

PORT OF EVERETT  
JOB ORDER CONTRACTING FOR  
GENERAL CONSTRUCTION SERVICES

AGREEMENT FORM

**PORT OF EVERETT AGREEMENT  
FOR JOB ORDER CONTRACTING (IDIQ) 2024  
CONTRACT NO. 9-2024-14**

THIS AGREEMENT is made and entered into by and between the Port of Everett (hereinafter called PORT) and Saybr Contractors, Inc. a corporation organized in the State of Washington, (hereinafter called CONTRACTOR). PORT and CONTRACTOR in consideration of the mutual covenants hereinafter set forth, agree as follows:

**ARTICLE 1 - WORK**

CONTRACTOR shall complete indefinite delivery – indefinite quantity public work as specified or indicated in the Contract Documents.

The Work is generally described as follows:

The Work of this Contract will be set forth in the Detailed Scopes of Work Referenced in the individual Job Orders. The Contractor is required to complete each approved Detailed Scope of Work for the Job Order Price within the Job Order Completion Time.

The value of the Job Order Price Proposal shall be calculated by summing the total of the calculation for each pre-priced task (unit price x quantity x adjustment factor) plus the value of all the Non-Pre-Priced tasks.

**ARTICLE 2 – COOPERATIVE PURCHASING**

1. The PORT has entered into an Interagency Agreement with Sourcewell, a State of Minnesota local government agency and service cooperative created under the laws of the State of Minnesota (Minnesota Statutes Section 123A.21) that, among other things, offers indefinite quantity, indefinite delivery construction procurement solutions to government entities. This Interagency Agreement establishes a Job Order Contractor program; participation will be open to public entities located within the State of Washington.
2. The CONTRACTOR may extend its offer to the PORT to other Washington State agencies for the same cost, terms, and conditions, provided that the Washington State agency enters into an Interlocal Agreement with the PORT and is eligible to utilize the Sourcewell purchasing cooperative.
3. The PORT will provide capacity from its Job Order Contract; Sourcewell will provide contract administration and will be the main point of contact for the CONTRACTOR and Washington State Agency.
4. Neither the Port or Sourcewell accepts any responsibility for agreements, contracts or purchase orders issued by other public agencies to the successful party. Each public agency accepts responsibility for compliance with any additional or varying laws and regulations governing purchase by or on behalf of the public agency. The Port accepts no responsibility for the

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performance of the successful party in providing services to other public agencies, nor any responsibility for the payment price to the successful party for other public-agency purchases.

**ARTICLE 3 - CONTRACT TIME**

- 3.1 The Base Term of the Agreement will be for two (2) years commencing on the Effective Date.
- 3.2 There is one (1) bilateral, one (1) year Option Term. Both parties must agree to extend the Agreement for the Option Term.
- 3.3 All Job Orders issued during the term of this Agreement shall be valid and in effect, notwithstanding that the Job Order may be performed, payments may be made, and the guarantee period may continue after such period has expired. All terms and conditions of the Contract Documents apply to each Job Order.
- 3.4 The CONTRACTOR shall commence work upon issuance of a Job Order, and shall complete the Detailed Scope of Work for the Job Order Price within the Job Order Completion Time.
- 3.5 Liquidated Damages: PORT and CONTRACTOR recognize that time is of the essence of this Agreement and that PORT will suffer financial loss if the Detailed Scope of Work is not completed within the Job Order Completion Time, plus any extensions thereof allowed in accordance with Article 15 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by PORT if the Detailed Scope of Work is not completed on time. Accordingly, instead of requiring any such proof, PORT and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay PORT liquidated damages as outline below and further defined in for each day that expires after the Job Order Completion Time.

**Schedule of Liquidated Damages**

Value of Job Order	Liquidated Damages
\$40 to \$150,000.00	\$500/Day
\$150,000.01to \$350,000.00	\$1,000/Day
\$350,000.01 or Greater	\$1,500/Day

**ARTICLE 4 - CONTRACT PRICE**

- 4.1 PORT shall pay CONTRACTOR for completion of the Detailed Scope of Work in the Job Order in accordance with the Contract Documents.
- 4.2 The Agreement is an indefinite delivery, indefinite quantity contract for general construction work and services. The Minimum Contract Value of Job Orders that the CONTRACTOR is

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guaranteed to the opportunity to perform under this Agreement is \$25,000. The Port reserves the right to issue Job Orders, or provide contract capacity to other agencies (cooperative purchasing), up to the maximum amount specified in RCW 39.10.40 of \$4,000,000 per year. The Maximum Contract Value shall not exceed the value set forth in the RCW. Any unused capacity from the previous year may be carried over for one year and added to the immediately following year's limit. The maximum annual volume including unused capacity shall not exceed the limit for two years.

- 4.3 The CONTRACTOR shall perform all Work required, necessary, proper for or incidental to the Detailed Scope of Work called for in each individual Job Order issued pursuant to the Agreement for the Unit Prices set forth in the Construction Task Catalog® and the following Adjustment Factors:
- A. Normal Working Hours (7:00 a.. to 6:00 p.m. Monday to Friday, except for PORT Holidays) Adjustment Factor: **1.435**
  - B. Other Than Normal Working Hours (6:01 p.m. to 6:59 a.m. Monday to Friday, and all-day Saturday, Sunday, and PORT Holidays: Adjustment Factor: **1.465**
  - C. Non-Pre-Priced Adjustment Factor: **1.350**

**ARTICLE 5 - PAYMENT PROCEDURES**

CONTRACTOR shall submit Applications for Payment in accordance with the General Conditions. Applications for Payment will be processed by Project Manager as provided in the General Conditions.

- 5.1 Progress Payments. PORT shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by Project Manager, within thirty (30) working days from application for payment. All progress payments will be on the basis of the progress of the Work as established in the General Conditions and the Tasks in the Construction Task Catalog for the Unit Price appearing therein multiplied by the Adjustment Factors listed above in Article 4.
- 5.2 Final Payment: Upon final completion and acceptance of the work in accordance with General Conditions, PORT shall pay the remainder of the Contract Price as recommended by the Project Manager.

**ARTICLE 6 - CONTRACTOR'S REPRESENTATIONS**

CONTRACTOR, by submitting a Proposal and entering into this AGREEMENT, makes the following representations:

- 6.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.
- 6.2 CONTRACTOR is fully qualified to perform the Work to be performed hereunder in a competent and professional manner.

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- 6.3 CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing underground facilities at or contiguous to the site and assumes responsibility for the accurate location of said underground facilities. No additional
- 6.5 CONTRACTOR has given PORT written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by PORT is acceptable to CONTRACTOR.
- 6.6 CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION
- 6.6.1 Pursuant to 2 CFR 200.213, the Contractor, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the Contractor is unable to certify, they must provide an explanation as to why they cannot prior to signing the agreement. The Contractor shall provide immediate written notice to the Port if at any time the Contractor learns that its certification was erroneous or has become erroneous by reason of changed circumstances, or have received notice that they have been suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in 2 CFR 180.
- 6.6.2 The Contractor agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction. Pursuant to 2 CFR 180.330, the Contractor is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements. The Contractor agrees that it will include this clause without modification in all lower tier covered transactions.

**ARTICLE 7 - CONTRACT DOCUMENTS**

The Contract Documents which comprise the entire agreement between PORT and CONTRACTOR concerning the work consist of the following:

- 7.1 This Agreement (pages 1 to 6, inclusive).
- 7.2 Exhibits to this Agreement.
- a. Performance and Payment Bonds, identified as Exhibit A and consisting of 3 pages.
  - b. Insurance Certificate(s) and additional insured endorsements identified as Exhibit B and consisting of 20 pages.
  - c. Retainage Bond, identified as Exhibit C, and consisting of 2 pages.
  - d. Notice-of-Award.
- 7.3 General Conditions (pages 1 to 77, inclusive), incorporated by reference

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- 7.4 Federal Grant Supplemental Conditions (pages 1 through 5, inclusive), incorporated by reference
- 7.5 Addenda numbers 1 to 2, inclusive, incorporated by reference
- 7.6 CONTRACTOR's Proposal, incorporated by reference
- 7.7 The Construction Task Catalog® Pricing, incorporated by reference
- 7.8 The Job Order Contract Technical Specifications, incorporated by reference
- 7.9 All Job Orders and related documents, including but not limited to: the Detailed Scope of Work with Drawings and Specifications, Price Proposal, Job Order Proposal, Notice to Proceed, submittals, record documents, and all require close-out documentation

There are no Contract Documents other than those listed above in this Article 7. The Contract Documents may only be amended, modified or supplemented as provided in the General Conditions or Supplementary Conditions.

**ARTICLE 8 - MISCELLANEOUS**

- 8.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.
- 8.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 8.3 PORT and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.
- 8.4 Each person signing this agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and bind and obligate such party with respect to all provisions contained in this agreement.
- 8.5 Original signatures transmitted and received via facsimile or other electronic transmission of a scanned document, (e.g., PDF or similar format) are true and valid signatures for all purposes hereunder and shall bind the parties to the same extent as that of an original signature. Any such facsimile or electronic mail transmission shall constitute the final agreement of the parties and conclusive proof of such agreement. Any such electronic counterpart shall be of sufficient quality to be legible either electronically or when printed as hardcopy. The Port shall determine legibility and acceptability for public record purposes. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.

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Article 9 – AUTHORIZED REPRESENTATIVES

- 9.1 The Port of Everett’s Authorized representative is its Procurement & Contracts Manager.
- 9.2 The Sourcwell Authorized representative is its Chief Procurement Officer.
- 9.3 The Contractor’s Authorized Representative is its CEO.  
If the Contractor’s Authorized Representative changes at any time during this Contract, Contractor must promptly notify the Port in writing.

IN WITNESS WHEREOF, all portions of the Contract Documents have been signed or identified by PORT and CONTRACTOR.

This Agreement will be effective on July 1, 2024.

PORT OF EVERETT  
 By *Lisa Lefever*  
0B7AD46E38FE4CC...  
 Title CEO/Executive Director

SAYBR CONTRACTORS, INC.  
 By *Karen Say-Valadez*  
 Title CEO

Address for giving notices  
 1205 Craftsman Way, Suite 200  
 Everett, WA 98201

Address for giving notices  
 3852 S 66th Street  
 Tacoma, WA 98409

**EXHIBIT A**  
**Performance and Payment Bonds**

**PERFORMANCE BOND**

Bond no. 2356957

KNOW ALL MEN BY THESE PRESENTS:

That Saybr Contractors, Inc.  
of Tacoma, Washington, as principal,  
and Swiss Re Corporate Solutions America Insurance Corporation  
of 1200 Main Street, Suite 800, Kansas City, MO 64105, as surety, firmly  
bound and held by the Port of Everett in the penal sum of Two Million

00/100<sup>th</sup>'s cents (\$ 2,000,000.00), good and lawful money of the  
United States of America for the payment whereof, well and truly to be paid to the Port of Everett, we  
bind ourselves, our heirs, successors, executors, administrators, and assigns, jointly and severally, firmly  
by these presents.

WHEREAS, the said principal has entered into written contract with said Port of Everett, on the  
1st of July A.D., 2024 for the construction of: Job Order Contract (IDIQ) 2024 / Contract No. 9-2024-14

said work to be done according to the terms of said contract.

NOW, THEREFORE, the conditions of the foregoing obligation are such that if the said principal and  
surety shall well and truly perform and complete all obligations and work under said contract and shall  
indemnify and save harmless the Port of Everett and employees thereof against any damages or loss  
which they or any of them may suffer or for which they or any of them become liable by the default,  
neglect, or carelessness on the part of said principal, his agents, servants, or employees, or by any acts  
or omission of said principal, his agents, servants, or employees, and surety in performance of said  
Contract, and if the principal shall reimburse upon demand of the Port of Everett any sums paid to him  
which exceed the final payment determined to be due upon completion of the project, then these  
presents shall become null and void; otherwise they shall remain in full force and effect.

IN WITNESS WHEREOF, We have hereunto set our hands and seals at Seattle, Washington, this 7th  
day of June A.D., 2024.

Principal: Saybr Contractors, Inc. 

By (Signature): \_\_\_\_\_

By (Print Name and Title): William Durkin - President

Surety: Swiss Re Corporate Solutions America Insurance Corporation

By (Signature): 

By (Print Name and Title): Roxana Palacios, Attorney-in-Fact

Agent Name: USI Insurance Services Phone No. 206-441-6300

Agent Mailing Address: 601 Union Street, Ste. 1000, Seattle, Wa 98101



**PAYMENT BOND**

Bond no. 2356957

KNOW ALL MEN BY THESE PRESENTS:


That Saybr Contractors, Inc.  
of Tacoma, Washington, as principal,  
and Swiss Re Corporate Solutions America Insurance Corporation  
of 1200 Main Street, Suite 800, Kansas City, MO 64105, as surety, firmly  
bound and held by the Port of Everett in the penal sum of Two Million  
dollars and 00/100<sup>th</sup>'s cents (\$ 2,000,000.00), good and lawful  
money of the United States of America for the payment whereof, well and truly to be paid to the Port of  
Everett, we bind ourselves, our heirs, successors, executors, administrators, and assigns, jointly and  
severally, firmly by these presents.

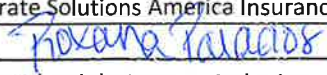
WHEREAS, the said principal has entered into written contract with said Port of Everett, on the  
1st of July A.D., 2024 for the construction of: Job Order Contract (IDIQ) 2024 / Contract No. 9-2024-14

said work to be done according to the terms of said contract.

NOW, THEREFORE, the conditions of the foregoing obligation are such that if the said principal shall  
comply with all requirements of law and pay, as they become due, all just claims for labor performed and  
materials and supplies furnished upon or for the work under said contract, whether said labor be  
performed and said materials and supplies be furnished under the original contract, any subcontract, or  
any and all duly authorized modifications thereto, and shall indemnify and save harmless the Port of  
Everett and employees thereof against any damage or loss which they or any of them suffer or for which  
they or any of them become liable by the default of said principal, or by any neglect or carelessness on the  
part of said principal, his agents, servants, or employees, then these presents shall become null and void;  
otherwise they shall remain in full force and effect.

IN WITNESS WHEREOF, We have hereunto set our hands and seals at Seattle, Washington, this 7th  
day of June A.D., 2024.

Principal: Saybr Contractors, Inc.  
By (Signature):   
By (Print Name and Title): William Durkin - President

Surety: Swiss Re Corporate Solutions America Insurance Corporation  
By (Signature):   
By (Print Name and Title): Roxana Palacios, Attorney-in-Fact  
Agent Name: USI Insurance Services Phone No. 206-441-6300  
Agent Mailing Address: 601 Union Street, Ste. 1000, Seattle, Wa 98101

**SWISS RE CORPORATE SOLUTIONS**

SWISS RE CORPORATE SOLUTIONS AMERICA INSURANCE CORPORATION ("SRCSAIC")  
SWISS RE CORPORATE SOLUTIONS PREMIER INSURANCE CORPORATION ("SRCSPIC")  
WESTPORT INSURANCE CORPORATION ("WIC")

**GENERAL POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS, THAT SRCSAIC, a corporation duly organized and existing under laws of the State of Missouri, and having its principal office in the City of Kansas City, Missouri, and SRCSPIC, a corporation organized and existing under the laws of the State of Missouri and having its principal office in the City of Kansas City, Missouri, and WIC, organized under the laws of the State of Missouri, and having its principal office in the City of Kansas City, Missouri, each does hereby make, constitute and appoint:

KATHLEEN M. MITCHELL, SCOTT C. ALDERMAN, DEBBIE LINDSTROM, JAMIE ARMFIELD, ROXANA PALACIOS, SANDRA STEWART,  
HOLLY E. ULFERS, AMBER ENGEL, KRISTINE SANTAMARIA, MARINA MATYUNIN, TATIANA GEFTER, TARA KOLOSKI and KATHY NYE

JOINTLY OR SEVERALLY

Its true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver, for and on its behalf and as its act and deed, bonds or other writings obligatory in the nature of a bond on behalf of each of said Companies, as surety, on contracts of suretyship as are or may be required or permitted by law, regulation, contract or otherwise, provided that no bond or undertaking or contract or suretyship executed under this authority shall exceed the amount of:

TWO HUNDRED MILLION (\$200,000,000.00) DOLLARS

This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Boards of Directors of both SRCSAIC and SRCSPIC at meetings duly called and held on the 18th of November 2021 and WIC by written consent of its Executive Committee dated July 18, 2011.

"RESOLVED, that any two of the President, any Managing Director, any Senior Vice President, any Vice President, the Secretary or any Assistant Secretary be, and each or any of them hereby is, authorized to execute a Power of Attorney qualifying the attorney named in the given Power of Attorney to execute on behalf of the Corporation bonds, undertakings and all contracts of surety, and that each or any of them hereby is authorized to attest to the execution of any such Power of Attorney and to attach therein the seal of the Corporation; and it is

FURTHER RESOLVED, that the signature of such officers and the seal of the Corporation may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be binding upon the Corporation when so affixed and in the future with regard to any bond, undertaking or contract of surety to which it is attached."



By Erik Janssens  
Erik Janssens, Senior Vice President of SRCSAIC & Senior Vice President of SRCSPIC & Senior Vice President of WIC

By Gerald Jagrowski  
Gerald Jagrowski, Vice President of SRCSAIC & Vice President of SRCSPIC & Vice President of WIC

IN WITNESS WHEREOF, SRCSAIC, SRCSPIC, and WIC have caused their official seals to be hereunto affixed, and these presents to be signed by their authorized officers

this 21ST day of JULY, 20 23

State of Illinois  
County of Cook

SS

**Swiss Re Corporate Solutions America Insurance Corporation**  
**Swiss Re Corporate Solutions Premier Insurance Corporation**  
**Westport Insurance Corporation**

On this 21ST day of JULY, 20 23, before me, a Notary Public personally appeared Erik Janssens, Senior Vice President of SRCSAIC and Senior Vice President of SRCSPIC and Senior Vice President of WIC and Gerald Jagrowski, Vice President of SRCSAIC and Vice President of SRCSPIC and Vice President of WIC, personally known to me, who being by me duly sworn, acknowledged that they signed the above Power of Attorney as officers of and acknowledged said instrument to be the voluntary act and deed of their respective companies.



Christina Manisco  
Christina Manisco, Notary

I, Jeffrey Goldberg, the duly elected Senior Vice President and Assistant Secretary of SRCSAIC and SRCSPIC and WIC, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney given by said SRCSAIC and SRCSPIC and WIC, which is still in full force and effect.

IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Companies this 7th day of June, 20 24.

Jeffrey Goldberg  
Jeffrey Goldberg, Senior Vice President & Assistant Secretary of SRCSAIC and SRCSPIC and WIC

**EXHIBIT B**  
**Insurance Certificate(s) and**  
**Additional Insured Endorsements**



Policy Number: VRS0007506  
Effective Date: 07/01/2024  
Expiration Date: 07/01/2025

**VIRTUE RISK PARTNERS**  
**VIRTUE PACK**  
**COMMON POLICY CONDITIONS**

This endorsement modifies insurance provided under VIRTUE PACK SERVICE BUSINESS PACKAGE POLICY.

Notwithstanding anything contained to the contrary in this VIRTUE PACK Service Business Package Policy, it is hereby agreed that all coverages bound and scheduled in the VIRTUE PACK Service Business Package Policy Declarations or the Contractors Pollution Liability Supplemental Declarations are subject to the following terms and conditions. In the event of a conflict between the provisions of these Common Policy Conditions and any Coverage Part, the provisions of these Common Policy Conditions shall control.

**A. LIMITS OF LIABILITY AND DEDUCTIBLE - ALL COVERAGE PARTS**

1. With the exception of any defense costs paid under the Commercial General Liability Coverage Part, the General Aggregate Limit Applicable to All Coverage Parts Combined, shown in the Declarations under Item III: Limits of Liability, is the most we will pay for the sum of CLAIMS, CLAIMS EXPENSES, occurrences or damages under all Coverage Parts, Optional Coverages, Supplemental Coverages, and Supplementary Payments under this VIRTUE PACK Service Business Package Policy.
2. If any CLAIM under any Coverage Part of this VIRTUE PACK Service Business Package Policy applies to multiple Coverage Parts, then the General Aggregate Limit Applicable to All Coverage Parts Combined, shown in the Declarations shall be limited to the highest applicable Limit of Liability payable under any one of the applicable Coverage Parts, with the exception of any applicable Excess Liability Coverage.

**B. ADDITIONAL INSURED**

1. It is understood and agreed that Section II. WHO IS AN INSURED of the Commercial General Liability Coverage Part and Section IV. DEFINITIONS, Paragraph I. INSURED of the Contractors Pollution Legal Liability and Professional Liability Coverage Parts, as applicable, are amended to include ADDITIONAL INSUREDS, but only with respect to liability for "bodily injury," "property damage," "personal and advertising injury" or LOSS caused, in whole or in part, by:
  - a) "your work", YOUR SERVICES, or PROFESSIONAL SERVICES performed for that ADDITIONAL INSURED and included in the "products-completed operations hazard";
  - b) Your acts or omissions in the performance of your ongoing operations for that ADDITIONAL INSURED; or
  - c) The acts or omissions of those acting on your behalf in the performance of your ongoing operations for that ADDITIONAL INSURED.

However:

1. The insurance afforded to such ADDITIONAL INSURED only applies to the extent permitted by law; and
  2. If coverage provided to the ADDITIONAL INSURED is required by a contract or agreement, the insurance afforded to such ADDITIONAL INSURED will not be broader than that which you are required by the contract or agreement to provide for such ADDITIONAL INSURED.
2. With respect to the insurance afforded to any ADDITIONAL INSURED, the following is added to Section III. LIMITS OF INSURANCE of the Commercial General Liability Coverage Part and Section V. LIMITS OF LIABILITY AND DEDUCTIBLE of the Contractors Pollution Legal Liability and Professional Liability Coverage Parts:

If coverage provided to the ADDITIONAL INSURED is required by a contract or agreement, the most we will pay on behalf of the ADDITIONAL INSURED is the amount of insurance:

    - a. Required by the contract or agreement; or
    - b. Available under the applicable Limits of Insurance, whichever is less.

It is understood and agreed that for the purposes of this Endorsement the following definition shall apply.

**A. ADDITIONAL INSURED means:**

1. Any person or entity specifically endorsed onto this Policy as an ADDITIONAL INSURED. If any, such ADDITIONAL INSURED shall maintain only those rights pursuant to this Policy as are specified by endorsement; or
2. Any person or organization the NAMED INSURED is required to name as an additional insured in a written contract or agreement, but only with respect to "your work," YOUR SERVICES or PROFESSIONAL SERVICES performed by or on behalf of the NAMED INSURED for that person or organization. However, such persons or organizations are covered only with respect to "bodily injury," "property damage," "personal and advertising injury," or LOSS arising out of "your work," YOUR SERVICES or PROFESSIONAL SERVICES and are not covered for any "bodily injury," "property damage," "personal and advertising injury," or LOSS arising out of the person's or organization's own liability.

**C. EXCLUSIONS**

There is no coverage whatsoever under this Policy for any of the following. We will also have no duty to defend the insured against any suit seeking damages to which this insurance does not apply.

1. Cross Suits

Any INJURY or DAMAGE, liability or obligation from any CLAIM initiated, alleged or caused to be brought about by a NAMED INSURED or INSURED against any other NAMED INSURED or INSURED.

This exclusion shall not apply to INJURY, DAMAGE, or CLAIMS brought by any person(s) or organization(s) whom you agree, in a written contract, to name as an ADDITIONAL INSURED, provided such ADDITIONAL INSURED:

- a) is not a parent, subsidiary or affiliate of any NAMED INSURED;
- b) does not have any ownership interest in any NAMED INSURED;
- c) is not owned, operated, controlled, or managed by any NAMED INSURED.

2. Prior Knowledge, Expected or Intended Injury

BODILY INJURY, PROPERTY DAMAGE, ENVIRONMENTAL DAMAGE, POLLUTION CONDITIONS or any LOSS expected or intended, should have been known by, or could have reasonably been expected by any RESPONSIBLE INSURED, to give rise to a CLAIM. This exclusion shall not apply to BODILY INJURY resulting from the use of reasonable force to protect persons or property.

3. Intentional Acts

BODILY INJURY, PROPERTY DAMAGE, ENVIRONMENTAL DAMAGE or any LOSS based upon or arising from any acts of an INSURED which are based upon or otherwise attributed to the INSURED'S intentional, willful, dishonest, fraudulent, malicious, deliberate or knowingly wrongful act, including but not limited to such behavior or non-compliance with any statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order, or instruction of any governmental agency or body prior to or after inception of this Policy, including but not limited to an intentional discharge, seepage, disposal, dispersal, migration, release of any substance that could cause a POLLUTION CONDITION, committed by or at the direction of a RESPONSIBLE INSURED.

This exclusion does not apply to a RESPONSIBLE INSURED that did not commit, participate in, or have knowledge of such an act.

4. Workers' Compensation

Any liability or obligation of any INSURED under any workers compensation, disability benefits, unemployment compensation, employee benefits, pension sharing, ERISA law or any similar federal, state or local law and any amendments thereto.

5. Employment Practices Liability

INJURY OR DAMAGE to:

- a. A person arising out of any:
  - (1) Refusal to employ that person;
  - (2) Termination of that person's employment; or

- (3) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or
- b. The spouse, child, parent, brother or sister of that person as a consequence of INJURY OR DAMAGE to that person at whom any of the employment-related practices described in paragraphs (1), (2) or (3) above is directed.

This exclusion applies whether the injury-causing event described in paragraphs (1), (2) or (3) above occurs before employment, during employment or after employment of that person.

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.

6. Employer's Liability

BODILY INJURY to:

1. An EMPLOYEE of any INSURED, their parent, subsidiary or affiliate, arising out of and in the course of employment by any INSURED, their parent, subsidiary or affiliate, or while performing duties related to the conduct of any INSURED'S business or the business of any INSURED's parent, subsidiary or affiliate; and
2. The spouse, child, parent, brother or sister of that EMPLOYEE as a consequence of Paragraph 5 a. above.

This exclusion applies whether any INSURED may be liable as an employer or in any other capacity and to any obligation of any INSURED to share damages with or repay someone who must pay damages because of such BODILY INJURY. This exclusion does not apply to liability assumed by any INSURED under an INSURED CONTRACT.

7. Related Claims

Any coverage provided under this Policy shall not apply to a CLAIM previously reported to the Company or any CLAIM or CLAIMS EXPENSES involving substantially the same general conditions or allegations that gave rise to any demand as referenced in the application, including any addendum or addenda attached thereto.

8. Injunctive Relief, Fines and Penalties

Any CLAIM seeking injunctive relief or payment for fines or penalties.

9. Project Coverage

Any liability or obligation from any project for which any INSURED is an insured on a separate project-specific policy issued by any insurance company.

10. Unsolicited Communications

Any liability or obligation, including obligations to pay damages or defend any claim or suit by reason of the assumption of liability in an INSURED CONTRACT, from unsolicited communications or allegations of unsolicited communications made by or on behalf of any INSURED.

Unsolicited communications means any form of communication, distribution, or the transmittal or publication of information or material, including, but not limited to facsimile, electronic mail, postal mail, express mail, telephone, internet or web-based advertisement, instant message, SMS message or text message that the recipient has not specifically requested. Unsolicited communications includes, but is not limited to actual or alleged violations of:

- a. The Telephone Consumer Protection Act (47 U.S.C 227), including any amendment of, or addition to, such statute;
- b. The Controlling the Assault of Non-Solicited Pornography and Marketing Act (15 U.S.C 7701), including any amendment of, or addition to, such statute; or
- c. Any other statute, ordinance or regulation relating to the communication, distribution or transmittal of unwanted content, information or material.

11. Access or Disclosure of Confidential or Personal Information

Any liability or obligation arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of any access to or disclosure of any person's or organization's confidential or personal information.

12. Cyber Liability

Any liability or obligation arising out of any cyber liability, including but not limited to data breach, spyware, malware, ransomware, phishing, or other electronic system hack or breach.

13. Climate Change

Any liability or obligation arising out of allegations related to global warming or climate change, including but not limited to effects of any naturally occurring or man-made gas, on the earth's climate.

14. Fire Suppression Negligence Exclusion

Any liability or obligation arising out of the NAMED INSURED'S failure to provide safeguards, monitoring or emergency fire suppression equipment, during and up to one hour after performing any operations involving any activity or operation that generates sparks, flames or heat capable of causing combustion.

15. War

Any liability or obligation of any INSURED caused, arising, directly or indirectly, out of:

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

16. Radioactive Waste

Any liability or obligation for radioactive, toxic or explosive properties of NUCLEAR MATERIAL. This exclusion shall not apply to the INSURED'S work as it relates to remediation and/or decommissioning of nonreactive sites which may contain or have become contaminated with Low-Level Radioactive Waste as defined in the Low-Level Radioactive Waste Policy Act and which is under the regulatory authority of the Atomic Energy Act of 1954, as amended.

17. NUCLEAR EXCLUSION

I. Any obligation:

A. Under any Liability Coverage, to injury, sickness, disease, death or destruction, BODILY INJURY or PROPERTY DAMAGE:

1. With respect to which an INSURED under the Policy is also an INSURED under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an INSURED under any such policy but for its termination upon exhaustion of its limit of insurance; or
2. Resulting from the HAZARDOUS PROPERTIES of NUCLEAR MATERIAL and with respect to which: (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the INSURED is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.



- B. Under any Medical Payments Coverage, or under any Supplementary Payments Provision relating to immediate medical or surgical relief, first aid, to expenses incurred with respect to BODILY INJURY, sickness, disease or death resulting from the HAZARDOUS PROPERTIES of NUCLEAR MATERIAL and arising out of the operation of a NUCLEAR FACILITY by any person or organization.
- C. Under any Liability Coverage, to injury, sickness, disease, death or destruction, BODILY INJURY or PROPERTY DAMAGE resulting from HAZARDOUS PROPERTIES of NUCLEAR MATERIAL, if:
  - 1. The NUCLEAR MATERIAL is at, or has been discharged or dispersed from any NUCLEAR FACILITY owned by, or operated by or on behalf of, an INSURED; or
  - 2. The NUCLEAR MATERIAL is contained in SPENT FUEL or WASTE and was at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an INSURED; or
  - 3. The injury, sickness, disease, death or destruction, BODILY INJURY or PROPERTY DAMAGE arises out of the furnishing by an INSURED of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any NUCLEAR FACILITY, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to injury to or destruction of property at such NUCLEAR FACILITY, PROPERTY DAMAGE to such NUCLEAR FACILITY and any property thereat.

As used in this Endorsement:

- A. HAZARDOUS PROPERTIES mean radioactive, toxic or explosive properties.
- B. NUCLEAR FACILITY means:
  - 1. Any NUCLEAR REACTOR;
  - 2. Any equipment or device designed or used for (a) separating the isotopes of uranium or plutonium, (b) processing or utilizing SPENT FUEL, or (c) handling, processing or packaging WASTE;
  - 3. Any equipment or device used for the processing fabricating or alloying of SPECIAL NUCLEAR MATERIAL, if at any time the total amount of such material in the custody of the INSURED at premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any of the combination thereof, or more than 250 grams of uranium 235; or
  - 4. Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of WASTE including the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.
- C. NUCLEAR MATERIAL means SOURCE MATERIAL, SPECIAL NUCLEAR MATERIAL, or BY-PRODUCT MATERIAL.
- D. NUCLEAR REACTOR means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.
- E. SOURCE MATERIAL, SPECIAL NUCLEAR MATERIAL, and BY-PRODUCT MATERIAL have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.
- F. SPENT FUEL means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a NUCLEAR REACTOR.
- G. WASTE means any waste material: (a) containing BY-PRODUCT MATERIAL other than the tailings or waste produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its SOURCE MATERIAL content, and (b) resulting from the operation by any person/organization of any NUCLEAR FACILITY included in the first two paragraphs of NUCLEAR FACILITY.

With respect to injury to or destruction of property, the word injury or the word destruction includes all forms of radioactive contamination of property. PROPERTY DAMAGE also includes all forms of radioactive contamination of property.

**D. GENERAL CONDITIONS**

1. **Actions Against Company:** No action shall lie against the Company unless, as a condition precedent thereto, each INSURED has fully complied with all of the provisions of this Policy, or until the amount of the INSURED'S obligation to pay shall have been finally determined either by written agreement of the INSURED or by judgment against the INSURED after actual trial and appeal has been concluded.

Any person, organization or legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by this Policy. No person or organization shall have any right under this Policy to join the Company as a party to any action against the INSURED to determine the INSURED liability, nor shall the Company be impleaded by the INSURED or his legal representative.

2. **Additional Premiums:** If, during this POLICY PERIOD, an increase in the risk or hazards covered hereunder occurs, the Company shall have the right to charge the appropriate additional premium.
3. **Assignment:** This Policy may not be assigned and shall be void if assigned or transferred without prior written consent of the Company.
4. **Bankruptcy or Insolvency:** Bankruptcy or Insolvency of the INSURED or of the INSURED estate shall not relieve the Company of any of its obligations hereunder.
5. **Cancellation:** This Policy may be cancelled by the NAMED INSURED by surrender thereof to the Company or any of its authorized agents or by mailing written notification stating when thereafter the cancellation shall be effective. This Policy may be cancelled by the Company for any reason, by mailing to the NAMED INSURED at the address shown in the Policy, written notification not less than 60 days (10 days for nonpayment of premium) thereafter such cancellation shall be effective. Proof of mailing of such notification shall be sufficient proof of notification. The time of surrender or the effective date and hour of cancellation stated in the notification shall become the end of the POLICY PERIOD. Delivery of such written notification either by the NAMED INSURED or by the Company shall be equivalent to mailing. If the NAMED INSURED cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the Company cancels, earned premium shall be computed pro rata. Premium adjustment may be either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation. The Company shall be entitled to cancel for non-payment of premium should monies, including, but not limited to premium, fees, or deductibles, be owed on any current or past policy by any NAMED INSURED to the Company. The Company shall be entitled to retain any unearned premium toward such monies owed.
6. **Changes:** Notification to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or estop the Company from asserting any right under the terms of this Policy; nor shall the terms of this Policy be waived or changed, except by endorsement issued to form a part of this Policy.
7. **Choice of Law:** The policy shall be governed and construed in accordance with the laws of the State of New York, without giving effect to conflict of law rules.
8. **Coverage Territory. This Policy applies to CLAIMS made:**
  - a. In the United States of America (including its territories and possessions), Puerto Rico and Canada;
  - b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in Paragraph 1 above; or
  - c. All other parts of the world if the injury or damage arises out of:
    - i. Goods or products made or sold by the INSURED in the territory described in Paragraph a. above; or ii. The activities of a person whose home is in the territory described in Paragraph a. above, but is away for a short time on your business.

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

9. **Declarations and Representations:** By acceptance of this Policy, the NAMED INSURED agrees that the statements contained in the Application for insurance, all supplemental materials, CLAIM information and any other information including submitted to the Company, including but not limited to the aforementioned, are accurate and complete at the time such information was reported. All submitted information comprise the INSURED'S agreements and representations, and knowledge that this Policy is issued in reliance upon the truth of such representations and that this Policy Declarations, Provisions, and Endorsements embody all agreements existing between all INSUREDS and the Company and supersede any prior express or implied agreements relating to this Policy.

The NAMED INSURED acknowledges and agrees that the Application and any other information submitted by the NAMED INSURED is incorporated into, and is part of, this Policy. The NAMED INSURED also acknowledges and agrees that the representations and warranties and contained in the Application or in any other information submitted by the NAMED INSURED in an effort to procure this Policy, are complete, true and correct and that the Company issued this Policy in specific reliance upon the representations and warranties contained in the Application and in any other information submitted by the NAMED INSURED.

10. **Independent Counsel:** In the event the INSURED is entitled by law to select independent counsel to defend the INSURED at the Company's expense, the attorney fees and all other litigation expenses the Company must pay to that counsel are limited to the rates the Company actually pays to counsel the Company retains in the ordinary course of business in the defense of a similar CLAIM or in the community where the CLAIM arose or is being defended.

Additionally, the Company may exercise the right to require that such counsel have certain minimum qualifications with respect to their competency, including experience in defending CLAIMS similar to the one pending against the INSURED and to require such counsel to have errors and omissions insurance coverage. As respects any such counsel, the INSURED agrees that counsel will timely respond to the Company's requests for information regarding the CLAIM. Furthermore, the INSURED may at any time, by its signed consent, freely and fully waive its right to select independent counsel.

11. **Inspection and Audit:** Any of the Company's authorized representatives shall have the right and opportunity, but not the obligation, when the Company so desires, to interview persons employed by the INSURED and to inspect at any reasonable time, during the POLICY PERIOD or thereafter, the INSURED'S premises, equipment, operations, COVERED LOCATIONS and all improvements, structures, products, ways, works, machinery and appliances thereon; but neither the Company nor its representatives shall assume any responsibility or duty to the INSURED or to any other party, person or entity, by reason of such right or inspection. Neither the Company's right to make inspections, nor the actual undertaking thereof nor any report thereon shall constitute an undertaking on behalf of the INSURED or others, to determine or warrant that property or operations are safe, healthful or conform to acceptable engineering practices or are in compliance with any law, rule or regulation. The NAMED INSURED agrees to provide access to appropriate personnel to assist the Company's representatives during any inspection. The Company shall also have the right to examine or audit any financial records of the NAMED INSURED to inspect for accuracy in reporting income or revenue as represented and warranted in the Application. Premium audits may be processed as a result of such inspection, after any policy expires or is terminated. Premium adjustment calculations shall determine additional premiums due, if any, and shall not result in any mid-term downward adjustment of premium.
12. **Material Change in Risk:** The INSURED must endeavor to notify the Company, in writing, of any change in operations which materially increases the risk from that originally assumed by the Company at Policy inception. Any failure by the INSURED to notify the Company may void all additional risk presented to the Company, if that failure to notify the Company presents additional exposure that the company has not had the opportunity to assess or receive due consideration for. The Company reserves the right to rescind all coverage offered under this policy, accordingly.

13. **Mediation and Deductible Credit:** If the INSURED and the Company agree to use Mediation to resolve a covered CLAIM, and is completely resolved by such Mediation, the INSURED's Deductible obligation will be reduced by 75%, subject to a maximum monetary reduction of \$35,000. For the purpose of this paragraph, Mediation means a non-binding process where a neutral panel of individuals assist the parties to reach their own settlement. When this occurs, we will reimburse the NAMED INSURED as soon as practical for any qualifying deductible amount which was already paid by the NAMED INSURED prior to the Mediation.
14. **Minimum Earned Premium:** If this Policy is cancelled at the request of any NAMED INSURED, the total retained by the Company shall not be less than 25.00%.
15. **Nonrenewal:** The Company may non-renew this Policy by mailing or delivering to the NAMED INSURED at the address stated on the Declarations Page, or any endorsement amending the Declarations Page, written notice of nonrenewal at least sixty (60) days before the expiration date of this Policy. The offer of Policy terms, conditions or premium different than those in effect prior to renewal, shall not constitute non-renewal.
16. **Other Insurance:**  
Commercial General Liability Coverage Only:
- a. **Primary Insurance:** This insurance is primary except when b. below applies.
  - b. **Excess Insurance:**
    - (1) This insurance is excess over any other insurance, whether primary, excess, contingent or on any other basis:
      - (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
      - (b) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
      - (c) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;
      - (d) If the loss arises out of the maintenance or use of aircraft, "auto" or watercraft to the extent not subject to Exclusion g. of Coverage A (SECTION I); or
      - (e) That is valid and collectible insurance available to you under any other policy.
    - (2) When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit." If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.
    - (3) When this insurance is excess over other insurance, we will pay only the amount of the loss, if any, that exceeds the sum of:
      - (a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
      - (b) The total of all deductible and self-insured amounts under all other insurance.

If a loss occurs involving two or more policies, each of which states that its insurance will be excess, then our policy will contribute on a pro rata basis.

All Other Coverage Parts except the Environmental Impairment Liability Coverage Part: If any part of either LOSS or CLAIMS EXPENSE are covered under this Policy and any other valid and collectible current, prior or subsequent Policy(ies) issued by any other insurer, this Policy shall provide coverage for such LOSS or CLAIMS EXPENSE on a pro rata basis with such other policy according to the applicable Limits of Liability of the applicable Coverage Part and such other policy. This coverage shall apply on an excess basis over any and all Project Specific Policies.

This insurance shall in no way be increased or expanded as a result of the receivership, insolvency, or inability to pay of any insurer with respect to both the duty to indemnify and the duty to defend. This also applies to the INSURED while acting as a self-insured for any coverage. The INSURED shall promptly upon the request of the Company provide the Company with copies of all policies potentially applicable against the liability to which this Policy applies.

The Company's obligation to make any payment for TRANSPORTATION shall be on an excess and non-contributory basis over any other primary and excess insurance available to the INSURED, whether collectible or not.

17. Primary Non-Contributory: Except as otherwise specified herein, this Policy shall be considered primary to any similar insurance held by third parties with respect to "your work," YOUR SERVICES and PROFESSIONAL SERVICES performed by you under any written contractual agreement with such third party. It is further agreed that any other insurance which person(s) or organizations(s) as referenced above may have, is excess and non-contributory to this insurance.
18. Severability: Except with respect to the Limits of Liability, and any rights or duties specifically assigned in this Policy to the NAMED INSURED, this insurance applies as if each NAMED INSURED were the only NAMED INSURED and separately to each INSURED against whom a CLAIM is made. Notwithstanding the foregoing, where no coverage is afforded under this policy to the NAMED INSURED, no coverage is afforded to any INSURED under this policy.
19. Sole Agent: The NAMED INSURED first listed in the Declarations shall be deemed agent of, and act on behalf of, all other INSUREDS, if any, with respect to all matters involving this policy, including the payment or return of premium, payment of all deductibles, receipt and acceptance of any endorsement issued to form a part of the Policy, giving and receiving notification of cancellation or non-renewal, and the exercise the Policy of the rights provided in the Extended Reporting Period clause, if applicable. The Company shall have the right to seek indemnification from any INSURED or any other person who may be legally liable for the debts of the NAMED INSURED.
20. Transfer or Recovery Rights: If the Company pays any amount or incurs CLAIM EXPENSE under this Policy, the Company shall be subrogated to the rights of recovery of each INSURED, against any person, firm or organization. All INSUREDS shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights, including without limitation, assignment of the INSURED rights against any person or organization on account of which the Company made payment or incurred coverage expense under this Policy. The INSURED shall do nothing to waive or prejudice such rights either prior or subsequent to any CLAIM.
21. Transfer of the NAMED INSURED'S Rights and Duties: The NAMED INSURED'S rights and duties under this policy may not be transferred without the Company's written consent except in the case of death of an individual NAMED INSURED. If an individual NAMED INSURED dies, their rights and duties will be transferred to the NAMED INSURED'S legal representative, but only while acting within the scope of duties as the NAMED INSURED'S legal representative. Until the NAMED INSURED'S legal representative is appointed, anyone having proper temporary custody of the NAMED INSURED'S property will have the NAMED INSURED'S rights and duties, but only with respect to that property.
22. Waiver of Subrogation: The Company waives any right of recovery it may have against any person(s) or organization(s) to whom the NAMED INSURED agrees, in a written contract, to provide a waiver of subrogation because of payments the Company makes for injury or damage arising out of the YOUR SERVICES done under a contract with that person or organization. This status exists only for the project specified in that contract. Under no circumstances shall this provision act to extend the policy period, change the scope of coverage, or increase the Aggregate Limits of Insurance scheduled in the VIRTUE PACK Service Business Package Policy Declarations or in any Supplemental Declarations. This paragraph shall not apply to the Environmental Impairment Liability Coverage Part.

23. Claim and Loss Apportionment. If a Claim made against an Insured includes both covered and uncovered allegations, or is made against an Insured and others not insured, the Insured and the Company recognize that there must be an allocation between covered and uncovered Claim Expenses and Loss payments, if any. The Insured and the Company shall use good faith efforts to agree upon a fair allocation between covered and uncovered Claims, Claim Expenses, and Loss taking into account the relative legal and financial exposures, and the relative benefits obtained in connection with the defense and/or settlement of the Claim by the Insured or others.
- a. If the Insured and the Insurer are unable to agree on the amount of the allocation, then the Company shall pay only those amounts (excess of the Deductible) which the Company deems to be fair and equitable until a different amount shall be agreed upon or determined pursuant to the terms of this Policy.
  - b. The Company may advance Claims Expenses and or Loss and pursuant to this paragraph prior to the final disposition of any such Claim, provided such Claim is covered by this Policy. Any such advance shall be on the condition that:
    - (1) the appropriate Deductible has been satisfied; and
    - (2) any amounts advanced by the Company shall serve to reduce the Limit of Liability stated in the Declarations to the extent they are not in fact repaid; and
    - (3) the Insured and the Company have agreed upon the portion of the Claims Expenses or Loss attributable to covered Claims against the Insureds; provided, however, if no agreement, the Company shall pay Costs of Defense as specified herein; and
    - (4) in the event it is finally established that the Company has no liability under the Policy for such Claim, the Insured will repay the Company all Claims Expenses and/or Loss advanced by virtue of this provision.

All other policy terms and conditions shall remain the same.

PLEASE READ THIS ENDORSEMENT CAREFULLY AND COMPLETELY. THIS ENDORSEMENT CHANGES THE POLICY. ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

Policy # VRS0007506  
Effective Date: 7/01/2024  
Expiration Date: 7/01/2025

## VIRTUE RISK PARTNERS VIRTUE PACK

### DESIGNATED CONSTRUCTION PROJECT(S) AGGREGATE LIMIT SUBJECT TO AN ALL PROJECTS LIMIT

PLEASE READ THIS ENDORSEMENT CAREFULLY AND COMPLETELY. THIS ENDORSEMENT CHANGES THE POLICY. ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

This endorsement modifies insurance provided under Commercial General Liability Coverage Part of the VIRTUE PACK SERVICE BUSINESS PACKAGE POLICY.

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

#### COMMERCIAL GENERAL LIABILITY COVERAGE PART

##### SCHEDULE

**Designated Construction Project(s):** All Projects occurring away from your own premises.

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

- A. For all sums which the insured becomes legally obligated to pay as damages caused by “occurrences” under Section I—Coverage A, and for all medical expenses caused by accidents under Section I—Coverage C, which can be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
1. A separate Designated Per Project Aggregate Limit equal to the General Aggregate Limit shown in the Declarations shall apply to each Designated Construction Project.  
However, the most we will pay under the insurance provided by this endorsement for all Designated Construction Projects shown in the Schedule above is \$ \_\_\_\_\_ unless otherwise stated below:  
  
\$ \_\_\_\_\_
  2. The separate Designated Per Project Aggregate Limit provided in A.1. above is the most we will pay for the sum of all damages under Coverage A, except damages because of “bodily injury” or “property damage” included in the “products-completed operations hazard,” and for medical expenses under Coverage C regardless of the number of:
    - a. Insureds;
    - b. Claims made or “suits” brought; or
    - c. Persons or organizations making claims or bringing “suits.”
  3. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the separate Designated Per Project Aggregate Limit provided in A.1. for that particular Designated Construction Project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations, nor shall they reduce the insurance provided by this endorsement for any other Designated Construction Project.

4. The limits shown in the Declarations for Each Occurrence, Damage To Premises Rented To You and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable separate Designated Per Project Aggregate Limit provided in A.1. for each Designated Construction Project.
- B. For all sums which the insured becomes legally obligated to pay as damages caused by “occurrence” under Section I—Coverage A, and for all medical expenses caused by accidents under Section I—Coverage C, which cannot be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
  1. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-Completed Operations Aggregate Limit, whichever is applicable; and
  2. Such payments shall not reduce any separate Designated Per Project Aggregate Limit provided in A.1.
- C. When coverage for liability arising out of the “products-completed operations hazard” is provided, any payments for damages because of “bodily injury” or “property damage” included in the “products-completed operations hazard” will reduce the Products-Completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor any separate Designated Per Project Aggregate Limit provided in A.1.
- D. If the applicable designated construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.
- E. The provisions of Section III—Limits Of Insurance not otherwise modified by this endorsement shall continue to apply as stipulated.

PLEASE READ THIS ENDORSEMENT CAREFULLY AND COMPLETELY. THIS ENDORSEMENT CHANGES THE POLICY. ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.



## BUSINESS AUTO ENHANCEMENT EDGE ENDORSEMENT

The Business Auto Enhancement Edge Endorsement is an optional endorsement that provides coverage enhancements. The following is a summary of broadened coverages provided by this endorsement. No coverage is provided by this summary, refer to the following endorsement for changes in your policy.

<b>SUMMARY OF COVERAGES</b>	<b>PAGE</b>
Accidental Airbag Deployment Coverage	5
Audio, Visual and Data Electronic Equipment – Limit Amended	5
Auto Loan/Lease Gap Coverage	5
Blanket Additional Insured	3
Blanket Waiver of Subrogation	5
Broadened Definition of Insured includes:	
● Newly Acquired Organizations for up to 180 Days	2
● Employees as Insureds	2
● Subsidiaries in Which You Own 50% or More	2
Deductible Waiver for Glass Repair	4
Employee Hired Auto	6
Fellow Employee Coverage	3
Hired Auto Physical Damage Coverage	3, 6
Knowledge of Accident, Claim, Suit or Loss	5
Loss Of Use Expenses - Amended	3
Personal Effects	3
Primary and Noncontributory If Required by a Written Contract or Written Agreement	6
Rental Reimbursement Coverage	4
Supplementary Payments - Amended:	
● Bail Bonds up to \$5,000	3
● Loss of Earnings up to \$500/Day	3
Temporary Substitute Vehicle Physical Damage	2
Towing	3
Transportation Expense Limits – Amended	3
Unintentional Failure to Disclose Hazards	6

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

## **BUSINESS AUTO ENHANCEMENT EDGE ENDORSEMENT**

This endorsement modifies the insurance provided under the following:

### **BUSINESS AUTO COVERAGE FORM**

With respect to the coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement. The SECTIONS of the Business Auto Coverage Form identified in this endorsement will be amended as shown below.

#### **SECTION I – COVERED AUTOS COVERAGE AMENDMENTS**

##### **A. Temporary Substitute Vehicle Physical Damage**

**SECTION I – COVERED AUTOS, C. Certain Trailers, Mobile Equipment And Temporary Substitute Autos** is amended by adding the following:

If a covered "auto" you own is out of service because of its:

- a. Breakdown;
- b. Repair;
- c. Servicing;
- d. "Loss", or
- e. Destruction;

the Physical Damage Coverages provided by the Business Auto Coverage Form for that disabled covered "auto" are extended to any "auto" you do not own while used with the permission of its owner as a temporary substitute for the covered "auto" that is out of service.

#### **SECTION II – COVERED AUTOS LIABILITY COVERAGE AMENDMENTS**

##### **A. Who Is An Insured**

**SECTION II – COVERED AUTOS LIABILITY COVERAGE, A. Coverage, 1. Who Is An Insured** is amended to add:

- d. Any legally incorporated subsidiary of yours in which you own more than 50% of the voting stock on the effective date of this coverage form.

However, "insured" does not include any subsidiary of yours that is an "insured" under any other automobile liability policy or would be an "insured" under such policy but for termination of such policy or the exhaustion on such policy's limits of insurance.

- e. Any organization which is newly acquired or formed by you and over which you maintain majority ownership. However, coverage under this provision:

- (1) is afforded only for the first 180 days after you acquire or form the organization or until the end of the policy period, whichever comes first;

- (2) does not apply to "bodily injury" or "property damage" that results from an "accident" that occurred before you formed or acquired the organization;

- (3) does not apply to any newly acquired or formed organization that is a joint venture or partnership; and

- (4) does not apply to an "insured" under any other automobile liability policy or would be an "insured" under such a policy but for termination of such policy or the exhaustion of such policy's limits of insurance.

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

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

**B. Blanket Additional Insured****SECTION II – COVERED AUTOS LIABILITY COVERAGE, A. Coverage, 1. Who Is An Insured, paragraph c.** is amended to add the following:

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the “bodily injury” or “property damage” occurs and that is in effect during the policy period, to be named as an additional insured is an “insured” for Liability Coverage, but only for damages to which this insurance applies and only to the extent that persons or organization qualifies as an “insured” under the Who Is An Insured provision contained in Section II.

**C. Liability Coverage Extensions – Supplementary Payments**

**SECTION II – COVERED AUTOS LIABILITY COVERAGE, A. Coverage, 2. Coverage Extensions, a. Supplementary Payments** is amended by replacing subparagraphs (2) and (4) with the following:

- (2) Up to \$5,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an “accident” we cover. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the “insured” at our request, including actual loss of earnings up to \$500 a day because of time off from work.

**D. Fellow Employee Coverage**

**SECTION II – COVERED AUTOS LIABILITY COVERAGE, B. Exclusions, 5. Fellow Employee,** the following is added:

<b>Co-Employee</b>	<b>Lawsuit</b>	<b>Defense</b>	<b>Cost</b>
<b>Reimbursement</b>			

If a suit seeking damages for “bodily injury” to any fellow “employee” of the “insured” arising out of and in the course of the fellow “employee’s” employment or while performing duties related to the conduct of your business, or a suit seeking damages brought by the spouse, child, parent, brother or sister of that fellow “employee”, is brought against you, we will reimburse reasonable costs that you incur in the defense of such matters. Any reimbursement made pursuant to this sub-section will be in addition to the limits of liability set forth in the Declarations.

**SECTION III – PHYSICAL DAMAGE COVERAGE AMENDMENTS****A. Towing**

**SECTION III – PHYSICAL DAMAGE COVERAGE, A. Coverage, 2. Towing,** is amended by adding the following:

**2. Towing**

We will pay up to \$250 for towing and labor costs incurred each time a covered “auto” is disabled. However, the labor must be performed at the place of disablement. This \$250 limit is reduced by any applicable towing limit shown in the declarations.

Regardless of the number of disablements, the maximum amount we will pay under this endorsement for all towing and labor costs combined during any one year is \$2,500.

**B. Transportation Expense – Limits Amended**

**SECTION III – PHYSICAL DAMAGE COVERAGE, A. Coverage, 4. Coverage Extensions, a. Transportation Expenses** is amended by replacing \$20 per day/\$600 maximum limit with \$50 per day/\$1000 maximum.

**C. Hired Auto Physical Damage – Loss Of Use Expenses – Limits Amended**

**SECTION III – PHYSICAL DAMAGE COVERAGE, A. Coverage, 4. Coverage Extensions, b. Loss Of Use Expenses** is amended by replacing the \$20 per day/\$600 maximum limit with \$50 per day/\$750 maximum limit.

**D. Personal Effects Coverage**

**SECTION III – PHYSICAL DAMAGE COVERAGE, A. Coverage, 4. Coverage Extensions** is amended by adding the following:

**c. Personal Effects**

We will pay up to \$500 for “loss” to personal effects, which are:

- (1) Owned by an “insured”; and
- (2) In or on your covered “auto.”

This coverage applies only in the event of the total theft of your covered “auto.” No deductible applies to this coverage.

**E. Glass Repair – Deductible Waiver**

**SECTION III – PHYSICAL DAMAGE COVERAGE,**  
**A. Coverage, 3. Glass Breakage – Hitting A Bird**  
**Or Animal – Falling Objects Or Missiles,** is amended by adding the following:

No deductible will apply to glass breakage if such glass is repaired, in a manner acceptable to us, rather than replaced.

**F. Hired Auto Physical Damage**

**SECTION III – PHYSICAL DAMAGE COVERAGE,**  
**A. Coverage** is amended by adding the following:

**5. Hired Auto Physical Damage**

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 of like kind and use, subject to the following:

- a. The most we will pay for any one “loss” is \$50,000 or the actual cash value or cost to repair or replace, whichever is less, minus a deductible;
- b. The deductible will be equal to the largest deductible applicable to any owned “auto” for that coverage. Any Comprehensive deductible does not apply to “loss” caused by fire or lightening;
- c. Hired Auto Physical Damage coverage is excess over any other collectible insurance; and
- d. 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.

If a limit for Hired Auto Physical Damage is indicated in the Declarations, then that limit replaces, and is not added to, the \$50,000 limit indicated above.

**G. Rental Reimbursement**

**SECTION III – PHYSICAL DAMAGE COVERAGE**  
**A. Coverage,** is amended by adding the following:

**6. Rental Reimbursement**

This coverage applies only to a covered “auto” of the private passenger or light truck type as follows:

- a. We will pay for rental reimbursement expenses incurred by you for the rental of a private passenger or light truck type “auto” because of “loss” to a covered private passenger or light truck type “auto”. Payment applies in addition to the otherwise applicable amount of each coverage you have on a covered private passenger or light truck type “auto.” No deductibles apply to this coverage.
- b. We will pay only for those expenses incurred during the policy period beginning 24 hours after the “loss” and ending, regardless of the policy’s expiration, with the lesser of the following number of days:
  - (1) The number of days reasonably required to repair or replace the covered private passenger or light truck type “auto”. If “loss” is caused by theft, this number of days is added to the number of days it takes to locate the covered private passenger or light truck type “auto” and return it to you; or
  - (2) 30 days.
- c. Our payment is limited to the lesser of the following amounts:
  - (1) Necessary and actual expenses incurred, or
  - (2) \$50 per day, up to a maximum of \$1,000.

- d. This coverage does not apply while there are spare or reserve private passenger or light truck type "autos" available to you for your operations.
- e. If "loss" results from the total theft of a covered "auto" of the private passenger or light truck type, we will pay under this coverage only that amount of your rental reimbursement expenses which is not already provided for under **SECTION III – PHYSICAL DAMAGE COVERAGE, A. Coverage, 4. Coverage Extensions.**

For the purposes of this Rental Reimbursement coverage, light truck is defined as a truck with a gross vehicle weight of 10,000 lbs. or less as defined by the manufacturer as the maximum loaded weight the auto is designed to carry.

**H. Accidental Airbag Deployment Coverage**

**SECTION III – PHYSICAL DAMAGE COVERAGE, A. Coverage** is amended by adding the following:

**7. Accidental Airbag Deployment Coverage**

We will pay to reset or replace factory installed airbag(s) in any covered "auto" for accidental discharge, other than discharge due to a collision loss.

This coverage is applicable only if comprehensive coverage applies to the covered "auto".

This coverage is excess over any other collectible insurance or reimbursement by manufacturer's warranty.

**I. Auto Loan/Lease Gap Coverage**

**SECTION III PHYSICAL DAMAGE COVERAGE, Item A., Coverage,** is amended by adding the following:

**8. Auto Loan/Lease Gap Coverage**

This coverage applies only to a covered "auto" described or designated in the Schedule or in the Declarations as including physical damage coverage.

In the event of a covered total "loss" to a covered "auto" described or designated in the Schedule or in the Declarations, we will pay any unpaid amount due on the lease or loan for a covered "auto" less:

- a. The amount paid under the Physical Damage Coverage Section on the policy; and
- b. Any:
  - (1) Overdue lease/loan payments at the time of the "loss";

- (2) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
- (3) Security deposits not returned by the lessor;
- (4) Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and
- (5) Carry-over balances from previous loans or leases.

**J. Audio, Visual and Data Electronic Equipment – Limit Amended**

**SECTION III - PHYSICAL DAMAGE COVERAGE, C. Limits of Insurance, 1.b.** is amended by replacing the \$1000 limit with a \$2,500 limit.

**SECTION IV – BUSINESS AUTO CONDITIONS AMENDMENTS**

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

**SECTION IV – BUSINESS AUTO CONDITIONS, A. Loss Conditions, 2. Duties In The Event Of Accident, Claim, Suit Or Loss, a.** is amended by adding the following:

This condition applies only when the "accident" or "loss" is known to:

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

But, this section does not amend the provisions relating to notification of police, protection or examination of the property which was subject to the "loss".

**B. Blanket Waiver of Subrogation**

**Section IV – BUSINESS AUTO CONDITIONS, A. Loss Conditions, 5. Transfer of Rights of Recovery Against Others to Us,** is amended by adding the following exception:

However, we waive any right of recovery we may have against any person or organization to the extent required of you by a written contract signed and executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.

**C. Unintentional Failure to Disclose Hazards**

**SECTION IV – BUSINESS AUTO CONDITIONS, B. General Conditions, 2. Concealment, Misrepresentation Or Fraud,** is amended by adding the following paragraph:

If you unintentionally fail to disclose any hazards existing at the inception date of the policy, or during the policy period in connection with any additional hazards, we will not deny coverage under this Coverage Part because of such failure.

**D. Employee Hired Auto**

**SECTION IV – BUSINESS AUTO CONDITIONS, B. General Conditions, 5. Other Insurance,** paragraph **b.** is deleted and replaced by the following:

**b.** For Hired Auto Physical Damage Coverage, the following are deemed to be a covered "auto" you own:

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

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

**E. Primary and Noncontributory If Required By Written Contract or Written Agreement**

**SECTION IV – BUSINESS AUTO CONDITIONS, B. General Conditions, 5. Other Insurance c.,** the following is added and supersedes any provision to the contrary:

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

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

POLICY NUMBER: VES0004611

COMMERCIAL EXCESS LIABILITY  
CX 24 33 11 16

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

## **NONCONTRIBUTORY - OTHER INSURANCE CONDITION**

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE PART

### **SCHEDULE**

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

**All Projects of the Insured but only to the extent that valid controlling underlying insurance is provided on a primary and noncontributory basis for written contracts.**

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

Paragraph 8. of **Section III - Conditions** is replaced by the following:

**8. Other Insurance**

a. This insurance is excess over, and shall not contribute with any of the other insurance, whether primary, excess, contingent or on any other basis. However:

(1) This condition will not apply to other insurance specifically written as excess over this Coverage Part.

(2) The insurance provided under this Coverage Part will not seek contribution from any other insurance available to an additional insured, provided that:

(a) The additional insured is a Named Insured under such other insurance;

(b) The additional insured is shown in the Schedule; and

(c) You have agreed in writing in a contract or agreement that this insurance would not seek contribution from any other insurance available to the additional insured.

When this insurance is excess, 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.

b. When this insurance is excess over other insurance, we will pay only our share of the "ultimate net loss" that exceeds the sum of:

(1) The total amount that all such other insurance would pay for the loss in the absence of the insurance provided under this Coverage Part; and

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

Policy# VES0004611  
Effective Date 07/01/2024  
Expiration Date 07/01/2025

**VIRTUE RISK PARTNERS**  
**VIRTUE EXCESS**  
**WAIVER OF SUBROGATION**

PLEASE READ THIS ENDORSEMENT CAREFULLY AND COMPLETELY. THIS ENDORSEMENT CHANGES THE POLICY. ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

This endorsement modifies insurance provided under VIRTUE COMMERCIAL EXCESS LIABILITY COVERAGE FORM.

Notwithstanding anything contained to the contrary, in this coverage form, it is hereby agreed that all coverages bound are subject to the following terms and conditions. In the event of a conflict between the provisions of this Endorsement and any Coverage Part, the provisions of this Endorsement shall control.

It is understood and agreed that the following shall be added to Section III. CONDITIONS, of VE P 0612.

**Waiver of Subrogation:** The Company waives any right of recovery it may have against any person(s) or organization(s) to whom the NAMED INSURED agrees, in a written contract, to provide a waiver of subrogation because of payments the Company makes for injury or damage arising out of YOUR SERVICES performed under a contract with that person or organization listed below.

**Schedule:**

This status exists only for the project specified in that contract. Under no circumstances shall this provision act to extend the policy period, change the scope of coverage, or increase the Aggregate Limits of Insurance.

All other policy terms and conditions shall remain the same.

PLEASE READ THIS ENDORSEMENT CAREFULLY AND COMPLETELY. THIS ENDORSEMENT CHANGES THE POLICY. ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.



Policy Number **VES0004611**

**VIRTUE RISK PARTNERS**  
**VIRTUE EXCESS**

**COMMERCIAL EXCESS LIABILITY COVERAGE FORM**

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the Company providing this insurance listed in the Declarations. The word "insured" means any person or organization qualifying as such under the UNDERLYING INSURANCE.

Other words and phrases that appear in quotation marks in this Policy have special meaning. Refer to Section IV – Definitions. Other words and phrases that are not defined under this Policy but are defined in the UNDERLYING INSURANCE will have the meaning described in the policy of UNDERLYING INSURANCE.

The insurance provided under this Policy will follow the same provisions, exclusions and limitations that are contained in the applicable UNDERLYING INSURANCE, unless otherwise directed by this Policy. To the extent such provisions differ or conflict, the provisions of this Policy will apply. However, the coverage provided under this Policy will not be broader than that provided by the applicable UNDERLYING INSURANCE.

There may be more than one policy of UNDERLYING INSURANCE listed in the Declarations and provisions in those policies may conflict, and may not be superseded by the provisions of this Policy. In such a case, the provisions, exclusions and limitations of the UNDERLYING INSURANCE applicable to the particular EVENT for which a claim is made or suit is brought will apply.

Please carefully read the entire Policy and any endorsements attached thereto, and discuss the coverage afforded hereunder with your agent or broker.

**SECTION I – COVERAGE**

**1. Insuring Agreement**

In consideration of the premium paid and in reliance upon the statements in the application, in the supplemental materials and in the information submitted, made a part hereof, and subject to all the terms, conditions, exclusions, Limits of Liability and Endorsements of this Virtue Risk Partners VIRTUE EXCESS Policy (the "Policy"), the Insurance Company listed in the Declarations (the "Company"), agrees with the NAMED INSURED as follows.

- a. We will pay on behalf of the insured the ULTIMATE NET LOSS in excess of the LIMIT OF UNDERLYING INSURANCE because of INJURY OR DAMAGE to which insurance provided under this Policy applies. If the UNDERLYING INSURANCE does not apply to INJURY OR DAMAGE for reasons other than exhaustion of the applicable limit of UNDERLYING INSURANCE, then this Policy shall have no obligation to cover such damages.

We will have the right and duty to defend the insured against any suit seeking damages for such INJURY OR DAMAGE when the applicable limits of UNDERLYING INSURANCE have been exhausted in accordance with the provisions of such UNDERLYING INSURANCE.

When we have no duty to defend, we will have the right to defend, or to participate in the defense of, the insured against any other suit seeking damages for INJURY OR DAMAGE.

However, we will have no duty to defend the insured against any suit seeking damages for which insurance under this Policy does not apply.

At our discretion, we may investigate any EVENT that may involve this insurance and settle any resultant claim or suit, for which we have the duty to defend.

But:

- (1) The amount we will pay for ULTIMATE NET LOSS is limited as described in Section II – Limits Of Insurance; and
  - (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under this Policy. However, if the policy of UNDERLYING INSURANCE specifies that limits are reduced by defense expenses, our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of defense expenses, judgments or settlements under this Policy.
- b. This insurance applies to INJURY OR DAMAGE that is subject to an applicable LIMIT OF UNDERLYING INSURANCE ". If any other limit, such as a sublimit, is specified in the UNDERLYING INSURANCE, this insurance does not apply to INJURY OR DAMAGE arising out of that exposure unless that limit is specified in the Declarations under the Schedule of UNDERLYING INSURANCE.
- c. If the UNDERLYING INSURANCE requires, for a particular claim, that the INJURY OR DAMAGE occur during its policy period in order for that coverage to apply, then this insurance will only apply to that INJURY OR DAMAGE if it occurs during the policy period of this Policy. If the UNDERLYING INSURANCE requires that the EVENT causing the particular INJURY OR DAMAGE takes place during its policy period in order for that coverage to apply, then this insurance will apply to the claim only if the EVENT causing that INJURY OR DAMAGE takes place during the policy period of this Policy.
- d. Any additional insured under any policy of UNDERLYING INSURANCE will automatically be an additional insured under this insurance. If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance required by the contract, less any amounts payable by any UNDERLYING INSURANCE.

Additional insured coverage provided by this insurance will not be broader than coverage provided by the UNDERLYING INSURANCE.

## 2. Exclusions

The following exclusions, and any other exclusions added by endorsement, apply to this Policy. In addition, the exclusions applicable to any UNDERLYING INSURANCE apply to this insurance unless superseded by the following exclusions, or superseded by any other exclusions added by endorsement to this Policy.

Insurance provided under this Policy does not apply to:

- a. Medical Payments  
Medical payments coverage or expenses that are provided without regard to fault, whether or not provided by the applicable UNDERLYING INSURANCE.
- b. Project Aggregate  
Coverage shall not apply to any Project Aggregate Coverage endorsed onto any UNDERLYING INSURANCE.

## SECTION II – LIMITS of INSURANCE

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

- a. Insureds;
- b. Claims made or suits brought, or number of vehicles involved;
- c. Persons or organizations making claims or bringing suits; or
- d. Limits available under any UNDERLYING INSURANCE.

2. The Limits of Insurance of this Policy will apply as follows:
  - a. This insurance only applies in excess of the LIMIT OF UNDERLYING INSURANCE.
  - b. The General Aggregate Limit is the most we will pay for the sum of all ULTIMATE NET LOSS, for all INJURY OR DAMAGE covered under this Policy.  
However, this General Aggregate Limit only applies to INJURY OR DAMAGE that is subject to an aggregate limit of insurance under the UNDERLYING INSURANCE.
  - c. Subject to paragraph 2.b above, if an Aggregate Sublimit is listed in the Declarations, the following provisions apply:
    1. The Aggregate Sublimit is the most we will pay for the sum of all ULTIMATE NET LOSS, for all INJURY OR DAMAGE covered under this Policy and arising out of the liability to which the Aggregate Sublimit applies. The Aggregate Sublimit is a part of, and not in addition to, the General Aggregate Limit.
    2. If no aggregate sublimit is specified for a particular liability, the General Aggregate Limit applies to that liability.
    3. In no event will the presence or absence of an Aggregate Sublimit increase the General Aggregate Limit, and we have no obligation to pay any amount in excess of the General Aggregate Limit regardless of the nature of the liability insured or the applicability of an Aggregate Sublimit.
  - d. Subject to Paragraph 2.b. above, the Each Occurrence Limit is the most we will pay for the sum of all ULTIMATE NET LOSS under this insurance because of all INJURY OR DAMAGE arising out of any one EVENT.
  - e. If the Limits of Insurance of the UNDERLYING INSURANCE are reduced by defense expenses by the terms of that policy, any payments for defense expenses we make will reduce our applicable Limits of Insurance in the same manner.
3. If any UNDERLYING INSURANCE has a policy period that is different from the policy period of this Policy then, for the purposes of this insurance, the LIMIT OF UNDERLYING INSURANCE " will only be reduced or exhausted by payments made for INJURY OR DAMAGE covered under this insurance.

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

### SECTION III – CONDITIONS

The following conditions apply. In addition, the conditions applicable to any UNDERLYING INSURANCE are also applicable to the coverage provided under this insurance unless superseded by the following conditions.

#### 1. Appeals

If the UNDERLYING INSURER or insured elects not to appeal a judgment in excess of the amount of the LIMIT OF UNDERLYING INSURANCE ", we may do so at our own expense. We will also pay for taxable court costs, pre- and postjudgment interest and disbursements associated with such appeal. In no event will this provision increase our liability beyond the applicable Limits of Insurance described in Section II – Limits of Insurance.

#### 2. Bankruptcy

##### a. Bankruptcy of Insured

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

b. **Bankruptcy of Underlying Insurer**

Bankruptcy or insolvency of the UNDERLYING INSURER will not relieve us of our obligations under this Policy.

However, insurance provided under this Policy will not replace any UNDERLYING INSURANCE in the event of bankruptcy or insolvency of the UNDERLYING INSURER. The insurance provided under this Policy will apply as if the UNDERLYING INSURANCE were in full effect and recoverable.

This Policy shall only apply excess of the limits of UNDERLYING INSURANCE stated in this Policy's Declarations, and shall not drop down or act as a replacement of such UNDERLYING INSURANCE in event of cancellation of UNDERLYING INSURANCE or bankruptcy, insolvency, receivership or any financial impairment of any insurer that issued UNDERLYING INSURANCE. The Insured expressly agrees to self-insure in the event of bankruptcy, insolvency, receivership or any financial impairment of any insurer that issued any UNDERLYING INSURANCE.

**3. Duties in The Event of an Event, Claim or Suit**

a. You must see to it that we are immediately notified in writing of an EVENT, regardless of the amount, which may result in a claim under this insurance. To the extent possible, notice should include:

- (1) How, when and where the EVENT 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 EVENT.

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

- (1) Immediately record the specifics of the claim or suit and the date received; and
- (2) Notify us immediately in writing.

All notices under this Policy shall be sent to the address listed on the Claim Procedure Notice endorsed onto this Policy, or other address(es) as substituted by the Company in writing. Notice to any other insurer under any UNDERLYING INSURANCE shall not constitute notice under this Policy.

c. You and any other insured involved must:

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

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

e. In the event of any payment under this Policy, the Company shall be subrogated to the extent of such payment to all the INSURED'S rights of recovery and the INSURED shall do everything necessary to secure and preserve such rights, including the execution of any documents necessary to enable the Company effectively to bring suit in the name of the INSURED.

Any amounts recovered after payment by the Company hereunder shall be apportioned in the inverse order of payment to the extent of actual payment. The expenses of all recovery proceedings shall be apportioned among the recipients of the recovery in the ratio of their respective recoveries.

#### **4. First Named Insured Duties**

The first Named Insured is the person or organization first named in the Declarations and is responsible for the payment of all premiums. The first Named Insured will act on behalf of all other Named Insureds for giving and receiving of notice of cancellation or the receipt of any return premium that may become payable.

At our request, the first Named Insured will furnish us, as soon as practicable, with a complete copy of any UNDERLYING INSURANCE and any subsequently issued endorsements or policies which may in any way affect the insurance provided under this Policy.

#### **5. Cancellation**

- a. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
- b. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - (1) 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
  - (2) 30 days before the effective date of cancellation if we cancel for any other reason.
- c. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
- d. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
- e. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
- f. If notice is mailed, proof of mailing will be sufficient proof of notice.

#### **6. Changes**

This Policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured is authorized by all other insureds to make changes in the terms of this Policy with our consent. This Policy's terms can be amended or waived only by endorsement.

#### **7. Maintenance Of/Changes To UNDERLYING INSURANCE**

Any UNDERLYING INSURANCE must be maintained in full effect without reduction of coverage or limits except for the reduction of aggregate limits in accordance with the provisions of such UNDERLYING INSURANCE that results from INJURY OR DAMAGE to which this insurance applies.

Such exhaustion or reduction is not a failure to maintain UNDERLYING INSURANCE. Failure to maintain UNDERLYING INSURANCE will not invalidate insurance provided under this Policy, but insurance provided under this Policy will apply as if the UNDERLYING INSURANCE were in full effect.

The first Named Insured must notify us in writing, as soon as practicable, if any UNDERLYING INSURANCE is cancelled, not renewed, replaced or otherwise terminated, or if the limits or scope of coverage of any UNDERLYING INSURANCE is changed.

If any of the UNDERLYING INSURANCE is canceled, non-renewed, or terminated, coverage under this Policy is automatically terminated on the same effective date and time

## 8. Other Insurance

- a. This insurance is excess over, and shall not contribute with any of the other insurance, whether primary, excess, contingent or on any other basis. This condition will not apply to insurance specifically written as excess over this Policy.

When this insurance is excess, if no other insurer defends, we may undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

- b. When this insurance is excess over other insurance, we will pay only our share of the ULTIMATE NET LOSS that exceeds the sum of:
  - (1) The total amount that all such other insurance would pay for the loss in the absence of the insurance provided under this Policy; and
  - (2) The total of all deductible and self-insured amounts under all that other insurance.

## 9. Premium Audit

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

## 10. Loss Payable

Liability under this Policy does not apply to a given claim unless and until:

- a. The insured or insured's UNDERLYING INSURER has become obligated to pay the LIMIT OF UNDERLYING INSURANCE "; and
- b. The obligation of the insured to pay the ULTIMATE NET LOSS in excess of the LIMIT OF UNDERLYING INSURANCE " has been determined by a final settlement or judgment or written agreement among the insured, claimant, UNDERLYING INSURER (or a representative of one or more of these) and us.

## 11. Legal Action Against Us

No person or organization has a right under this Policy:

- 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 Policy 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 Policy 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, UNDERLYING INSURER and the claimant or the claimant's legal representative.

## 12. Transfer of Defense

- a. Defense Transferred To Us

When the limits of UNDERLYING INSURANCE have been exhausted, in accordance with the provisions of UNDERLYING INSURANCE, we may elect to have the defense transferred to us. We will cooperate in the transfer of control to us of any outstanding claims or suits seeking damages to which this insurance applies and which would have been covered by the UNDERLYING INSURANCE had the applicable limit not been exhausted.

b. Defense Transferred By Us

When our limits of insurance have been exhausted our duty to provide a defense will cease.

We will cooperate in the transfer of control of defense to any insurer specifically written as excess over this Policy of any outstanding claims or suits seeking damages to which this insurance applies and which would have been covered by the UNDERLYING INSURANCE had the applicable limit not been exhausted.

In the event that there is no insurance written as excess over this Policy, we will cooperate in the transfer of control to the insured and its designated representative.

**13. When We Do Not Renew**

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

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

**SECTION IV – DEFINITIONS**

The definitions applicable to any UNDERLYING INSURANCE also apply to this insurance. In addition, the following definitions apply.

1. UNDERLYING INSURANCE means any policy of insurance or self-insurance listed in the Declarations under the Schedule of UNDERLYING INSURANCE.
2. UNDERLYING INSURER means any insurer who provides any policy of insurance listed in the Declarations under the Schedule of UNDERLYING INSURANCE.
3. EVENT means an occurrence, offense, accident, act, or other event, to which the applicable UNDERLYING INSURANCE applies.
4. INJURY OR DAMAGE means any injury or damage, covered in the applicable UNDERLYING INSURANCE arising from an EVENT.
5. LIMIT OF UNDERLYING INSURANCE" means the total deductible or self-insured retention applicable to each event plus all limits of UNDERLYING INSURANCE applicable to the claim.
6. ULTIMATE NET LOSS means the total sum, after reduction for deductibles and other insurance (whether collectible or not), recoveries, or salvages collectible, that the insured becomes legally obligated to pay as damages by reason of:
  - a. Settlements, judgments, binding arbitration; or
  - b. Other binding alternate dispute resolution proceeding entered into with our consent.

ULTIMATE NET LOSS includes defense expenses if the UNDERLYING INSURANCE specifies that limits are reduced by defense expenses.

**EXHIBIT C**  
**Retainage Bond**





SWISS RE CORPORATE SOLUTIONS

SWISS RE CORPORATE SOLUTIONS AMERICA INSURANCE CORPORATION ("SRCSAIC")
SWISS RE CORPORATE SOLUTIONS PREMIER INSURANCE CORPORATION ("SRCSPIC")

GENERAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, THAT SRCSAIC, a corporation duly organized and existing under laws of the State of Missouri, and having its principal office in the City of Kansas City, Missouri. and SRCSPIC, a corporation organized and existing under the laws of the State of Missouri and having its principal office in the City of Kansas City, Missouri, each does hereby make, constitute, and appoint: Roxana Palacios

Principal: Saybr Contractors, Inc.
Obligee: Port of Everett
Bond Description: Job Order Contracting (IDIQ) 2024 ; Contract No. 9-2024-14
Bond Number: 2356958
Bond Amount: See Bond Form

Its true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver, for and on its behalf and as its act and deed, bonds or other writings obligatory in the nature of a bond on behalf of each of said Companies, as surety, on contracts of suretyship as are or may be required or permitted by law, regulation, contract or otherwise, provided that no bond or undertaking or contract or suretyship executed under this authority shall exceed the amount of:

FIFTY MILLION (\$50,000,000.00) DOLLARS

This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Boards of Directors of both SRCSAIC and SRCSPIC at meetings duly called and held on the 9th of May 2012:

"RESOLVED, that any two of the President, any Managing Director, any Senior Vice President, any Vice President, the Secretary or any Assistant Secretary be, and each or any of them hereby is, authorized to execute a Power of Attorney qualifying the attorney named in the given Power of Attorney to execute on behalf of the Corporation bonds, undertakings and all contracts of surety, and that each or any of them hereby is authorized to attest to the execution of any such Power of Attorney and to attach therein the seal of the Corporation; and it is

FURTHER RESOLVED, that the signature of such officers and the seal of the Corporation may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be binding upon the Corporation when so affixed and in the future with regard to any bond, undertaking or contract of surety to which it is attached."



By [Signature]
Erik Janssens, Senior Vice President of SRCSAIC & Senior Vice President of SRCSPIC

By [Signature]
Gerald Jagrowski, Vice President of SRCSAIC & Vice President of SRCSPIC

IN WITNESS WHEREOF, SRCSAIC and SRCSPIC have caused their official seals to be hereunto affixed, and these presents to be signed by their authorized officers this 10TH day of NOVEMBER, 20 22

Swiss Re Corporate Solutions America Insurance Corporation
Swiss Re Corporate Solutions Premier Insurance Corporation

State of Illinois
County of Cook



On this 10TH day of NOVEMBER, 20 22, before me, a Notary Public personally appeared Erik Janssens, Senior Vice President of SRCSAIC and Senior Vice President of SRCSPIC and Gerald Jagrowski, Vice President of SRCSAIC and Vice President of SRCSPIC, personally known to me, who being by me duly sworn, acknowledged that they signed the above Power of Attorney as officers of and acknowledged said instrument to be the voluntary act and deed of their respective companies.



[Signature]
Christina Manisco, Notary

I, Jeffrey Goldberg, the duly elected Senior Vice President and Assistant Secretary of SRCSAIC and SRCSPIC, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney given by said SRCSAIC and SRCSPIC, which is still in full force and effect.
IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Companies this 7th day of June, 2024.

[Signature]
Jeffrey Goldberg, Senior Vice President & Assistant Secretary of SRCSAIC and SRCSPIC