



**AMENDMENT NO. 1
TO MASTER COPIER/PRINTER LEASE AND
MAINTENANCE AGREEMENT ("Agreement")**

Legal Doc./Contract No. of this signed Amendment (*Legal use only*): 148111

<p>OTHER PARTY</p> <p>UBEO West, LLC ("Other Party") Attn: Clint Phillips 3131 Esplanade Chico, CA 95973 Phone: (530) 343-6065 Email: cphillips@ubeo.com</p>	<p>FCSS</p> <p>Fresno County Superintendent of Schools ("FCSS") Attn: Dr. Michele Cantwell-Copher, Superintendent 1111 Van Ness Avenue Fresno, CA 93721 Phone: (559) 265-3000 Email: mcopher@fcoe.org</p>
<p>If any information stated above is different from that stated on the Agreement or any prior amendment(s), a Party hereby authorizes the other Party to give, effective on the Amendment Effective Date, all notices, demands, and other communications relating to the Agreement and any amendment(s) thereto to the Party, in accordance with the provisions in the Agreement, to the person and address or email stated above.</p>	
<p>TERM OF CONTRACT ("Contract Term", <i>dates must match those stated on Agreement</i>):</p> <p>Effective Date: July 1, 2023 Termination Date: June 30, 2028</p>	<p>EFFECTIVE DATE OF AMENDMENT (<i>date must be within the Contract Term stated in Agreement/prior amendment(s)</i>):</p> <p>"Amendment Effective Date": July 1, 2023</p>
<p>AMENDMENT: Other Party and FCSS are referred to separately as a "Party" and collectively as the "Parties". The Parties entered into the above-referenced Agreement and hereby desire to amend said Agreement as set forth below (<i>complete each as indicated below</i>):</p> <p>1. CONTRACT TERM</p> <p>1.1 The Termination Date was previously amended to: No change</p> <p>1.2 This Amendment changes the Termination Date as follows (<i>mark one and complete as required</i>):</p> <p style="padding-left: 40px;"><input checked="" type="checkbox"/> No change <input type="checkbox"/> New Termination Date:</p> <p>2. CONTRACT AMOUNT</p> <p>2.1 The Contract Amount of the Agreement is: \$ Varies</p> <p>2.2 The sum of all prior amendments to the Agreement is (<i>state \$0 if none</i>): \$0</p> <p>2.3 This Amendment changes the Contract Amount as follows (<i>mark one and complete as applicable</i>):</p> <p style="padding-left: 40px;"><input type="checkbox"/> No change</p> <p style="padding-left: 40px;"><input type="checkbox"/> Increase by the following amount: \$</p> <p style="padding-left: 40px;"><input type="checkbox"/> Decrease by the following amount: \$</p> <p style="padding-left: 40px;"><input checked="" type="checkbox"/> Modify as follows: \$ Other Party will charge the Equipment Monthly Fee after an Order is executed and the Equipment has been successfully installed. The Equipment Monthly Fee shall be prorated based on the installation date. FCSS shall continue to pay the Maintenance Monthly Fee for any existing equipment used prior to installation at the rate of Contract No. 143623 established in the 2018-2023 Order.</p> <p>2.4 The amended Contract Amount is (<i>sum of 2.1 to 2.3</i>): \$ Varies</p>	

3. SERVICES/WORK. This Amendment changes the Services/Work as follows (*mark one and complete as applicable*):

No change

Add the following: The Parties are in the process of executing Orders for new Equipment to be installed throughout the month of July 2023. Other Party shall allow FCSS to continue to use equipment previously installed pursuant to Contract No. 143623 until the new Equipment is successfully installed. The Parties anticipate that the new Equipment will all be successfully installed by no later than August 31, 2023.

Delete the following:

Modify as follows:


4. OTHER CHANGES (*leave blank if none*): Clint Phillips is designated as the person to receive notices pursuant to Section 10.6 of the Agreement. The address, phone number, and email address for receipt of notices is designated above.

In consideration of the covenants, conditions, and promises in and for good and valuable consideration and the mutual benefits to be derived from this Amendment, the Parties hereby enter into this Amendment. Unless specifically stated in this Amendment otherwise, this Amendment is effective commencing on the Amendment Effective Date stated above. Except as stated in this Amendment, all terms and conditions of the Agreement and all prior amendments thereto, if any, shall remain in full force and effect in accordance with the terms and conditions stated therein and all terms used in this Amendment shall have the same meaning as in the Agreement. If any provision of this Amendment conflicts with any provision of the Agreement, the provision of this Amendment shall govern. If any provision of this Amendment conflicts with any provision of a prior amendment, the provision of the amendment that is most recent in time shall govern unless specifically stated otherwise in an amendment. Each person executing this Amendment on behalf of a Party represents that he/she is authorized to execute on behalf of and to bind the Party to this Amendment.


OTHER PARTY

FCSS

By: _____


Print Name: Clint Phillips
Title: Executive V.P.

By: _____


Dr. Michele Cantwell-Copher, Superintendent
or Authorized Designee

NOTE – ELECTRONIC SIGNATURE: While FCSS will accept digital signatures on contracts and amendments, they must be validated by a reliable Certificate Authority, and if a digital signature is used to execute any such document, the signature page thereof must be provided to FCSS in the electronic format it was signed in.

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**MASTER COPIER/PRINTER LEASE AND MAINTENANCE AGREEMENT
("Agreement")**

COVER

This Master Copier/Printer Lease and Maintenance Agreement ("**Agreement**"), dated and effective July 1, 2023 ("**Effective Date**"), is entered into by and between the following parties (separately referred to as a "**Party**" and collectively as the "**Parties**"):

UBEO West, LLC ("**Contractor**")
Attn: Name of contact, Title
3131 Esplanade
Chico, CA 95973
Phone: (530) 343-6065
Email: email

Fresno County Superintendent of Schools ("**FCSS**")
Attn: Dr. Michele Cantwell-Copher, Superintendent
1111 Van Ness Avenue
Fresno, CA 93721-2000
Phone: (559) 265-3000
Email: mcopher@fcoe.org

This Agreement contains the following documents and each exhibit and amendment entered into in accordance with this Agreement, each of which is referred to as a "**Contract Document**" and collectively as the "**Contract Documents**" and together form the "**Contract**":

Cover

General Terms and Conditions


- Article 1 Recitals and Representations
- Article 2 Definitions
- Article 3 Equipment Lease and Maintenance
- Article 4 Payment and Taxes
- Article 5 Option to Purchase Leased Equipment
- Article 6 Term and Termination of Agreement and Order
- Article 7 Insurance
- Article 8 Indemnity
- Article 9 Dispute Resolution
- Article 10 General Provisions
- Article 11 Availability of Agreement to Other California Local Entities

Contractor's Bid Response

"**Required Documents**" (not attached) means documentation to support Contractor's representations in Article 1, documents required of Contractor in Article 4, and proof of insurance and notices that each Party must provide to the other Party under Article 7.

Each person executing this Agreement on behalf of a Party represents that he/she is authorized to execute on behalf of and to bind and hereby bind the Party to this Agreement.

CONTRACTOR

By: 
Print Name: Clint Phillipis
Title: Executive V.P.

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FCSS

By: 
Dr. Michele Cantwell-Copher, Superintendent
or Authorized Representative

GENERAL TERMS AND CONDITIONS

ARTICLE 1 RECITALS AND REPRESENTATIONS.

The following recitals constitute a part of this Agreement and the Contract:

- 1.1 FCSS issued a Request for Proposals for Copier/Printer Lease and Maintenance Services identified as RFP# NC-2023-001, incorporated by reference as though set forth herein.
- 1.2 Contractor submitted a proposal found to offer the best value services in response to RFP# NC-2023-001, incorporated by reference as though set forth herein.
- 1.3 Contractor represents that it is authorized to conduct business in the State of California, is authorized to provide the Equipment and Maintenance, and is willing and able to so provide in accordance with this Agreement and each Order that is entered into and executed by the Parties.
- 1.4 Contractor represents and warrants that Contractor is authorized to lease, sell, and grant to FCSS all rights set forth under this Agreement and applicable Order(s).
- 1.5 FCSS may, during the Contract Term, lease one or more Equipment and/or procure Maintenance from Contractor. If FCSS desires to lease or purchase any Equipment or procure Maintenance, the Parties shall enter into and execute an Order in accordance with the terms and conditions of this Agreement.
- 1.6 Contractor represents and shall ensure that Contractor and all persons, whom Contractor employs or retains to perform any Maintenance and other services under this Agreement, have the proper training, skill, and experience and is qualified to so perform, including having all required licenses, permits, and/or certifications. Contractor shall provide FCSS with written proof of such licenses, permits, and/or certifications upon FCSS' request and notify FCSS in writing no later than 10 days after Contractor receives any notice that any such licenses, permits, and/or certifications have been revoked, suspended, placed on probation, or non-renewed. Except as stated otherwise in this Agreement, Contractor shall be solely responsible for: (A) all means, methods, techniques, sequences, procedures, safety, and work coordination necessary or proper for Contractor to render performance; (B) the acts and omissions of Contractor's officers, employees, agents, and any other persons who Contractor retains to render any performance; and (C) taking all reasonable precautions for the safety and prevention of injury to the person of and damage or loss to the property of Contractor's officers, employees, agents and any other persons who Contractor retains to render performance and to any officers, employees, agents, students, or invitees of FCSS or any third party.
- 1.7 By this Agreement, the Parties desire to set forth the terms and conditions upon which Contractor shall perform those obligations required of Contractor and FCSS shall pay Contractor therefor, and to set forth other rights and obligations of the Parties.

ARTICLE 2 DEFINITIONS. Terms with initial capital letter are defined terms and shall have the respective meanings set forth in this Agreement and other Contract Documents.

ARTICLE 3 EQUIPMENT LEASE AND MAINTENANCE.

SECTION 3.1 ORDER AND AMENDMENT THERETO.

- 3.1.1 All leases of Equipment and/or procurement of Maintenance shall be set forth in Equipment Lease and Maintenance Orders (each, an "Order"), the form of which shall be substantially similar to the Order form attached to this Agreement. Each Order shall be completed, using

where applicable, the information and amounts in the Equipment List and shall be executed by the Parties. Upon full execution by the Parties, each Order shall be deemed to incorporate the terms and conditions of this Agreement and the other Contract Documents and shall be binding upon the Parties.

- 3.1.2 Terms used in the Order shall have the meaning set forth in this Agreement. As used in the Order, "**Lease Term**" means the period beginning with the date on which the Order becomes effective and ending with the last date on which the Order is in effect.
- 3.1.3 Any amendment to an Order shall be in the form of a revised Order containing the same contract number as the original Order and be fully executed by the Parties.

SECTION 3.2 LEASE OF EQUIPMENT; PURCHASE OF TRACKING/REPORTING SOFTWARE.

3.2.1 EQUIPMENT DEFINED. "**Equipment**" means any or all of the following:

- 3.2.1.1 "**Copier**" means each multi-function printer and related accessory equipment that Contractor makes available during the Contract Term for lease by FCSS, each of which was set forth in Contractor's Proposal Form and is attached hereto as Exhibit B ("**Equipment List**") as submitted by Contractor with its bid and as may be amended from time to time by the Parties in accordance with this Agreement.
- 3.2.2.2 "**Printer**" means each laser printer and related accessory equipment that Contractor makes available during the Contract Term for lease by FCSS, each of which was set forth in Contractor's Proposal Form and is included in the Equipment List.
- 3.2.2.3 "**Software Equipment**" means each accessory equipment that Contractor makes available during the Contract Term for lease by FCSS for use and operation of uniFLOW or another tracking/reporting software that may be purchased or leased by FCSS.

3.2.2 LEASE OF EQUIPMENT. During the Contract Term, FCSS may lease pursuant to a fully executed Order one or more Equipment from Contractor.

- 3.2.2.1 **COPIER LEASE.** Following the award and execution of the Contract, the Parties shall cooperate and coordinate to select Copiers and Printers with specifications and functions that are equivalent to or substantially similar to the Equipment List and such accessory Equipment as selected by FCSS for each Copier ("**Copier Lease**") through several Orders. Until an Order has been entered into and executed by the Parties, FCSS shall have the right to cancel, increase, or decrease the number of any Copier that FCSS leases from Contractor, change the manufacturer/model of any Copier, or add, delete, or change any accessory Equipment.
- 3.2.2.2 **CONDITION.** Unless the Parties agree in an Order, each leased Equipment that Contractor leases to FCSS shall be new (never been leased, sold, or used by another entity or person) when the leased Equipment is first delivered to FCSS.
- 3.2.2.3 **PLACEMENT LOCATION.** Contractor shall deliver and install, and FCSS shall keep, each leased Equipment at the Placement Location stated in the applicable Order. Upon written notice to Contractor at least 15 days before a scheduled relocation, FCSS may request that Contractor relocate or that FCSS be allowed to relocate a leased Equipment to another location operated by FCSS. Contractor shall not deny any reasonable request by FCSS to relocate a leased Equipment.

- 3.2.2.4 **USE AND ENJOYMENT.** During the applicable Lease Term, FCSS shall have the rights to use each leased Equipment to perform essential governmental and educational functions consistent with the permissible scope of FCSS' authority. Contractor shall provide FCSS with quiet use and enjoyment of each leased Equipment during its Lease Term. FCSS shall peaceably and quietly have, hold, and enjoy the leased Equipment during its Lease Term without suit, trouble, or hindrance from Contractor except as otherwise expressly set forth in this Agreement. Contractor shall not interfere with such quiet use and enjoyment during the Lease Term of the leased Equipment so long as FCSS has not materially breached one or more provisions of this Agreement.
- 3.2.2.5 **CONTRACTOR ACCESS.** FCSS shall allow Contractor access to all leased Equipment. Except in an emergency involving potential risk of injury to person(s) or serious damage to property or as agreed upon by the FCSS Department that uses the leased Equipment, Contractor shall coordinate with and notify the FCSS Department before Contractor enters upon any FCSS premises.
- 3.2.2.6 **OWNERSHIP AND INTEREST TO LEASED EQUIPMENT.** Contractor represents that Contractor is the owner of each Equipment that Contractor leases to FCSS under this Agreement and has sole legal title thereto. Each leased Equipment is and will remain personal property and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the leased Equipment or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. FCSS shall keep each leased Equipment free and clear of all liens and claims.
- 3.2.2.7 **WARRANTIES AND GUARANTEES.** CONTRACTOR MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING THAT THE LEASED EQUIPMENT IS FIT FOR A PARTICULAR PURPOSE OR IS MERCHANTABLE. FCSS AGREES THAT FCSS HAS SELECTED EACH LEASED EQUIPMENT BASED UPON FCSS' OWN JUDGMENT AND, EXCEPT FOR THOSE REPRESENTATIONS AND PROVISIONS CONTAINED IN THIS AGREEMENT AND THE APPLICABLE ORDER, DISCLAIMS ANY RELIANCE UPON ANY STATEMENTS OR REPRESENTATIONS CONTRACTOR MADE.

SECTION 3.3 INTENTIONALLY OMITTED.

SECTION 3.4 CONTRACTOR EQUIPMENT IDENTIFICATION NUMBER. Contractor shall place on each leased Equipment an identification number ("**Contractor Equipment ID Number**"). The Contractor Equipment Identification Number shall be used by the Parties solely to identify the leased Equipment for purposes related to this Agreement.

SECTION 3.5 MAINTENANCE OF LEASED EQUIPMENT.

3.5.1 **MAINTENANCE DEFINED.** "**Maintenance**" shall mean and include the following:

- 3.5.1 "**Supply**" means black toners, color toners, developers, drums, clean materials and supplies (except paper and staples), and any parts, supplies, and/or equipment necessary to maintain in good repair and working order each leased Equipment at no additional cost to FCSS. All toners for Copiers that Contractor provides shall be Original Equipment Manufacturer new. All toner cartridges for Printers shall be high quality remanufactured and guaranteed by Contractor as new.

3.5.2 **“Maintenance Services”** means the services set forth below that Contractor shall provide, as applicable, on each Equipment that FCSS leases from Contractor pursuant to a fully executed Order.

3.5.2.1 Conduct inspection on a regular basis of all leased Equipment. Such inspection(s) shall be coordinated and scheduled with FCSS and at FCSS' request.

3.5.2.2 Maintain and keep all leased Equipment in good repair and working order and in accordance with the manufacturer's recommendations, including but not limited to, replacement of drums and other parts, and necessary cleaning materials, supplies, and services.

3.5.2.3 Perform repair, except where the particular leased Equipment has sustained loss, destruction, or damage and the Parties determine that it is non-operable and not likely to be repaired without substantial delay or substantial cost, or where the leased Equipment fails, in FCSS' opinion, to operate in a satisfactory manner.

3.5.2.4 Move or relocate, at no extra cost to FCSS, any leased Equipment within five business days of the date on which Contractor receives FCSS' request.

3.5.2.5 Enforce any warranty for the leased Equipment.

3.5.3 **“Customer Service and Training”** means a dedicated account team, including a local contact person who is available Monday through Friday, 8:00 am to 5:00 pm, to: (A) advise and assist on Equipment leased from Contractor pursuant to this Agreement; (B) train, support, and assist FCSS regarding use and operation of each Equipment leased from Contractor pursuant to this Agreement; and (B) at FCSS' request, reviews and reports regarding Maintenance to FCSS.

3.5.2 MAINTENANCE OF LEASED EQUIPMENT. Contractor shall provide, during the applicable Lease Term, Maintenance in accordance with the following for each Equipment leased from Contractor pursuant to a fully executed Order.

3.5.2.1 SUPPLY. Contractor shall provide the Supply requested by FCSS or as mutually determined by the Parties to be necessary for proper operation of the leased Equipment. If Contractor fails to provide Supply for a leased Equipment within two business days of FCSS' request, FCSS, upon expiration of the two business days and without any notice to Contractor, may purchase supplies from any source and Contractor shall reimburse FCSS for the cost of the purchased supplies within 30 days of Contractor's receipt of FCSS' invoice requesting payment therefor.

3.5.2.2 MAINTENANCE SERVICE.

(A) Contractor shall inspect, maintain, and/or repair each leased Copier and Printer, except where it has sustained loss, destruction, or damage and the Parties determine that it is non-operable and not likely to be repaired without substantial delay or substantial cost, or where the leased Copier or Printer fails, in FCSS' opinion, to operate in a satisfactory manner. Contractor shall perform the inspection, maintenance, and/or repair within six hours after Contractor receives FCSS' request. Unless specifically provided otherwise in this Agreement in which case such time deadline shall apply, Contractor shall

perform Maintenance Services, other than inspection, maintenance, and repair, within two business days after Contractor receives FCSS' request.

- (B) If Contractor fails to perform the Maintenance Service in accordance with (A) above and fails to provide FCSS with a loaner Copier or Printer in accordance with Subsection (C) below, FCSS, starting on the third business day after FCSS' request for Maintenance Services and without any notice to Contractor, may perform or procure the performance of services, and purchase any materials and supplies as FCSS determines are necessary to inspect, maintain, repair, and/or keep the affected leased Copier or Printer in good order and working condition. FCSS shall also, per Section 4.5 (Abatement of Payment), have the right, starting on the third business day after FCSS' request for Maintenance Services until but not including the day on which the affected leased Copier or Printer is restored to good order and working condition ("**Abatement Period**"), to deduct from the Maintenance Monthly Fee for the affected leased Copier or Printer and without providing any notice to Contractor, (A) the Maintenance Monthly Fee for the Abatement Period; and (B) \$200 per month for the affected leased Copier or Printer, prorated based on the number of days during the Abatement Period. FCSS will have no setoffs, deductions or counterclaims against the Equipment Monthly Lease for the affected leased Copier or Printer. If the Maintenance Monthly Fee for the affected leased Copier or Printer is not sufficient to cover the deduction for the Abatement Period, Contractor shall pay FCSS any excess amount within 30 days of Contractor's receipt of FCSS' invoice.
- (C) **LOANER EQUIPMENT.** After inspecting an affected leased Copier or Printer, if Contractor determines that the time to procure the necessary parts and/or perform the necessary Maintenance Service will take more than five business days, Contractor shall provide FCSS with a loaner Copier or Printer that has equal or higher capabilities than the affected leased Copier or Printer by no later than the sixth business day after FCSS' request for Maintenance Services.

SECTION 3.6 LOSS, DESTRUCTION, AND DAMAGE TO AND NON-OPERABLE LEASED EQUIPMENT. The provisions in this Section apply where a leased Equipment sustains loss, destruction, or damage or does not operate to FCSS' satisfaction (separately and collectively referred to as "**Loss Event**"). Within 15 days of the date on which the loss, destruction, or damage occurred or the leased Equipment is not operating to FCSS' satisfaction, the Party with knowledge thereof shall notify the other Party in writing. The Parties shall then cooperate and determine whether the affected leased Equipment may be repaired without substantial delay and cost. If the Parties determine that there would be substantial delay and cost to perform the repair, the following shall apply:

- 3.6.1 NON-FCSS CAUSED LOSS.** If the loss, destruction, or damage to the leased Equipment is caused in any way by Contractor, an unknown source, normal wear and tear, or a defect of the affected leased Equipment, the Parties agree: (A) Contractor, within one week of Contractor's receipt of FCSS' written notification of the loss, destruction, or damage, shall exchange the affected lease Equipment with a replacement equipment of the same or a higher type, utility, condition, and value as the affected leased Equipment at no added cost to FCSS; (B) the applicable Order of the affected leased Equipment shall continue, unchanged, except it shall be updated with the description and serial number of the replacement Equipment; (C) FCSS shall continue to pay the Equipment Monthly Lease and Maintenance Monthly Fee for the affected leased Equipment as they become due; and (D) Contractor shall remove and dispose of the affected leased Equipment.

3.6.2 **FCSS-CAUSED LOSS.** The following shall apply if FCSS solely caused the loss, destruction, or damage to the affected leased Equipment:

3.6.2.1 **NO REPLACEMENT EQUIPMENT.** If FCSS elects by written notice to Contractor *not* to replace the affected leased Equipment, the Parties agree: (1) FCSS shall pay each Equipment Monthly Lease and Maintenance Monthly Fee for the affected leased Equipment that is due before the date on which the loss, destruction, or damage occurred as each such payment becomes due; (2) FCSS shall pay the present value of the Equipment Monthly Fee remaining for the affected leased Equipment for the remaining Lease Term *plus* the fair market value of the affected leased Equipment as of the last date of Lease Term *minus* any proceeds that either Party receives from insurance covering the affected leased Equipment, the sum of which shall then be discounted by six percent (6%) for each year that remains in the Lease Term for the affected leased Equipment; (3) FCSS is not obligated to pay for any Maintenance Monthly Fee for the affected leased Equipment that is due on and after the date on which the loss, destruction or damage occurred; (4) upon FCSS' payment of the amount in (2) and Contractor's receipt of such payment and the insurance proceeds, if any, the Order applicable to the affected leased Equipment shall terminate without any further action or notice by either Party; and (5) Contractor shall remove and dispose of the affected leased Equipment.

3.6.2.2 **REPLACEMENT EQUIPMENT.** If FCSS elects by written notice to Contractor to replace the affected leased Equipment, the Parties agree that the provisions stated immediately above in 3.6.2.1 shall apply and the Parties shall enter into a new Order for FCSS to lease the replacement Equipment and Contractor to provide Maintenance therefor. On any Order for a leased Copier, the Lease Term shall be a minimum of 60 months. On any Order for a leased Printer, the Lease Term shall be month-to-month.

SECTION 3.7 INTENTIONALLY OMITTED.

SECTION 3.8 ADDITIONAL SUPPLY AND SERVICE. FCSS may request, or Contractor may propose, that Contractor provide other supplies ("**Additional Supply**") and/or services ("**Additional Service**") to FCSS that are not included in Contractor's Equipment List. Any Additional Supply or Additional Service that the Parties agree upon shall be set forth in a writing executed by them.

SECTION 3.9 COOPERATION AND COORDINATION. The Parties shall cooperate and coordinate to facilitate an orderly transition, delivery, installation, testing, and operation of the leased Equipment; connection of the leased Equipment to tracking/reporting software; provision of Maintenance where required by an Order; and performance of all other obligations required of each Party under this Agreement. Contractor shall minimize disruption and interruption of FCSS' operations.

SECTION 3.10 USE OF OTHER EQUIPMENT AND SUPPLIERS. Throughout the Contract Term, FCSS, at its sole determination, may continue to use and operate any existing multi-function printers, laser printers, and other equipment, not part of the leased Equipment, as FCSS determines appropriate. In addition, FCSS, at FCSS' discretion and expense and without any notice, obligation, or liability to Contractor, may have another company or entity provide identical, similar, or different equipment, supplies, and/or services for FCSS. FCSS' use of another company or entity shall not constitute or be deemed a breach of any provision of this Agreement or any Order.

ARTICLE 4 PAYMENT AND TAXES

SECTION 4.1 MONTHLY PAYMENT.

4.1.1 AMOUNT. As full consideration and compensation for the lease of each Equipment and provision of Maintenance therefor, FCSS shall pay Contractor a “**Monthly Payment**” consisting of the following:

4.1.1.1 “**Equipment Monthly Lease**” means the amount that FCSS shall pay Contractor each month for the lease of an Equipment. The Equipment Monthly Lease shall be based on the following:

- (A) INITIAL COPIER LEASE. The Equipment Monthly Fee for each Copier that FCSS leases as part of the Initial Copier Lease shall be as stated in Equipment List provided, however, that if a lower rate exists for the Equipment in any contract through which FCSS may lease the Equipment (e.g., “piggyback” contract through another public agency), Contractor shall lease the Copier to FCSS at the lower rate.
- (B) SUBSEQUENT LEASES OF COPIER AND PRINTER. The Equipment Monthly Lease for any Equipment that FCSS leases in any subsequent leases shall, as applicable, be as stated in Equipment List, as submitted by Contractor with its proposal and as may be amended from time to time by the Parties in accordance with this Agreement, provided, however, that if a lower rate exists for an Equipment in any contract through which FCSS may lease the Equipment (e.g., “piggyback” contract through another public agency), Contractor shall lease the Equipment to FCSS at the lower rate. The Equipment Monthly Lease shall only accrue for each month of the Lease Term for an Order and no additional fees shall be applied for Orders executed after the Contract Effective Date.

4.1.1.2 “**Maintenance Monthly Fee**” means the amount that FCSS shall pay to Contractor each month for Contractor to provide Maintenance of each leased Equipment.

- (A) The Maintenance Monthly Fee for each Equipment that Contractor provides Maintenance shall be calculated for each month as follows: (B/W Volume X B/W Rate) + (if applicable, Color Volume X Color Rate) as stated in the Equipment List. The B/W Rate and Color Rate shall not be increased or decreased during the Lease Term applicable to a Copier or Printer. Any increase or decrease to the B/W Rate or Color Rate shall be agreed upon and set forth in an amendment to this Agreement, which amendment shall state, at a minimum, the effective date of the change and the new rates.
- (B) Volume shall be tracked and reported, at FCSS’ discretion and selection, using the meter on each Copier or Printer. “**Volume**” means the total number of impressions or copies that FCSS makes during a month on a Copier or Printer for which Contractor is providing Maintenance. Volume shall not include any facsimiles, Laserfiche, scans, and impressions made using the Copier or Printer where there is no printout.
- (C) Contractor shall assist FCSS to install, at FCSS’ discretion and selection, uniFLOW or other tracking/reporting software on each leased Equipment. Contractor shall utilize the FCSS-selected software to track and bill FCSS for each printed page made on each leased Equipment. The Parties shall cooperate and coordinate to operate the FCSS-selected software to track the Volume for each such leased Equipment.

- 4.1.2 **PRORATION.** If the Lease Term for an Order does not start on the first day of a month or does not terminate on the last day of a month, the Equipment Monthly Lease and Maintenance Monthly Fee shall be prorated based on the number of days that have passed compared to the number of days that remain in the month.

SECTION 4.2 INVOICE AND SUPPORTING DOCUMENTATION.

- 4.2.1 **INVOICE AND VOLUME REPORT.** Before Contractor may receive any payment under this Agreement, Contractor shall submit to FCSS at the address stated on the Cover, **to the attention of Internal Finance, Accounts Payable**, by no later than the 15th day of each month, an itemized invoice for the Monthly Payment due for the prior month. Each invoice shall state the applicable Order No., Contractor Equipment ID Number for the particular leased Equipment, and purchase order number issued by FCSS. Each invoice shall be accompanied by a report of the Volume for each leased Equipment during the month for which payment of the Monthly Payment is requested. The report shall list, at a minimum, the Contractor Equipment Identification Number of each leased Equipment and state for each the applicable Equipment Monthly Lease and the Maintenance Monthly Fee with itemization of the applicable B/W Volume and B/W Rate, and, if applicable, Color Volume and Color Rate.
- 4.2.2 **DECLARATION UNDER PENALTY OF PERJURY.** Each person submitting and/or signing an invoice on behalf of Contractor declares under penalty of perjury under California laws, and certifies and attests that: (A) he/she has thoroughly reviewed the claim for payment and knows its content; (B) the invoice and supporting information are true, accurate, and complete, and reflect amounts due and services that Contractor has completed in accordance with this Agreement and the correct amount for those services; (C) Contractor has complied and is in compliance with all obligations required of Contractor under this Agreement; and (D) he/she is familiar with Penal Code section 72 pertaining to false claims, and knows and understands that submission and/or certification of a false claim may lead to fines, imprisonment, and/or other legal consequences.
- 4.2.3 **ADDITIONAL DOCUMENTATION.** Upon receiving an invoice and if FCSS objects to it and/or requires additional information or documentation, FCSS shall notify Contractor and Contractor shall provide such information and/or documentation to FCSS within 10 days after Contractor receives FCSS' notice. If Contractor fails or refuses to provide the additional information, FCSS shall have the right to withhold payment of any or all of the Monthly Payment until such time that FCSS receives such information from Contractor.

SECTION 4.3 PAYMENT SCHEDULE AND RELEASE. FCSS shall pay each Monthly Payment within 30 days of FCSS' receipt and approval of Contractor's invoice and supporting documentation. Contractor's acceptance of any payment pursuant to this Agreement shall constitute, effective on the date of acceptance, a release of all claims and liabilities that Contractor has or may have against FCSS for any additional payment for the matters for which the payment was made. However, FCSS' payment shall not relieve Contractor of Contractor's obligations under the applicable Order and this Agreement or for deficient or defective services or products discovered after the payment is made.

SECTION 4.4 PAYMENT TO CONSTITUTE A CURRENT EXPENSE. FCSS' obligation to pay the Monthly Payment constitutes a current expense of FCSS payable solely from FCSS' general or other funds that are legally available for that purpose, and shall not be construed to be a debt of FCSS in contravention of any applicable constitutional or statutory limitation concerning the creation of indebtedness by FCSS, nor shall anything contained in this Agreement or in an Order constitute a pledge of the general tax revenues, funds, or moneys of FCSS.

SECTION 4.5 ABATEMENT OF PAYMENT. FCSS shall immediately notify Contractor in writing upon

the occurrence of act or omission by Contractor that interferes substantially with FCSS' use and possession of a leased Equipment. If Contractor does not cease such interference within two business days of Contractor's receipt of FCSS' notice, the Parties agree that the FCSS may deduct from the Maintenance Monthly Lease of the affected leased Equipment as they become due and shall not be obligated to pay Contractor both of the following: (A) the Maintenance Monthly Lease for the affected leased Equipment for each day during which Contractor substantially interfered with FCSS' use and possession of the leased Equipment *plus* (B) \$200 per month for each leased Equipment affected, pro-rated for the period during which the substantial interference occurred. If the remaining Maintenance Monthly Lease of the affected leased Equipment is not sufficient to cover the deduction under this Section, Contractor shall pay such excess amount to FCSS within 30 days of Contractor's receipt of FCSS' invoice. Except as provided in this Section, FCSS will have no setoffs, deductions, or counterclaims against the Monthly Maintenance Fee of the affected leased Equipment and will have no setoffs, deductions or counterclaims against the Equipment Monthly Lease of the affected leased Equipment.

SECTION 4.6 TAXES. The Parties intend that FCSS will use the leased Equipment for a governmental or proprietary purpose, and therefore, the leased Equipment will be exempt from all property taxes. Under current California requirements, FCSS must perform annual filing in January before such exemption is granted for the following year. Throughout the Contract Term, Contractor shall notify FCSS by January 15 of each year of the annual filing requirement and provide the applicable Fresno County form and follow up with FCSS' contact person listed on the Cover to sign and mail the exemption form. If Contractor fails to so notify FCSS and, as a result, FCSS is levied property taxes due or if any leased Equipment is determined not to be exempt from property tax, Contractor shall pay the property tax on the leased Equipment for that tax year and as it becomes due. FCSS is not responsible or liable for any taxes that may be assessed for Maintenance or Additional Service that Contractor provides, the Parties agreeing that such responsibility and liability shall belong to Contractor, except for sales tax as required by the State of California that is FCSS' responsibility.

SECTION 4.7 PAYMENT PROCESSING DOCUMENTS. At FCSS' request and as applicable, Contractor shall provide a Taxpayer Identification Number Request (W-9), Withholding Exemption Certificate (CA Form 590), and other documents that FCSS may require to process payment to Contractor, each of which is incorporated by reference into and constitutes a part of this Agreement and each Order and is collectively referred to as "**Payment Processing Documents**". If any Payment Processing Document becomes incorrect during the Contract Term, Contractor shall promptly notify in writing and/or submit to FCSS the appropriate document reflecting the correct information.

SECTION 4.8 RECORD KEEPING, RETENTION, INSPECTION, AND AUDIT. Contractor shall maintain accurate books and records of all leased Equipment, Maintenance, Additional Supply, and Additional Service provided under, amounts billed pursuant to, and all documents required of Contractor under this Agreement for at least five years following the Contract Term and make them available for review, audit, and/or copying by FCSS. If any Order or request for Additional Supply or Additional Service involves the expenditure of \$10,000 or more in funds from the State of California, it is subject, for three years after the final payment is made, to the State Auditor's examination and audit at FCSS' request or as part of an audit of FCSS. The provisions of this Section shall survive the termination of this Agreement.

ARTICLE 5 INTENTIONALLY OMITTED.

ARTICLE 6 TERM AND TERMINATION OF AGREEMENT AND ORDER.

SECTION 6.1 CONTRACT TERM OF AGREEMENT. This Agreement shall become effective on the Contract Effective Date and shall continue in full force and effect thereafter until and including June 30,

2028 (“**Contract Term**”), unless this Agreement is extended in accordance with this Agreement or is terminated during the Contract Term in accordance with Section 6.3 below.

SECTION 6.2 EXTENSION OF CONTRACT TERM. The Parties, by mutual agreement set forth in an amendment to this Agreement, may extend the Initial Contract Term for an additional one-year period, up to two one-year additional periods.

SECTION 6.3 ORDERS. Upon termination of this Agreement, all applicable Orders shall terminate without any notice or action by either Party.

SECTION 6.4 TERMINATION OF AGREEMENT AND RIGHTS AND OBLIGATIONS THEREUPON. Termination of this Agreement shall occur in accordance with any of the following:

6.4.1 EXPIRATION OF CONTRACT TERM. This Agreement and all Orders shall terminate effective 12:00 midnight on the last day of the Contract Term without any notice or action by either Party. Upon and after the expiration of the Contract Term, the following shall apply:

6.4.1.1 REMOVAL OF LEASED EQUIPMENT WITH EXPIRED LEASE TERM. Contractor, at its sole cost and liability, shall remove all leased Equipment, and FCSS shall allow such removal from FCSS’ premises within 30 days of the last day of the Lease Term.

6.4.1.2 NO NEW LEASE OF EQUIPMENT. Upon expiration of the Contract Term, no public agency under Public Contract Code section 20118 or FCSS may lease any Equipment or procure Maintenance pursuant to this Agreement.

6.4.2 MATERIAL BREACH. If a Party materially breaches one or more provisions of this Agreement and the non-breaching Party intends to terminate this Agreement due to such material breach, the non-breaching Party must provide the breaching Party with written notice stating the specific provisions of this Agreement and/or applicable Order(s) that were materially breached, the acts or omissions of the breaching Party that caused the material breach, and the corrective actions that are requested by the non-breaching Party. The breaching Party shall have 30 days from the date that the breaching Party receives the non-breaching Party’s notice to resolve and perform the corrective actions and, upon completion thereof, provide a written report to the non-breaching Party as to corrective actions taken by the breaching Party. If, upon expiration of the 30 days, the breaching Party has not resolved and corrected the material breach, this Agreement along with all Orders then in effect, shall terminate at 12:00 midnight on 30th day after the breaching Party receives the non-breaching Party’s notice of material breach and termination without any further notice or action by either Party. Upon and after termination of this Agreement, the following shall apply:

6.4.2.1 RIGHTS AND OBLIGATIONS UPON TERMINATION BY FCSS FOR CONTRACTOR BREACH. If FCSS terminates this Agreement due to Contractor’s material breach of one or more provisions of this Agreement and the Parties have not agreed otherwise in a writing executed by them or this Agreement does not provide otherwise, the following applies and survives the termination of this Agreement:

(A) PAYMENT BY FCSS. FCSS shall pay to Contractor only the portion of each Monthly Payment due as of the effective date of termination. FCSS is not obligated to pay Contractor any portion of the Monthly Payment that would have been due after the effective date of termination of this Agreement.

(B) **REMOVAL OF LEASED EQUIPMENT BY CONTRACTOR.** Contractor, at its sole cost and liability, shall remove all leased Equipment from FCSS' premises within 30 days of the effective date of termination of this Agreement.

6.4.2.2 RIGHTS AND OBLIGATIONS UPON TERMINATION BY CONTRACTOR FOR FCSS BREACH. If Contractor terminates this Agreement due to FCSS' material breach of one or more provisions of this Agreement and this Agreement does not provide otherwise, the following applies and survives the termination of this Agreement:

(A) **PAYMENT BY FCSS.** FCSS shall pay Contractor the lesser of the following: (A) the remaining Equipment Monthly Lease amounts for each Order then in effect, payment to be made as each such payment becomes due; or (B) the present value of the Equipment Monthly Lease amounts remaining for each Order *plus* the fair market value of the leased Equipment set forth in such Order as of the last day of the Lease Term, the sum of which shall then be discounted by six percent (6%) for each year that remains in the Lease Term, such payment to be made by FCSS to Contractor within 30 days of the effective termination date of this Agreement.

(B) **REMOVAL OF EQUIPMENT BY CONTRACTOR.** Contractor shall remove all leased Equipment from FCSS' premises within 30 days of the effective date of termination of this Agreement. FCSS will reimburse Contractor for the reasonable cost of such removal and transportation of the leased Equipment to a location within the City of Fresno, State of California.

6.4.3 BANKRUPTCY OR INSOLVENCY. This Agreement shall terminate effective the day immediately preceding the day on which Contractor: (A) files a voluntary petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors; (B) applies for, consents to, or has an order, judgment, or decree entered by a court for, approval of a petition or appointment of a receiver, trustee, custodian, or liquidator of all or a substantial part of Contractor's assets; (C) is unable to, fails to, or admits in writing its inability generally to pay its debts or obligations as they become due; and/or (D) makes a general assignment for the benefit of creditors. Upon termination of this Agreement pursuant to this Subsection, the provisions in Subsection 6.4.2.1 above apply and survive the termination of this Agreement.

6.4.4 ASSIGNMENT, TRANSFER, SUBCONTRACT, OR SUBLEASE. If this Agreement or any Order or any rights or obligations thereunder are assigned, transferred, subcontracted, or subleased in violation of Section 10.3 below, the non-breaching Party, at its discretion, may terminate this Agreement by notifying the breaching Party in writing at least 10 days before the effective date of termination. This Agreement and all Orders then in effect shall terminate effective at 12:00 midnight on the effective date of termination without any further notice or action by either Party. If this Agreement is terminated due to Contractor's breach, Subsection 6.4.2.1 above shall govern the Parties' rights and obligations. If this Agreement is terminated due to FCSS' breach, Subsection 6.4.2.2 shall govern the Parties' rights and obligations.

6.4.5 LOSS OF RIGHTS TO CONDUCT BUSINESS. FCSS may terminate this Agreement and all Orders effective on the date stated in FCSS' written notice of termination to Contractor if: (A) Contractor's legal rights to exist or conduct business in California has been revoked or terminated by the California Secretary of State, any other agency, or a court; or (B) Contractor's legal rights to exist or conduct business in California has been suspended or rendered inactive by the California Secretary of State, any other agency, or a court and such suspension lasts more than 30 consecutive days.

SECTION 6.5 TERMINATION OF ORDER AND RIGHTS AND OBLIGATIONS THEREUPON. Termination of an Order shall occur in accordance with any of the following provision:

6.5.1 NON-APPROPRIATION. FCSS is obligated only to pay the Monthly Payment in any fiscal year (July 1 through June 30 of the next year) as may lawfully be made from funds budgeted and appropriated for that purpose during that fiscal year. Despite any contrary provisions in this Agreement or any Order, FCSS may terminate any Order by providing Contractor with written notice at least 60 days before the effective termination date of the Order where FCSS, the Fresno County Board of Education, and/or any entity from which FCSS receives or is to receive funds to pay for the Order reduce or eliminate some or all such funds, or fail or determine not to appropriate sufficient funds to make future payments for the Order. Contractor understands that each FCSS Department may be separately funded through one or more sources and if such funds are not available, a FCSS Department's need for a leased Equipment and/or Maintenance may no longer be needed, in which case FCSS may terminate the Order pursuant to this Subsection. Upon and after termination of an Order and unless the Parties agree otherwise in a writing executed by them, the following applies and survives the termination of the Order: (A) FCSS shall pay only the portion of the Monthly Payment due for the terminated Order as of the effective date of termination of the Order; (B) Contractor, at its sole cost and liability, shall remove the leased Equipment that are the subject of the terminated Order from FCSS' premises within 30 days of the effective date of termination of the Order; and (C) FCSS agrees not to lease, rent or purchase any similar equipment as the leased Equipment for which an Order is being terminated for non-appropriated funds for a period of one (1) year following the effective termination date of the Order.

SECTION 6.6 OTHER RIGHTS AND INTERESTS UPON TERMINATION. Upon termination of this Agreement or any Order, the following provisions apply to the extent applicable and survives the termination of this Agreement or the Order:

6.6.1 SUPPLY. Contractor shall remove all Supply that Contractor delivered to FCSS but have not been used by FCSS.

6.6.2 ADDITIONAL SUPPLY AND SERVICE. FCSS shall pay Contractor for any Additional Supply and Additional Services that Contractor provided or performed before the effective date of termination of this Agreement.

6.6.3 PAYMENT SCHEDULE AND PRORATION. Unless provided otherwise in this Agreement, all provisions in Article 4 shall apply to Contractor's request for, and FCSS' issuance of any payment under this Article 6, and, upon making such payment, FCSS is not obligated to pay and shall have no liability for any payment to Contractor under the terminated Order or this Agreement, whether pursuant to contract, law or equity. If the effective termination date is not the last day of a month, any payment of the Monthly Payment shall be prorated based on the number of days that passed compared to the number of days remaining in the month.

6.6.4 REMOVAL OF DATA FROM LEASED COPIER AND PRINTER. Upon termination of this Agreement or any Order, Contractor shall remove all FCSS data and information stored on any leased Copier and Printer.

SECTION 6.7 FORCE MAJEURE. A Party is not liable for failing or delaying performance of any Order and this Agreement due to events that are beyond the Party's reasonable control and occurring without its fault or negligence, for example, acts of God such as tornadoes, lightning, earthquakes, hurricanes, floods, or other natural disasters (collectively "**Force Majeure**") provided that the Party has notified the other Party in writing of the occurrence of the Force Majeure, except that a Force Majeure shall not excuse FCSS' payment of any portion of the Monthly Payment that is due where FCSS had the use,

enjoyment, and possession of the leased Equipment and the Maintenance Monthly Fee where Contractor has performed the Maintenance required of Contractor and for which payment is sought in accordance with this Agreement and submitted an invoice and supporting information and documentation as required in Article 4. Contractor shall not be entitled to any payment for any Maintenance or Additional Service that Contractor did not perform and for any leased Equipment that FCSS was not able to use, enjoy, or possess during the period of the Force Majeure.

ARTICLE 7 INSURANCE.

SECTION 7.1 FCSS INSURANCE. FCSS, at its cost and throughout the Contract Term, shall maintain in effect insurance or self-insurance that complies, at a minimum, with the following requirements:

- 7.1.1 *Commercial general liability* with limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate and coverage for property damage, bodily injury, and personal and advertising injury.
- 7.1.2 *Workers compensation* with limits of not less than \$1,000,000 or as required by State laws, whichever is greater; and *employer's liability insurance* of not less than \$1,000,000.
- 7.1.3 *Commercial automobile liability* covering, at a minimum, all owned, non-owned, and hired autos or any auto, with a combined single limit of not less than \$1,000,000 per accident.
- 7.1.4 *Property Insurance* insuring each leased Equipment for its full replacement value against loss, theft, damage, and destruction and naming Contractor as a loss payee.

SECTION 7.2 CONTRACTOR INSURANCE. Contractor, at its cost and throughout the Contract Term, shall maintain in effect insurance that complies, at a minimum, with the following requirements:

- 7.2.1 *Commercial general liability* with limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate and coverage for property damage, bodily injury, and personal and advertising injury. This insurance shall contain a blanket additional insured endorsement or be endorsed to name the Fresno County Superintendent of Schools, the Fresno County Board of Education, and their officers, employees, agents, and volunteers as an additional insured.
- 7.2.2 *Workers compensation* with limits of not less than \$1,000,000 or as required by State laws, whichever is greater; and *employer's liability insurance* of not less than \$1,000,000.
- 7.2.3 *Commercial automobile liability* covering, at a minimum, all owned, non-owned, and hired autos or any auto, with a combined single limit of not less than \$1,000,000 per accident.

SECTION 7.3 PROOF AND NOTICE. Each Party shall provide to the other Party written proof of the existence of the required insurance, including all required endorsements with 10 days of the Effective Date. Upon FCSS' request, Contractor shall provide a copy of the insurance policy or other proof of insurance satisfactory to FCSS. Each Party shall provide the other Party with written proof of renewal of each required insurance, including all required endorsements, at least 15 days before the date on which the insurance expires.

SECTION 7.4 SUBCONTRACTOR INSURANCE. Any person or entity that Contractor retains to perform any Maintenance or Additional Service shall maintain insurance that complies, at a minimum, with the requirements of Section 7.2. Upon FCSS' request, Contractor shall require such persons and entities to provide to FCSS written proof of the required insurance.

ARTICLE 8 INDEMNITY.

SECTION 8.1 MUTUAL OBLIGATION. Each Party's indemnity, defense, and hold harmless obligations to the other Party under or related to this Agreement shall be governed solely by this Article. A Party ("**Indemnitor**") shall: (A) indemnify and hold harmless the other Party ("**Indemnitee**") to the full extent permitted by California laws for any Loss sustained by Indemnitee or a Third Party only in proportion to Indemnitor's liability based on a Final Determination; and (B) defend and pay for all of Indemnitor's attorney's fees and litigation costs related to any Claim or Loss without any right against or from the Indemnitee for indemnity and/or hold harmless of such costs and fees, or any right for defense. "**Claim**" means any claim, demand, lawsuit, cause of action, action, cross-complaint, cross-action, and/or proceeding arising out of, resulting from, or relating to this Agreement where there has been no Final Determination. "**Loss**" means any bodily injury, property damage, personal injury, advertising injury, liability, loss, damage, judgment, expense, and/or cost (excluding attorney's fees and litigation costs that a Party or a Third Party incurred or paid related to a Loss or Claim) arising out of, resulting from, or relating to this Agreement and for which there has been a Final Determination that a Party is or both Parties are liable. "**Third Party**" means a person who or an entity that is not any of the following: (A) a Party; (B) an owner, director, officer, employee, or agent of Contractor; (C) an employee, agent, or volunteer of FCSS or a member, officer, or agent of the Fresno County Board of Education; or (D) contracted with (whether directly or through a subcontract of any level) or otherwise retained by a Party to act for or on the Party's behalf. "**Final Determination**" means any judgment, order, or decision, each a "**Determination,**" by a court of competent jurisdiction or a governmental entity with jurisdiction to render the Determination where the Determination is not subject to appeal or the period for an appeal has expired.

SECTION 8.2 CONTRACTOR INDEMNITY OBLIGATION – TRACKING/REPORTING SOFTWARE. Notwithstanding any other provision in this Agreement and if FCSS shall lease or purchase tracking/reporting software, Contractor shall indemnify, defend, and hold harmless FCSS for and against any Claim and Loss, including attorney's fees and costs, arising out of, resulting from, or related to tracking/reporting software, including but not limited to, any claim and/or liability against FCSS for infringement of any copyright, trademark, and/or trade secret.

SECTION 8.3 NOTICE. A Party who intends to seek or seeks indemnity, defense, and/or hold harmless from the other Party pursuant to this Article: (A) shall notify the other Party in writing and within a reasonable time after the Party knows or becomes aware of any Claim that may or will result in a Loss, describing, if known or determinable, the pertinent circumstances, all entities and persons involved, and the amount being claimed; and (B) shall not settle or otherwise resolve the Claim until it has notified the other Party of the Claim in accordance with the preceding provision (A) and given the other Party written notice and an opportunity to participate in and to consent to the settlement or resolution of the Claim, which consent the other Party shall not unreasonably withhold.

SECTION 8.4 NO LIMITATION BY INSURANCE AND SURVIVAL OF OBLIGATIONS. A Party's obligations under this Article are not limited to or by any insurance that it maintains or the lack of insurance but apply to the full extent permitted by California laws, and shall survive the termination of this Agreement and any or all Orders.

ARTICLE 9 DISPUTE RESOLUTION.

The Parties shall meet and confer in good faith to resolve any dispute between them arising out of, resulting from, or relating to this Agreement or any Order, including any Claim or Loss for which a Party seeks indemnity pursuant to Article 8 and any dispute relating to this Agreement or any Order that arises or occurs after the termination of this Agreement. During any dispute, FCSS' decision, for the time being, shall prevail and Contractor shall perform this Agreement and any Order as FCSS directs without prejudice to a Final Determination, as this term is defined in Article 8. During a dispute regarding payment under this Agreement, FCSS shall pay Contractor the amount that is undisputed and due to Contractor; if a disputed amount is determined in a Final Determination to be due to Contractor, FCSS

shall pay such amount to Contractor within 30 days of the date of the Final Determination, unless a different date is stated in the Final Determination or in an agreement executed by the Parties, in which case, FCSS shall pay Contractor in accordance therewith. Except for an action to preserve the status quo and/or prevent irreparable harm, a Party shall not commence any cause of action, action, lawsuit, or proceeding arising out of, resulting from, or relating to this Agreement or any Order until after the Party has complied with the provisions of this Article. The provisions of this Article shall survive the termination of this Agreement.

ARTICLE 10 GENERAL PROVISIONS.

SECTION 10.1 ENTIRE AGREEMENT, EXECUTION, AMENDMENT, AND WAIVER. This Agreement is a complete and exclusive statement of the Parties' agreement under Code of Civil Procedure section 1856. The Parties may execute this Agreement and any amendment hereto in counterparts such that each Party's signature is on a separate page. A copy or an original of this Agreement with the Parties' signatures, whether original or transmitted by electronic means, shall be deemed a fully executed contract. Unless specifically provided otherwise in this Agreement in which case such provision shall apply to the extent provided therein, the Parties may amend or waive any covenant, term, or condition of this Agreement only by a writing executed by them.

SECTION 10.2 INTERPRETATION, APPLICABLE LAWS AND TIME ZONE, VENUE, SEVERABILITY, AND SURVIVAL OF TERMINATION. This Agreement is to be interpreted according to its fair meaning and not strictly for or against any Party, and under California laws without giving effect to choice of law provisions that may result in the application of the laws of another jurisdiction. All dates and times stated in this Agreement shall be according to Pacific Time. All causes of action, actions, lawsuits, and proceedings arising out of, resulting from, or relating to this Agreement or any Order shall be adjudicated in state or federal court in Fresno County, California, provided that FCSS does not hereby waive any immunity to suit. If a court of competent jurisdiction holds any provision of this Agreement void, illegal, or unenforceable, this Agreement shall remain in full force and effect and shall be interpreted as though such invalidated provision is not a part of this Agreement and the remaining provisions shall be construed to preserve the Parties' intent in this Agreement. Any provision in this Agreement that by its nature applies after, or is specifically stated to survive, the termination of this Agreement shall survive the termination of this Agreement and the applicable Orders(s).

SECTION 10.3 INDEPENDENT CONTRACTOR, ASSIGNMENT, TRANSFER, SUBCONTRACT, AND SUBLEASE. Contractor is an independent contractor, and it and its officers, employees, and agents are not, and shall not represent themselves as, officers, employees, or agents of FCSS. This Agreement does not and shall not be construed to create an agency relationship, partnership, or joint venture between the Parties. Contractor shall not assign, transfer, or subcontract any or all of its obligations under this Agreement or any Order, including by operation of law or change of control or merger, without FCSS' prior written consent. Contractor shall have the right to assign and transfer to its financing entity(ies) or banks any and all rights, title, and interest in the leased Equipment, and the Monthly Payment that FCSS has under one or more Orders. FCSS shall not assign or transfer any Order or sublease any leased Equipment without Contractor's prior written consent.

SECTION 10.4 COMPLIANCE WITH APPLICABLE LAWS. Contractor shall comply with all federal and California laws applicable to its performance of this Agreement and each Order. If an Order is funded with any federal funds, Contractor shall comply with federal suspension and debarment regulations, including Executive Order 12549 (29 C.F.R. Part 98). Each provision of law required to be inserted in or that applies to this Agreement shall be deemed inserted herein, and this Agreement and each Order shall be read and enforced as though such provision of law is inserted herein; however, if any conflict or inconsistency exists between a provision in this Agreement and a provision in applicable law(s), the provision in this Agreement shall govern except where the provision in this Agreement is

specifically prohibited or deemed void by the applicable law(s) in which case the provision in the applicable law(s) shall govern.

SECTION 10.5 ADVERTISING. A Party shall not use the other Party's name or logo in advertisement or promotional literature of any kind without the other Party's prior written consent. Notwithstanding this, Contractor may communicate to those entities listed in Article 11 of the existence of this Agreement and that those entities may lease any Equipment based on this Agreement.

SECTION 10.6 NOTICES. Except as may be stated otherwise in this Agreement in which case such provision shall govern to the extent provided therein, each Party shall give any notices, demands, and all other communications required or permitted under this Agreement in writing and by one of the following methods to the other Party at its address and/or email stated on the Cover, delivery to be effective upon receipt thereof by the other Party: (A) hand delivery; (B) sent by a reputable overnight courier service that tracks the delivery; (C) sent by certified mail, return receipt requested, postage prepaid; or (D) sent by regular mail and transmitted by e-mail; and, if to FCSS, a copy of any notice and demand by email to: Legal Services at legalservices@fcoe.org. A Party may change its contact person and/or contact information stated on the Cover by notifying the other Party of the particular change and the effective date thereof in accordance with this Section. The provisions of this Section shall survive the termination of this Agreement.

SECTION 10.7 HEADINGS. The headings in this Agreement are provided for the convenience of the Parties and in no way define, limit, extend, or describe the scope or intent of this Agreement or of any of the provisions of this Agreement. If any conflict or inconsistency exists between any heading and any provision, the provision, and not the heading, shall govern and control the construction of this Agreement.

ARTICLE 11 AVAILABILITY OF MASTER AGREEMENT TO OTHER CALIFORNIA LOCAL ENTITIES.

During the Contract Term and as permitted by Public Contract Code section 20118, school districts within Fresno County and other school districts and county superintendent of schools/county offices of education may lease Equipment directly from Contractor on the same terms and conditions of the Contract. FCSS makes no representation that any such local entities will lease any Equipment from Contractor. Any lease between any local entity and Contractor shall be binding only as between the local entity and Contractor and shall not be binding upon or affect FCSS's rights and obligations under this Agreement or any Order. The requirements contained in this Agreement are unique to FCSS' need and may or may not be applicable to the lease between a local entity and Contractor, including leased Equipment chosen by FCSS, Volume consideration, scope and monthly billing methodology, and forms attached to this Agreement.

EXHIBIT A

TEMPLATE EQUIPMENT LEASE AND MAINTENANCE ORDER

Contract NO. _____ ("Order")

"Lease Term": Month #, 20## – June 30, 2028

Department/Contact Person/ Placement Location	Equipment (Equipment No./Manufacturer/Model/Serial No./Contractor ID No. of each Copier or Printer and related accessory Equipment)	"Equipment Monthly Lease"	Black/White Rate Per Printed Page ("B/W Rate")	Color Rate Per Printed Page ("Color Rate")
Dept.: Contact: Location:		\$ Subtotal: \$	\$	\$
Dept.: Contact: Location:		\$ Subtotal: \$	\$	\$
Dept.: Contact: Location:		\$ Subtotal: \$	\$	\$
Dept.: Contact: Location:		\$ Subtotal: \$	\$	\$
Dept.: Contact: Location:		\$ Subtotal: \$	\$	\$
Dept.: Contact: Location:		\$ Subtotal: \$	\$	\$

This Order is entered into pursuant to the Master Copier/Printer Lease and Maintenance Agreement dated [DATE]. Each person executing this Order on behalf of a Party represents that he/she is authorized to execute on behalf of and to bind the Party to this Order.

CONTRACTOR: _____ FCSS: _____
 Print Name: _____ Dr. Michele Cantwell-Copher or Authorized Designee
 Title: _____

Additional Named Insureds

Other Named Insureds

A&A Office Systems Inc	Additional Named Insured
Braswell Office Systems Inc	Additional Named Insured
Business Copy Associates, Inc.	Additional Named Insured
CBSPRINT LLC dba Copy Zone	Additional Named Insured
Complete Business Systems Inc	Additional Named Insured
Core Business Solutions, Inc.	Additional Named Insured
Digital Enterprises, Inc	Additional Named Insured
H&B Copies Inc dba Copy Corner	Additional Named Insured
James B Schwab Co., Inc.	Additional Named Insured
PrintRX LLC	Additional Named Insured
Rainmaker Document Technology	Additional Named Insured
Ray Morgan Company, Inc.	Additional Named Insured
Ray Morgan Company, LLC	Additional Named Insured
RMC A Ray Morgan Company, LLC	Additional Named Insured
Seacoast Business Machines, Inc	Additional Named Insured
Skillern's Business Systems, Inc	Additional Named Insured
UBEO Holdings, LLC	Additional Named Insured
UBEO Midco, LLC	Additional Named Insured
UBEO OF AUSTIN INC	Additional Named Insured
UBEO OF EAST TEXAS INC	Additional Named Insured
UBEO OF NORTH TEXAS INC	Additional Named Insured
UBEO, LLC	Additional Named Insured
United Reprographic Supply	Additional Named Insured
UBEO, LLC dba Centric Business Systems	Additional Named Insured
UBEO West, LLC COECO Office Systems. Inc.	Additional Named Insured

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

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

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

Schedule

ALL PERSONS AND/OR ORGANIZATIONS THAT ARE REQUIRED BY WRITTEN CONTRACT OR AGREEMENT WITH THE INSURED, EXECUTED PRIOR TO THE ACCIDENT OR LOSS, THAT WAIVER OF SUBROGATION BE PROVIDED UNDER THIS POLICY FOR WORK PERFORMED BY YOU FOR THAT PERSON AND/OR ORGANIZATION

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

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

Endorsement Effective 11/07/2022 Policy No. WC 0738171 - 00

Endorsement No.

Insured UBEO Midco, LLC

Premium \$

Insurance Company American Zurich Insurance Company

Countersigned by _____

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED FOR COVERED AUTOS LIABILITY COVERAGE

This endorsement modifies insurance provided under the following:

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

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

This endorsement identifies person(s) or organization(s) who are "insureds" for Covered Autos Liability Coverage under the Who Is An Insured provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured: UBEO Midco, LLC

Endorsement Effective Date: 11/07/2022

SCHEDULE

Name Of Person(s) Or Organization(s): Any person or organization to whom or to which you are required to provide additional insured status or additional insured status on a primary, non-contributory basis, in a written contract or written agreement executed prior to loss, except where such contract or agreement is prohibited by law.

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

Each person or organization shown in the Schedule is an "insured" for Covered Autos Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Paragraph **A.1.** of Section **II** – Covered Autos Liability Coverage in the Business Auto and Motor Carrier Coverage Forms and Paragraph **D.2.** of Section **I** – Covered Autos Coverages of the Auto Dealers Coverage Form.



Coverage Extension Endorsement

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l Prem.	Return Prem.
BAP 0438610 - 00	11/07/2022	11/07/2023	11/07/2022	62060000	INCL	

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

**Business Auto Coverage Form
Motor Carrier Coverage Form**

A. Amended Who Is An Insured

1. The following is added to the **Who Is An Insured** Provision in **Section II – Covered Autos Liability Coverage**:

The following are also "insureds":

- Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow for acts performed within the scope of employment by you. Any "employee" of yours is also an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.
- Anyone volunteering services to you is an "insured" while using a covered "auto" you don't own, hire or borrow to transport your clients or other persons in activities necessary to your business.
- Anyone else who furnishes an "auto" referenced in Paragraphs **A.1.a.** and **A.1.b.** in this endorsement.
- Where and to the extent permitted by law, any person(s) or organization(s) where required by written contract or written agreement with you executed prior to any "accident", including those person(s) or organization(s) directing your work pursuant to such written contract or written agreement with you, provided the "accident" arises out of operations governed by such contract or agreement and only up to the limits required in the written contract or written agreement, or the Limits of Insurance shown in the Declarations, whichever is less.

2. The following is added to the **Other Insurance** Condition in the Business Auto Coverage Form and the **Other Insurance – Primary and Excess Insurance Provisions Condition** in the Motor Carrier Coverage Form:

Coverage for any person(s) or organization(s), where required by written contract or written agreement with you executed prior to any "accident", will apply on a primary and non-contributory basis and any insurance maintained by the additional "insured" will apply on an excess basis. However, in no event will this coverage extend beyond the terms and conditions of the Coverage Form.

B. Amendment – Supplementary Payments

Paragraphs **a.(2)** and **a.(4)** of the **Coverage Extensions** Provision in **Section II – Covered Autos Liability Coverage** are replaced by the following:

- Up to \$5,000 for the 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.
- 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.

C. Fellow Employee Coverage

The **Fellow Employee** Exclusion contained in **Section II – Covered Autos Liability Coverage** does not apply.

D. Driver Safety Program Liability and Physical Damage Coverage

1. The following is added to the **Racing** Exclusion in **Section II – Covered Autos Liability Coverage**:

This exclusion does not apply to covered "autos" participating in a driver safety program event, such as, but not limited to, auto or truck rodeos and other auto or truck agility demonstrations.

2. The following is added to Paragraph 2. in the **Exclusions** of **Section III – Physical Damage Coverage** of the Business Auto Coverage Form and Paragraph 2.b. in the **Exclusions** of **Section IV – Physical Damage Coverage** of the Motor Carrier Coverage Form:

This exclusion does not apply to covered "autos" participating in a driver safety program event, such as, but not limited to, auto or truck rodeos and other auto or truck agility demonstrations.

E. Lease or Loan Gap Coverage

The following is added to the **Coverage** Provision of the **Physical Damage Coverage** Section:

Lease Or Loan Gap Coverage

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

- a. Any amount paid under the **Physical Damage Coverage** Section of the Coverage Form; and
- b. Any:
 - (1) Overdue lease or 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 leases or loans.

F. Towing and Labor

Paragraph **A.2.** of the **Physical Damage Coverage** Section is replaced by the following:

We will pay up to \$75 for towing and labor costs incurred each time a covered "auto" of the private passenger type is disabled. However, the labor must be performed at the place of disablement.

G. Extended Glass Coverage

The following is added to Paragraph **A.3.a.** of the **Physical Damage Coverage** Section:

If glass must be replaced, the deductible shown in the Declarations will apply. However, if glass can be repaired and is actually repaired rather than replaced, the deductible will be waived. You have the option of having the glass repaired rather than replaced.

H. Hired Auto Physical Damage – Increased Loss of Use Expenses

The **Coverage Extension** for **Loss Of Use Expenses** in the **Physical Damage Coverage** Section is replaced by the following:

Loss Of Use Expenses

For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver under a written rental contract or written rental agreement. We will pay for loss of use expenses if caused by:

- (1) Other than collision only if the Declarations indicate that Comprehensive Coverage is provided for any covered "auto";
 - (2) Specified Causes Of Loss only if the Declarations indicate that Specified Causes Of Loss Coverage is provided for any covered "auto"; or
 - (3) Collision only if the Declarations indicate that Collision Coverage is provided for any covered "auto".
- However, the most we will pay for any expenses for loss of use is \$100 per day, to a maximum of \$3000.

I. Personal Effects Coverage

The following is added to the **Coverage** Provision of the **Physical Damage Coverage** Section:

Personal Effects Coverage

- a. We will pay up to \$750 for "loss" to personal effects which are:
 - (1) Personal property owned by an "insured"; and
 - (2) In or on a covered "auto".
- b. Subject to Paragraph a. above, the amount to be paid for "loss" to personal effects will be based on the lesser of:
 - (1) The reasonable cost to replace; or
 - (2) The actual cash value.
- c. The coverage provided in Paragraphs a. and b. above, only applies in the event of a total theft of a covered "auto". No deductible applies to this coverage. However, we will not pay for "loss" to personal effects of any of the following:
 - (1) Accounts, bills, currency, deeds, evidence of debt, money, notes, securities, or commercial paper or other documents of value.
 - (2) Bullion, gold, silver, platinum, or other precious alloys or metals; furs or fur garments; jewelry, watches, precious or semi-precious stones.
 - (3) Paintings, statuary and other works of art.
 - (4) Contraband or property in the course of illegal transportation or trade.
 - (5) Tapes, records, discs or other similar devices used with audio, visual or data electronic equipment.

Any coverage provided by this Provision is excess over any other insurance coverage available for the same "loss".

J. Tapes, Records and Discs Coverage

1. The Exclusion in Paragraph **B.4.a.** of **Section III – Physical Damage Coverage** in the Business Auto Coverage Form and the Exclusion in Paragraph **B.2.c.** of **Section IV – Physical Damage Coverage** in the Motor Carrier Coverage Form does not apply.
2. The following is added to Paragraph **1.a. Comprehensive Coverage** under the **Coverage** Provision of the **Physical Damage Coverage** Section:

We will pay for "loss" to tapes, records, discs or other similar devices used with audio, visual or data electronic equipment. We will pay only if the tapes, records, discs or other similar audio, visual or data electronic devices:

- (a) Are the property of an "insured"; and
- (b) Are in a covered "auto" at the time of "loss".

The most we will pay for such "loss" to tapes, records, discs or other similar devices is \$500. The **Physical Damage Coverage Deductible** Provision does not apply to such "loss".

K. Airbag Coverage

The Exclusion in Paragraph **B.3.a.** of **Section III – Physical Damage Coverage** in the Business Auto Coverage Form and the Exclusion in Paragraph **B.4.a.** of **Section IV – Physical Damage Coverage** in the Motor Carrier Coverage Form does not apply to the accidental discharge of an airbag.

L. Two or More Deductibles

The following is added to the **Deductible** Provision of the **Physical Damage Coverage** Section:

If an accident is covered both by this policy or Coverage Form and by another policy or Coverage Form issued to you by us, the following applies for each covered "auto" on a per vehicle basis:

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

M. Physical Damage – Comprehensive Coverage – Deductible

The following is added to the **Deductible** Provision of the **Physical Damage Coverage** Section:

Regardless of the number of covered "autos" damaged or stolen, the maximum deductible that will be applied to Comprehensive Coverage for all "loss" from any one cause is \$5,000 or the deductible shown in the Declarations, whichever is greater.

N. Temporary Substitute Autos – Physical Damage

1. The following is added to **Section I – Covered Autos**:

Temporary Substitute Autos – Physical Damage

If Physical Damage Coverage is provided by this Coverage Form on your owned covered "autos", the following types of vehicles are also covered "autos" for Physical Damage Coverage:

Any "auto" you do not own when used with the permission of its owner as a temporary substitute for a covered "auto" you do own but is out of service because of its:

1. Breakdown;
2. Repair;
3. Servicing;
4. "Loss"; or
5. Destruction.

2. The following is added to the Paragraph **A. Coverage** Provision of the **Physical Damage Coverage** Section:

Temporary Substitute Autos – Physical Damage

We will pay the owner for "loss" to the temporary substitute "auto" unless the "loss" results from fraudulent acts or omissions on your part. If we make any payment to the owner, we will obtain the owner's rights against any other party.

The deductible for the temporary substitute "auto" will be the same as the deductible for the covered "auto" it replaces.

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

Paragraph **a.** of the **Duties In The Event Of Accident, Claim, Suit Or Loss** Condition is replaced by the following:

- a.** In the event of "accident", claim, "suit" or "loss", you must give us or our authorized representative prompt notice of the "accident", claim, "suit" or "loss". However, these duties only apply when the "accident", claim, "suit" or "loss" is known to you (if you are an individual), a partner (if you are a partnership), a member (if you are a limited liability company) or an executive officer or insurance manager (if you are a corporation). The failure of any

agent, servant or employee of the "insured" to notify us of any "accident", claim, "suit" or "loss" shall not invalidate the insurance afforded by this policy.

Include, as soon as practicable:

- (1) How, when and where the "accident" or "loss" occurred and if a claim is made or "suit" is brought, written notice of the claim or "suit" including, but not limited to, the date and details of such claim or "suit";
- (2) The "insured's" name and address; and
- (3) To the extent possible, the names and addresses of any injured persons and witnesses.

If you report an "accident", claim, "suit" or "loss" to another insurer when you should have reported to us, your failure to report to us will not be seen as a violation of these amended duties provided you give us notice as soon as practicable after the fact of the delay becomes known to you.

P. Waiver of Transfer Of Rights Of Recovery Against Others To Us

The following is added to the **Transfer Of Rights Of Recovery Against Others To Us** Condition:

This Condition does not apply to the extent required of you by a written contract, executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by such contract. This waiver only applies to the person or organization designated in the contract.

Q. Employee Hired Autos – Physical Damage

Paragraph **b.** of the **Other Insurance** Condition in the Business Auto Coverage Form and Paragraph **f.** of the **Other Insurance – Primary and Excess Insurance Provisions** Condition in the Motor Carrier Coverage Form are replaced by the following:

For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

- (1) Any covered "auto" you lease, hire, rent or borrow; and
- (2) Any covered "auto" hired or rented under a written contract or written agreement entered into by an "employee" or elected or appointed official with your permission while being operated within the course and scope of that "employee's" employment by you or that elected or appointed official's duties as respect their obligations to you.

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

R. Unintentional Failure to Disclose Hazards

The following is added to the **Concealment, Misrepresentation Or Fraud** Condition:

However, we will not deny coverage under this Coverage Form if you unintentionally:

- (1) Fail to disclose any hazards existing at the inception date of this Coverage Form; or
- (2) Make an error, omission, improper description of "autos" or other misstatement of information.

You must notify us as soon as possible after the discovery of any hazards or any other information that was not provided to us prior to the acceptance of this policy.

S. Hired Auto – World Wide Coverage

Paragraph **7a.(5)** of the **Policy Period, Coverage Territory** Condition is replaced by the following:

- (5) Anywhere in the world if a covered "auto" is leased, hired, rented or borrowed for a period of 60 days or less,

T. Bodily Injury Redefined

The definition of "bodily injury" in the **Definitions** Section is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease, sustained by a person including death or mental anguish, resulting from any of these at any time. Mental anguish means any type of mental or emotional illness or disease.

U. Expected Or Intended Injury

The **Expected Or Intended Injury** Exclusion in Paragraph **B. Exclusions** under **Section II – Covered Auto Liability Coverage** is replaced by the following:

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.

V. Physical Damage – Additional Temporary Transportation Expense Coverage

Paragraph **A.4.a.** of **Section III – Physical Damage Coverage** is replaced by the following:

4. Coverage Extensions

a. Transportation Expenses

We will pay up to \$50 per day to a maximum of \$1,000 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

W. Replacement of a Private Passenger Auto with a Hybrid or Alternative Fuel Source Auto

The following is added to Paragraph **A. Coverage** of the **Physical Damage Coverage** Section:

In the event of a total "loss" to a covered "auto" of the private passenger type that is replaced with a hybrid "auto" or "auto" powered by an alternative fuel source of the private passenger type, we will pay an additional 10% of the cost of the replacement "auto", excluding tax, title, license, other fees and any aftermarket vehicle upgrades, up to a maximum of \$2500. The covered "auto" must be replaced by a hybrid "auto" or an "auto" powered by an alternative fuel source within 60 calendar days of the payment of the "loss" and evidenced by a bill of sale or new vehicle lease agreement.

To qualify as a hybrid "auto", the "auto" must be powered by a conventional gasoline engine and another source of propulsion power. The other source of propulsion power must be electric, hydrogen, propane, solar or natural gas, either compressed or liquefied. To qualify as an "auto" powered by an alternative fuel source, the "auto" must be powered by a source of propulsion power other than a conventional gasoline engine. An "auto" solely propelled by biofuel, gasoline or diesel fuel or any blend thereof is not an "auto" powered by an alternative fuel source.

X. Return of Stolen Automobile

The following is added to the **Coverage Extension** Provision of the **Physical Damage Coverage** Section:

If a covered "auto" is stolen and recovered, we will pay the cost of transport to return the "auto" to you. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage.

All other terms, conditions, provisions and exclusions of this policy remain the same.



Additional Insured – Automatic – Owners, Lessees Or Contractors

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l Prem.	Return Prem.
CPO 0738167 - 00	11/07/2022	11/07/2023	11/07/2022	62060000		

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured: UBEO Midco, LLC

Address (including ZIP Code): 401 E Sonterra Blvd
San Antonio, TX 78258-4073

This endorsement modifies insurance provided under the:

Commercial General Liability Coverage Part

A. Section II – Who Is An Insured is amended to include as an additional insured any person or organization whom you are required to add as an additional insured on this policy under a written contract or written agreement. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf,

in the performance of your ongoing operations or "your work" as included in the "products-completed operations hazard", which is the subject of the written contract or written agreement.

However, the insurance afforded to such additional insured:

1. Only applies to the extent permitted by law; and
2. Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to:

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

- a. The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- b. 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.

C. The following is added to Paragraph 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit of Section IV – Commercial General Liability Conditions:

The additional insured must see to it that:

1. We are notified as soon as practicable of an "occurrence" or offense that may result in a claim;
2. We receive written notice of a claim or "suit" as soon as practicable; and
3. A request for defense and indemnity of the claim or "suit" will promptly be brought against any policy issued by another insurer under which the additional insured may be an insured in any capacity. This provision does not apply to insurance on which the additional insured is a Named Insured if the written contract or written agreement requires that this coverage be primary and non-contributory.

D. For the purposes of the coverage provided by this endorsement:

1. The following is added to the Other Insurance Condition of Section IV – Commercial General Liability Conditions:

Primary and Noncontributory insurance

This insurance is primary to and 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; and
 - b. You are required by written contract or written agreement that this insurance be primary and not seek contribution from any other insurance available to the additional insured.
- 2. The following paragraph is added to Paragraph 4.b. of the Other Insurance Condition of Section IV – Commercial General Liability Conditions:**

This insurance is excess over:

Any of the other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured, in which the additional insured on our policy is also covered as an additional insured on another policy providing coverage for the same "occurrence", offense, claim or "suit". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where our policy is required by a written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.

E. This endorsement does not apply to an additional insured which has been added to this policy by an endorsement showing the additional insured in a Schedule of additional insureds, and which endorsement applies specifically to that identified additional insured.

F. With respect to the insurance afforded to the additional insureds under this endorsement, the following is added to Section III – Limits Of Insurance:

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the written contract or written agreement referenced in Paragraph A. of this endorsement; or
 2. 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.

All other terms and conditions of this policy remain unchanged.



Technology Liability Enhancement Endorsement

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Policy No. CPO 0738167 - 00

Effective Date: 11/07/2022

This endorsement modifies insurance provided under the:

Commercial General Liability Coverage Part

A. Broadened Named Insured

1. The following is added to Section II – Who Is An Insured:

Any organization of yours, including any partnership or joint venture, which is not shown in the Declarations, and over which you maintain an ownership interest of more than 50% of such organization as of the effective date of this Coverage Part, will qualify as a Named Insured. However, such organization will not qualify as a Named Insured under this provision if it:

- a. Is newly acquired or formed during the policy period;
- b. Is also an insured under another policy, other than a policy written to apply specifically in excess of this Coverage Part; or
- c. Would be an insured under another policy but for its termination or the exhaustion of its limits of insurance.

Each such organization remains qualified as a Named Insured only while you maintain an ownership interest of more than 50% in the organization during the policy period.

2. The last paragraph of Section II – Who Is An Insured does not apply to this provision to the extent that such paragraph would conflict with this provision.

B. Newly Acquired or Formed Organizations as Named Insureds

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

3. Any organization you newly acquire or form during the policy period, including any partnership or joint venture, and over which you maintain an ownership interest of more than 50% of such organization, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
- b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
- c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

An additional premium will apply in accordance with our rules and rates in effect on the date you acquired or formed the organization.

2. The last paragraph of Section II – Who Is An Insured does not apply to this provision to the extent that such paragraph would conflict with this provision.

C. Insured Status – Employees

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

2. Each of the following is also an insured:

- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

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

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

However:

Paragraphs (1)(a) and (1)(d) do not apply to "bodily injury" arising out of his or her providing or failing to provide:

- (i) Medical or paramedical services to persons performed by any physician, dentist, nurse, emergency medical technician, paramedic or other licensed medical care person employed by you to provide such services, or volunteering for you to provide such services; or
- (ii) "Good Samaritan Acts" performed by any non-licensed medical care person employed by you or volunteering for you,

So long as such "employee" or "volunteer worker" is performing duties related to the conduct of your business.

"Good Samaritan Acts" mean any assistance of a medical nature rendered or provided in an emergency situation for which no remuneration is demanded or received.

Paragraphs (1)(a), (b) and (c) do not apply to any "employee" designated as a supervisor or higher in rank, with respect to "bodily injury" to co-"employees". As used in this provision, "employees" designated as a supervisor or higher in rank means only "employees" who are authorized by you to exercise direct or indirect supervision or control over "employees" or "volunteer workers" and the manner in which work is performed.

D. Insured Status – Amateur Athletic Participants

Section II – **Who Is An Insured** is amended to include as an insured any person you sponsor while participating in amateur athletic activities. However, no such person is an insured for:

a. "Bodily injury" to:

- (1) Your "employee", "volunteer worker" or any person you sponsor while participating in such amateur athletic activities; or
- (2) You, any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company) while participating in such amateur athletic activities; or

b. "Property damage" to property owned by, occupied or used by, rented to, in the care, custody or control of, or over which the physical control is being exercised for any purpose by:

- (1) Your "employee", "volunteer worker" or any person you sponsor; or
- (2) You, any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

E. Additional Insureds – Lessees of Premises

1. **Section II – Who Is An Insured** is amended to include as an additional insured any person(s) or organization(s) who leases or rents a part of the premises you own or manage who you are required to add as an additional insured on this policy under a written contract or written agreement, but only with respect to liability arising out of your ownership, maintenance or repair of that part of the premises which is not reserved for the exclusive use or occupancy of such person or organization or any other tenant or lessee.

This provision does not apply after the person or organization ceases to lease or rent premises from you.

However, the insurance afforded to such additional insured:

- a. Only applies to the extent permitted by law; and
 - b. Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured.
2. With respect to the insurance afforded to the additional insureds under this endorsement, the following is added to **Section III – Limits Of Insurance**:

The most we will pay on behalf of the additional insured is the amount of insurance:

- a. Required by the written contract or written agreement referenced in Subparagraph E.1. of this endorsement; or
 - b. Available under the applicable Limits of Insurance shown in the Declarations,
- whichever is less.

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

F. Additional Insured – Vendors

1. The following change applies if this Coverage Part provides insurance to you for "bodily injury" and "property damage" included in the "products-completed operations hazard":

Section II – Who Is An Insured is amended to include as an additional insured any person or organization (referred to throughout this Paragraph F. as vendor) who you have agreed in a written contract or written agreement, prior to loss, to name as an additional insured, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business:

However, the insurance afforded to such vendor:

- a. Only applies to the extent permitted by law; and
 - b. Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured.
2. With respect to the insurance afforded to these vendors, the following additional exclusions apply:
 - a. The insurance afforded the vendor does not apply to:
 - (1) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
 - (2) Any express warranty unauthorized by you;
 - (3) Any physical or chemical change in the product made intentionally by the vendor;
 - (4) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
 - (5) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
 - (6) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (7) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
 - (8) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - (a) The exceptions contained in Subparagraphs (4) or (6); or
 - (b) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
 - b. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.
 - c. This insurance does not apply to any of "your products" for which coverage is excluded under this Coverage Part.
3. With respect to the insurance afforded to the vendor under this endorsement, the following is added to Section III – **Limits Of Insurance**:
- The most we will pay on behalf of the vendor is the amount of insurance:
- a. Required by the written contract or written agreement referenced in Subparagraph F.1. of this endorsement; or
 - b. Available under the applicable Limits of Insurance shown in the Declarations,
- whichever is less.

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

G. Additional Insured – Managers, Lessors or Governmental Entity

1. Section II – **Who Is An Insured** is amended to include as an additional insured any person or organization who is a manager, lessor or governmental entity who you are required to add as an additional insured on this policy under a written contract, written agreement or permit, 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
 - b. The acts or omission of those acting on your behalf; and
- resulting directly from:
- a. Operations performed by you or on your behalf for which the state or political subdivision has issued a permit;
 - b. Ownership, maintenance, occupancy or use of premises by you; or
 - c. Maintenance, operation or use by you of equipment leased to you by such person or organization.
- However, the insurance afforded to such additional insured:
- a. Only applies to the extent permitted by law; and
 - b. Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured.
2. This provision does not apply:
- a. Unless the written contract or written agreement has been executed, or the permit has been issued, prior to the "bodily injury", "property damage" or offense that caused "personal and advertising injury";
 - b. To any person or organization included as an insured under Paragraph 3. of Section II – **Who Is An Insured**;
 - c. To any lessor of equipment if the "occurrence" or offense takes place after the equipment lease expires;
 - d. To any:
 - (1) Owners or other interests from whom land has been leased by you; or

- (2) Managers or lessors of premises, if:
- (a) The "occurrence" or offense takes place after the expiration of the lease or you cease to be a tenant in that premises;
 - (b) The "bodily injury", "property damage" or "personal and advertising injury" arises out of the structural alterations, new construction or demolition operations performed by or on behalf of the manager or lessor; or
 - (c) The premises are excluded under this Coverage Part.
3. With respect to the insurance afforded to the additional insureds under this endorsement, the following is added to Section III – **Limits Of Insurance**:
- The most we will pay on behalf of the additional insured is the amount of insurance:
- a. Required by the written contract or written agreement referenced in Subparagraph G.1. of this endorsement; or
 - b. Available under the applicable Limits of Insurance shown in the Declarations,
- whichever is less.
- This Paragraph G. shall not increase the applicable Limits of Insurance shown in the Declarations.

H. Additional Insured – Other Persons or Organizations

1. Section II – **Who Is An Insured** is amended to include as an insured any person or organization who does not qualify as an additional insured under Paragraphs E. through Paragraph G. of this endorsement so long as you are required to add such person or organization as an additional insured on this policy under a written contract or written agreement, 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
 - b. The acts or omissions of those acting on your behalf.
- However, the insurance afforded to such additional insured:
- a. Only applies to the extent permitted by law; and
 - b. Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured.
2. With respect to the insurance afforded to the additional insureds under this Paragraph H., the following additional exclusions apply:
- The insurance afforded to the additional insured under this Paragraph H. does not apply to any person or organization:
- a. For "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering or failure to render any professional service;
 - b. For "bodily injury" or "property damage" included in the "products-completed operations hazard"; or
 - c. Who is scheduled as an additional insured under another endorsement attached to this policy.
3. With respect to the insurance afforded to the additional insureds under this Paragraph H., the following is added to Section III – **Limits Of Insurance**:
- The most we will pay on behalf of the additional insured is the amount of insurance:
- a. Required by the written contract or written agreement referenced in Subparagraph H.1. of this endorsement; or
 - b. Available under the applicable Limits of Insurance shown in the Declarations,
- whichever is less.
- This Paragraph H. shall not increase the applicable Limits of Insurance shown in the Declarations.

I. Damage to Premises Rented or Occupied by You

1. The last paragraph under Paragraph 2. **Exclusions** of Section I – **Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:

Exclusions c. through n. do not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner. A separate Damage To Premises Rented To You Limit of Insurance applies to this coverage as described in Section III – **Limits Of Insurance**.

2. Paragraph 6. of 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 any one premises while rented to you or temporarily occupied by you with permission of the owner.

J. Broadened Contractual Liability

The "insured contract" definition under the **Definitions** Section is replaced by the following:

"Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury", "property damage", or "personal and advertising injury" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

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

- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in Paragraph (1) above and supervisory, inspection, architectural or engineering activities.

K. Limited Contractual Liability Coverage – Personal and Advertising Injury

1. Exclusion e. of Section I – **Coverage B – Personal And Advertising Injury Liability** is replaced by the following:

This insurance does not apply to:

e. Contractual Liability

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

This exclusion does not apply to liability for damages:

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

(2) Assumed in a written contract or written agreement that is an "insured contract", provided the "personal and advertising injury" occurs subsequent to the execution of the written contract or written agreement. Solely for purposes of liability so assumed in such written contract or written agreement, reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "personal and advertising injury", provided:

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

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

2. Paragraph 2.d. of Section I – **Supplementary Payments – Coverages A and B** is replaced by the following:

d. The allegations in the "suit" and the information we know about the "occurrence" or offense are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;

3. The following is added to the paragraph directly following Paragraph 2.f. of Section I – **Supplementary Payments – Coverages A and B**:

Notwithstanding the provisions of Paragraph 2.e.(2) of Section I – **Coverage B – Personal And Advertising Injury Liability**, such payments will not be deemed to be damages for "personal and advertising injury" and will not reduce the limits of insurance.

L. **Supplementary Payments**

The following changes apply to **Supplementary Payments – Coverages A and B**:

Paragraphs 1.b. and 1.d. are replaced by the following:

b. Up to \$5,000 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$1,000 a day because of time off from work.

M. **Broadened Property Damage**

1. **Property Damage to Contents of Premises Rented Short-Term**

The paragraph directly following Paragraph (6) in Exclusion j. of Section I – **Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" to premises, including "property damage" to the contents of such premises, rented to you under a rental agreement for a period of 14 or fewer consecutive days. A separate Limit of Insurance applies to Damage to Premises Rented to You as described in Section III – **Limits Of Insurance**.

2. **Elevator Property Damage**

a. The following is added to Exclusion j. of Section I – **Coverage A – Bodily Injury And Property Damage Liability**:

Paragraphs (3) and (4) of this exclusion do not apply to "property damage" arising out of the use of an elevator at premises you own, rent or occupy.

b. The following is added to Section III – **Limits Of Insurance**:

Subject to Paragraph 5. above, the most we will pay under Coverage A for damages because of "property damage" to property loaned to you or personal property in the care, custody or control of the insured arising out of the use of an elevator at premises you own, rent or occupy is \$25,000 per "occurrence".

3. **Property Damage to Borrowed Equipment**

a. The following is added to Exclusion j. of Section I – **Coverage A – Bodily Injury And Property Damage Liability**:

Paragraph (4) of this exclusion does not apply to "property damage" to equipment you borrow from others at a jobsite.

b. The following is added to Section III – Limits Of Insurance:

Subject to Paragraph 5. above, the most we will pay under Coverage A for damages because of "property damage" to equipment you borrow from others is \$25,000 per "occurrence".

N. Expected or Intended Injury or Damage

Exclusion a. of Section I – Coverage A – Bodily Injury And Property Damage Liability is replaced by the following:

This insurance does not apply to:

a. Expected Or Intended Injury Or Damage

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

O. Definitions – Bodily Injury

The "bodily injury" definition under the Definitions Section is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by a person, including mental anguish, mental injury, shock, fright or death sustained by that person which results from that bodily injury, sickness or disease.

P. Non-Owned Aircraft, Auto and Watercraft

Exclusion g. of Section I – Coverage A – Bodily Injury And Property Damage Liability is replaced by the following:

This insurance does not apply to:

g. Aircraft, Auto Or Watercraft

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

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

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 75 feet long; and
 - (b) Not being used to carry persons for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;
- (5) An aircraft that is hired or chartered by you or loaned to you, with a paid and licensed crew, and is not owned in whole or in part by an insured; or
- (6) "Bodily injury" or "property damage" arising out of:
 - (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged; or
 - (b) The operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

Q. Definitions – Leased Worker, Temporary Worker and Labor Leasing Firm

1. The "leased worker" and "temporary worker" definitions under the **Definitions** Section are replaced by the following:

"Leased worker" means a person leased to you by a "labor leasing firm" under a written agreement between you and the "labor leasing firm", to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

"Temporary worker" means a person who is furnished to you to support or supplement your work force during "employee" absences, temporary skill shortages, upturns or downturns in business or to meet seasonal or short-term workload conditions. "Temporary worker" does not include a "leased worker".

2. The following definition is added to the **Definitions** Section:

"Labor leasing firm" means any person or organization who hires out workers to others, including any:

- a. Employment agency, contractor or services;
- b. Professional employer organization; or
- c. Temporary help service.

R. Definition – Mobile Equipment

Paragraph **f.** of the "mobile equipment" definition under the **Definitions** Section is replaced by the following:

- f. Vehicles not described in Paragraph **a.**, **b.**, **c.** or **d.** above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment, exceeding a combined gross vehicle weight of 1000 pounds, are not "mobile equipment" but will be considered "autos":

- (1) Equipment designed primarily for:

- (a) Snow removal;
- (b) Road maintenance, but not construction or resurfacing; or
- (c) Street cleaning;

- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

S. Definitions – Your Product and Your Work

The "your product" and "your work" definitions under the **Definitions** Section are replaced by the following:

"Your product":

- a. Means:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

- (a) You;
- (b) Others trading under your name; or
- (c) A person or organization whose business or assets you have acquired; and

- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

- b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance, use, handling, maintenance, operation or safety of "your product"; and

- (2) The providing of or failure to provide warnings or instructions.

c. Does not include vending machines or other property rented to or located for the use of others but not sold.

"Your work":

a. Means:

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

b. Includes:

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

T. Expanded Personal and Advertising Injury Definition

1. The "personal and advertising injury" definition under the **Definitions** Section is replaced by the following:

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

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
- d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
- f. The use of another's advertising idea in your "advertisement";
- g. Infringing upon another's copyright, trade dress or slogan in your "advertisement"; or
- h. Discrimination, harassment or segregation, based on sex, sexual orientation, gender identity, gender expression, marital status, race, creed, religion, national origin, age, physical capabilities or mental capabilities, except to the extent:
 - (1) Insurance for the discrimination, harassment or segregation is prohibited by law; or
 - (2) The discrimination, harassment or segregation directly or indirectly relates to the employment, prospective employment or termination of employment of any person or persons by any insured.

As used in this endorsement, discrimination, harassment or segregation includes continuous or repeated exposure to substantially the same general harmful conditions.

2. Solely for the purposes of Paragraph 1.h. above, the following exclusion is added to Paragraph 2. **Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:**

This insurance does not apply to:

Discrimination, Harassment Or Segregation Prior To Policy Period

"Personal and advertising injury" arising out of any discrimination, harassment or segregation which formed the basis of an offense before the beginning of the policy period.

U. Duties in the Event of Occurrence, Offense, Claim or Suit Condition

The following paragraphs are added to Paragraph 2. **Duties In The Event Of Occurrence, Offense, Claim Or Suit** of Section IV – **Commercial General Liability Conditions:**

Notice of an "occurrence" or of an offense which may result in a claim under this insurance or notice of a claim or "suit" shall be given to us as soon as practicable after knowledge of the "occurrence", offense, claim or "suit" has been reported to any insured listed under Paragraph 1. of Section II – **Who Is An Insured** or an "employee" authorized by you to give or receive such notice. Knowledge by other "employees" of an "occurrence", offense, claim or "suit" does not imply that you also have such knowledge.

In the event that an insured reports an "occurrence" to the workers compensation carrier of the Named Insured and this "occurrence" later develops into a General Liability claim, covered by this Coverage Part, the insured's failure to report such "occurrence" to us at the time of the "occurrence" shall not be deemed to be a violation of this Condition. You must, however, give us notice as soon as practicable after being made aware that the particular claim is a General Liability rather than a Workers Compensation claim.

V. Other Insurance Condition

Paragraphs **4.a.** and **4.b.(1)** of the Other Insurance Condition of Section **IV – Commercial General Liability Conditions** are replaced by the following:

4. Other Insurance

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

a. Primary Insurance

This insurance is primary except when Paragraph **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph **c.** below. However, this insurance is primary to and will not seek contribution from any other insurance available to an additional insured provided that:

- (1) The additional insured is a Named Insured under such other insurance; and
- (2) You are required by written contract or written agreement that this insurance be primary and not seek contribution from any other insurance available to the additional insured.

Other insurance includes any type of self insurance or other mechanism by which an insured arranges for funding of its legal liabilities.

b. Excess Insurance

(1) This insurance is excess over:

(a) Any of the other insurance, whether primary, excess, contingent or on any other basis:

- (i) That is property insurance, Builder's Risk, Installation Risk or similar coverage for "your work";
- (ii) That is property insurance purchased by you (including any deductible or self insurance portion thereof) to cover premises rented to you or temporarily occupied by you with permission of the owner;
- (iii) That is insurance purchased by you (including any deductible or self insurance portion thereof) 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;
- (iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section **I – Coverage A – Bodily Injury And Property Damage Liability**; or
- (v) That is property insurance (including any deductible or self insurance portion thereof) purchased by you to cover damage to:

Equipment you borrow from others; or

Property loaned to you or personal property in the care, custody or control of the insured arising out of the use of an elevator at premises you own, rent or occupy.

(b) Any other primary insurance (including any deductible or self insurance portion thereof) available to the insured covering liability for damages arising out of the premises, operations, products, work or services for which the insured has been granted additional insured status either by policy provision or attachment of any endorsement. Other primary insurance includes any type of self insurance or other mechanism by which an insured arranges for funding of its legal liabilities.

- (c) Any of the other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured, in which the additional insured on our policy is also covered as an additional insured on another policy providing coverage for the same "occurrence", claim or "suit". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where our policy is required by written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.

W. Unintentional Failure to Disclose All Hazards

Paragraph 6. **Representations** of Section IV – **Commercial General Liability Conditions** is replaced by the following:

6. Representations

By accepting this policy, you agree:

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

Coverage will continue to apply if you unintentionally:

- a. Fail to disclose all hazards existing at the inception of this policy; or
- b. Make an error, omission or improper description of premises or other statement of information stated in this policy.

You must notify us as soon as possible after the discovery of any hazards or any other information that was not provided to us prior to inception of this Coverage Part.

X. Waiver of Right of Subrogation

Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us** of Section IV – **Commercial General Liability Conditions** is replaced by the following:

8. Transfer Of Rights Of Recovery Against Others To Us

- a. If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.
- b. If the insured waives its right to recover payments for injury or damage from another person or organization in a written contract executed prior to a loss, we waive any right of recovery we may have against such person or organization because of any payment we have made under this Coverage Part. The written contract will be considered executed when the insured's performance begins, or when it is signed, whichever happens first. This waiver of rights shall not be construed to be a waiver with respect to any other operations in which the insured has no contractual interest.

Y. In Rem

Section IV – **Commercial General Liability Conditions** is amended to add the following:

In Rem

Any "suit" brought as an action *in rem* against any watercraft owned or operated by or for the insured shall in all respects be treated in the same manner as though such "suit" were brought against the insured.

Z. Liberalization Condition

The following condition is added to Section IV – **Commercial General Liability Conditions**:

Liberalization Clause

If we revise this Coverage Part to broaden coverage without an additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in the state shown in the mailing address of your policy.

All other terms, conditions, provisions and exclusions of this policy remain the same.



Northern California ReLiEF (NCR)

MEMORANDUM OF COVERAGE

MEMORANDUM #: NCR 01001-26

DECLARATIONS

COVERED AGENCY(IES) NAME AND ADDRESS

Organization of Self-Insured Schools

Fresno County Superintendent of Schools
 1111 Van Ness Avenue
 Fresno, CA 93721-2000

COVERAGE PERIOD: 12:01 A.M. July 1, 2022 to July 1, 2023

Coverage (Per Loss Occurrence)	Limit of Coverage	Member Retained Limit
<u>Coverage A - Liability</u>		
Maximum Single Limit for all Members Per Occurrence	\$50,000,000	
Coverage (Per Loss Occurrence)	Limit of Coverage per Member	Member Retained Limit
<u>Coverage A - Liability</u>		
Combined Single Limit (includes MRL)	\$50,000,000	\$50,000
Sublimits below are subject to and do not increase the Combined Single Limit Coverage set forth above		
Employee Benefit Program Claims	\$50,000	\$10,000
Breach Of Contract Claims	\$50,000	\$10,000
Special Education Program Claims	\$50,000	\$10,000
Injunctive/Non-Monetary Claims	\$100,000	\$10,000
Uninsured/Underinsured Motor Vehicle (Combined Single Limit)	\$1,000,000	\$10,000
Asbestos Claims	\$50,000	\$10,000
Wage Claim/Loss Adjustment Expense Only	\$50,000	\$10,000
Auxiliary/Foundation Claims	\$1,000,000	\$10,000

Coverage (Per Loss Occurrence)	Limit of Coverage	Member Retained Limit
Coverage B - Property		
Maximum Single Limit for all Members Per Occurrence	\$500,250,000	
Coverage (Per Loss Occurrence)	Limit of Coverage per Member	Member Retained Limit
Coverage B - Property		
Combined Single Limit (includes MRL)	\$500,250,000	\$50,000
Sublimits below are subject to and do not increase the Combined Single Limit Coverage set forth above		
Sprinkler Leakage caused by Earthquake	\$10,000,000	\$50,000
Newly Acquired Location	\$5,000,000	\$50,000
Personal Property of Others (except as follows)	\$100,000	\$50,000
Any One item on Loan or Exhibition	\$25,000	\$50,000
Any One Elected or Appointed Official or Employee	\$1,000	\$50,000
Any One Student	\$500	\$50,000
Transmission or Distribution Lines	\$5,000,000	\$50,000
Back Up of Sewers or Drains	\$10,000,000	\$50,000
Property in Transit	\$1,000,000	\$50,000
Off-Site Property	\$1,000,000	\$50,000
Rental Payment Interruption	\$10,000,000	\$50,000
Valuable Papers or Records	\$10,000,000	\$50,000
Loss of Revenues and Extra Expense (Combined Single Limit)	\$25,000,000	\$50,000
Pollution/Decontamination (sudden and accidental)	\$100,000,000 per occurrence and in the SAFER Program Annual Aggregate	\$50,000
Plants (\$1,000 per item)	\$50,000	\$50,000
Fine Arts (\$1,000 per item)	\$50,000	\$50,000
Architect's and Engineer's Fee	Up to 15% of the Total Loss Occurrence	\$50,000
Construction Manager Fee	Up to 5% of the Property loss cost, subject to a maximum of \$75,000, for any one loss	\$50,000
Property Damage Errors and Omissions, Loss Adjustment Expenses, Loss of Revenues, and Extra Expense	\$100,000,000 SAFER Program Aggregate	\$50,000
Builder's Risk for Covered Projects		
Covered Project up to \$250,000	\$250,000	\$50,000
Covered Project over \$250,000	Per Endorsement	Per Endorsement
Debris Removal	25% of loss up to a maximum of \$250,000	\$50,000

Coverage (Per Loss Occurrence)	Limit of Coverage	Member Retained Limit
Coverage C - Additional Coverages, if selected		
Maximum Single Limit for all Members Per Occurrence Equipment Breakdown Coverage	\$100,000,000	
Coverage - Additional Coverages, if selected (Per Loss Occurrence)	Limit of Coverage per Member	Member Retained Limit
Equipment Breakdown Coverage	\$100,000,000	\$1,000
Loss of Revenue/Extra Expense	Follows any coverage provided under Coverage B	
Spoilage	\$5,000,000	
Excavation	\$25,000	
Expediting Expenses	\$5,000,000	
Freezing	\$25,000	
Hazardous Substances	\$250,000	
Newly Acquired Locations	\$5,000,000	
Electronic Data Processing Equipment Coverage - MRL Reduction	Included in Property Limit	\$50,000
Each Laptop off premises	Included in Property Limit	NIL
<u>Crime Coverage</u> (Policy Number 01-335-54-73)	\$5,000,000	\$2,500
Impersonation Fraud Coverage	\$100,000	\$25,000
<u>Information/Cyber Security and Privacy Coverage</u> (Policy Number 22IU10559/H22CXS20695-00)	\$12,000,000 SAFER Program Aggregate. See policy for member limits.	\$50,000 Subject to terms and conditions per the policy. See policy for member limit.

**MEMBER ESTIMATED CONTRIBUTION
FOR THE COVERAGE PERIOD**

\$150,238

**THIS MEMORANDUM OF COVERAGE DECLARATIONS IS ATTACHED AND MADE
AN INTEGRAL PART OF THE MEMORANDUM OF COVERAGE.**

FOR NORTHERN CALIFORNIA REGIONAL LIABILITY EXCESS FUND

BY



07/01/2022

KEENAN & ASSOCIATES, JPA MANAGER

Issue Date