

WARREN BOARD OF EDUCATION
PURCHASE CONTRACT FOR College Textbooks and Codes from Textbook Acquisition Services, LLC

This contract for the purchase college textbooks and codes (the "Contract") is made and entered into this 1st day of August, 2024, between the Warren Board of Education (the "School System"), 109 Cousin Lucy's Lane, Warrenton, NC 27589, and Textbook Acquisition Services (the "Provider"), 1818 North Taylor Street #323 Little Rock, AR 72207

For and in consideration of the mutual promises set forth in the Contract the parties do mutually agree as follows:

1. Obligations of Provider. Provider hereby agrees to provide the college textbooks as follows:

The specific college textbooks and codes, from Provider, Textbook Acquisition Services attached as Exhibit A. The textbooks and codes shall be provided in a timely manner acceptable to the School System in full compliance with the terms and conditions of this Contract. If there are any terms and conditions included in Exhibit A that are inconsistent with the terms contained in this Contract, this Contract shall control.

- 1.1. Warranty. Provider warrants that it has good and marketable title to all of the equipment provided pursuant to this Contract. Provider further warrants that the equipment shall be free and clear of all liens, claims, encumbrances, or demands of third parties. Provider shall indemnify, defend, and hold harmless the School System from any and all liability, loss, costs, damage, judgment, or expense (including reasonable attorneys' fees) resulting from or arising in any way out of any such third party claims by any third parties and/or which are based upon, or are the result of any breach of the warranties contained in this Section. In the event of a breach, Provider shall, at no additional cost to the School System, replace or modify the equipment with equivalent materials, obtain for the School System the right to continue using the materials, and in all other respects use its best efforts to remedy the breach. **Title to Products and risk of loss or damage during shipment pass from Provider to the School System upon delivery to the destination specified on the applicable PO (F.O.B. Destination, freight prepaid and added). Notwithstanding the foregoing, title to third party software, the licenses to which are resold by Provider, will remain with the third party. The School System's rights in such software are specified in the license agreement between such third party and the School System.**

2. Obligations of the School System.

The School System hereby agrees to compensate Provider for the equipment in the total amount of \$ 51,500.00 within 30 days of receiving a final, itemized invoice from the Provider. In the event of a payment default, the School System will be responsible for all of Provider's costs of collection, including, but not limited to, court costs, filing fees and attorneys' fees. In addition, if payments are not received as described above, Provider reserves the right to suspend shipments of Products until payment is received.

- 2.1. In the event of inclement weather, fire, power failure, or other similar occurrence, which may necessitate the cancellation of the delivery of the item(s), and an alternate date cannot be agreed upon, the School System will be under no obligation to compensate Provider for items not delivered.
3. Invoices. Provider shall provide School System with invoice(s) itemized by products provided, the date(s) that products were provided, and the amount owed, along with any supporting documentation that may be requested in advance by School System.
4. Termination for Convenience. The School System may terminate this Contract at any time at its complete discretion upon twenty (20) calendar days' notice in writing from the School System to Provider prior to the date of termination. In addition, all finished or unfinished documents and other materials produced

by Provider pursuant to this Contract shall, at the request of the School System be turned over to it and become its property. If the Contract is terminated by the School System in accordance with this section, the School System will pay Provider at the rate set out in Section 2.1 for all good delivered as of the date of termination, even if the goods or services are delivered after such date.

5. Termination for Default. At any time, the School System may terminate this Contract immediately and without prior notice if provider is unable to meet goals and timetables or if the School System is dissatisfied with the quality of equipment provided. Following the termination of this Contract under this Section, the Parties' duties to one another shall cease except for those obligations that, by their nature, shall survive the termination of this Contract, including, but not limited to, the School System's payment obligations for goods and/or services ordered by the School System before the date of termination, even if the goods or services are delivered after such date.
6. Contract Funding. It is understood and agreed between Provider and the School System that the School System's payment obligation under this Contract is contingent upon the availability of appropriated funds from which payment for Contract purposes can be made.
7. Insurance. Provider agrees to maintain Commercial General Liability in amount of \$1,000,000 each occurrence with \$2,000,000 General Aggregate. Provider shall maintain \$1,000,000 in automobile liability, and other appropriate insurance, as well as Workers Compensation in the required statutory amount for all employees participating in the provision of goods under this Contract. Provider also agrees to maintain \$1,000,000 in professional liability insurance if the Provider is engaged in a professional service pursuant to this Contract. The Board of Education shall be named by endorsement as an additional insured on the general and automobile liability policies. Certificates of such insurance shall be furnished by Provider to the School System and shall contain an endorsement to provide the School System notice of any intent to cancel or terminate by either Provider or the insuring company in accordance with policy provisions. Failure to furnish insurance certificates or maintain such insurance shall be a default under this contract and shall be grounds for immediate termination of this Contract.
8. Taxes. Provider shall pay all federal, state, and FICA taxes for all employees participating in the provision of goods under this Contract.
9. Monitoring and Auditing. Provider shall cooperate with the School System, or with any other person or agency as directed by the School System, in monitoring, auditing, or investigating activities related to this Contract. Provider shall permit the School System to evaluate all activities conducted under this contract as dictated by the School System. Provider shall provide auditors retained by the School System with access to any records and files related to the provision of goods under this Contract. The School System agrees that its auditors will maintain the confidentiality of any identified and actual trade secrets of Provider accessed during an audit conducted under this Contract.
10. Lunsford Act. Provider also acknowledges that G.S. § 14-208.18 prohibits anyone required to register as a sex offender under Article 27A of Chapter 14 of the General Statutes from knowingly being on the premises of any school. Provider shall conduct or arrange to have conducted, at its own expense, sexual offender registry checks on each of its owners, employees, agents and subcontractors ("contractual personnel") who will engage in any delivery of goods to School System property or at a School System sponsored event, except checks shall not be required for individuals who are solely delivering or picking up equipment, materials, or supplies at: (1) the administrative office or loading dock of a school; (2) non school sites; (3) schools closed for renovation; or (4) school construction sites. The checks shall include at a minimum checks of the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry ("the Registries"). For Provider's convenience only, all of the required registry checks may be completed at no cost by accessing the United States Department of Justice Sex Offender Public Website at <http://www.nsopw.gov/>. Provider shall provide certification on the Sexual Offender Registry Check Certification Form (Exhibit B) that the registry checks were conducted on each of its contractual personnel providing services or delivering goods under this Contract prior to the commencement of such services or the delivery of such goods. Provider shall conduct a current initial check of the registries.

The sex offender

registry checks shall be conducted within 30 days of Provider's execution of the Contract and prior to delivering any goods on School System property. In addition, Provider agrees to conduct the registry checks and provide a supplemental certification form before any additional contractual personnel are used to deliver goods or provide services pursuant to this Contract. Provider further agrees to conduct annual registry checks of all contractual personnel and provide annual certifications at each anniversary date of this Contract. Provider shall not assign any individual to deliver goods or provide services pursuant to this Contract if said individual appears on any of the listed registries. Provider agrees that it will maintain all records and documents necessary to demonstrate that it has conducted a thorough check of the registries as to each contractual personnel, and agrees to provide such records and documents to the School System upon request. Provider specifically acknowledges that the School System retains the right to audit these records to ensure compliance with this section at any time in the School System's sole discretion. Failure to comply with the terms of this provision shall be deemed a material breach of the Contract. If requested by the School System, the Provider shall provide sufficient background information regarding any or all contractual personnel who may deliver goods or perform services under this contract in order to allow the School System to perform a criminal background check on each individual at the School System's expense. Provider further agrees that it has an ongoing obligation to provide the School System with the name of any new contractual personnel who may deliver goods or provide services under the Contract. The School System reserves the right to prohibit any contractual personnel of Provider from delivering goods or providing services under this Contract if the School System determines, in its sole discretion, that such contractual personnel may pose a threat to the safety or well-being of students, school personnel or others, or if such contractual personnel may otherwise pose a risk to the School System's operations. Failure to comply with the terms of this provision shall be deemed a material breach of the Contract.

11. Indemnification. Provider shall indemnify and hold harmless the School System and its agents and employees from and against all third-party claims, actions, demands, costs, property damages, losses, and/or expenses of any kind whatsoever proximately resulting from the omission or commission of any act, lawful or unlawful, by Provider or its agents and/or employees, including but not limited to court costs and reasonable attorney's fees, incurred in connection with the defense of said matters. The parties agree that this indemnification clause is an "evidence of indebtedness" for purpose of N. C. Gen. Stat. § 6-21.2.
12. Relationship of Parties. Provider shall be an independent contractor of the School System, and nothing herein shall be construed as creating a partnership or joint venture; nor shall any employee of Provider be construed as an employee, agent, or principal of the School System.
13. Compliance with Applicable Laws. Both Parties shall comply with all applicable laws and regulations in providing goods under this Contract. In particular, Provider shall not employ any individuals to provide goods to the School System who are not authorized by federal law to work in the United States. Provider represents and warrants that it is aware of and in compliance with the Immigration Reform and Control Act and North Carolina law (Article 2 of Chapter 64 of the North Carolina General Statutes) requiring use of the E-Verify system for employers who employ twenty-five (25) or more employees and that it is and will remain in compliance with these laws at all times while providing goods pursuant to this Contract. Provider shall also ensure that any of its subcontractors (of any tier) will remain in compliance with these laws at all times while providing subcontracted goods in connection with this Contract. Provider is responsible for providing affordable health care coverage to all of its full-time employees providing goods to the School System. The definitions of "affordable coverage" and "full-time employee" are governed by the Affordable Care Act and accompanying IRS and Treasury Department regulations.
14. Restricted Companies Lists. Provider represents that as of the date of this Contract, Provider is not included on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.58. Provider also represents that as of the date of this Contract, Provider is not included on the list of restricted companies determined to be engaged in a boycott of Israel created by the North

Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.81.

15. Anti-Nepotism. Unless disclosed to the School System in writing prior to the Board's approval and execution of the Contract. Provider warrants that, to the best of its knowledge and in the exercise of due diligence, none of its corporate officers, directors, or trustees and none of its employees who will directly provide goods under this Contract are immediate family members of any member of the Warren County Board of Education or of any principal or central office staff administrator employed by the School System. For purposes of this provision, "immediate family" means spouse, parent, child, brother, sister, grandparent, or grandchild, and includes step, half, and in-law relationships. Should Provider become aware of any family relationship covered by this provision or should such a family relationship arise at any time during the term of this Contract, Provider shall immediately disclose the family relationship in writing to the Superintendent of Schools. Unless disclosed prior to the execution of the Contract or formally waived by the School System at a Board meeting, the existence of a family relationship covered by this Contract is grounds for immediate termination by School System without further financial liability to Provider.

16. Applicable School Board of Education Policies. Provider acknowledges that the Warren County Board of Education has adopted policies governing conduct on School System property and agrees to abide by any and all relevant Board policies while on School System property. The Provider acknowledges that Board's policies are available on the School System's website.

17. Assignment. Intentionally Omitted.

18. Contract Modifications. This contract may be amended only by written amendments duly executed by and between the School System and Provider.

19. Governing Law. North Carolina law will govern the interpretation and construction of the Contract. This paragraph shall completely replace and supersede the Governing Law paragraph appearing in the Terms and Conditions appearing on Provider's website: <https://www.cdwg.com/content/cdwg/en/terms/conditions/sales-and-service-projects.html>

20. Order of Precedence. The Parties do hereby agree that in the event of conflict between the terms and conditions of this Contract and the terms and conditions in an agreement entered into between the parties at the same time as or prior to this Agreement, the terms and conditions of this Agreement shall prevail.

21. Entire Agreement. This Contract, including the purchase order, if any, used in connection herewith and any other document(s) expressly incorporated by reference as a part of this Contract, constitutes and expresses the entire agreement and understanding between the parties concerning its subject matter. This Contract supersedes all prior and contemporaneous discussions, promises, representations, agreements and understandings relative to the subject matter of this contract. To the extent there may be any conflict between the four corners of this Contract and other documents incorporated by reference herein, the terms of this Contract will control.

i. First Amendment to Provider's Terms and Conditions.

a. The Parties hereby agree to delete all provisions regarding arbitration under the Governing Law section appearing on <https://www.cdwg.com/content/cdwg/en/terms/conditions/sales-and-service-projects.html>

22. Attached Exhibits: The following documents, if any, are attached as Exhibits to this Contract and incorporated by reference herein:

Exhibit A: Invoices of books and codes

23. Severability. If any provision of this Contract shall be declared invalid or unenforceable, the remainder of the Contract shall continue in full force and effect.

24. Counterparts and Execution. This Contract may be executed in any number of counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. The Parties agree that computer scanned and/or faxed signatures or copies of this Contract will have the same validity and force as an "original."

25. Authority to Enter Contract. The person(s) executing this Contract on behalf of Provider have authority to do so as an official, binding act of Provider.

26. Availability and Product Return. All Product orders are subject to Product availability. School System's return of any Product will be governed by Provider's return policy, as it is specified on Exhibit A (as amended from time to time), which is incorporated herein. Provider reserves the right to deliver Products in instalments, and the terms and conditions of this Contract shall apply to each such delivery and each delivery of the Products shall be separately invoiced and payable in accordance with Section 2.

27. Provider shall not be liable for any loss or damage suffered or incurred by arising from the School System's delay or failure to fulfil or otherwise discharge any of its obligations under this Contract or any SOW and/or PO where such delay or failure is caused by any non-performance of its obligations by the School System, industrial dispute, sudden or substantial depletion of Seller's staff, or any Force Majeure Event. Force Majeure Event means any event or circumstance arising which is beyond the reasonable control of Provider (including but not limited to any industrial dispute affecting any third party, carrier delays, embargos, acts of God or acts or laws of governmental regulations or government agencies, severe weather conditions, fire, flood, disaster, failure of power, civil riot, war or terrorism).

28. LIMITATION OF LIABILITY. UNDER NO CIRCUMSTANCES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY SET FORTH HEREIN, WILL EITHER PARTY, ITS AFFILIATES OR ITS OR THEIR SUPPLIERS, SUBCONTRACTORS OR AGENTS BE LIABLE FOR: ANY LOSS OF PROFITS, LOSS OF SALES OR TURNOVER, LOSS OR DAMAGE TO REPUTATION, BUSINESS, REVENUES OR SAVINGS, LOSS, DAMAGE OR CORRUPTION OF DATA OR SOFTWARE, OR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITIES OF SUCH DAMAGES OR IF SUCH DAMAGES ARE OTHERWISE FORESEEABLE, IN EACH CASE, AND WHETHER A CLAIM FOR ANY SUCH LIABILITY IS PREMISED UPON BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY OF LIABILITY. IN THE EVENT OF ANY LIABILITY INCURRED BY EITHER PARTY OR ANY OF ITS AFFILIATES HEREUNDER, THE ENTIRE LIABILITY OF EACH PARTY AND ITS AFFILIATES FOR DAMAGES FROM ANY CAUSE WHATSOEVER WILL NOT EXCEED THE LESSER OF THE UNITED STATES DOLLAR (A) AMOUNT PAID OR PAYABLE BY CUSTOMER FOR THE SPECIFIC PURCHASED ITEM(S) GIVING RISE TO THE CLAIM OR (B) 100,000.

ALL EXCLUSIONS AND LIMITATIONS IN THIS CONTRACT, ANY STATEMENT OF WORK AND/OR ANY PURCHASE ORDER SHALL ONLY APPLY SO FAR AS PERMITTED BY LAW AND IN PARTICULAR NOTHING SHALL EXCLUDE OR RESTRICT LIABILITY (I) FOR ANY BREACH OF THE CONFIDENTIALITY OBLIGATIONS SET OUT IN SECTION 9 OF THIS CONTRACT; OR (II) IN RESPECT OF ANY INDEMNITIES SET OUT IN THIS CONTRACT.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first indicated above.

WARREN COUNTY _____ **BOARD OF EDUCATION**

Lehman, Board Chair Member/Manager

Victoria

ATTEST:

Dr. Carol Montague-Davis, Interim Superintendent

This instrument has been preaudited in the manner required by the School Budget and Fiscal Control Act.

School System Finance Officer Date

Exhibit A