/3/2014	3/3/2014	Customer IT
3/3/2014	4/14/2014	ESG Dev, Customer IT
4/21/2014	5/5/2014	ESG Dev, Customer IT
5/12/2014	5/23/2014	ESG Dev, Customer IT
5/23/2014	6/6/2014	ESG Dev, Customer IT
6/9/2014	6/20/2014	ESG Dev, Customer IT
8/4/2014	8/4/2014	ESG Dev, Customer IT
8/4/2014	8/8/2014	ESG Dev, Customer IT
8/8/2014	8/8/2014	ESG Dev, Customer IT
5/5/2014	7/14/2014	PM, Trainer, Sys Admin Team



Phase	Training			
		Administration workspace	5/5/2014	PM, Trainer, Sys Admin Team
		Organization workspace	5/5/2014	PM, Trainer, Sys Admin Team
		Roles	5/5/2014	PM, Trainer, Sys Admin Team
		Forms	5/5/2014	PM, Trainer, Sys Admin Team
		Workflows - written, tested, accepted by work group	5/5/2014	PM, Trainer, Sys Admin Team
		Assessments	5/5/2014	PM, Trainer, Sys Admin Team
		Housing Setup	5/5/2014	PM, Trainer, Sys Admin Team
		Report set up, Mapping	5/5/2014	PM, Trainer, Sys Admin Team
		Dashboards	5/5/2014	PM, Trainer, Sys Admin Team
		Reports	5/5/2014	PM, Trainer, Sys Admin Team
		Lawson Interface	5/5/2014	ESG Dev, Customer IT
		Customer Functional Acceptance	7/14/2014	ESG Team, Sys Admin Team
		System Administration Training	3/18/2014	PM, Trainer, Sys Admin Team



Phase 4 - Go Live	Classroom Prep - reserve SU dates, reserve EU dates and determine EU schedule	5/13/2014	5/16/2014	PM, Customer PM
	Super User Training	7/29/2014	7/31/2014	Trainer, Super Users
	End User Training	8/4/2014	8/8/2014	Super Users, Customer Team
Phase 5 - Go Live	Report and Query Training	7/23/2014	7/24/2014	Trainer, Sys Admin Team
	Pre Go Live Meeting	8/11/2014	8/11/2014	ESG Team, Customer PM
	Go Live	8/12/2014	8/15/2014	ESG Team, Customer Team
Phase 6 - Go Live	Post Go Live Meetings	8/18/2014	8/29/2014	PM, Trainer, Customer PM
	Transition to Support	9/1/2014	9/1/2014	PM, Customer PM
	Schedule weekly, then bi-weekly meetings	9/1/2014	9/1/2014	PM, Customer PM
	Reconcile project hours	9/1/2014	9/1/2014	PM



## EXHIBIT F:

### BUSINESS ASSOCIATE ADDENDUM ("HIPAA EXHIBIT")

The parties to the Agreement are committed to complying with the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated there under (collectively "HIPAA"). In order to ensure such compliance this HIPAA Exhibit sets forth the terms and conditions pursuant to which Protected Health Information that is provided to, or created or received by, Business Associate from or on behalf of Covered Entity will be handled.

#### 1. Definitions.

- A. Business Associate. "Business Associate" shall mean Empowered Solutions Group, Inc.
- B. Covered Entity. "Covered Entity" shall mean Fort Bend County
- C. Designated Record Set. The phrase "Designated Record Set" shall have the same meaning as the phrase "designated record set" set forth within the Privacy and Security Rule, as may be amended from time to time.
- D. Individual. The term "Individual" shall have the same meaning as the term "individual" in the Privacy and Security Rule and shall include a person who qualifies as a personal representative in accordance with the Privacy and Security Rule.
- E. Privacy and Security Rule. The phrase "Privacy and Security Rule" shall mean the Standards for Privacy of Individually Identifiable Information and the Security Standards for the Protection of Electronic Health Information at 45 C.F.R. part 160 and part 164, as amended from time to time.
- F. Protected Health Information. The phrase "Protected Health Information" shall have the same meaning as the phrase "protected health information" set forth within the Privacy and Security Rule, as may be amended from time to time, to the extent such information is provided to, or created or received by, Business Associate from or on behalf of Covered Entity.
- G. Secretary. The term "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his/her designee.



Terms or phrases used, but not otherwise defined, in this HIPAA Exhibit shall have the same meaning as those terms in the Privacy and Security Rule.

2. Scope. This HIPAA Exhibit applies to all actions, relationships and transactions between Covered Entity and Business Associate pursuant to the Agreement and through which Covered Entity provides Protected Health Information to the Business Associate in any form or medium whatsoever.
3. Purpose: General Rules Regarding Protected Health Information. This HIPAA Exhibit sets forth the terms and conditions pursuant to which Protected Health Information that is held, transmitted, disclosed, received or created by Business Associate from or on behalf of Covered Entity will be handled. Except as otherwise specified herein, Business Associate may make all uses and disclosures of Protected Health Information necessary to perform its obligations to Covered Entity under the Agreement or pursuant to Covered Entity's written instruction, provided that such uses or disclosures would not violate the Privacy and Security Rule. All other uses and disclosures not required by law, authorized by this HIPAA Exhibit or authorized by any other written agreement with Covered Entity or Covered Entity's written instructions are prohibited.
4. Business Activities of the Business Associate. Unless otherwise limited herein, Business Associate may:
  - A. Use and/or disclose Protected Health Information in its possession for the proper management and administration of Business Associate as it relates to the services provided to Covered Entity, provided that such uses and/or disclosures are permitted by federal and state laws;
  - B. Disclose Protected Health Information in its possession to third parties for the proper management and administration of Business Associate or to fulfill any present or future legal responsibilities of Business Associate, provided that the disclosures are required by law or Business Associate represents to Covered Entity, in writing, that Business Associate has obtained reasonable assurances from the third party that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the third party and the third party notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;
  - C. Use Protected Health Information to provide data aggregation services to Covered Entity as permitted by 45 C.F.R. Section 164.504(e)(2)(i)(B), except as otherwise limited in this HIPAA Exhibit; and



- D. Use Protected Health Information to report violations of law to appropriate federal and state authorities, consistent with 45 C.F.R. Section 164.502(j)(1).
5. Responsibilities of Business Associate. With regard to its use and/or disclosure of Protected Health Information, Business Associate hereby agrees to do the following:
- A. Use and/or disclose the Protected Health Information in its possession only as permitted by this HIPAA Exhibit or otherwise permitted or required by federal and state laws;
  - B. Ensure that all of its employees, representatives, subcontractors or agents that receive, use or have access to Protected Health Information under this HIPAA Exhibit agree to adhere to the same terms and conditions on the use and/or disclosure of Protected Health Information that apply herein, including the obligation to return, destroy or maintain the confidentiality of, Protected Health Information as provided under Section 8(B)(2) of this HIPAA Exhibit;
  - C. Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Health Information that it creates, receives, maintains or transmits on behalf of the Covered Entity, as required by the Privacy and Security Rule;
  - D. Establish procedures for mitigating improper use and/or disclosure of Protected Health Information in the event Business Associate discloses Protected Health Information to any third party for purposes other than "treatment," "payment" or "health care operations" as those terms are used and defined within the Privacy and Security Rule. Business Associate shall provide prompt notice of the date and purpose of each disclosure as well as the name and address of the recipient, to the Covered Entity at the address set forth herein.
  - E. Report to the designated Privacy Officer of Covered Entity, in writing, any use and/or disclosure of the Protected Health Information that is not permitted or required by this HIPAA Exhibit or a security incident of which Business Associate becomes aware within ten (10) days of Business Associate's discovery of such unauthorized use and/or disclosure or security incident;
  - F. Upon written request, make available during normal business hours at Business Associate's offices, all records, books, agreements, policies and procedures relating to the use and/or disclosure of Protected Health Information to Covered Entity within ten (10) days of receiving the request for purposes of enabling



Covered Entity to determine Business Associate's compliance with the terms of this HIPAA Exhibit;

- G. Make available all records, books, agreements, policies and procedures relating to the use and/or disclosure of Protected Health Information to the Secretary for purposes of determining Covered Entity's compliance with the Privacy and Security Rule, subject to attorney-client privilege and other applicable legal privileges; and
- H. Within thirty (30) days of receiving a written request from Covered Entity, provide to Covered Entity such information as is requested by Covered Entity to permit Covered Entity to respond to a request by an Individual to account for disclosures of the Individual's Protected Health Information or to amend the Individual's Protected Health Information in accordance with Section 7 of this HIPAA Exhibit.

6. Responsibilities of Covered Entity

- A. Provide Business Associate with a copy of the notice of privacy practices that it utilizes in accordance with the Privacy and Security Rule, as well as inform Business Associate of any changes in said notice;
- B. Inform Business Associate of any changes in, or revocation of, permission by the Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses or disclosures; and
- C. Notify Business Associate, in writing and in a timely manner, of any restrictions on the use and/or disclosure of Protected Health Information agreed to by Covered Entity in accordance with the Privacy and Security Rule.

7. Handling of Designated Record Sets. In the event that the Protected Health Information received or created by the Business Associate on behalf of the Covered Entity constitutes a Designated Record Set:

- A. Business Associate agrees to make any amendments to the Protected Health Information that the Covered Entity directs pursuant to the Privacy and Security Rule and at the request of the Covered Entity or the Individual and in the time and manner reasonably designated by Covered Entity.
- B. Covered Entity agrees to:



1. Notify Business Associate, in writing, of any Protected Health Information Covered Entity seeks to make available to an Individual pursuant to the Privacy and Security Rule and the time and manner in which Business Associate should provide such access; and
2. Notify Business Associate, in writing, of any amendments to the Protected Health Information in the possession of Business Associate that Business Associate should make and the time and manner in which such amendments should be made.

8. Term and Termination.

- A. Term: The provisions of this HIPAA Exhibit shall remain in effect for the term of the Agreement, unless otherwise provided in this HIPAA Exhibit.
- B. Termination. Unless otherwise provided herein, this HIPAA Exhibit shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy the Protected Health Information, protections are extended to such information in accordance with the provisions of this Section.
  1. As provided under the Privacy and Security Rule, upon Covered Entity's knowledge of a material breach of the terms of this HIPAA Exhibit by Business Associate, Covered Entity shall provide Business Associate with an opportunity to cure said material breach in accordance with the terms of the Agreement. Covered Entity shall make any reports deemed necessary, in its sole discretion, to the Secretary.
  2. Unless Business Associate has an independent legal right to the Protected Health Information provided to, or created or received by, Business Associate on behalf of Covered Entity, Business Associate shall return to Covered Entity or destroy, as requested by Covered Entity, within sixty (60) days of the termination of the Agreement, Protected Health Information in Business Associate's possession and retain no copies or back up files or tapes. If Business Associate retains Protected Health Information, the terms of this HIPAA Exhibit shall remain in effect for so long as Business Associate remains in possession of any Protected Health Information provided to, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health



Information that is in the possession of agents or subcontractors of Business Associate.

3. In the event Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction is infeasible, Business Associate shall extend the protections of this HIPAA Exhibit to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

9. Miscellaneous.

- A. No Third Party Beneficiaries. There are no intended third party beneficiaries to the provisions of this HIPAA Exhibit. Without in any way limiting the foregoing, it is the parties' specific intent that nothing contained in this HIPAA Exhibit give rise to any right or cause of action, contractual or otherwise, in or on behalf of any Individual whose Protected Health Information is used or disclosed pursuant to this HIPAA Exhibit.
- B. References. A reference in this HIPAA Exhibit to a section in the Privacy and Security Rule means the section as in effect or as amended, and for which compliance is required.
- C. Amendment. The parties agree to take such action as is necessary to amend this HIPAA Exhibit from time to time in order for Covered Entity to comply with the requirements of the Privacy and Security Rule. No amendment to this HIPAA Exhibit shall be effective until reduced to writing and signed by the parties.
- D. Survival. The respective rights and obligations of Business Associate and Covered Entity set forth in this HIPAA Exhibit shall survive the termination of the Agreement.



**EXHIBIT G: Fort Bend County Travel Policy**

## **Fort Bend County Travel Policy**

Approved in Commissioners' Court on November 3, 2009

Effective November 4, 2009

Revised September 7, 2010

The Commissioners' Court allocates funds annually for the payment of travel expenditures for county employees and officials within the individual departmental budgets. Travel expenditures paid from these budgets must serve a public purpose for Fort Bend County. These expenditures may be paid directly to the vendor or provided as a reimbursement to the employee/official upon completion of their travel. Advance payments to vendors may be accommodated by issuance of a check or use of a County procurement card. Eligible expenditure categories under this policy include: Lodging, meals, transportation, registration fees, and other fees (with justification). Each category is further defined below.

### **CONTRACT RATES:**

Fort Bend County is a 'Cooperative Purchasing Participating Entity' with the State of Texas. This program is also known as TPASS (Texas Procurement and Support Services) State Travel Management Program (STMP). This gives County employees and officials access to the contract rates negotiated by the State for hotels and rental cars. Procurement procedures for these contract services are explained within the categories below.

### **OUT OF STATE TRAVEL:**

**Authorization:** The traveler must obtain Commissioners' Court approval for out-of-state travel before departure. The duration must include travel days along with the event scheduled days. To prevent delays in processing travel reimbursement, ensure that the travel duration is accurately defined when submitting the agenda request.

**Documentation:** The traveler must provide an excerpt from the Commissioners' Court minutes (<http://www.co.fort-bend.tx.us/getSitePage.asp?sitePage=7269>) with the travel reimbursement form.

### **LODGING:**

#### **Hotel:**

**Texas:** Hotel reimbursements are limited to contract hotel rates near the event site. Participating contract hotels are listed at [http://portal.cpa.state.tx.us/hotel/hotel\\_directory/index.cfm](http://portal.cpa.state.tx.us/hotel/hotel_directory/index.cfm). When making a reservation the traveler must ask for the State of Texas Contract rate and be prepared to provide the



County's agency #: C0790. Contract hotels must be used unless a non-contract hotel provides a lower total cost or no contract hotel is available. If the organizer of a conference/seminar has negotiated discount rates with a hotel(s), the traveler may choose these lodging services without penalty. The traveler will be responsible for the excess charge over the contract hotel rates near the event site if they choose not to stay at a contract hotel or a conference sponsored discounted hotel. The traveler may choose any hotel that is less than the contract hotel rates near the event site to save additional county funds. If no contract hotels are listed for the destination city, the traveler is required to choose lodging services near the event site that meet their needs at an economical rate.

**Out-of-State:** The traveler is required to choose lodging services near the event site that meet their needs at an economical rate.

**Travel Days:** If the traveler must leave before 7:00AM to arrive at the start of the event and/or return to the County after 6:00PM after the event concludes, an additional night's lodging is allowable before and/or after the event.

**Additional fees:** Fees for additional services (internet, telephone, valet, parking...) require justification to be allowable.

**Gratuities:** Gratuities are not reimbursable for any lodging services.

**Overpayments by County:** Any lodging overpayment by the County must be reimbursed by the hotel before processing a reimbursement to the traveler for any of the categories addressed in this policy. Prepaid lodging services should be accurately calculated or underestimated by excluding the taxes to prevent delays in processing travel reimbursements.

**Procurement Card:** The traveler may use the procurement card to make lodging reservations. Contact Purchasing to arrange or use the procurement card assigned to the department or traveler.

**Documentation:** The original itemized hotel statement must be submitted with the travel reimbursement claim showing a zero balance. A copy of the itemized hotel statement must be submitted with the travel reimbursement claim if the traveler used a County procurement card to purchase lodging services or prepaid by County check. Event agenda/documentation or a letter from the traveler describing the event/meeting is required. If utilizing conference negotiated hotel rates, documentation of rates is required.

#### **MEALS:**

**Texas:** Meals including gratuities will be reimbursed to the traveler at a flat rate of \$36/day. If a traveler departs after 2:00PM or returns by 12:00PM the reimbursement rate will be \$18/day for that day.

**Out-of-state:** Meals including gratuities will be reimbursed to the traveler at a flat rate of \$48/day. If a traveler departs after 2:00PM or returns by 12:00PM the reimbursement rate will be \$24/day for that day.



**Day trips:** Meals will not be reimbursed for trips that do not require an overnight stay.  
**Procurement Card:** No meal purchases are allowed on any County procurement card.  
**Documentation:** No meal receipts are required for reimbursement. Event agenda/documentation or a letter from the traveler describing the event/meeting is required.

#### **TRANSPORTATION:**

**Personal Vehicle:** Use of personal vehicle will be reimbursed at the current rate/mile set by Commissioners' Court. Mileage should be calculated using the County office location of the traveler and the event location. Mileage may not be calculated using the traveler's home. Mileage should be calculated using an employee's vehicle odometer reading or by a readily available online mapping service for travel out of Fort Bend County. If using the mileage of an online mapping service, state which mapping service was used or provide a printout of your route detailing the mileage. For local travel, odometer readings or mapping service details are not required. Departments should develop a mileage guide for employees for local travel points, if a department does not have a mileage guide, the Auditor's Office will determine if the mileage listed is reasonable.

**County Vehicle:** Fuel purchases when using a County vehicle must be made with the County fuel card. Original receipts must be provided with reimbursement request.

**Airfare:** Airfare is reimbursable at the lowest available rate based on 14 day advance purchase of a discounted coach/economy full-service seat. The payment confirmation and itinerary must be presented with the travel reimbursement form. Trip insurance is not an allowable expense.

**Rental Car:** Rental cars are limited to the negotiated TPASS rates listed at:

<http://www.window.state.tx.us/procurement/prog/stmp/stmp-rental-car-contract/vendor-comparison/>. The contact information for Avis is listed here:

<http://www.window.state.tx.us/procurement/prog/stmp/stmp-rental-car-contract/Avis/>.

The contact information for Enterprise is listed here:

<http://www.window.state.tx.us/procurement/prog/stmp/stmp-rental-car-contract/Enterprise/>. You will need to make your reservations at least 14 days in advance and provide the County's agency #: C0790. The instructions for reserving with each agency are explained at the individual web sites above. The traveler will not be reimbursed for any amount over the negotiated contract rates if a non-contract company is used at a higher rate. The traveler may use a non-contract vendor at a rate lower than the contract rates with no penalty. The original contract/receipt must be presented with the travel reimbursement form or a copy if a County procurement card is used. Optional rental car fees are not reimbursable such as GPS, prepaid fuel, premium radio, child safety seats and additional insurance.



**Other Transportation:** Other forms of transit (bus, taxi, train) are reimbursable with an original receipt.

**Additional fees:** Fees for additional services (tolls, parking...) require justification to be allowable. Optional rental car fees are not reimbursable (GPS, prepaid fuel, premium radio, additional insurance, child safety seats...). Original receipts or documentation are required for allowable fees.

**Gratuities:** Gratuities are not reimbursable for any transportation services.

**Procurement Card:** The traveler may use a County procurement card to make transportation reservations for air travel and rental car services. Contact Purchasing to arrange or use the procurement card assigned to the department or traveler.

**Documentation:** Original receipts are required for all transportation reimbursements paid by the traveler. Transportation services obtained with a County procurement card require a copy of the receipt. Additional requirements are noted within each category above. Event agenda/documentation or a letter from the traveler describing the event/meeting is required.

#### **REGISTRATION:**

**Registration fees:** Registration fees are reimbursable for events that serve a Fort Bend County purpose.

**Procurement Card:** The traveler may use a County procurement card to register for an event. Contact Purchasing to arrange or use the procurement card assigned to the department or traveler.

**Documentation:** An original receipt must be obtained upon registration and submitted with the reimbursement request if paid by the traveler. A copy of the receipt must be provided if registration is paid on a County procurement card. Event agenda/documentation or a letter from the traveler describing the event/meeting is required.

#### **GRANTS:**

Travel expenditures from Federal and State grants must also conform to the granting agency's funding requirements.

#### **PACKAGE AND GROUP TRAVEL RATES:**

The traveler may obtain a package travel rate for airfare, hotel, and/or rental car services for a combined rate of less than the individual rates pursuant to the category requirements above without penalty. The traveler may also participate in group lodging or rental car services for a combined rate of less than the individual per person rates pursuant to the category requirements without penalty.

#### **TRAVEL REIMBURSEMENT FORM:**



The traveler must use the current travel reimbursement form <http://econnect/index.aspx?page=55>) for all travel related services addressed in this policy. No other expenditures may be submitted for reimbursement on the travel reimbursement form. After completing all required information, the travel form must be signed/dated by the traveler and the department head/elected official.



# CERTIFICATE OF LIABILITY INSURANCE

-EMPSO1

OP ID: CV

DATE (MM/DD/YYYY)  
02/07/14

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

PRODUCER The Presidio Group, Inc. 5295 South 300 West #550 Salt Lake City, UT 84107 Steven L Slaugh	801-924-1400	CONTACT NAME:	
	801-924-1441	PHONE (A/C, No, Ext):	FAX (A/C, No):
		EMAIL ADDRESS:	
		INSURER(S) AFFORDING COVERAGE	NAIC #
		INSURER A: The Hartford	19682
		INSURER B:	
		INSURER C:	
		INSURER D:	
		INSURER E:	
		INSURER F:	

INSURED  
Empowered Solutions  
740 E. 3900 S. Ste. 301  
Salt Lake City, UT 84107

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

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	X X	34SBAVT2457	05/01/13	05/01/14	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COM/POP AGG \$ 4,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	X X	34UECAQ9635	02/07/14	01/25/15	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000		34SBAVT2457	11/25/13	11/25/14	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N/A	34WECRX1561	01/25/14	01/25/15	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
Fort Bend County is shown as additional insured for general liability and auto liability per attached forms SS0008 04/05 and HA9916 03/12 as their interest may appear. Waiver of subrogation applies for general liability and auto liability per attached forms SS0008 04/05 and HA9916 03/12.  
norma.weaver@fortbendcountytexas.gov

### CERTIFICATE HOLDER

FORTBEN

Fort Bend County  
Purchasing Department  
Att: Norma Weaver  
301 Jackson Street Ste #201  
Richmond, TX 77469

### CANCELLATION

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

AUTHORIZED REPRESENTATIVE

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**BUSINESS LIABILITY COVERAGE FORM**

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

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## BUSINESS LIABILITY COVERAGE FORM

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

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

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

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

### A. COVERAGES

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

##### Insuring Agreement

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

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

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

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

- b. This insurance applies:

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

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

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

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

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

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

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

## BUSINESS LIABILITY COVERAGE FORM

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

### e. Incidental Medical Malpractice

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

## 2. MEDICAL EXPENSES

### Insuring Agreement

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

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

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

## 3. COVERAGE EXTENSION - SUPPLEMENTARY PAYMENTS

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

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

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

## BUSINESS LIABILITY COVERAGE FORM

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

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

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

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

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

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

### B. EXCLUSIONS

#### 1. Applicable To Business Liability Coverage

This insurance does not apply to:

##### a. Expected Or Intended Injury

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

##### b. Contractual Liability

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

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

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

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

## BUSINESS LIABILITY COVERAGE FORM

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

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

### c. Liquor Liability

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

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

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

### d. Workers' Compensation And Similar Laws

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

### e. Employer's Liability

"Bodily injury" to:

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

- (b) Performing duties related to the conduct of the insured's business, or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of (1) above.

This exclusion applies:

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

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

### f. Pollution

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

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

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

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

**BUSINESS LIABILITY COVERAGE FORM**

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

## BUSINESS LIABILITY COVERAGE FORM

### g. Aircraft, Auto Or Watercraft

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

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

This exclusion does not apply to:

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

### h. Mobile Equipment

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

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

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

### i. War

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

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

### j. Professional Services

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

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

## BUSINESS LIABILITY COVERAGE FORM

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

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

### k. Damage To Property

"Property damage" to:

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

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

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

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

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

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

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

### l. Damage To Your Product

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

### m. Damage To Your Work

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

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

### n. Damage To Impaired Property Or Property Not Physically Injured

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

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

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

## BUSINESS LIABILITY COVERAGE FORM

### o. Recall Of Products, Work Or Impaired Property

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

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

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

### p. Personal And Advertising Injury

"Personal and advertising injury":

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

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

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

(c) Title of any literary or artistic work;

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

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

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

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

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

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

(12) Arising out of:

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

**BUSINESS LIABILITY COVERAGE FORM**

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

**q. Electronic Data**

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

**r. Employment-Related Practices**

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

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

This exclusion applies:

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

**s. Asbestos**

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

(a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";

(b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or

(c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

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

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

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

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

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

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### 2. Applicable To Medical Expenses Coverage

We will not pay expenses for "bodily injury":

- a. **Any Insured**  
To any insured, except "volunteer workers".
- b. **Hired Person**  
To a person hired to do work for or on behalf of any insured or a tenant of any insured.
- c. **Injury On Normally Occupied Premises**  
To a person injured on that part of premises you own or rent that the person normally occupies.
- d. **Workers' Compensation And Similar Laws**  
To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.
- e. **Athletics Activities**  
To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests.
- f. **Products-Completed Operations Hazard**  
Included with the "products-completed operations hazard".
- g. **Business Liability Exclusions**  
Excluded under Business Liability Coverage.

### C. WHO IS AN INSURED

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

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

### 2. Each of the following is also an insured:

#### a. Employees And Volunteer Workers

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

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

(1) "Bodily injury" or "personal and advertising injury":

(a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

(b) To the spouse, child, parent, brother or sister of that co-"employee" or that "volunteer worker" as a consequence of Paragraph (1)(a) above;

(c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or

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

If you are not in the business of providing professional health care services, Paragraph (d) does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

(2) "Property damage" to property:

(a) Owned, occupied or used by,

## BUSINESS LIABILITY COVERAGE FORM

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

### b. Real Estate Manager

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

### c. Temporary Custodians Of Your Property

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

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

### d. Legal Representative If You Die

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

### e. Unnamed Subsidiary

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

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

### 3. Newly Acquired Or Formed Organization

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

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

b. Coverage under this provision does not apply to:

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

### 4. Operator Of Mobile Equipment

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

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

### 5. Operator of Nonowned Watercraft

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

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

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

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

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

## BUSINESS LIABILITY COVERAGE FORM

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

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

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

### a. Vendors

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

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

This insurance does not apply to:

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

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

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

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

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

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

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

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

### b. Lessors Of Equipment

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

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

**c. Lessors Of Land Or Premises**

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

**d. Architects, Engineers Or Surveyors**

- (1) Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
  - (a) In connection with your premises; or
  - (b) In the performance of your ongoing operations performed by you or on your behalf.
- (2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:

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

**e. Permits Issued By State Or Political Subdivisions**

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

**f. Any Other Party**

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

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

## BUSINESS LIABILITY COVERAGE FORM

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

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

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

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

### D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE

#### 1. The Most We Will Pay

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

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

#### 2. Aggregate Limits

The most we will pay for:

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

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

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

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

#### 3. Each Occurrence Limit

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

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

#### 4. Personal And Advertising Injury Limit

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

#### 5. Damage To Premises Rented To You Limit

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

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

#### 6. How Limits Apply To Additional Insureds

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

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

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

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

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

### E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS

#### 1. Bankruptcy

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

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

##### a. Notice Of Occurrence Or Offense

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

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

##### b. Notice Of Claim

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

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

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

##### c. Assistance And Cooperation Of The Insured

You and any other involved insured must:

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

##### d. Obligations At The Insured's Own Cost

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

##### e. Additional Insured's Other Insurance

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

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

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

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

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

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

### 3. Financial Responsibility Laws

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

### 4. Legal Action Against Us

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

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

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

### 5. Separation Of Insureds

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

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

### 6. Representations

#### a. When You Accept This Policy

By accepting this policy, you agree:

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

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

#### b. Unintentional Failure To Disclose Hazards

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

### 7. Other Insurance

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

#### a. Primary Insurance

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

#### b. Excess Insurance

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

##### (1) Your Work

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

##### (2) Premises Rented To You

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

##### (3) Tenant Liability

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

##### (4) Aircraft, Auto Or Watercraft

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

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

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

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

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

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

That is other insurance available to an additional insured.

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

#### (a) Primary Insurance When Required By Contract

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

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

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

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

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

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

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

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

#### c. Method Of Sharing

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

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

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

#### a. Transfer Of Rights Of Recovery

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

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

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

**BUSINESS LIABILITY COVERAGE FORM**

**F. OPTIONAL ADDITIONAL INSURED COVERAGES**

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

**1. Additional Insured - Designated Person Or Organization**

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

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

**2. Additional Insured - Managers Or Lessors Of Premises**

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

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

This insurance does not apply to:

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

**3. Additional Insured - Grantor Of Franchise**

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

**4. Additional Insured - Lessor Of Leased Equipment**

a. WHO IS AN INSURED under Section C. is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Lessor of Leased Equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

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

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

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

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

This insurance does not apply to:

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

**6. Additional Insured - State Or Political Subdivision - Permits**

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

## BUSINESS LIABILITY COVERAGE FORM

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

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

This insurance does not apply to:

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

### 7. Additional Insured – Vendors

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

- b. The insurance afforded to the vendor is subject to the following additional exclusions:

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

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

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

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

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

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

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

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

### 8. Additional Insured – Controlling Interest

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

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

## BUSINESS LIABILITY COVERAGE FORM

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

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

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

(1) In the performance of your ongoing operations for the additional insured(s); or

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

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

(1) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or

(2) Supervisory, inspection, architectural or engineering activities.

### 10. Additional Insured – Co-Owner Of Insured Premises

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

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

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

## G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS

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

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

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

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

However, "advertisement" does not include:

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

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

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

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

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

5. "Bodily injury" means physical:

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

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

6. "Coverage territory" means:

**BUSINESS LIABILITY COVERAGE FORM**

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
  - b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above;
  - c. All other parts of the world if the injury or damage arises out of:
    - (1) Goods or products made or sold by you in the territory described in a. above;
    - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
    - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication
- provided the insured's responsibility to pay damages is determined in the United States of America (including its territories and possessions), Puerto Rico or Canada, in a "suit" on the merits according to the substantive law in such territory, or in a settlement we agree to.
- 7. "Electronic data" means information, facts or programs:
    - a. Stored as or on;
    - b. Created or used on; or
    - c. Transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
  - 8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
  - 9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
  - 10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
  - 11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
    - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or

- b. You have failed to fulfill the terms of a contract or agreement;
- if such property can be restored to use by:
- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
  - b. Your fulfilling the terms of the contract or agreement.
12. "Insured contract" means:
- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is subject to the Damage To Premises Rented To You limit described in Section D. - Liability and Medical Expenses Limits of Insurance.
  - b. A sidetrack agreement;
  - c. Any easement or license agreement, including an easement or license agreement in connection with construction or demolition operations on or within 50 feet of a railroad;
  - d. Any obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
  - e. An elevator maintenance agreement; or
  - f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
- Paragraph f. includes that part of any contract or agreement that indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing.
- However, Paragraph f. does not include that part of any contract or agreement:

## BUSINESS LIABILITY COVERAGE FORM

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

## BUSINESS LIABILITY COVERAGE FORM

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

**BUSINESS LIABILITY COVERAGE FORM**

- b. Donates his or her work;
  - c. Acts at the direction of and within the scope of duties determined by you; and
  - d. Is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.
24. "Your product":
- a. Means:
    - (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
      - (a) You;
      - (b) Others trading under your name; or
      - (c) A person or organization whose business or assets you have acquired; and
    - (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
  - b. Includes:
    - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- (2) The providing of or failure to provide warnings or instructions.
- c. Does not include vending machines or other property rented to or located for the use of others but not sold.
25. "Your work":
- a. Means:
    - (1) Work or operations performed by you or on your behalf; and
    - (2) Materials, parts or equipment furnished in connection with such work or operations.
  - b. Includes:
    - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
    - (2) The providing of or failure to provide warnings or instructions.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## COMMERCIAL AUTOMOBILE BROAD FORM ENDORSEMENT

This endorsement modifies insurance provided under the following:

### BUSINESS AUTO COVERAGE FORM

To the extent that the provisions of this endorsement provide broader benefits to the "insured" than other provisions of the Coverage Form, the provisions of this endorsement apply.

#### 1. BROAD FORM INSURED

##### A. Subsidiaries and Newly Acquired or Formed Organizations

The Named Insured shown in the Declarations is amended to include:

- (1) Any legal business entity other than a partnership or joint venture, formed as a subsidiary in which you have an ownership interest of more than 50% on the effective date of the Coverage Form. However, the Named Insured does not include any subsidiary that is an "insured" under any other automobile policy or would be an "insured" under such a policy but for its termination or the exhaustion of its Limit of Insurance.
- (2) Any organization that is acquired or formed by you and over which you maintain majority ownership. However, the Named Insured does not include any newly formed or acquired organization:
  - (a) That is a partnership or joint venture,
  - (b) That is an "insured" under any other policy,
  - (c) That has exhausted its Limit of Insurance under any other policy, or
  - (d) 180 days or more after its acquisition or formation by you, unless you have given us notice of the acquisition or formation.

Coverage does not apply to "bodily injury" or "property damage" that results from an "accident" that occurred before you formed or acquired the organization.

##### B. Employees as Insureds

Paragraph A.1. - WHO IS AN INSURED - of SECTION II - LIABILITY COVERAGE is amended to add:

- d. Any "employee" of yours while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

##### C. Lessors as Insureds

Paragraph A.1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add:

- e. The lessor of a covered "auto" while the "auto" is leased to you under a written agreement if:
  - (1) The agreement requires you to provide direct primary insurance for the lessor and
  - (2) The "auto" is leased without a driver.Such a leased "auto" will be considered a covered "auto" you own and not a covered "auto" you hire.

##### D. Additional Insured if Required by Contract

(1) Paragraph A.1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add:

- f. When you have agreed, in a written contract or written agreement, that a person or organization be added as an additional insured on your business auto policy, such person or organization is an "insured", but only to the extent such person or organization is liable for "bodily injury" or "property damage" caused by the conduct of an "insured" under paragraphs a. or b. of Who Is An Insured with regard to the ownership, maintenance or use of a covered "auto."

The insurance afforded to any such additional insured applies only if the "bodily injury" or "property damage" occurs:

- (1) During the policy period, and
- (2) Subsequent to the execution of such written contract, and
- (3) Prior to the expiration of the period of time that the written contract requires such insurance be provided to the additional insured.

(2) How Limits Apply

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the most we will pay on behalf of such additional insured is the lesser of:

- (a) The limits of insurance specified in the written contract or written agreement; or
- (b) The Limits of Insurance shown in the Declarations.

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

(3) Additional Insureds Other Insurance

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

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

(4) Duties in The Event Of Accident, Claim, Suit or Loss

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the additional insured shall be required to comply with the provisions in LOSS CONDITIONS 2. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS - OF SECTION IV - BUSINESS AUTO CONDITIONS, in the same manner as the Named Insured.

**E. Primary and Non-Contributory if Required by Contract**

Only with respect to insurance provided to an additional insured in 1.D. - Additional Insured If Required by Contract, the following provisions apply:

(3) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract or written agreement that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in Other Insurance 5.d.

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

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

Paragraphs (3) and (4) do not apply to other insurance to which the additional insured has been added as an additional insured.

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

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

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

We will share the remaining loss, if any, by the method described in Other Insurance 5.d.

**2. AUTOS RENTED BY EMPLOYEES**

Any "auto" hired or rented by your "employee" on your behalf and at your direction will be considered an "auto" you hire.

The OTHER INSURANCE Condition is amended by adding the following:

If an "employee's" personal insurance also applies on an excess basis to a covered "auto" hired or rented by your "employee" on your behalf and at your direction, this insurance will be primary to the "employee's" personal insurance.

**3. AMENDED FELLOW EMPLOYEE EXCLUSION**

**EXCLUSION 5. - FELLOW EMPLOYEE -** of SECTION II - LIABILITY COVERAGE does not apply if you have workers' compensation insurance in-force covering all of your "employees".

Coverage is excess over any other collectible insurance.

**4. HIRED AUTO PHYSICAL DAMAGE COVERAGE**

If hired "autos" are covered "autos" for Liability Coverage and if Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form for any "auto" you own, then the Physical Damage Coverages provided are extended to "autos" you hire or borrow, subject to the following limit.

The most we will pay for "loss" to any hired "auto" is:

- (1) \$100,000;
- (2) The actual cash value of the damaged or stolen property at the time of the "loss"; or
- (3) The cost of repairing or replacing the damaged or stolen property,

whichever is smallest, minus a deductible. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage. No deductible applies to "loss" caused by fire or lightning. Hired Auto Physical Damage coverage is excess over any other collectible insurance. Subject to the above limit, deductible and excess provisions, we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own.

We will also cover loss of use of the hired "auto" if it results from an "accident", you are legally liable and the lessor incurs an actual financial loss, subject to a maximum of \$1000 per "accident".

This extension of coverage does not apply to any "auto" you hire or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households.

**5. PHYSICAL DAMAGE - ADDITIONAL TEMPORARY TRANSPORTATION EXPENSE COVERAGE**

Paragraph A.4.a. of SECTION III - PHYSICAL DAMAGE COVERAGE is amended to provide a limit of \$50 per day and a maximum limit of \$1,000.

**6. LOAN/LEASE GAP COVERAGE**

Under SECTION III - PHYSICAL DAMAGE COVERAGE, in the event of a total "loss" to a covered "auto", we will pay your additional legal obligation for any difference between the actual cash value of the "auto" at the time of the "loss" and the "outstanding balance" of the loan/lease.

"Outstanding balance" means the amount you owe on the loan/lease at the time of "loss" less any amounts representing taxes; overdue payments; penalties, interest or charges resulting from overdue payments; additional mileage charges; excess wear and tear charges; lease termination fees; security deposits not returned by the lessor; costs for extended warranties, credit life insurance, health, accident or disability insurance purchased with the loan or lease; and carry-over balances from previous loans or leases.

**7. AIRBAG COVERAGE**

Under Paragraph B. EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

The exclusion relating to mechanical breakdown does not apply to the accidental discharge of an airbag.

**8. ELECTRONIC EQUIPMENT - BROADENED COVERAGE**

a. The exceptions to Paragraphs B.4 - EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE are replaced by the following:

Exclusions 4.c. and 4.d. do not apply to equipment designed to be operated solely by use of the power from the "auto's" electrical system that, at the time of "loss", is:

- (1) Permanently installed in or upon the covered "auto";
- (2) Removable from a housing unit which is permanently installed in or upon the covered "auto";
- (3) An integral part of the same unit housing any electronic equipment described in Paragraphs (1) and (2) above; or

- (4) Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system.

b. Section III – Version CA 00 01 03 10 of the Business Auto Coverage Form, Physical Damage Coverage, Limit of Insurance, Paragraph C.2 and Version CA 00 01 10 01 of the Business Auto Coverage Form, Physical Damage Coverage, Limit of Insurance, Paragraph C are each amended to add the following:

\$1,500 is the most we will pay for "loss" in any one "accident" to all electronic equipment (other than equipment designed solely for the reproduction of sound, and accessories used with such equipment) that reproduces, receives or transmits audio, visual or data signals which, at the time of "loss", is:

- (1) Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;
- (2) Removable from a permanently installed housing unit as described in Paragraph 2.a. above or is an integral part of that equipment; or
- (3) An integral part of such equipment.

c. For each covered "auto", should loss be limited to electronic equipment only, our obligation to pay for, repair, return or replace damaged or stolen electronic equipment will be reduced by the applicable deductible shown in the Declarations, or \$250, whichever deductible is less.

**9. EXTRA EXPENSE - BROADENED COVERAGE**

Under Paragraph A. - COVERAGE - of SECTION III - PHYSICAL DAMAGE COVERAGE, we will pay for the expense of returning a stolen covered "auto" to you.

**10. GLASS REPAIR - WAIVER OF DEDUCTIBLE**

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

No deductible applies to glass damage if the glass is repaired rather than replaced.

**11. TWO OR MORE DEDUCTIBLES**

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

If another Hartford Financial Services Group, Inc. company policy or coverage form that is not an automobile policy or coverage form applies to the same "accident", the following applies:

- (1) If the deductible under this Business Auto Coverage Form is the smaller (or smallest) deductible, it will be waived;
- (2) If the deductible under this Business Auto Coverage Form is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

**12. AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS**

The requirement in LOSS CONDITIONS 2.a. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS - of SECTION IV - BUSINESS AUTO CONDITIONS that you must notify us of an "accident" applies only when the "accident" is known to:

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

**13. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS**

If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure.

**14. HIRED AUTO - COVERAGE TERRITORY**

Paragraph e. of GENERAL CONDITIONS 7. - POLICY PERIOD, COVERAGE TERRITORY - of SECTION IV - BUSINESS AUTO CONDITIONS is replaced by the following:

e. For short-term hired "autos", the coverage territory with respect to Liability Coverage is anywhere in the world provided that if the "insured's" responsibility to pay damages for "bodily injury" or "property damage" is determined in a "suit," the "suit" is brought in the United States of America, the territories and possessions of the United States of America, Puerto Rico or Canada or in a settlement we agree to.

**15. WAIVER OF SUBROGATION**

TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US - of SECTION IV - BUSINESS AUTO CONDITIONS is amended by adding the following:

We waive any right of recovery we may have against any person or organization with whom you have a written contract that requires such waiver because of payments we make for damages under this Coverage Form.

**16. RESULTANT MENTAL ANGUISH COVERAGE**

The definition of "bodily injury" in SECTION V-DEFINITIONS is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by any person, including mental anguish or death resulting from any of these.

**17. EXTENDED CANCELLATION CONDITION**

Paragraph 2. of the COMMON POLICY CONDITIONS - CANCELLATION - applies except as follows:

If we cancel for any reason other than nonpayment of premium, we will mail or deliver to the first Named Insured written notice of cancellation at least 60 days before the effective date of cancellation.

**18. HYBRID, ELECTRIC, OR NATURAL GAS VEHICLE PAYMENT COVERAGE**

In the event of a total loss to a "non-hybrid" auto for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended as follows:

- a. If the auto is replaced with a "hybrid" auto or an auto powered solely by electricity or natural gas, we will pay an additional 10%, to a maximum of \$2,500, of the "non-hybrid" auto's actual cash value or replacement cost, whichever is less.
- b. The auto must be replaced and a copy of a bill of sale or new lease agreement received by us within 60 calendar days of the date of "loss,"

c. Regardless of the number of autos deemed a total loss, the most we will pay under this Hybrid, Electric, or Natural Gas Vehicle Payment Coverage provision for any one "loss" is \$10,000.

For the purposes of the coverage provision,

a.A "non-hybrid" auto is defined as an auto that uses only an internal combustion engine to move the auto but does not include autos powered solely by electricity or natural gas.

b.A "hybrid" auto is defined as an auto with an internal combustion engine and one or more electric motors; and that uses the internal combustion engine and one or more electric motors to move the auto, or the internal combustion engine to charge one or more electric motors, which move the auto.

**19. VEHICLE WRAP COVERAGE**

In the event of a total loss to an "auto" for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended to add the following:

In addition to the actual cash value of the "auto", we will pay up to \$1,000 for vinyl vehicle wraps which are displayed on the covered "auto" at the time of total loss. Regardless of the number of autos deemed a total loss, the most we will pay under this Vehicle Wrap Coverage provision for any one "loss" is \$5,000. For purposes of this coverage provision, signs or other graphics painted or magnetically affixed to the vehicle are not considered vehicle wraps.