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State of New Hampshire

DEPARTMENT OF SAFETY
JAMES H. HAYES BLDG. 33 HAZEN DR.
CONCORD, N.H. 03305
(603) 271-2791

EDDIE EDWARDS
ASSISTANT COMMISSIONER

STEVEN R. LAVOIE
ASSISTANT COMMISSIONER

ROBERT L. QUINN
COMMISSIONER

September 24, 2024

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Safety, Division of Administration to enter into a **sole source** contract with Baldwin Publishing, Inc (Vendor Code #: TBD) of Washington Crossing, PA 18977 in the amount of \$36,500 to provide online comprehensive wellness content to support the well-being of our employees. Effective upon Governor and Council approval through October 31, 2027. **65% Federal Funds, 9% General Funds, 9% Highway Funds, 17% Other Funds**

Funds are available in the following accounts for State Fiscal Year 2025 and are anticipated to be available in State Fiscal Year 2026 and 2027, upon the availability and continued appropriation of funds in the future operating budget, with the authority to adjust budget line items within the price limitation and encumbrances between state fiscal years through the Budget Office, if needed and Justified.

Fiscal Year	Account	Total Amount
2025	02-23-23-232010-Department of Safety, Division of Administration,	\$11,300
2026	28420000-103-502664: ARPA-Mental Health & Resiliency, Contracts	\$12,600
2027	02-23-23-232015- Department of Safety, Division of Administration, 21920000-103-502664: Human Resources Management, Contracts	\$12,600
Total		\$36,500

EXPLANATION

This request is to contract with Baldwin Publishing for the procurement of a comprehensive wellness content solution for the Department. This procurement is essential to support the well-being of our employees and to enhance our overall organizational productivity through a content delivery on our internal web presence. This request is **sole source** because earlier this year, we initiated a Request for Proposal (RFP #2024-018) process to identify a vendor capable of providing a wellness content solution tailored to the needs of our Department. Unfortunately, the RFP process did not yield a successful outcome; either the proposals were noncompliant or exceeded our budget constraints.

The well-being of our employees is a top priority for our Department; as we continue to face the challenges posed by high workloads and the increasing demands of public service, it is essential that we provide our workforce with access to resources that promote mental, physical, and emotional health. A robust wellness content solution will offer our employees the tools they need to manage stress, improve overall health, and remain productive in their roles. The solution from Baldwin Publishing will provide licensed content monthly to incorporate into the Department's existing web presence focusing on Health, Fitness, Wellness, and Nutrition which is peer-reviewed.

The Department respectfully request your approval for this contract.

Respectfully Submitted,

Robert L. Quinn
Commissioner of Safety

Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name Department of Safety		1.2 State Agency Address 33 Hazen Drive, Concord, NH 03305	
1.3 Contractor Name Baldwin Publishing, Inc.		1.4 Contractor Address 1107 Taylorsville Road, Suite 101 Washington Crossing, PA 18977	
1.5 Contractor Phone Number (267)573-4268	1.6 Account Unit and Class 02-23-23-232010- 28420000 & 21920000	1.7 Completion Date 10/31/2027	1.8 Price Limitation 36,500
1.9 Contracting Officer for State Agency Melanic Carraher		1.10 State Agency Telephone Number 603-223-8956	
1.11 Contractor Signature  Date: 9/24/24		1.12 Name and Title of Contractor Signatory Hal Pitkow, Secretary & Treasurer	
1.13 State Agency Signature  Date: 9/24/2024		1.14 Name and Title of State Agency Signatory Deputy Director of Administration	
1.15 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.16 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By:  On: 10/01/24			
1.17 Approval by the Governor and Executive Council (if applicable) G&C Item number: _____ G&C Meeting Date: _____			

2. SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT B which is incorporated herein by reference ("Services").

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.13 ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed.

3.3 Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds. In no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provided in EXHIBIT B, in whole or in part, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT C which is incorporated herein by reference.

5.2 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8. The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance

hereof, and shall be the only and the complete compensation to the Contractor for the Services.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 The State's liability under this Agreement shall be limited to monetary damages not to exceed the total fees paid. The Contractor agrees that it has an adequate remedy at law for any breach of this Agreement by the State and hereby waives any right to specific performance or other equitable remedies against the State.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/EQUAL EMPLOYMENT OPPORTUNITY.

6.1 In connection with the performance of the Services, the Contractor shall comply with all applicable statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal employment opportunity laws and the Governor's order on Respect and Civility in the Workplace, Executive order 2020-01. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of age, sex, sexual orientation, race, color, marital status, physical or mental disability, religious creed, national origin, gender identity, or gender expression, and will take affirmative action to prevent such discrimination, unless exempt by state or federal law. The Contractor shall ensure any subcontractors comply with these nondiscrimination requirements.

6.3 No payments or transfers of value by Contractor or its representatives in connection with this Agreement have or shall be made which have the purpose or effect of public or commercial bribery, or acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business.

6.4. The Contractor agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with this Agreement and all rules, regulations and orders pertaining to the covenants, terms and conditions of this Agreement.

7. PERSONNEL.

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 The Contracting Officer specified in block 1.9, or any successor, shall be the State's point of contact pertaining to this Agreement.

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) calendar days from the date of the notice; and if the Event of Default is not timely cured, terminate this Agreement, effective two (2) calendar days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 give the Contractor a written notice specifying the Event of Default and set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

9. TERMINATION.

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) calendar days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, deliver to the Contracting Officer, not later than fifteen (15) calendar days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. In addition, at the State's discretion, the Contractor shall, within fifteen (15) calendar days of notice of early termination, develop and submit to the State a transition plan for Services under the Agreement.

10. PROPERTY OWNERSHIP/DISCLOSURE.

10.1 As used in this Agreement, the word "Property" shall mean all data, information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

10.2 All data and any Property which has been received from the State, or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

10.3 Disclosure of data, information and other records shall be governed by N.H. RSA chapter 91-A and/or other applicable law. Disclosure requires prior written approval of the State.

11. **CONTRACTOR'S RELATION TO THE STATE.** In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

12.1 Contractor shall provide the State written notice at least fifteen (15) calendar days before any proposed assignment, delegation, or other transfer of any interest in this Agreement. No such assignment, delegation, or other transfer shall be effective without the written consent of the State.

12.2 For purposes of paragraph 12, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.3 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State.

12.4 The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

13. **INDEMNIFICATION.** The Contractor shall indemnify, defend, and hold harmless the State, its officers, and employees from and against all actions, claims, damages, demands, judgments, fines, liabilities, losses, and other expenses, including, without limitation, reasonable attorneys' fees, arising out of or relating to this Agreement directly or indirectly arising from death, personal injury, property damage, intellectual property infringement, or other claims asserted against the State, its officers, or employees caused by the acts or omissions of negligence, reckless or willful misconduct, or fraud by the Contractor, its employees, agents, or subcontractors. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the State's sovereign immunity, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and continuously maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 commercial general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate or excess; and

14.1.2 special cause of loss coverage form covering all Property subject to subparagraph 10.2 herein, in an amount not less than 80% of the whole replacement value of the Property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or any successor, a certificate(s) of insurance for all insurance required under this Agreement. At the request of the Contracting Officer, or any successor, the Contractor shall provide certificate(s) of insurance for all renewal(s) of insurance required under this Agreement. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. The Contractor shall furnish the Contracting Officer identified in block 1.9, or any successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. WAIVER OF BREACH. A State's failure to enforce its rights with respect to any single or continuing breach of this Agreement shall not act as a waiver of the right of the State to later enforce any such rights or to enforce any other or any subsequent breach.

17. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

18. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no such approval is required under the circumstances pursuant to State law, rule or policy.

19. CHOICE OF LAW AND FORUM.

19.1 This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire except where the Federal supremacy clause requires otherwise. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

19.2 Any actions arising out of this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration, but must, instead, be brought and maintained in the Merrimack County Superior Court of New Hampshire which shall have exclusive jurisdiction thereof.

20. CONFLICTING TERMS. In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and any other portion of this Agreement including any attachments thereto, the terms of the P-37 (as modified in EXHIBIT A) shall control.

21. THIRD PARTIES. This Agreement is being entered into for the sole benefit of the parties hereto, and nothing herein, express or implied, is intended to or will confer any legal or equitable right, benefit, or remedy of any nature upon any other person.

22. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

23. SPECIAL PROVISIONS. Additional or modifying provisions set forth in the attached EXHIBIT A are incorporated herein by reference.

24. FURTHER ASSURANCES. The Contractor, along with its agents and affiliates, shall, at its own cost and expense, execute any additional documents and take such further actions as may be reasonably required to carry out the provisions of this Agreement and give effect to the transactions contemplated hereby.

25. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

26. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings with respect to the subject matter hereof.

Exhibit A
Special Provisions

1. **Additional Terms to License of Content.** The Parties understand and agree that the rights granted to State by Baldwin shall not include the right to:
- a. sublicense the Licensed Content, or any portion thereof, on a standalone basis or to incorporate the Licensed Content, or any portion thereof, a second time or in different material, media or application; or
 - b. alter or modify the Licensed Content, or any portion thereof.

State further agrees:

- i. that any and all parts or sections of the Licensed Content, which Baldwin designates and/or codes as "Mandatory Content" shall be included and incorporated in any and all content, media and/or applications in which State uses the Licensed Content; and
- ii. to incorporate any and all changes, modifications and/or updates to the Licensed Content that Baldwin provides to State in writing.

State agrees that Baldwin shall have the right to receive and inspect records and reports of traffic on any State website on which State uses, displays and otherwise embeds or embodies the Licensed Content, and further agrees to cooperate with Baldwin in conducting such inspections by providing Baldwin with copies or reproductions of the content to be inspected and/or allowing Baldwin reasonable access to the content to be inspected; provided that such inspections do not unreasonably interfere with State's business, the provision of patient care, or with the use of the media or the Licensed Content.

State shall take all reasonable steps necessary to ensure that no person or entity will have unauthorized access to the Licensed Content. The Parties agree that to the extent the Licensed Content is made accessible on the Internet by State for State's legitimate business purposes hereunder, such Internet access is beyond the scope of State's control and will not be considered "unauthorized access" as used in the preceding sentence. State agrees that Baldwin shall have the right to reasonably inspect the manner and the media in which State uses, displays and otherwise embeds or embodies the Licensed Content, and further agrees to cooperate with Baldwin in conducting such inspections by providing Baldwin with copies or reproductions of the content to be inspected and/or allowing Baldwin reasonable access to the content to be inspected; provided that such inspections do not unreasonably interfere with State's business, the provision of patient care, or with the use of the media or the Licensed Content.

2. **Warranties of Baldwin.** Baldwin hereby represents and warrants that Baldwin owns and controls one hundred percent (100%) of all rights in and to the Licensed Content or is the authorized representative of such owners and that Baldwin therefore has the right to convey to State the rights provided herein. Baldwin further represents and warrants that State's use of the Licensed Content will not violate or infringe any copyright, patent, trade secret, or other property rights of any other person or entity, and that neither the consent of, nor payment to, any other person or entity is required for State's use of the Licensed Content as contemplated hereunder. Baldwin shall be solely responsible for obtaining and paying for any and all consents from any other third parties necessary to convey the rights provided herein.

Baldwin shall use best efforts to ensure that the Licensed Content is available for State's use at all times, except when the Licensed Content is not available due to maintenance and/or updating of Baldwin's website, server and/or the server(s) to which the Baldwin's website and/or server are connected. Availability is defined as the Licensed Content being available online and accessible via the Internet to State and those accessing the Licensed Content through State's website. In the event the Licensed Content is not available or accessible as set forth above, following notice from State, Baldwin agrees to promptly make the Licensed Content available to State on a portable data storage device, at Baldwin's expense.

Baldwin does not make any express, implied or statutory warranty, except as specifically set forth in this Agreement, and specifically disclaims the implied warranty of merchantability, warranty of fitness for a particular purpose, and any warranty that arises by statute or otherwise in law or from a course of dealing or usage or trade.

3. Indemnification by Baldwin. Baldwin hereby agrees to defend, indemnify and hold State harmless against any loss, liability and damage, including costs and expenses, but excluding attorneys' fees, arising out of any claims or suits, that arise from any warranty or representation made pursuant to this Agreement; and/or that State's use of any or all of the Licensed Content infringe or otherwise violate the rights, in whole or in part, of any third party, provided State promptly notifies Baldwin in writing of the claim or suit. In the event that State seeks indemnification under this paragraph, Baldwin shall have the right to either defend or settle any such claim or suit, and State agrees to cooperate and assist in the defense of any such claim or suit, unless otherwise mutually agreed upon in writing, or unless Baldwin fails to assume Baldwin's obligation to defend and State is required to do so to protect State's interests. The foregoing indemnity by Baldwin shall not apply to any extraneous or additional material inserted by State in the Licensed Content.

In addition, if a claim or suit described above is asserted and State promptly notifies Baldwin in writing of the claim or suit, Baldwin will, at Baldwin's option and at Baldwin's sole expense: (i) procure for State the legal right to continue using the Licensed Content; (ii) replace or modify the Licensed Content to eliminate the infringement or alleged infringement while providing substantial equivalent performance; or (iii) accept return of the Licensed Content, and promptly pay to State the amount of the fees paid under this Agreement applicable to that portion of the Licensed Content that is subject to a claim or suit as described above. If Baldwin does not exercise any one of the options listed above within a reasonable time, State has the right, at State's option, to terminate this Agreement by giving twenty (20) business days written notice, in which event Baldwin will have no right to cure, and Baldwin will promptly pay to State the amount of the fees paid under this Agreement applicable to that portion of the Licensed Content that is subject to a claim or suit as described above.

4. Baldwin's Liability. Baldwin shall not be liable to State for any delays, interruptions, or failures to provide the Services, including but not limited to, producing and/or distributing the Licensed Content, if such delays, interruptions, or failures are due to causes beyond the reasonable control of Baldwin. Baldwin shall not be liable for any loss or damages to State or to any other party by reason of the Services or the publication or dissemination of the Licensed Content, or by reason of the content of the Licensed Content, except as otherwise provided under this Agreement and as specifically provided in Sections 2 (Warranties of Baldwin) and 3 (Indemnification by Baldwin) of this Agreement.

In no event, shall Baldwin be liable to State for any bodily injury, personal injury, wrongful death, loss or damage to revenues, profits, goodwill, or other special, incidental, indirect or consequential damages of any kind, resulting from Baldwin's performance or failure to perform any service or obligation under this Agreement, or resulting from the furnishing, performance, use or loss of use of any of the Licensed Content or other property of State, including without limitation any interruption of State's business, whether resulting from breach of contract or breach of warranty, even if Baldwin has been advised of the possibility of such damages. No breach by Baldwin of any provision hereof shall give State the right to any injunctive or other equitable relief. State's sole remedy for any breach of any provision hereof being limited to actual proven damages and such other remedies as set forth in Sections 2 (Warranties of Baldwin) and 3 (Indemnification by Baldwin).

State acknowledges that the limitations on the liability of Baldwin set forth in Sections 2 (Warranties of Baldwin), 3 (Indemnification by Baldwin) and 4 (Baldwin's Liability) herein are integral to the amount of the fees charged to State under this Agreement, and that were Baldwin to assume any further liability beyond that set forth in Sections 2 (Warranties of Baldwin), 3 (Indemnification by Baldwin) and 4 (Baldwin's Liability) herein, such fees would have been substantially greater.

Except as otherwise set forth in this Agreement, Baldwin shall have a period of thirty (30) days in which to cure to any default hereunder by Baldwin.

5. Baldwin's Remedies. Notwithstanding anything to the contrary herein, upon the occurrence of any breach or default by State, Baldwin may pursue any right or remedy available at law or in equity including, without limitation, Baldwin may: (i) terminate this Agreement; (ii) proceed to obtain such equitable relief as Baldwin may deem necessary to enjoin any existing or threatened breach of any provision hereof intended to protect Baldwin's interest in or the nature of the Licensed Content, without bond; or (iii) take such other actions and seek such further remedies as may be appropriate at law or in equity, all of which shall be deemed cumulative and no one of which shall be deemed an election of remedies.

6. **State's Representations.** In addition to any other representations and/or warranties made in this Agreement, State agrees to notify Baldwin of any allegations of infringements of patent, copyright, trademark or other intellectual property rights in the Licensed Content that comes to State's attention.

7. **Copyright Notice and Trademark Notice on Licensed Content.** All materials and media which contain copies, images and reproductions of the Licensed Content and/or in which the Licensed Content were used or embodied pursuant to this Agreement shall contain or be accompanied by a copyright notice (for each *Health eCooks*[®] recipe and recipe photograph and *Cook eKitchen*[™] recipe and recipe photograph) and trademark and trade name notice (for the name and mark *Health eCooks*[®], *Cook eKitchen*[™] and "Baldwin Publishing") in the name of Baldwin, and a credit referencing Baldwin as the copyright, trademark and trade name owner of the foregoing.

All trademarks and trade names of each Party are and will remain the exclusive property of such Party. Neither Party will acquire any right to the trademarks or trade name of the other Party. Except as expressly stated herein, neither Party may: (i) publicize this Agreement or its subject matter, (ii) state that any product or service has been approved or endorsed by the other Party or its affiliates; or (iii) use the name, trade name, trademark or symbol of the other Party in connection with any advertising or promotional materials or activities, or in other written, electronic, magnetic or laser media communications with or materials or products provided to third parties.

Exhibit B Scope of Services

Baldwin Publishing, Inc. ("Baldwin" or "Licensor") is in the business of providing the Services which include designing and programming the content portal identified in Section 1.a.ii., and licensing the content identified in Section 1.a.i. that is referred to as "Licensed Content" (collectively the "Services"), and the "New Hampshire Department of Safety" ("NH Department of Safety", "Client" or "Licensee") desires to engage Baldwin to provide the Services.

1. Definitions. Throughout this Exhibit B, the following expressions shall be interpreted as set forth below:

a. "Services": are the following:

i. "Licensed Content": Licensed Content is:

(a) *Taste of Wellness*: twenty-eight (28) articles, infographics, quizzes, recipes and/or videos, which Baldwin, in its sole discretion, selects from the following Baldwin databases:

- Health;
- Fitness & Nutrition;
- Wellness;
- *Health eCooks*® cardiac, diabetes and/or gluten-free video recipes and/or text only, cardiac, diabetes and/or gluten-free recipes (some of which may be linked to "How To" video cooking tips) with web quality photographs; and

Baldwin will update and change the Licensed Content in Section 1.a.i.(a) at least in part, on or about the first business day of each month, and reserves unto itself and in its sole discretion the right to select the updates and the particular content to be updated;

(b) *Today's Health Tip* which is a content discovery widget that consists of seven (7) content items with web quality photographs that Baldwin designates from the Licensed Content in Section 1.a.i.(a) herein and displays as "thumbnails" or reduced-size versions of the content items on a NH Department of Safety webpage each month throughout the term of this Agreement. The thumbnails of the content items link to the complete content items on a different NH Department of Safety webpage. One content item will be featured on a daily, rotating basis. At the conclusion of each month, seven (7) different content items will be featured in the *Today's Health Tip* module; and

ii. "Content Portal": "Content Portal" is a webpage that will serve as the landing page for the content defined in Section 1.a.i.(a) herein.

Baldwin will design, program and code the Content Portal with the following features, *inter alia*:

(a) Navigation to each of the databases identified in Sections 1.a.i.(a) herein;

(b) Images, text boxes, fonts and layout resize to optimize user experience for the device on which the content is being viewed; (c) Social Media icons on the website pages for each content item that automate posting the content item to social media channels;

(c) Social Media icons on the website pages for each content item that automate posting the content item to social media channels;

(d) Optional Client provided Calls-to-Action and/or advertisements (“CTA or Ad”) that will appear on every webpage on which the Licensed Content appears. The CTA or Ad will redirect website visitors to a Licensee website page designated by Licensee. The same CTA or Ad will appear on every webpage. However, the CTA or Ad that appears on landing pages that display thumbnails of the Licensed Content will have a rectangular shape and be sized 1920 pixels x 640 pixels, and the CTA or Ad that appears on interior pages on which the entire content items appear will be square shaped and sized 640 pixels x 640 pixels.

(e) Coding for unique Google Analytics that contains the following metrics, *inter alia*, traffic acquisition (how visitors arrived at your Baldwin Portal, e.g. direct, organic, email, referral, Unassigned); number of users; sessions (# of sessions, engaged sessions, engagement rate and average time of visit); event count (page views, user engagement, first visit, share, scroll); landing page & page path; tech overview (platform, operating system, and device [desktop, mobile, tablet]); and country & city from which access to your Baldwin Portal originated; and

iii. **“Health Observance Content Guide”**: “Health Observance Content Guide” is a non-public web portal with a monthly schedule of events, observances and/or recognition days that Baldwin compiles to assist NH Department of Safety in posting the Licensed Content to the social media applications identified in Section 5 herein. Each event, observance or recognition day on the Health Observance Content Guide includes a link to a specific item of Licensed Content that Baldwin in its professional judgment recommends for posting to social media for that event, observance or recognition day; and the specific item of Licensed Content can then be posted to social media by “clicking” on the icon of the desired social media application.

b. **“Licensee”**: State of New Hampshire Department of Safety.

2. Commencement Date and Term of Agreement. The Term of this Agreement is three (3) years. The Agreement shall commence upon Governor and Council approval, and shall terminate on October 31, 2027, or three (3) years after the date on which the Licensed Content is first made available to NH Department of Safety; whichever date is later.

3. Quantity & Availability of Licensed Content and Running Time of Videos in Sections 1.a.i. (a). When the Licensed Content in Section 1.a.i. (a) is first made available to NH Department of Safety, Baldwin, in its sole discretion, will select twenty-eight (28) content items from the Baldwin databases identified in Section 1.a.i. (a).

At the conclusion of the month in which the foregoing Licensed Content in Section 1.a.i. (a) is first made available to Licensee, and on or about the first business day of each month thereafter, Baldwin, in its sole discretion, will again select twenty-eight (28) content items from the Baldwin databases identified in Section 1.a.i. (a).

Baldwin will update and change the Licensed Content in Section 1.a.i.(a), inclusive, at least in part, on or about the first business day of each month.

At the conclusion of each month, the Licensed Content from that month will cease to be available and/or electronically delivered to NH Department of Safety. Notwithstanding the foregoing, NH Department of Safety is not required to remove links to Licensed Content that it posted to social media pursuant to Section 5 herein. Moreover, the links to Licensed Content that NH Department of Safety posted to social media pursuant to Section 5 herein will continue to link to the Licensed Content for the remainder of the Term of this Agreement.

The Licensed Content will be made available to NH Department of Safety through a standard digital and/or electronic delivery method that will allow the Licensed Content to be accessed or viewed from the Content Portal identified in Section 1.a.ii. herein.

The running time of each: (i) *Health eCooks*® recipe video will be approximately two (2) - four (4) minutes; (ii) *Health eCooks*® “How To” video cooking tip will be approximately twenty (20) seconds - two (2) minutes; and (iii) fitness, nutrition, health, and wellness video will be approximately forty-five (45) seconds - five (5) minutes.

4. License of Content. Baldwin hereby grants to NH Department of Safety during the Term of this Agreement a non-exclusive license to use, display and otherwise embed or embody, in whole or in part, the Licensed Content identified in:

a. Section 1.a.i.(a) herein, in the form submitted by Licensor to Licensee, as part of: (i) one (1) Licensee website; and (ii) two (2) Licensee social media applications, limited to Facebook, X (formerly known as Twitter), Pinterest, LinkedIn and/or Instagram; provided, however, NH Department of Safety understands and agrees that the videos will be available in a responsive video player that can only be used on the foregoing social media applications by posting a link to the videos. Moreover, neither the videos, nor the “How To” video cooking tips may be used, posted, uploaded &/or otherwise embedded or embodied on the foregoing social media sites and/or any other video sharing website, including but not limited to, YouTube and/or Vimeo;

b. Section 1.a.i.(b) herein, in the form submitted by Licensor to Licensee, on no more than three (3) subdomains, subdirectories and/or webpages within a subdirectory(ies) of the Licensee website.

The Parties understand and agree that without first obtaining the express written consent of Licensor, that Licensee is prohibited from using the Licensed Content in any other manner, material, media or application whatsoever.

**Exhibit C
Method of Payment**

The monetary consideration for the rights granted herein is a Service Fee in the sum of Ten Thousand Five Hundred (\$10,500.00) Dollars for Year One of the Agreement, Twelve Thousand Six Hundred (\$12,600.00) Dollars for Year Two of the Agreement and Twelve Thousand Six Hundred (\$12,600.00) Dollars for Year Three of the Agreement. The foregoing Service Fee includes one (1) hour of Baldwin's programming, coding and design time to customize set-up, delivery and display of the Licensed Content in the portal described in Section 1.a.ii. herein. NH Department of Safety understands and agrees that programming, coding and/or design time in excess of one (1) hour will be an additional charge that will be billed in 15-minute increments at the rate of \$200.00/hour (One-time fee). The number of hours in excess of the hour included in the yearly service fee shall not exceed four (4) hours for the term of the contract.

Fiscal Year 2025 Year 1:	\$10,500 + Additional 4 hours at \$200/hour \$800 = \$11,300
Fiscal Year 2026 Year 2:	\$12,600
Fiscal Year 2027 Year 3:	\$12,600
Total contract not to exceed:	\$36,500

The Service Fee for Year One (\$10,500.00) is due and payable to Baldwin in full upon signing this Agreement. Baldwin will invoice NH Department of Safety for the Year Two (\$12,600.00) and Year Three (\$12,600.00) Service Fees thirty (30) days before the first and second anniversaries, respectively, of the Effective Date of this Agreement. The Year Two and Year Three Service Fees shall be due and payable within thirty (30) days of NH Department of Safety's receipt of said invoices. Invoices, if any, for the one-time fee(s) shall be due and payable within (30) days of NH Department of Safety's receipt of said invoice(s).

NH Department of Safety shall not be obligated to make any other payments, including without limitation, royalty payments or residuals, to Baldwin or any third party, for the Services or use of the Licensed Content.

State of New Hampshire

Department of State

CERTIFICATE

I, David M. Scanlan, Secretary of State of the State of New Hampshire, do hereby certify that HQ BALDWIN PUBLISHING is a New Hampshire Trade Name registered to transact business in New Hampshire on October 16, 2009. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 620935

Certificate Number: 0006785996



IN TESTIMONY WHEREOF,
I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 1st day of October A.D. 2024.

A handwritten signature in black ink, appearing to read "David M. Scanlan".

David M. Scanlan
Secretary of State

Corporate Resolution

I, **Toni Donina**, hereby certify that I am the duly elected President of Baldwin Publishing, Inc. I hereby certify the following is a true copy of a vote taken at a meeting of the shareholders, duly called and held on September 23, 2024, at which a quorum of the shareholders were present and voting.

VOTED: That Hal Pitkow, Secretary and Treasurer is duly authorized to enter into contracts or agreements on behalf of Baldwin Publishing, Inc. with the State of New Hampshire and any of its agencies or departments and further is authorized to execute any documents which may in his/her judgment be desirable or necessary to effect the purpose of this vote.

I hereby certify that said vote has not been amended or repealed and remains in full force and effect as of the date of the contract to which this certificate is attached. This authority **remains valid for thirty (30) days** from the date of this Corporate Resolution. I further certify that it is understood that the State of New Hampshire will rely on this certificate as evidence that the person(s) listed above currently occupy the position(s) indicated and that they have full authority to bind the corporation. To the extent that there are any limits on the authority of any listed individual to bind the corporation in contracts with the State of New Hampshire, all such limitations are expressly stated herein.

DATED: September 24, 2024

ATTEST: *Toni Donina*
Toni Donina, President

Pennsylvania Department of State
Bureau of Corporations and Charitable Organizations
PO Box 8722 | Harrisburg, PA 17105-8722
T: 717-787-1057
dos.pa.gov/BusinessCharities

Regarding: Baldwin Publishing, Inc.
Request Type: Subsistence Certificate **Issuance Date:** September 23, 2024
Request No.: 043176831 **File No.:** 0004096439
Receipt No.: 001226950
Filing Type: Domestic Business Corporation
Filing Subtype: Business
Initial Filing Date: March 22, 2012
Status: Active

TO ALL WHOM THESE PRESENTS SHALL COME, GREETING:

I DO HEREBY CERTIFY THAT

Baldwin Publishing, Inc.

is currently subsisting on the records of the Department of State as of the issuance date herein.

I DO FURTHER CERTIFY THAT this Subsistence Certificate shall not imply that all fees, taxes and penalties owed to the Commonwealth of Pennsylvania are paid.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of my office to be affixed, the day and year above written

A handwritten signature in black ink, appearing to read "Albert Schmidt".

Albert Schmidt
Secretary of the Commonwealth

Verify this certificate online at www.file.dos.pa.gov

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL GENERAL LIABILITY EXTENSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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With respect to coverage afforded by this endorsement, the provisions of the policy apply unless modified by the endorsement.

A. NON-OWNED AIRCRAFT

Under Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability, exclusion g. Aircraft, Auto Or Watercraft does not apply to an aircraft provided:

1. It is not owned by any insured;
2. It is hired, chartered or loaned with a trained paid crew;
3. The pilot in command holds a currently effective certificate, issued by the duly constituted authority of the United States of America or Canada, designating her or him a commercial or airline pilot; and
4. It is not being used to carry persons or property for a charge.

However, the insurance afforded by this provision does not apply if there is available to the insured other valid and collectible insurance, whether primary, excess (other than insurance written to apply specifically in excess of this policy), contingent or on any other basis, that would also apply to the loss covered under this provision.

B. NON-OWNED WATERCRAFT

Under Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability, Subparagraph (2) of exclusion g. Aircraft, Auto Or Watercraft is replaced by the following:

This exclusion does not apply to:

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

- (a) Less than 52 feet long; and
- (b) Not being used to carry persons or property for a charge.

C. PROPERTY DAMAGE LIABILITY - ELEVATORS

1. Under Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability, Subparagraphs (3), (4) and (6) of exclusion j. Damage To Property do not apply if such "property damage" results from the use of elevators. For the purpose of this provision, elevators do not include vehicle lifts. Vehicle lifts are lifts or hoists used in automobile service or repair operations.
2. The following is added to Section IV - Commercial General Liability Conditions, Condition 4. Other Insurance, Paragraph b. Excess Insurance:

The insurance afforded by this provision of this endorsement is excess over any property insurance, whether primary, excess, contingent or on any other basis.

D. EXTENDED DAMAGE TO PROPERTY RENTED TO YOU (Tenant's Property Damage)

If Damage To Premises Rented To You is not otherwise excluded from this Coverage Part:

1. Under Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury and Property Damage Liability:

a. The fourth from the last paragraph of exclusion j. Damage To Property is replaced by the following:

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire, lightning, explosion, smoke, or leakage from an automatic fire protection system) to:

- (i) Premises rented to you for a period of 7 or fewer consecutive days; or
- (ii) Contents that you rent or lease as part of a premises rental or lease agreement for a period of more than 7 days.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" to contents of premises rented to you for a period of 7 or fewer consecutive days.

A separate limit of insurance applies to this coverage as described in Section III - Limits of Insurance.

- b. The last paragraph of subsection **2. Exclusions** is replaced by the following:

Exclusions c. through n. do not apply to damage by fire, lightning, explosion, smoke or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to Damage To Premises Rented To You as described in **Section III - Limits Of Insurance**.

2. Paragraph 6. under **Section III - Limits Of Insurance** is replaced by the following:

6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to:

- a. Any one premise:

(1) While rented to you; or

(2) While rented to you or temporarily occupied by you with permission of the owner for damage by fire, lightning, explosion, smoke or leakage from automatic protection systems; or

- b. Contents that you rent or lease as part of a premises rental or lease agreement.

3. As regards coverage provided by this provision **D. EXTENDED DAMAGE TO PROPERTY RENTED TO YOU (Tenant's Property Damage)** - Paragraph 9.a. of **Definitions** is replaced with the following:

9.a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning, explosion, smoke, or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with the permission of the owner, or for damage to contents of such premises that are included in your premises rental or lease agreement, is not an "insured contract".

E. MEDICAL PAYMENTS EXTENSION

If **Coverage C Medical Payments** is not otherwise excluded, the Medical Payments provided by this policy are amended as follows:

Under Paragraph 1. **Insuring Agreement** of **Section I - Coverage C - Medical Payments**, Subparagraph (b) of Paragraph a. is replaced by the following:

- (b) The expenses are incurred and reported within three years of the date of the accident; and

F. EXTENSION OF SUPPLEMENTARY PAYMENTS - COVERAGES A AND B

1. Under **Supplementary Payments - Coverages A and B**, Paragraph 1.b. is replaced by the following:

- b. Up to **\$3,000** for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the **Bodily Injury Liability Coverage** applies. We do not have to furnish these bonds.

2. Paragraph 1.d. is replaced by the following:

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

G. ADDITIONAL INSUREDS - BY CONTRACT, AGREEMENT OR PERMIT

1. Paragraph 2. under **Section II - Who Is An Insured** is amended to include as an insured any person or organization whom you have agreed to add as an additional insured in a written contract, written agreement or permit. Such person or organization is an additional insured but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused in whole or in part by:

- a. Your acts or omissions, or the acts or omissions of those acting on your behalf, in the performance of your on going operations for the additional insured that are the subject of the written contract or written agreement provided that the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" is committed, subsequent to the signing of such written contract or written agreement; or



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- b. Premises or facilities rented by you or used by you; or
- c. The maintenance, operation or use by you of equipment rented or leased to you by such person or organization; or
- d. Operations performed by you or on your behalf for which the state or political subdivision has issued a permit subject to the following additional provisions:
 - (1) This insurance does not apply to "bodily injury", "property damage", or "personal and advertising injury" arising out of the operations performed for the state or political subdivision;
 - (2) This insurance does not apply to "bodily injury" or "property damage" included within the "completed operations hazard".
 - (3) Insurance applies to premises you own, rent, or control but only with respect to the following hazards:
 - (a) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners, or decorations and similar exposures; or
 - (b) The construction, erection, or removal of elevators; or
 - (c) The ownership, maintenance, or use of elevators covered by this insurance.

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.

With respect to Paragraph 1.a. above, a person's or organization's status as an additional insured under this endorsement ends when:

- (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

With respect to Paragraph 1.b. above, a person's or organization's status as an additional insured under this endorsement ends when their written contract or written agreement with you for such premises or facilities ends.

With respects to Paragraph 1.c. above, this insurance does not apply to any "occurrence" which takes place after the equipment rental or lease agreement has expired or you have returned such equipment to the lessor.

The insurance provided by this endorsement applies only if the written contract or written agreement is signed prior to the "bodily injury" or "property damage".

We have no duty to defend an additional insured under this endorsement until we receive written notice of a "suit" by the additional insured as required in Paragraph b. of Condition 2. **Duties In the Event Of Occurrence, Offense, Claim Or Suit under Section IV - Commercial General Liability Conditions.**

2. With respect to the insurance provided by this endorsement, the following are added to Paragraph 2. **Exclusions under Section I - Coverage A - Bodily Injury And Property Damage Liability:**

This insurance does not apply to:

- a. "Bodily injury" or "property damage" arising from the sole negligence of the additional insured.
- b. "Bodily injury" or "property damage" that occurs prior to you commencing operations at the location where such "bodily injury" or "property damage" occurs.
- c. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

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

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

- d. "Bodily injury" or "property damage" occurring after:

- (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

- e. Any person or organization specifically designated as an additional insured for ongoing operations by a separate **ADDITIONAL INSURED -OWNERS, LESSEES OR CONTRACTORS** endorsement issued by us and made a part of this policy.

3. With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of 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:

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

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

H. PRIMARY AND NON-CONTRIBUTORY ADDITIONAL INSURED EXTENSION

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this policy.

Condition 4. Other Insurance of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended as follows:

- a. The following is added to Paragraph a. **Primary Insurance:**

If an additional insured's policy has an Other Insurance provision making its policy excess, and you have agreed in a written contract or written agreement to provide the additional insured coverage on a primary and noncontributory basis, this policy shall be primary and we will not seek contribution from the additional insured's policy for damages we cover.

b. The following is added to Paragraph b. **Excess Insurance:**

When a written contract or written agreement, other than a premises lease, facilities rental contract or agreement, an equipment rental or lease contract or agreement, or permit issued by a state or political subdivision between you and an additional insured does not require this insurance to be primary or primary and non-contributory, this insurance is excess over any other insurance for which the additional insured is designated as a Named Insured.

Regardless of the written agreement between you and an additional insured, this insurance is excess over any other insurance whether primary, excess, contingent or on any other basis for which the additional insured has been added as an additional insured on other policies.

I. **ADDITIONAL INSURED - EXTENDED PROTECTION OF YOUR "LIMITS OF INSURANCE"**

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this policy.

1. The following is added to Condition 2. **Duties In The Event Of Occurrence, Offense, Claim or Suit:**

An additional insured under this endorsement will as soon as practicable:

- a. Give written notice of an "occurrence" or an offense that may result in a claim or "suit" under this insurance to us;
- b. Tender the defense and indemnity of any claim or "suit" to all insurers whom also have insurance available to the additional insured; and
- c. Agree to make available any other insurance which the additional insured has for a loss we cover under this Coverage Part.
- d. We have no duty to defend or indemnify an additional insured under this endorsement until we receive written notice of a "suit" by the additional insured.

2. The limits of insurance applicable to the additional insured are those specified in a written contract or written agreement or the limits of insurance as stated in the Declarations of this policy and defined in **Section III - Limits of Insurance** of this policy, whichever are less. These limits are inclusive of and not in addition to the limits of insurance available under this policy.

J. **WHO IS AN INSURED - INCIDENTAL MEDICAL ERRORS / MALPRACTICE
WHO IS AN INSURED - FELLOW EMPLOYEE EXTENSION - MANAGEMENT EMPLOYEES**

Paragraph 2.a.(1) of Section II - **Who Is An Insured** is replaced with the following:

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

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1) (a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1) (a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services. However, if you are not in the business of providing professional health care services or providing professional health care personnel to others, or if coverage for providing professional health care services is not otherwise excluded by separate endorsement, this provision (Paragraph (d)) does not apply.

Paragraphs (a) and (b) above do not apply to "bodily injury" or "personal and advertising injury" caused by an "employee" who is acting in a supervisory capacity for you. Supervisory capacity as used herein means the "employee's" job responsibilities assigned by you, includes the direct supervision of other "employees" of yours. However, none of these "employees" are insureds for "bodily injury" or "personal and

advertising injury" arising out of their willful conduct, which is defined as the purposeful or willful intent to cause "bodily injury" or "personal and advertising injury", or caused in whole or in part by their intoxication by liquor or controlled substances.

The coverage provided by provision J. is excess over any other valid and collectable insurance available to your "employee".

K. NEWLY FORMED OR ADDITIONALLY ACQUIRED ENTITIES

Paragraph 3. of Section II - Who Is An Insured is replaced by the following:

3. Any organization you newly acquire or form and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
 - a. Coverage under this provision is afforded only until the expiration of the policy period in which the entity was acquired or formed by you;
 - b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
 - c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.
 - d. Records and descriptions of operations must be maintained by the first Named Insured.

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

L. FAILURE TO DISCLOSE HAZARDS AND PRIOR OCCURRENCES

Under Section IV - Commercial General Liability Conditions, the following is added to Condition 6. Representations:

Your failure to disclose all hazards or prior "occurrences" existing as of the inception date of the policy shall not prejudice the coverage afforded by this policy provided such failure to disclose all hazards or prior "occurrences" is not intentional.

M. KNOWLEDGE OF OCCURRENCE, OFFENSE, CLAIM OR SUIT

Under Section IV - Commercial General Liability Conditions, the following is added to Condition 2. Duties In The Event of Occurrence, Offense, Claim Or Suit:

Knowledge of an "occurrence", offense, claim or "suit" by an agent, servant or "employee" of any insured shall not in itself constitute knowledge of the insured unless an insured listed under Paragraph 1. of Section II - Who Is An Insured or a person who has been designated by them to receive reports of "occurrences", offenses, claims or "suits" shall have received such notice from the agent, servant or "employee".

N. LIBERALIZATION CLAUSE

If we revise this Commercial General Liability Extension Endorsement to provide more coverage without additional premium charge, your policy will automatically provide the coverage as of the day the revision is effective in your state.

O. BODILY INJURY REDEFINED

Under Section V - Definitions, Definition 3. is replaced by the following:

3. "Bodily Injury" means physical injury, sickness or disease sustained by a person. This includes mental anguish, mental injury, shock, fright or death that results from such physical injury, sickness or disease.

P. EXTENDED PROPERTY DAMAGE

Exclusion a. of **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** is replaced by the following:

a. Expected Or Intended Injury

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

Q. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US - WHEN REQUIRED IN A CONTRACT OR AGREEMENT WITH YOU

Under **Section IV - Commercial General Liability Conditions**, the following is added to **Condition 8. Transfer Of Rights Of Recovery Against Others To Us**:

We waive any right of recovery we may have against a person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard" provided:

1. You and that person or organization have agreed in writing in a contract or agreement that you waive such rights against that person or organization; and
2. The injury or damage occurs subsequent to the execution of the written contract or written agreement.

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