

**JEFFERSON COUNTY PUBLIC SCHOOLS
CONTRACT FOR THE PROCUREMENT OF PROFESSIONAL SERVICES**

THIS CONTRACT FOR PROCUREMENT OF PROFESSIONAL SERVICES (hereinafter "Contract") is entered into between the JEFFERSON COUNTY BOARD OF EDUCATION (hereinafter "Board"), a political subdivision of the Commonwealth of Kentucky, with its principal place of business at 3332 Newburg Road, Louisville, Kentucky 40218 and NoRedInk Corporation (hereinafter "Contractor"), with its principal place of business at 548 Market Street, San Francisco, CA 94104-5401.

WITNESSETH:

WHEREAS, the Board desires to procure the particular services of Contractor, which are more fully defined below; and

WHEREAS, Contractor has held itself out to be competent and capable of performing the services contracted for herein;

NOW, THEREFORE, in consideration of the mutual promises and agreements hereinafter set forth, the Board and Contractor (hereinafter "Parties") agree as follows:

ARTICLE I

Entire Agreement; Amendments

This Contract is the entire agreement between the Parties and supersedes any and all agreements, representations and negotiations, either oral or written, between the Parties before the effective date of this Contract. This Contract may not be amended or modified except in writing as provided in Article VIII. This Contract is supplemented by the Board's Procurement Regulations currently in effect (hereinafter "Regulations") that are incorporated by reference into and made a part of this Contract. In the event of a conflict between any provision of this Contract and any provisions of the Regulations, the Regulations shall prevail. The NoRedInk Master Service Terms ("NRI Terms") are attached hereto and incorporated herein. In the event of a conflict between the terms of this Contract and the NRI Terms, the terms of this Contract shall prevail.

ARTICLE II

Services

Contractor agrees to perform the following services (hereinafter "Services") of a quality and in a manner that is within the highest standards of Contractor's profession or business. The Services are as follows:

Contractor shall provide subscriptions for the NoRedink Premium hosted service to various schools which focuses on adaptive, mastery-based writing curriculum for grades 5-12. The software will provide practice opportunities to all students on grammar and mechanics and structural patterns of informational and argumentative writing. Purchase orders for licenses shall be entered by each participating school. NoRedInk software license pricing is attached and incorporated herein by reference.

Contractor agrees that they will not operate a motor vehicle in the performance of this Contract. The Contract Administrator hereby waives the insurance requirement for automobile liability insurance. If during

the terms of this Contract, Contractor is not required by Kentucky law to maintain workers compensation insurance, then the Contract Administrator hereby waives the requirement for workers compensation insurance contained in Article V. All other provisions of Article V shall remain the same.

ARTICLE III Compensation

The Board shall pay Contractor the total amount stated below (hereinafter "Contract Amount"). The Contract Amount shall be paid in a lump sum upon completion of the Services, unless a schedule of progress payments is stated below. The Contract Amount shall be for total performance of this Contract and includes all fees, costs and expenses incurred by Contractor including but not limited to labor, materials, taxes, profit, overhead, travel, insurance, subcontractor costs and other costs, unless otherwise stated below. To receive payment, Contractor must submit an itemized invoice or invoices. If progress payments are authorized, each invoice must specify the actual work performed. If payment of costs or expenses is authorized, receipts must be attached to the invoice.

Contract Amount:	<u>Shall not exceed \$50,000</u>
Progress Payments (if not applicable, insert N/A):	Each participating school will submit invoices after license is purchased and will be paid for by the school.
Costs/Expenses (if not applicable insert N/A):	N/A
Fund Source:	Various School Budgets

ARTICLE IV Term of Contract

Contractor shall begin performance of the Services on May 25, 2022 and shall complete the Services no later than June 30, 2023, unless this Contract is modified as provided in Article VIII.

ARTICLE V Performance of Services by Contractor

The Services shall be performed by Contractor, and in no event shall Contractor subcontract with any other person to aid in the completion of the Services without the prior written approval of the Contract Administrator defined below.

Contractor shall appoint one person who shall be responsible for reporting to the Board on all Services performed under the terms of this Contract and who shall be available for consultation with the Contract Administrator.

Contractor is an independent contractor, not an employee. Contractor is responsible for the payment of all federal, state and local payroll taxes and providing unemployment insurance and workers compensation coverage to Contractor's employees. Contractor shall provide all equipment, materials and supplies necessary for the performance of the Services.

Contractor shall at all times during the term of this Contract comply with all applicable laws, regulations, rules and policies. Contractor shall obtain and keep in force all licenses, permits and certificates necessary for the performance of the Services.

Contractor agrees to hold harmless, indemnify, and defend the Board and its members, agents, and employees from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation, including the Contractor himself, in connection with the performance of this Contract. Contractor also agrees to hold harmless, indemnify, and defend the Board and its members, agents, and employees from any and all claims or losses incurred by any supplier, contractor, or subcontractor furnishing work, services, or materials to Contractor in connection with the performance of this Contract. This provision survives termination of this Contract.

Unless waived in writing by the Contract Administrator, Contractor shall maintain during the term of this Contract policies of primary insurance covering the following risks and in at least the following amounts: commercial general liability, including bodily injury, property damage, personal injury, products and completed operations, and contractual, \$1,000,000; and automobile liability, \$1,000,000. Contractor shall furnish to the Contract Administrator certificates of insurance evidencing this coverage and naming the Board as an additional insured. Additionally, Contractor shall maintain workers compensation coverage with limits required by law; and professional errors and omissions coverage with minimum limits of \$1,000,000. Contractor shall furnish certificates of insurance evidencing this coverage to the Contract Administrator.

ARTICLE VI Equal Opportunity

During the performance of this Contract, Contractor agrees that Contractor shall not discriminate against any employee, applicant or subcontractor because of race, color, national origin, age, religion, marital or parental status, political affiliations or beliefs, sex, sexual orientation, gender identity, gender expression, veteran status, genetic information, disability, or limitations related to pregnancy, childbirth, or related medical conditions. If the Contract Amount is paid from federal funds, this Contract is subject to Executive Order 11246 of September 24, 1965 and in such event the Equal Opportunity Clause set forth in 41 Code of Federal Regulations 60-1.4 is hereby incorporated by reference into this Contract as if set forth in full herein.

ARTICLE VII Prohibition of Conflicts of Interest

It shall be a breach of this Contract for Contractor to commit any act which is a violation of the provisions of Article XI of the Regulations entitled "Ethics and Standards of Conduct," or to assist or participate in or knowingly benefit from any act by any employee of the Board which is a violation of such provisions.

ARTICLE VIII Changes

The Board and Contractor may at any time, by mutual agreement set forth in a written addendum, make changes in the definition of the Services; the scope of the Services; and the Contract Amount. The Contract Administrator and Contractor may, at any time, by mutual agreement set forth in a written addendum, make changes in the time within which the Services are to be performed; the schedule of Progress Payments; and mutual Termination of the Contract.

ARTICLE IX Termination for Convenience of the Board

The Board may terminate this Contract in whole or in part at any time by giving written notice to Contractor of such termination and specifying the effective date thereof, at least thirty (30) days before the specified effective date. The Board shall compensate Contractor for Services satisfactorily performed through the effective date of termination.

ARTICLE X Termination for Default

The Board may, by written notice of default to Contractor, terminate the whole or any part of this Contract, if Contractor breaches any provision of this Contract, or so fails to make progress as to endanger performance of this Contract, and in either of these circumstances, does not cure the breach or failure within a period of five (5) days after receipt of notice specifying the breach or failure. In the event of termination for default, the Board may secure the required services from another contractor. If the cost to the Board exceeds the cost of obtaining the Services under this Contract, Contractor shall pay the additional cost. The rights and remedies of the Board provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

ARTICLE XI Disputes

Any differences or disagreements arising between the Parties concerning the rights or liabilities under this Contract, or any modifying instrument entered into under Article VIII of this Contract, shall be resolved through the procedures set out in the Regulations.

ARTICLE XII Contractor's Work Product

Unless waived in writing by the Contract Administrator, the Board shall retain ownership in and the rights to any reports, research data, creative works, designs, recordings, graphical representations or other works of a similar nature (hereinafter "Works") produced or delivered by Contractor under this Contract. Contractor agrees that the Works are "works for hire" and Contractor assigns all right, title and interest in the Works to the Board.

Any reports, information, data, etc. given to or prepared or assembled by Contractor under this Contract shall not be made available to any individual or organization by Contractor without the prior written approval of the Board. Provided, nothing in this Article may be used to violate the provisions of any Kentucky or Federal statute or regulation which requires reporting of information.

ARTICLE XIII Contract Administrator

The Board shall appoint a Contract Administrator for the purposes of daily administrative decision-making pertaining to the Contract. If Contractor and the Contract Administrator disagree on any circumstance or set of facts pertaining to the administration or execution of this Contract, the Board shall resolve the matter after notification by either the Contract Administrator or the Contractor in the manner prescribed by the Regulations. If the Board fails to give notice to Contractor of the appointment of a Contract Administrator, the Contract Administrator shall be the Board's Chief Financial Officer.

ARTICLE XIV Right to Audit

The Board shall have the right to inspect and audit all accounting reports, books or records which concern the performance of the Services. Inspection shall take place during normal business hours at Contractor's place of business. Contractor shall retain all records relating to the performance of this Contract for five (5) years after the end of the term of this Contract.

ARTICLE XV Miscellaneous

- A. All Articles shall be construed as read, and no limitation shall be placed on any Article by virtue of its descriptive heading.
- B. Any notices or reports by one Party to the other Party under this Contract shall be made in writing, to the address shown in the first paragraph of this Contract, or to such other address as may be designated in writing by one Party to the other. Notices shall be effective when received if personally delivered, or three days after mailing if mailed.
- C. If any part of this Contract is held to be void, against public policy or illegal, the balance of this Contract shall continue to be valid and binding.
- D. This Contract shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky.
- E. No delay or omission by either Party in exercising any right under this Contract shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of this Contract.
- F. At all times during the term of this Contract, Contractor shall comply with the Family Educational Rights and Privacy Act of 1974. If Contractor has access to student records, Contractor shall limit its employees' access to those records to persons for whom access is essential to perform this Contract.
- G. If this Contract requires Contractor and/or any employees of Contractor access to school grounds on a regularly scheduled and continuing basis for the purpose of providing services directly to a student or students, all individuals performing such services under this Contract are required to submit per KRS 160.380 to a national and state criminal history background check by the Department of Kentucky State Police and the Federal Bureau of Investigation and have a letter, provided by the individual, from the Cabinet for Health and Family Services stating no administrative findings of child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.
- H. Contractor shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Contractor or subcontractor for the duration of this Contract and shall reveal any final determination of a violation by the Contractor or subcontractor of the preceding KRS Chapters.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract to be effective as of May 25, 2022.

Contractor’s Social Security Number or Federal Tax ID Number:

JEFFERSON COUNTY BOARD OF
EDUCATION

By: _____

Title: Martin A. Pollio, Ed.D.
Superintendent

NoRedInk, Corporation
CONTRACTOR

By: _____

Title: Stephen Gardner
Vice President of Sales & Success

Cabinet Member: <u>Robert Moore</u>	_____ (Initials)
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Jefferson County Public Schools
**NONCOMPETITIVE NEGOTIATION
DETERMINATION AND FINDING**

1. An emergency exists which will cause public harm as a result of the delay in competitive procedures (Only the Superintendent shall declare an emergency.) —

State the date the emergency was declared by the superintendent: _____

2. There is a single source for the items within a reasonable geographic area —

Explain why the vendor is a single source: _____

3. The contract is for the services of a licensed professional, education specialist, technician, or an artist —

State the type of service: Education Specialist: Software License

4. The contract is for the purchase of perishable items purchased on a weekly or more frequent basis —

State the item(s): _____

5. The contract is for proprietary item(s) for resale: This can include the buying or selling of item(s) by students when it is part of the educational experience —

State the type(s) of item(s): _____

6. The contract is for replacement parts when the need cannot be reasonably anticipated and stockpiling is not feasible —

State the item(s): _____

7. The contract or purchase is for expenditures made on authorized trips outside the boundaries of Jefferson County Public Schools —

State the location: _____

8. The contract is for a sale of supplies at reduced prices that will afford Jefferson County Public Schools a savings (Purchase must be approved by Director of Purchasing) —

Explain the logic: _____

9. The contract is for the purchase of supplies which are sold at public auction or by receiving sealed bids —

State the items: _____

I have determined that, pursuant to K.R.S. 45A. 380, the above item(s) should be obtained by the Noncompetitive Negotiation Methods since competition is not feasible.

Robert Moore

Print name of person making Determination

Chief of Schools

School or Department

Signature of person making Determination

Date

NoRedInk Corporation

Name of Contractor (Contractor Signature Not Required)

Requisition Number

Explanation of Noncompetitive Negotiation Methods can be found under K.R.S. 45A.380 and on page 15 in the Procurement Regulations

F-471-1

Revised 05/2011



Exhibit A

NO RED INK MASTER SERVICE TERMS **(last updated July 7, 2020)**

The following terms and conditions, including those documents incorporated herein by reference (collectively, the “Terms”) are a legal contract between NoRedInk Corp. (“NoRedInk”) on the one hand, and you and your employer (collectively, “Client”) on the other. By approving an Order Form, having access to, receiving, and/or using the Services provided by NoRedInk you agree, on behalf of Client, without limitation or qualification, to be bound by and to comply with these Terms. Client may not use the Hosted Service or accept Professional Services unless it accepts these Terms and has the power and legal right to form a contract with NoRedInk under these Terms. Any individual using, accessing or procuring Services in the name of or as part of such individual’s responsibilities within an organization, or who submits to the Hosted Service data controlled by such organization, represents and warrants that such individual is authorized and intends by those actions to bind such organization to these Terms.

Each Order Form will be deemed to incorporate these Terms as published by NoRedInk on the effective date of such Order Form.

1. Definitions.

“Agreement” means these Terms and each Order Form agreed by the parties.

“Client Data” means any electronic data, information or material, including content created by Users and personal information, provided or submitted to NoRedInk by Client or Users to or through the Hosted Service.

“Hosted Service” means, collectively, those hosted service(s) set forth in an Order Form(s) made available by NoRedInk, through the use of (and including) NoRedInk’s cloud platform, proprietary software and associated documentation.

“Order Form” means the an online or written order form or account setup form for the Service, a statement of work for Professional Services, or another written agreement, submitted by Client and accepted by NoRedInk from time to time, specifying, among other things, the number of licenses, services, fees, the Service Term and other charges as agreed to between the parties, but which does not contain any modifications of or amendments to these Terms.

“Professional Services” means the professional consulting service(s) as set forth in an Order Form(s) made available by NoRedInk, and collectively with the Hosted Service, the “Services”.

“Service Term” means the term during which NoRedInk will provide the Services to Client as specified in each Order Form. Each Service Term commences upon the later of the execution of the Order Form for such Service Term or the designated Service Term start date on such Order Form.

“Staff Users” means Client’s employees and contractors who are authorized to use the Hosted Service as a teacher or administrator.

“Student Users” means students authorized by a Staff User to use the Hosted Service as a student, and collectively with the Staff Users, “Users”.

2. Services.

2.1 Hosted Service. Subject to these Terms, NoRedInk grants Client and its Staff Users a non-exclusive, non-transferable, non-sublicensable right during the Service Term to access and use the Hosted Service, and NoRedInk will make the Hosted Service available to for its intended pedagogical purpose in accordance with these Terms and the Order Form(s). Client’s use of the Hosted Service is subject to the limitation on the number of Users specified in the relevant Order Form and payment of the fee specified in the relevant Order Form if Client exceeds the User limit. NoRedInk may in its sole discretion change the Hosted Service without materially decreasing the functionality of the Hosted Service. Other than as expressly set forth in these Terms, no license or other rights are granted in the Services, NoRedInk expressly reserves all such rights and all title and interest in and to the Services and all intellectual property rights therein.

2.2 Access. NoRedInk will provide Client’s Users access to the Hosted Service pursuant to password protected user accounts. NoRedInk will send instructions to Staff Users, including Client-designated administrator Staff Users (each an “Admin”) regarding the administrative tools made available to Client, and will provide Admins with

appropriate administrative credentials. The Admin tools and other Staff User tools allow a variety of actions, including, for example, the creation of additional Admins, approving or rejecting individuals as Staff Users and Student Users, viewing and allowing the viewing of the information of other users, particularly Student Users, and editing or deleting from the Hosted Service information (including Client Data) submitted by other Users. All actions taken using the Admin and Staff User tools will be deemed approved by Client.

2.3 Restrictions. Client shall not itself or cause or permit others to: (a) disassemble, reverse engineer, or decompile the Hosted Service or otherwise attempt to access any of technology underlying the Hosted Service; (b) access the administrative interfaces of the Hosted Service for the purposes of competitive analysis, benchmarking, or designing, modifying, or otherwise creating any service or software program, or any portion thereof, that performs functions similar to the functions performed by the Hosted Service; or (c) copy, sublicense, or provide access or other dissemination of any element of the Hosted Service, in whole or in part, to any third party.

2.4 Professional Services. Client may request NoRedInk to provide certain Professional Services that are ancillary to the Service, such as teacher professional development services and training classes, and NoRedInk will use commercially reasonable efforts to provide such Professional Services as set forth on an Order Form from time to time.

2.5 Support. NoRedInk will provide email support for the Hosted Service during normal business hours (between the hours of 7:00 am and 5:00 pm PST on business days).

3. Data Handling, Feedback.

3.1 Client Data. As between NoRedInk and Client, all Client Data remains the sole property of Client (subject to any rights that Student Users may have in content they create within the Hosted Service). Client grants to NoRedInk a non-exclusive license during the Service Term to use and reproduce the Client Data to the extent necessary to provide, maintain, and improve the Services. NoRedInk will also have the right during and after the Service Term to (a) use and analyze data about the use of the Hosted Service by Client and Users in order to maintain and improve the Services, and (b) to disclose statistics aggregating Client and User usage data with NoRedInk's other clients' data for marketing and other purposes; provided that such data and statistics are not used except as de-identified or aggregated in a manner which renders identification of natural persons infeasible, and are never disclosed to any third party (except NoRedInk subcontractors in connection with the provision of the Services) other than in an aggregated format from which neither the identity of Client nor the identity of any natural person can reasonably be derived.

3.2 Data Compliance Basics.

(a) NoRedInk has implemented commercially reasonable and appropriate technical and organizational measures intended to secure Client Data from accidental loss and from unauthorized access, use, alteration or disclosure.

(b) NoRedInk will not use or sell the personal information of Student Users to market or advertise to Student Users or their or families or guardians.

(c) Client Data may include personal information from education records that are subject to the Family Educational Rights and Privacy Act (20 U.S.C. 1232g) and the Family Educational Rights and Privacy Act Regulations (34 CFR Part 99), as amended or otherwise modified from time to time ("FERPA"). To the extent that Client Data includes such education records ("Education Records"), NoRedInk will comply with FERPA, and will not disclose or use Education Records received from or on behalf of Client (or its Users) except as permitted or required by this Agreement, as required by law, or as otherwise authorized in writing by Client. For the purposes of FERPA, NoRedInk shall be considered a "school official".

(d) To the extent that Client Data includes personal information concerning Student Users under 13, NoRedInk will comply with Children's Online Privacy Protection Act, 15 U.S.C. 6501-6506 ("COPPA") with respect to such information, expressly subject to Client: (i) fulfilling the COPPA consent requirement for the use of the Hosted Service by Student Users under 13, and (ii) if Client learns or believes that a student under 13 may be using the Hosted Service without adequate consent having been provided, Client will immediately suspend such student's access to the Hosted Service and notify NoRedInk.

(e) More detail concerning NoRedInk's security and privacy practices for personal information provided to NoRedInk under these Terms are set forth in the Data Protection Addendum located at <https://www.noredink.com/data-protection-addendum> (the "DPA"), which is hereby incorporated by reference.

3.3 Subject to these Terms and the DPA, the terms and conditions of the NoRedInk Privacy Policy (which may be viewed at <http://noredink.com/privacy>) is incorporated herein by reference, shall apply to individual Users' use of the Service, and Client hereby acknowledges and agrees to the terms thereof. The NoRedInk Privacy Policy may be amended from time to time. Any changes shall be effective as to Users upon the earlier of Client's approval of such changes (an exchange of emails to suffice) or the beginning of the next Service Term after notice is provided.

3.4 **Suggestions, Ideas and Feedback; Client Data.** NoRedInk shall have the unrestricted right to use or act upon any suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by Client or any other party relating to the Service.

4. **Client Responsibilities.**

4.1 **Responsibility.** Client shall: (a) have sole responsibility for all activities that occur under Client's User accounts and for all Client Data; (b) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Hosted Service and notify NoRedInk promptly of any such activity; and (c) comply with all applicable local, state, federal, and foreign laws (including the Family Educational Rights and Privacy Act (20 U.S.C. 1232g) and the Family Educational Rights and Privacy Act Regulations (34 CFR Part 99), as amended or otherwise modified from time to time) in using the Hosted Service.

4.2 **Hosted Service Guidelines.** Client shall use the Hosted Service solely for its internal pedagogical purposes as contemplated by these Terms and shall not use, or allow Users to use, the Hosted Service in a manner inconsistent with such purpose, including without limitation: (a) attempting to gain unauthorized access to, interfere with or disrupt the integrity or performance of the Hosted Service, computer systems, or networks related to the Hosted Service or any data contained in any of those; or (b) harassing or interfering with any user's use and enjoyment of the Hosted Service.

5. **Fees & Payment.**

5.1 **Fees.** Client shall pay the fees as specified in each Order Form or SOW (as applicable). Fees are non-refundable except as otherwise specifically set forth in these Terms.

5.2 **Payment Terms.** Amounts due shall be payable thirty (30) days from the invoice date. All quotes and payments made under these Terms shall be in United States dollars. Late payments shall bear interest at the lower of one and one-half percent (1.5%) per month or the maximum rate permitted by law. If Client's account is ten (10) days or more overdue, in addition to any of its other rights or remedies, NoRedInk reserves the right to suspend the Service provided to Client, without prior notice or liability to the Client, until such amounts are paid in full. Client shall pay all of NoRedInk's reasonable fees, costs and expenses (including reasonable attorney's fees) if legal action is required to collect outstanding undisputed balances.

5.3 **Taxes.** NoRedInk's fees are exclusive of all taxes, levies, or duties of any nature ("Taxes"), and Client is responsible for payment of all Taxes, excluding only taxes levied by NoRedInk's local taxing authority on NoRedInk's income. If NoRedInk has the legal obligation to pay or collect taxes for which Client is responsible pursuant to this Section 5.3, the appropriate amount shall be invoiced to and paid by Client, unless Client provides NoRedInk with a valid tax exemption certificate authorized by the appropriate taxing authority.

6. **Confidentiality.**

6.1 **Definition of Confidential Information.** As used herein, "Confidential Information" means all information of a party ("Disclosing Party") which the Disclosing Party designates in writing as being confidential when it discloses such information to the other party ("Receiving Party"), including without limitation these Terms, the Hosted Service and any nonpublic information regarding the same, business and marketing plans, technology and technical information, product designs, and business processes (whether in tangible or intangible form, in written or in machine readable form, or disclosed orally or visually). Confidential Information shall not include any information that: (a) is or becomes generally known to the public without the Receiving Party's breach of any obligation owed to the Disclosing Party; (b) was independently developed by the Receiving Party without the

Receiving Party's breach of any obligation owed to the Disclosing Party; or (c) is received from a third party who obtained such Confidential Information without any third party's breach of any obligation owed to the Disclosing Party.

6.2 **Protection.** Neither party will disclose the other party's Confidential Information, or use the other party's Confidential Information for any purpose other than to perform its obligations or exercise its rights under these Terms. Each party will protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall either party exercise less than reasonable care in protecting such Confidential Information. Further, to the extent that Client is subject to a freedom of information act, open records law or similar legislative or regulatory obligations ("**Disclosure Laws**"), Client agrees that it will treat NoRedInk's Confidential Information as subject to exemption from disclosure as "confidential commercial information" or any similar category of information subject to exemption from disclosure to the maximum extent possible under the relevant Disclosure Laws.

6.3 **Compelled Disclosure.** If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior written notice of such compelled disclosure and reasonable assistance (at Disclosing Party's cost) if the Disclosing Party wishes to contest the disclosure. Without limiting the generality of the foregoing, Client agrees that it will provide NoRedInk with the maximum notice period and right to object to disclosure of NoRedInk Confidential Information available under the applicable Disclosure Laws.

6.4 **Remedies.** If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of this Section 6, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

7. **Warranties & Disclaimers.**

7.1 **Warranties.** Each party represents and warrants that it has the legal power to enter into these Terms, and that it has the right and authority to grant to rights granted under this Agreement. NoRedInk represents and warrants that it will provide the Services in a manner consistent with reasonable standards applicable in NoRedInk's industry.

7.2 **Disclaimer of Warranties.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NOREDINK MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND HEREBY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

8. **Indemnification.**

8.1 **Indemnification by NoRedInk.** Subject to these Terms, NoRedInk will defend Client against any claims, demands, suits or proceedings made or brought by a third party ("**Claims**") against Client to the extent based upon an allegation that the Hosted Service, as furnished by NoRedInk hereunder and used by Client within the scope of this Agreement, misappropriates any third party trade secret or infringes any third party's copyright or U.S. patent or trademark rights. NoRedInk will indemnify and hold Client harmless against damages awarded by a court or settlements agreed by NoRedInk in connection with such Claims. NoRedInk shall have no obligations to Client under this Section 8.1 to the extent such Claims arise from Client's or Users' breach of these Terms. If any Claim is made under this Section, in NoRedInk's sole judgment, is likely to be made, NoRedInk may, at its discretion, either: (a) procure for Client the right to continue to use the Hosted Service, as such use is specifically provided for in these Terms, (b) replace or modify the Hosted Service to avoid infringement, or (c) terminate these Terms upon written notice to Client, and refund any paid but unused fees to Client. The obligations in this Section are Client's sole remedy for any claim that the Services infringe or misappropriate any third party intellectual property rights,

8.2 **Indemnification by Client.** Subject to these Terms and to the fullest extent permitted by any state laws limiting Client's liability, Client will defend NoRedInk against any Claims against NoRedInk to the extent: (a) arising out of the Client Data, or the use thereof by either party solely in accordance with this Agreement, or (b) arising from Client's use of the Services in breach of this Agreement, including but not limited to failure to obtain parental consent for Student Users who are under 13. Client will indemnify and hold NoRedInk harmless against

damages awarded by a court or settlements agreed by Client in connection with such Claims. Client shall have no obligations to NoRedInk under this Section 8.2 to the extent such Claims arise from NoRedInk's breach of these Terms.

8.3 Procedure. Each party's obligations under this Section 8 are conditioned on the party seeking indemnification: (a) promptly giving written notice of the Claim to the indemnifying party (provided that any delay in notification will excuse the indemnifying party only to the extent such delay materially prejudices the indemnifying party's ability to defend or settle the claim); (b) giving the indemnifying party sole control of the defense and settlement of the Claim (provided that the indemnifying party may not settle or defend any Claim without the indemnified party's consent unless such settlement unconditionally releases the indemnifying party of all liability); and (c) providing to the indemnifying party, at the indemnifying party's cost, all reasonable assistance.

9. Limitation of Liability and Action.

9.1 Limitation of Liability.

(a) EXCEPT FOR DAMAGES PAYABLE TO THIRD PARTIES UNDER SECTION 8.1, IN NO EVENT SHALL NOREDINK HAVE ANY LIABILITY HEREUNDER FOR ANY LOST PROFITS, LOSS OF DATA, LOSS OF USE, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED, UNDER ANY THEORY OF LIABILITY, WHETHER OR NOT NOREDINK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

(b) IN NO EVENT SHALL NOREDINK'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS, UNDER ANY THEORY OF LIABILITY, EXCEED THE GREATER OF \$10,000 OR THE AMOUNTS ACTUALLY PAID BY CLIENT FOR THE SERVICE DURING THE ONE (1) YEAR PERIOD IMMEDIATELY PRECEDING THE DATE THE CAUSE OF ACTION AROSE.

9.2 Insurance. NoRedInk will during the Service Term maintain the following insurance coverage at its own cost and expense: (a) Workers' Compensation as required by applicable law in its jurisdiction; (b) Automotive Liability with a minimum limit of not less than \$1,000,000 combined single limit for property damage and bodily injury per accident, covering all vehicles operated by NoRedInk; (c) Commercial General Liability, on an occurrence basis, with a minimum combined single limit of \$1,000,000 per occurrence; and (d) Cyber Liability covering the liability for technology errors and omissions, network security breaches and privacy, in an amount of at least \$1,000,000 per occurrence.

9.3 Limitation of Action. No action (regardless of form) arising out of the Agreement may be commenced by either party more than two (2) years after the expiration of the Service Term for the Service(s) to which such action pertains.

10. Term & Termination.

10.1 Term. These Terms commence on the date an Order Form is executed by both parties and, unless sooner terminated in accordance with these Terms, shall continue until the expiration of the last Service Term to expire. In the event of an inadvertent gap of fewer than ninety (90) days between the expiration of a Service Term and the execution of a new Order Form intended to extend or renew the use of the Services, these Terms shall be deemed to not to have expired and to have continued in force through such inadvertent gap.

10.2 Termination for Cause. A party may terminate the Agreement for cause: (a) upon thirty (30) days written notice of a material breach to the other party, provided such breach remains uncured at the expiration of the notice period; or (b) if the other party becomes the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors.

10.3 Effect of Termination. Upon the effective date of termination of this Agreement: (a) all then-active Order Forms will terminate; (b) Client's use of the Services is terminated, and Client shall immediately cease accessing the Hosted Service except that for thirty (30) days after termination, Client may access the Hosted Service solely to downloading its Client Data; (c) any and all payment obligations of Client incurred prior to the date of termination will immediately become due; (d) within thirty (30) days of such termination each party will return or, if return is not feasible, destroy all copies of Confidential Information of the other party in its possession except as required to

comply with any applicable legal or accounting record keeping requirement; and (e) within thirty (30) days of termination NoRedInk will provide Client with the opportunity to download the Client Data or if Client is unable to do so, a copy of the Client Data, and will then destroy all Client Data. The following provisions shall survive the termination or expiration of these Terms for any reason and shall remain in effect after any such termination or expiration: Sections 1, 2.3, 3, 5 (as to outstanding payment obligations) and 6 through 11.

11. General Provisions.

11.1 Governing Law; Disputes. This Agreement and all disputes relating hereto shall be governed exclusively by, and construed exclusively in accordance with, the laws of the State of California, without regard to its conflict of laws provisions. The federal and state courts located in the Northern District of California shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement, and each party hereby submits to the personal jurisdiction and venue of such courts. The parties acknowledge and agree that any unauthorized disclosure or use of a party's confidential information or intellectual property would cause such party irreparable harm for which monetary damages would be inadequate. Accordingly, in the event of such a disclosure or use, the aggrieved party may seek injunctive or other equitable relief to enforce this Agreement in addition to any available legal remedies. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

11.2 Relationship of the Parties. This Agreement may not be construed to create or imply any partnership, agency or joint venture between the parties. NoRedInk may utilize subcontractors to fulfill any of its obligations or exercise any of its rights hereunder, provided that NoRedInk will remain responsible for such subcontractors' actions and omissions in connection with the Agreement as if NoRedInk had itself acted or failed to act. There are no third party beneficiaries to this Agreement.

11.3 Force Majeure. Except for a failure to make payments when due, party is not liable under any Agreement for non-performance caused by events or conditions beyond that party's reasonable control, if the party makes reasonable efforts to perform.

11.4 Notices. To the extent notices can be delivered by the use of a designated feature of the user interface of the Hosted Service (e.g., Client termination notices or address changes), notice will be effective when delivered through such user interfaces. All other notices under this Agreement shall be in writing and sent by email, or personally delivered or sent by guaranteed overnight courier, by registered or certified mail, return receipt requested to NoRedInk's address for notice set forth on the Order Form and to Client at the address provided by Client in its Hosted Service account, means evidenced by a delivery receipt or by email. Notice shall be deemed to have been given upon actual delivery (evidenced as to email by a non-automated reply) or refusal of delivery. Notices to NoRedInk shall be addressed to the attention of its CEO, with a copy to its Head of Operations.

11.5 Waiver and Severability. Any express waiver or failure to exercise promptly any right under this Agreement will not create a continuing waiver or any expectation of non-enforcement. If any provision of this Agreement is held to be contrary to law or unenforceable, the provision shall be changed and interpreted so as to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect, unless the modification or severance of any provision has a material adverse effect on a party, in which case such party may terminate this Agreement.

11.6 Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior express written consent of the other party, not to be unreasonably withheld. Notwithstanding the foregoing, NoRedInk may assign this Agreement without Client's consent in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Any purported assignment in breach of this Section shall be void and of no effect. This Agreement shall bind and inure to the benefit of the parties' respective permitted successors and permitted assigns.

11.7 Counterparts. Order Forms may be executed in counterparts (including by telefacsimile or exchange of PDF or similar documents), which taken together shall form one legal instrument.

11.8 Entire Agreement and Construction. These Terms, the DPA, and the Order Form constitute the entire agreement between the parties as to its subject matter. No modification or waiver of these Terms shall be effective unless in writing and signed by the party against whom the modification or waiver is to be asserted. Notwithstanding

any language to the contrary therein, no terms or conditions stated in any Client order documentation (even if used as an Order Form) shall be incorporated into or form any part of these Terms.



NoRedInk Pricing

NoRedInk offers individual per student and unlimited-use school site licensing. The school site license pricing varies based on the enrollment range for the school.

NoRedInk requires a minimum order of 100 students.

There are no initial or additional annual fees beyond the subscription. Renewals would be quoted at the same rate.

District-wide (by grade) pricing is also available. Contact your NoRedInk representative for a custom quote.

Student and School Licensing

Premium License Type	Total school enrollment range		List Price - Annual Subscription
Site - Small	1	399	\$5,250
Site - Med	400	599	\$7,350
Site - Large	600	799	\$8,400
Site - X-Large	800	1099	\$9,450
Site - XX-Large	1100		\$10,500
Per Student			\$15.75

Volume Discounts (by District)

Number of Schools Purchased by District	1-2	3-5	6-10	11-15	16-20	21+
Additional Discount	0%	2.5%	5%	7.5%	10%	13%



Training and Professional Development

Service type	Price	Number of sessions	# of teachers per session
In-Person Professional Development	\$4,000 per trainer day including expenses	3-4 (up to 6 hours total): 3 sessions for new teacher training or train-the-trainer (2 hours each) 4 sessions for advanced (90 minutes each)	up to 20
Live Virtual Professional Development	\$500 per session	1 (or up to 1 hour)	up to 15

2. A subsidiary organization of the first Named Insured shown in the Declarations that the first Named Insured acquires or forms during the policy period, if at the time of loss the first Named Insured controls, either directly or indirectly, more than 50 percent of the interests entitled to vote generally in the election of the governing body of such organization.

G. WHO IS AN INSURED - EMPLOYEES (INCLUDING CPR AND FIRST AID) AND VOLUNTEER WORKERS

In **Section II - Liability**, Paragraph **C. Who is an Insured**, Paragraph 2.a. is replaced by the following:

2. Each of the following is also an insured:

- a. Your "employees" but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, no "employee" is an insured for:

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

- (a) To you, to any of your directors, managers, members, "executive officers" or partners (whether or not an "employee") or to any co-"employee" while such injured person is either in the course of his or her employment or while performing duties related to the conduct of your business;
- (b) To the brother, child, parent, sister or spouse of such injured person as a consequence of any injury described in Paragraph (a) above; or
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of any injury described in Paragraph (a) or (b) above.

With respect to "bodily injury" only, the limitations described in Paragraph 2.a.(1) above do not apply to you or to your directors, managers, members, "executive officers", partners or supervisors as insureds. The limitations also do not apply to your "employees" as insureds, with respect to such damages caused by cardiopulmonary resuscitation or first aid services administered by such an "employee".

- (2) "Property damage" to any property owned, occupied or used by you or by any of your directors, managers, members, "executive officers" or partners (whether or not an "employee") or by any of your "employees". This limitation does not apply to "property damage" to premises while rented to you or temporarily occupied by you with the permission of the owner.

- b. Your "volunteer workers", but only while acting within the scope of their activities for you and at your direction.

H. ADDITIONAL INSURED

In **Section II - Liability**, Paragraph **C. Who is an Insured**, the following is added:

2. Each of the following is also an insured:

LESSOR OF LEASED EQUIPMENT

- e. Any person or organization from whom you lease equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization and only if you are required by a contract or agreement to provide them with such insurance as is afforded by this policy.

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 contract or agreement to provide for such additional insured.

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

MANAGERS OR LESSORS OF PREMISES

- f. Any person or organization from whom you lease premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and only if you are required by a contract or agreement to provide them with such insurance as is afforded by this policy.

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 contract or agreement to provide for such additional insured.

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

This insurance does not apply to:

- (1) Any "occurrence" that takes place after you cease to be a tenant in such premises.
- (2) Structural alterations, new construction or demolition operations performed by or for such additional insureds.

VENDORS

- g. Any person or organization who is a vendor of "your products", 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:

- (1) The insurance afforded to such vendor only applies to the extent permitted by law; and
- (2) If coverage provided to the vendor is required by a contract or agreement, the insurance afforded to such vendor will not be broader than that which you are required by the contract or agreement to provide for such vendor.

With respect to the insurance afforded to these vendors, the following additional exclusions apply:

(1) This insurance afforded the vendor does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to the liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - (i) The exceptions contained in Subparagraph (d) or (f); or
 - (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

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

With respect to the insurance afforded to these vendors, the following is added to Paragraph D. **Liability And Medical Expenses Limits Of Insurance:**

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

- (1) Required by the contract or agreement; or
- (2) Available under the applicable Limits Of Insurance shown in the Declarations;

whichever is less.

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

OTHER PERSONS OR ORGANIZATIONS PURSUANT TO CONTRACT OR AGREEMENT

- h. Any persons or organizations that you are required by a contract or agreement to provide with such insurance as is afforded by this policy. However, such a person or organization is an insured only:
- (1) To the extent such contract or agreement requires the additional insured to be afforded status as an insured; and
 - (2) For activities that did not occur, in whole or in part, before the execution of the contract or agreement.

No person or organization is an insured under this provision:

- (1) That is more specifically identified under any other provision of Paragraph **C. Who Is An Insured** (regardless of any limitation applicable thereto).
- (2) With respect to any assumption of liability in a contract or agreement. This limitation does not apply to the liability for damages the additional insured would have in the absence of the contract or agreement.

However, the insurance afforded to such persons or organizations:

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

The following is added at the end of Paragraph **C. Who Is An Insured**:

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

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

- a. Ownership, maintenance or use of any assets; or
- b. Conduct of any person or organization whose assets, business or organization;

any Named Insured acquires, either directly or indirectly, for any:

- (1) "Bodily injury" or "property damage" that occurred; or
- (2) "Personal and advertising injury" arising out of an offense first committed;

in whole or in part, before such acquisition is executed.

With respect to the insurance afforded to the persons or organizations described in Paragraphs **e., f., and h.** above, the following is added to Paragraph **D. Liability And Medical Expenses Limits Of Insurance**:

The most we will pay on behalf of such person or organization is the amount of insurance:

- (1) Required by the contract or agreement; or
 - (2) Available under the applicable Limits Of Insurance shown in the Declarations;
- whichever is less.

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

I. DAMAGE TO PREMISES RENTED TO YOU – \$1,000,000

In **Section II - Liability**, Paragraph **D. Liability and Medical Expenses Limits of Insurance**, Paragraphs 3. and 4. are deleted and replaced with the following:

- 3. Subject to the **Liability And Medical Expenses Limits Of Insurance**, the most we will pay under Business Liability Coverage for damages because of "property damage" to any one premises while rented to you or while temporarily occupied by you with permission of the owner is \$1,000,000.

4. Aggregate Limits

The most we will pay for:

- a. All "bodily injury" and "property damage" that is included in the "products-completed operations hazard" is twice the Liability and Medical Expenses limit.

b. All:

- (1) "Bodily injury" and "property damage" except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard";

- (2) Plus medical expenses;

- (3) Plus all "personal and advertising injury" caused by offenses committed;

is twice the Liability and Medical Expenses Limit.

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

J. PER LOCATION GENERAL AGGREGATE LIMIT WITH COMBINED TOTAL AGGREGATE LIMIT

In **Section II - Liability**, Paragraph **D. Liability and Medical Expenses Limits of Insurance**, the following is added:

1. Subject to the Combined Total Aggregate Limit shown in the Declarations, for the sum of all damages that the insured becomes legally obligated to pay for all "bodily injury" and "property damage" caused by "occurrences" under Paragraph **A.1. Business Liability**, and for all medical expenses caused by accidents under Paragraph **A.2. Medical Expenses**, which can be attributed only to a single "location":
 - a. A separate Location General Aggregate Limit will apply to each "location", and that limit is equal to the Other than Products/Completed Operations Aggregate Limit shown in the Declarations.
 - b. The separate Location General Aggregate Limit is the most we will pay for the sum of all damages for "bodily injury" or "property damage" under Paragraph **A.1. Business Liability**, except in connection with "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under Paragraph **A.2. Medical Expenses**, regardless of the number of:
 - (1) Insureds;
 - (2) Claims made or "suits" brought; or
 - (3) Persons or organizations making claims or bringing "suits".
 - c. Any payments made under Paragraph **A.1.** or under Paragraph **A.2. Medical Expenses** shall reduce the separate Location General Aggregate Limit for that "location". Such payments shall not reduce the Other Than Products/Completed Operations Aggregate Limit shown in the Declarations nor shall they reduce the separate Location General Aggregate Limit for any other "location".
 - d. The limits shown in the Declarations for Each Occurrence, Damage To Premises Rented To You and Medical Expense continue to apply. However, instead of being subject to the Other Than Products/Completed Operations Aggregate Limit shown in the Declarations, such limits will be subject to the applicable separate Location General Aggregate Limit.
2. Subject to the Combined Total Aggregate Limit shown in the Declarations, for the sum of all damages that the Insured becomes legally obligated to pay for all "bodily injury" or "property damage" caused by occurrences under Paragraph **A.1. Business Liability** and for all medical expenses caused by accidents under Paragraph **A.2.**, which cannot be attributed only to operations at a single "location".
 - a. Any payments made under Paragraph **A.1. Business Liability** for damages or under Paragraph **A.2.** for medical expenses shall reduce the amount available under the Other Than Products/Completed Operations Aggregate Limit or the Products/Completed Operations Aggregate Limit, whichever is applicable; and
 - b. Such payments shall not reduce the separate Location General Aggregate Limit applicable to a single "location".
3. Subject to the separate Location General Aggregate Limit and all other applicable limits, the Combined Total Aggregate Limit shown in the Declarations is the most we will pay for the combined sum of amounts described above, regardless of the number of "locations".
4. Any payments we make for "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-Completed Operations Aggregate Limit regardless of the number of "locations", and not reduce the Other Than Products/Completed Operations Aggregate Limit nor the separate Location General Aggregate Limit applicable to a single "location."
5. As used in this endorsement, "location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.
6. The provisions of Paragraph **D. Liability and Medical Expenses Limits Of Insurance** not otherwise modified by this endorsement shall continue to apply as stipulated.

K. KNOWLEDGE/NOTICE OF OCCURRENCE

In **Section II - Liability, Paragraph E. Liability and Medical Expenses General Conditions, 2. Duties In the Event Of Occurrence, Offense, Claim or Suit** is amended to include the following:

- e. Knowledge of an "occurrence" or offense by an agent or "employee" of the insured will not constitute knowledge by the insured, unless an "executive officer" (whether or not an "employee") of any insured or an "executive officer's" designee knows about such "occurrence" or offense. Failure of an agent or "employee" of the insured, other than an "executive officer" (whether or not an "employee") of any insured or an "executive officer's" designee, to notify us of an "occurrence" or offense that such person knows about will not affect the insurance afforded to you.
- f. If a claim or loss does not reasonably appear to involve this insurance, but it later develops into a claim or loss to which this insurance applies, the failure to report it to us will not violate this condition, provided the insured gives us immediate notice as soon as the insured is aware that this insurance may apply to such loss or claim.

L. BODILY INJURY, INCLUDING RESULTING MENTAL ANGUISH

In **Section II - Liability, Paragraph F. Liability and Medical Expenses Definitions**, paragraph 3. is deleted and replaced with the following:

3. "Bodily injury" means physical:

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

sustained by a person, including resulting death, humiliation, mental anguish, mental injury or shock at any time. All such loss shall be deemed to occur at the time of the physical injury, sickness or disease.

M. COVERAGE TERRITORY, LIMITED WORLDWIDE

In **Section II - Liability, Paragraph F. Liability and Medical Expenses Definitions**, paragraph 4. is deleted and replaced by the following:

4. "Coverage territory" means all parts of the world.

However, "coverage territory" does not include any:

- a. "Bodily injury" or "property damage" that takes place or any offense committed outside of the United States of America (including its possessions and territories), Canada and Puerto Rico, unless the insured's responsibility to pay damages is determined by a "suit" on the merits that is brought in the United States of America (including its possessions and territories), Canada or Puerto Rico; or
- b. Injury or damage in connection with any "suit" brought outside the United States of America (including its possessions and territories), Canada and Puerto Rico.

N. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

In **Section III – Common Policy Conditions, Paragraph C. Concealment, Misrepresentation or Fraud** is amended to include the following additional paragraph:

Unintentional failure of an "employee" of the insured to disclose a hazard or other material information will not violate this condition, unless an "executive officer" (whether or not an "employee") of any insured knows about such hazard or other material information.

O. OTHER INSURANCE, INCLUDING PRIMARY PROVISION

In **Section III – Common Policy Conditions, Paragraph H. Other Insurance**, subparagraphs 2. and 3. are replaced by the following:

H. Other Insurance

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

1. Primary Insurance

This insurance is primary except when Paragraph 2 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 3 below.

2. Excess Insurance

a. This insurance is excess over:

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

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

(b) That is insurance that applies to "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or

(c) If the loss arises out of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section II.B. Exclusions, 1. Applicable to Business Liability Coverage; or

(2) Any other primary insurance available to you covering liability for damages arising out of the premises or operations for which you have been added as an additional insured.

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

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

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

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

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

Method of Sharing

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

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

P. WAIVER OF SUBROGATION REQUIRED BY CONTRACT

In **Section III – Common Policy Conditions**, Paragraph **K. Transfer of Rights of Recovery Against Others To Us**, subparagraph 2. is replaced by the following:

2. Applicable to Businessowners Liability Coverage:

We will waive the rights of recovery we would otherwise have had against another person or organization, for loss to which this insurance applies, provided the insured has waived their rights of recovery against such person or organization in a contract or agreement that is executed before such loss.

To the extent that the insured's rights to recover all or part of any payment made under this Coverage Part have not been waived, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This paragraph does not apply to Medical Expenses Coverage.

All other terms and conditions of the policy remain unchanged.