

CFO/Controller approval dated: _____
Budget line: _____

SCHOOL DISTRICT OF THE CITY OF ERIE, PA

AGREEMENT FOR PURCHASE AND SALE OF GOODS

FIBERLASERPRO 4848 PACKAGE

THIS AGREEMENT FOR THE PURCHASE AND SALE OF GOODS (the “Contract”) is made and entered into as of the DAY day of MONTH, 2025 by and between COMPANY NAME, having a principal place of business of COMPANY ADDRESS hereinafter called “Seller”, and the SCHOOL DISTRICT OF THE CITY OF ERIE, PA, hereinafter called “School District”, having a principal place of business at 1910 Sassafras Street, Erie, Pennsylvania 16502.

WHEREAS, School District desires to purchase and receive from Seller, and Seller desires to sell and assign to School District, certain goods, and any related services, in reliance upon the warranties and representations set forth and upon the terms and conditions of this Contract.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound hereby, School District and Seller hereby agree as follows:

1. Goods Sold; Standard Terms and Conditions. School District agrees to purchase from Seller, and Seller agrees to sell and deliver to School District, those certain goods and services as more fully described and identified in the bid documents which are attached hereto and incorporated herein by reference as Exhibit “A” (hereinafter, the “Goods”). If the School District did not and will not issue bid documents, the School District’s request for proposal and/or the Seller’s proposal is attached as Exhibit A. Any deviation from any standard or specification identified in Exhibit “A” shall, unless agreed to in writing by the School District, be cause for rejection or revocation of acceptance of the Goods. School District’s standard term and conditions (“Standard Terms and Conditions”) are attached as Exhibit B and are incorporated into and made part of this Contract.

2. Purchase Price; Shipping; Payment; Taxes.

(a) School District will pay Seller the purchase price for the Goods, including payment pursuant to any plan, timeline or installment method all as set forth in Exhibit “A”. Seller shall pay all applicable delivery charges in full, unless expressly otherwise provided in Exhibit A. All invoices shall itemize the goods delivered and shall not include sales, use or excise taxes. If the Seller, after a request by the School District, does not provide evidence satisfactory to the School District to support any item or items set forth on an invoice, the School District shall have no liability to make any payment with respect to that item or items. If the School District has already made payment for that item or items, the School District may by notice to the Seller require the Seller to refund the School District the amount of any such overpayment, or the School District, at its option, may set off such overpayment against any payments accruing thereafter to the Seller under this Contract or any other contract between the parties.

(b) **School District’s Tax Exemption.** Seller understands and acknowledges that the School District is exempt from payment of all state and local sales and use tax. Seller agrees that it shall utilize a Pennsylvania Exemption Certificate provided by the School District to procure any and all materials, including any supplies and equipment related to this Contract to avoid

unnecessary payment of any tax. The School District shall complete or provide copies of Pennsylvania Exemption Certificates for Seller as reasonably required.

3. Resolution. The School Directors of the School District must authorize, or have authorized, this Contract by a valid resolution. The Seller acknowledges that the School District has no power to contract for the purchase of goods other than within the scope of the resolution.

4. **Notices.** All notices, requests, demands and other communications required or permitted to be given or made under this Contract shall be in writing, shall be deemed effective when received and shall be delivered personally, sent by registered or certified mail (return receipt requested), postage prepaid, or by commercial courier service, as follows:

IF TO DISTRICT: School District of the City of Erie
Attention: Superintendent's Office
1910 Sassafras Street
Erie, Pennsylvania 16502

With a copy to: Knox McLaughlin Gornall & Sennett, P.C.
Attention: School District of the City of Erie Solicitor
120 West 10th Street
Erie, PA 16501

IF TO CONTRACTOR: CONTRACTOR

With a copy to: NAME AND ADDRESS

Seller or School District may change its address for notices by giving notice of a new address in accordance with this section.

5. **Order of Precedence.** The exhibits attached to this Contract are part of the Contract and are listed below:

<u>Exhibit</u>	<u>Exhibit Name</u>
A	Bid Documents/Request for Proposal/Proposal
B	Standard Terms and Conditions

In the event of any conflict between documents attached as part of Exhibit A, the bid documents will control, and if bid documents do not exist, the School District's request for proposal will control. Further, if a conflict exists between any Exhibit, another Exhibit or this Contract, the following order or precedence shall apply: first, this Contract; second, Exhibit B; third, Exhibit A. The terms and conditions of this Contract are intended to govern the purchase and sale of the Goods, and any conflicting terms and conditions, or additional terms and conditions, in any Seller or vendor prepared document shall not apply.

IN WITNESS WHEREOF, the Seller and School District have executed this Contract as a contract under seal, with the intent to be legally bound, as of the day and the year first above written, and the person executing this Contract on behalf of Seller or School District represents and warrants that this Contract has been authorized, is validly executed by an authorized officer or agent, and is binding upon and enforceable that party in accordance with its terms.

WITNESSES/ATTEST:

SCHOOL DISTRICT:

SCHOOL DISTRICT OF THE
CITY OF ERIE

By:

(Seal)

Board Secretary

Dr. Jay Breneman
Title: School Board President

SELLER:

By: _____ (Seal)
Name:
Title:

2620394.v1

EXHIBIT “A”

BID DOCUMENTS/REQUEST FOR PROPOSAL/PROPOSAL

EXHIBIT "B"

STANDARD TERMS AND CONDITIONS

1. Delivery Location & Delivery Date. The Goods shall be delivered F.O.B.

Destination to School District's facility located in Erie, Pennsylvania identified in Exhibit "A" or as otherwise directed by School District (the "Delivery Location"). The Goods shall be delivered no later than the date(s) specified in Exhibit "A" or otherwise by School District (the "Delivery Date"). Time, quantity, and delivery to the specified Delivery Location are of the essence under this Contract. Unless otherwise expressly agreed to by the School District in writing, Seller may not make partial shipments of Goods to School District.

2. Seller Bears Risk of Delivery. Seller shall bear the risk of shipment and delivery of the Goods, including, but not limited to the amount of any loss, deterioration or damage from the time of shipment until delivered to the School District at the Delivery Location. Seller shall properly pack, label, mark, and ship all Goods in accordance with applicable Law and industry standards, and shall provide School District with shipment documentation showing the Purchase Order number, Seller's identification number for the subject Goods, the number of units in the shipment, the number of cartons or containers in the shipment, Seller's name, and the country of origin.

3. Inspection & Acceptance of Goods. School District shall inspect the Goods upon arrival at the Delivery Location and, within thirty (30) days of delivery, give written notice to Seller if any Goods do not conform with the terms of this Contract. The School District's failure to discover non-conforming Goods upon delivery shall not relieve Seller of any of its obligations hereunder or limit any rights or remedies the School District may have under this Contract or applicable law. If the quantity delivered exceeds the quantity specified in the Contract or Purchase Order, School District may either (i) reject such excess Goods for a refund of the price paid for such excess Goods, plus any inspection, shipping, handling, and transportation charges incurred by School District, or (ii) keep such excess Goods. If the quantity delivered is less than the quantity specified in the Contract or Purchase Order, School District may either require the Seller to (i) ship the missing quantity of Goods to School District at Seller's expense and risk of loss, or (ii) refund the price paid by School District for such missing Goods, together with any charges or expenses incurred by School District. Notwithstanding anything to the contrary in this Contract, School District may reject the entire shipment of Goods if over 5% of the Goods in the shipment are non-conforming or if there is a shortage or overage of more than 5% of the total quantity of Goods ordered.

4. Late Shipment. Any shipment of Goods that arrives at the Delivery Location after the Delivery Date may in the School District's sole discretion be deemed non-conforming. School District shall have the right to return the Goods to Seller for a full refund, at Seller's expense in accordance with Section 5, and at Seller's risk of loss in transit. For purposes of this Contract, "full refund" means no restocking fees or other deductions shall apply.

5. Return of Non-Conforming Goods. If School District determines that any of the Goods do not conform to the terms of this Contract, School District shall have the right to return the non-conforming Goods to Seller for replacement or a full refund at the discretion of the School

District. If the School District determines that 5% or more of the Goods are non-conforming, the School District may cancel all future deliveries without liability to Seller. The amount of any cost or expense incurred by School District associated with the shipment of non-conforming Goods to Seller shall be the responsibility of Seller and payable on demand.

6. **Responsibility For Goods.** Acceptance of goods or payment for goods shall not relieve the Seller of responsibility for the substance and quality of the goods. Without additional compensation Seller shall diligently and expeditiously correct any deficiencies with respect to goods that are not returned.

7. **Meetings.** The Seller will attend any meetings requested by the School District, at the location established by the School District, provided that the School District give 72 hours' notice of the meeting and its location to the School District.

8. **Site License(s).** To the extent that Exhibit "A" to this Contract requires the Seller to carry out any portion of the work under the Contract on premises of the School District, the School District, subject to the terms, covenants and conditions set forth in this Contract, hereby grants the Seller a limited, revocable license to use such School District premises, and only such School District premises, as are expressly provided or by necessary implication required in order for the Seller to complete the work under the Contract in conformity with the requirements of this Contract. The School District shall have the right at any time and for any reason to condition or terminate the foregoing license. The Seller covenants and agrees to comply with all rules and regulations set by a principal concerning his or her school. The Seller shall promptly repair any and all damage to School District premises caused by the Seller or any of the Seller's officers, agents, employees or subcontractors.

9. **Contract Reporting.** The Seller shall comply promptly with the School District's reporting requirements for contracts, including electronic or other reporting of Seller and contract data.

10. **Termination.** School District may terminate this Contract with respect to any undelivered Goods, without cause, at any time by giving written notice of termination to Seller. School District shall have no liability to Seller for the termination other than payment for conforming Goods received prior to termination. Further, if the General Assembly of the Commonwealth of Pennsylvania fails to appropriate or timely pay to the School District sufficient funds, or a federal grant or other funding to support this Contract is not funded or timely paid, and the School District determines sufficient funds have not been appropriated or received for the payment of Goods, this Contract shall immediately terminate at the sole discretion of the School District or be delayed, postponed or otherwise modified in writing at the mutual discretion of the Seller and School District.

11. **Seller's Warranties.** Seller expressly warrants, in addition to any warranty in Exhibit A or delivered with the Goods, that all Goods: (a) shall strictly conform in all respects with any description and specification incorporated herein; (b) shall comply with all applicable laws, shall be delivered free from any security interest or other lien or encumbrance; (c) shall be merchantable, of new and best material (except when this Contract expressly provides otherwise), fit for the purpose for which such Goods are intended, and shall be free from all defects, including

latent defects in workmanship, material and design; and (d) the sale and use of the Goods will not infringe any domestic or foreign patents, trademarks, trade dress, copyrights, trade secrets or any other form of intellectual property. In addition to the foregoing express warranties, the Goods shall be subject to all warranties arising by operation of law. All warranties shall survive inspection, delivery, acceptance and payment, shall run to School District, its officers, agents, employees, students, successors, assigns, customers and users of the Goods and shall not be deemed to be exclusive. The Seller shall work with the School District and any service provider for the Goods to repair and/or replace the Goods under any applicable warranty. Seller has obtained and shall maintain all licenses, registrations, and permits required to perform its obligations under this Contract.

12. Compliance with Law.

(a) Seller represents to School District, and guarantees the same, that no article shipped pursuant to this Contract is adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, or is an article which may not under the provisions of that Act (including section 404 or 505) be introduced into interstate commerce; that no article shipped pursuant to this Contract is produced in violation of any provisions of the Fair Labor Standards Act; that during the performance of this Contract the Seller, and the Goods, are fully in compliance with all provisions as may be applicable from time to time of any other federal or state and municipal laws or regulations. If recall or modification of any of the Goods is required by the FDA or any other governmental body, or is voluntarily recommended or required by the Seller or any vendor to Seller, Seller shall, at its sole cost and expense, immediately notify School District in writing of such recall or modification, remove, package, and ship to Seller's plant the affected Goods, and at no additional charge to School District replace such Goods with Goods which have been evaluated and accepted by School District as comparable for the School District's purposes.

(b) If required by the School District, the Seller will comply with the following, and make timely deliveries required by the following, each document to be satisfactory to the School District in form and substance:

- (i) Non-collusion affidavit(s);
- (ii) If this Contract is subject to the Motor Vehicle Procurement Act (62 Pa. C.S.A. §§3731 – 3736, as amended or replaced), and no exception (as determined by the School District) to the Act applies, any vehicle subject to the Act must be manufactured in North America and the School District shall have the right to require certificates of origin and other evidence of compliance.
- (iii) If this Contract is subject to the Public Facilities Concession Regulation Act (62 Pa. C.S.A. Chapter 43, as amended or replaced), and no exception (as determined by the School District) to the Act applies, the School District shall have the right to regulate the kinds, quality and prices of the Goods and services subject to this Contract upon terms and conditions deemed appropriate by the School District.

(iv) The Pennsylvania Right-to-Know Law (the “RTKL”), 65 P.S. §§ 67.101-67.3104, as amended or replaced, applies to this Contract. Unless Seller provides School District, in writing, with the name and contact information of another person, School District shall notify Seller using the information provided by Seller in the contact information provided in this Contract if School District needs Seller’s assistance in any matter arising out of the RTKL. Seller shall notify School District in writing of any change in the name or the contact information within a reasonable time prior to the change.

Upon notification to the Seller that the School District has received a request for records under the RTKL which pertains to the Goods or services contemplated by this Contract, the Seller shall fully assist the School District in responding to the request. Such assistance shall include, at a minimum, providing the School District, within five (5) business days, access to, and copies of, any document or information arising out of the Contract in the Seller’s possession that the School District deems a Public Record (“Requested Information”) and providing such other assistance as the School District may request.

If the Seller fails to provide the Requested Information to the School District within the required time period, the failure shall be considered an event of default, and the Seller shall pay, indemnify and hold the School District harmless for any damages, penalties, detriment or harm that the School District may incur as a result of the Seller’s failure, including reasonable attorney’s fees incurred by the School District in the administration of the Right-to-Know Request and any appeal therefrom.

If the Seller refuses to supply the Requested Information, and the Pennsylvania Office of Open Records or the Pennsylvania Courts determine that a record in the possession of a Seller is a public record, in addition to the foregoing, liquidated damages of \$100 per day will be assessed for each calendar day beyond the date the Seller was required to provide the record by the Pennsylvania Office of Open Records, or, upon appeal, the Pennsylvania Courts. The Seller’s duties under this section shall survive the termination of this Contract and as long as the Seller has Requested Information in its possession.

(v) If this Contract is for construction, alteration or repair of a public building or public work subject to 62 Pa. C.S.A. §3701, as amended or replaced, the Seller shall comply with the following:

In the hiring of employees for the performance of work under the Contract or any subcontract, no Seller, subcontractor or any person acting on behalf of the Seller or subcontractor shall by reason of gender, race, creed or color discriminate against any citizen of this

Commonwealth who is qualified and available to perform the work to which the employment relates.

No Seller or subcontractor or any person on their behalf shall in any manner discriminate against or intimidate any employee hired for the performance of work under the contract on account of gender, race, creed or color.

The Contract may be canceled or terminated by the government agency, and all money due or to become due under the contract may be forfeited for a violation of the terms or conditions of that portion of the Contract.

- (vi) If any of the Goods are, or contain, oil products, the Seller will notify the School District of that fact. The Seller will, to the extent possible, procure and purchase in connection with this Contract recycled oil products as substantially equivalent to products made from new oil pursuant to 62 Pa. C.S.A. §3746, as amended or replaced.
- (vii) If this contract is subject to 62 Pa. C.S.A. §3932, as amended or replaced, or if the Seller is a qualified small business concern subject to the Political Subdivision Procurement Interest Payment Act, the applicable rate of interest shall be 1.0% per annum. Further, in addition to any other requirements in Exhibit A, each invoice of Seller shall be accompanied by written evidence of delivery of the Goods for which the invoice is issued.
- (viii) The Seller will comply with and will cooperate with the School District to establish compliance with the “Steel Products Procurement Act”, 73 P.S. §1881 et seq. (as amended, the “Steel Act”). Except when compliance is not required by the Steel Act (as determined by the School District), if any steel products are to be used or supplied in the performance of this Contract, only Steel Products (as defined in the Steel Act) shall be used in the performance of this Contract or any subcontract.

Required payments under this Contract shall be delayed until a reasonable period of time after Seller shall comply with the certification and other requirements for payment under the Steel Act.

The provisions of the Steel Act shall not be considered as waived under any circumstances unless (a) the School District has determined in writing, under authority granted under the Steel Act, that a certain steel product or products are not produced in the United States in sufficient quantities to meet the requirements of the Contract; or, (b) the steel product to be used or supplied in performance of the contract is included on a list, published on the Pennsylvania Department of

General Services website pursuant to the Steel Act, of exempt machinery and equipment steel products.

(c) With respect to employees of Seller that will possibly have direct contact with children subject to 23 Pa. C.S.A. Chapter 63 and 24 P.S. § 1-111.1, each as amended or replaced (the “Child Protection Laws”), the Seller will collect and provide copies or other access to the School District of required employment history reviews and other required information. The Seller will, prior to assigning an employee to perform work under this Contract that requires compliance with the Child Protection Laws, inform the School District of any instance known to the Seller that would generate an official response to any of the sexual abuse or sexual misconduct questions asked of prior employees in the course of an employment history review. If the School District objects after being notified, the Seller may not assign the employee to work for the School District in a capacity involving direct contact with children. If the Pennsylvania Department of Education has or hereafter determines that Seller willfully violated 24 P.S. §1-111.1, the School District is prohibited from doing business with the Seller.

(d) Pursuant to 62 Pa.C.S.A. § 3701, the parties agree that:

- (i) In the hiring of employees for the performance of work under the Contract, the Seller or any subcontractor or any person acting on their behalf shall not discriminate against any citizen of this Commonwealth by reason of gender, race, creed or color who is qualified and available to perform the work to which the employment relates.
- (ii) No contractor or subcontractor or any person on their behalf shall in any manner discriminate against or intimidate any employee hired for the performance of work under the Contract on account of gender, race, creed or color.
- (iii) The Contract may be canceled or terminated by the School District, and all money due or to become due under the Contract may be forfeited for a violation of the terms or conditions of that portion of the Contract.

(e) Seller shall comply with the Pennsylvania Human Relations Act, Act 222 of October 27, 1955 (P.L. 744) (43 P.S. Section 951, et seq.) of the Commonwealth of Pennsylvania, as amended. Specifically, Seller agrees to prohibit discrimination because of race, color, religious creed, ancestry, age, sex, national origin, handicap or disability, by employers, employment agencies, labor organizations, contractors and others.

(f) Prior to delivery of the Goods, Seller will comply with all bonding requirements of the bid and Pennsylvania law.

13. **No Infringement.** Seller warrants that the Goods subject to this Contract and the sale and use of them will not infringe any domestic or foreign patents, trademarks, trade dress, copyrights, trade secrets or any other form of intellectual property.

14. Replacement Parts. If any of the Goods is equipment (as defined in the Pennsylvania Uniform Commercial Code, the “UCC”), for so long as School District uses the Goods, Seller agrees to make available and sell to School District such parts as needed to maintain the Goods in good working order and to offer a maintenance program.

15. Uniform Commercial Code. All implied warranties and School District remedies including consequential damages set forth in the UCC are included in this Contract. No terms, conditions or other provisions in any document provided by or through Seller, even if included in Exhibit A, shall modify, supplement or supersede this Section or any other Section in this Contract.

16. Survival. The representations, warranties and covenants contained in these Standard Terms and Conditions shall survive termination of this Contract.

17. Subcontracts.

(a) **School District Consent Required.** The Seller shall not delegate or enter into any Subcontract for the performance of any of its obligations under this Contract, including any portion of the work under the Contract, in whole or in part, without in each instance first giving notice to and obtaining the written consent of the School District, which consent the School District may grant, withhold, condition or delay in its sole discretion. The School District hereby consents to any Subcontract entered into by the Seller specifically referenced in Exhibit “A” to this Contract. Any subcontract made in violation of this Section shall be null and void. The School District shall have no obligation to any Subcontractor. Each Subcontract shall contain clauses to the effect that (i) the Subcontractor shall have no recourse to the School District for any payment, or for performance under, such Subcontract; (ii) the Subcontractor consents to any assignment of the Subcontract by the Seller to the School District, at the School District’s sole option; and (iii) the Seller shall make payment to any Subcontractor within five (5) business days after receipt of payment from the School District with respect to work properly invoiced by a Subcontractor to the Seller and reflected in the payment by the School District to the Seller.

(b) **No Change in the Seller’s Obligations.** The existence of any Subcontract shall not alter or limit the obligations of the Seller to the School District under this Contract. The Seller shall at all times remain fully responsible for its Subcontractors, and shall ensure that it legally binds all Subcontractors to the same terms and conditions as the Seller under this Contract, including without limitation, non-discrimination, warranties, confidentiality, maintenance and preservation of records and audit by government representatives.

18. Non-Assignment. Except through a Subcontract subject to Section 17 above, the Seller shall not assign this Contract, or any part of this Contract, nor delegate performance of any part of this Contract, without the prior written consent of the School District, which consent the School District may grant, withhold, condition or delay in its sole discretion. Any purported assignment in violation of this provision shall be void and of no effect. The School District’s consent to an assignment shall not release the assignor from any liability accrued or thereafter accruing under this Contract. Any assignment shall be in writing and shall contain an express assumption by the assignee of all liability accrued or thereafter accruing under this Contract. Consent by the School District to any assignment shall not constitute a course of conduct, dealing or performance with respect to any other assignment or proposed assignment. For purposes of this

paragraph, an assignment includes the acquisition of the Seller, or a controlling interest therein, through an asset sale or a corporate or other merger, the appointment of a receiver or bankruptcy trustee for the Seller, and the transfer of this Contract or the Seller in any bankruptcy or other insolvency-related proceeding. A receiver or trustee of or for the Seller in any federal or state bankruptcy, insolvency or other proceeding concerning the Seller shall comply with the requirements set forth in this Contract, including but not limited to this Section.

19. Audits; Records and Payments.

(a) **Audits.** From time to time during the term of this Contract, and for a period of six (6) years after the expiration or termination of this Contract (see 24 P.S. § 5-518), the School District, the Commonwealth of Pennsylvania, including without limitation its Auditor General and the Pennsylvania Department of Education, or a department, agency or instrumentality of the United States of America, if the School District funds this Contract with federal funds, or any of their authorized representatives (each, for the purposes of this Section, an “Auditor”) may audit any and all aspects of the Seller’s performance under this Contract, including but not limited to its billings and invoices and payments received. If requested by an Auditor or the School District, the Seller shall submit to the Auditor and the School District for review or inspection, all invoices presented for payment pursuant to this Contract, all cancelled checks, materials, invoices, vouchers, reports, work product, work papers, books, records and accounts upon which the invoices are based, and any and all documentation and justification in support of expenditures or fees incurred pursuant to this Contract.

(b) **Inspection.** The Seller acknowledges and agrees that any Auditor may inspect or review all of its work under the Contract and any Goods, and all of its sites, locations and facilities related to its performance under this Contract. Inspection and review of work under the Contract and Goods shall take place at the offices of the Seller in the City, or in another location with the Auditor’s consent. The Seller shall cooperate with all School District, City, Commonwealth of Pennsylvania and federal inspections and reviews conducted in accordance with the provisions of this Contract. The scope of such inspection and review of the work under the Contract and Goods, and sites, locations and facilities, including, without limitation, programs, lies in the sole discretion of the Auditor. Such inspection or review may include, without limitation, meetings with persons receiving services under this Contract, review of staffing ratios and job descriptions, and meetings with any of the Seller’s staff members who either directly or indirectly participate or participated in carrying out any of the work under the Contract, including preparing, delivering or installing any Goods.

(c) **Availability of Records.** The Seller shall make available, in the City at reasonable times during the Term of this Contract and for the period set forth in subsection 19.d. below, all records pertaining to this Contract for the purpose of inspection, audit or reproduction by any Auditor. The Seller shall provide such records without unreasonable delay when requested by an Auditor.

(d) **Retention of Records.** The Seller shall retain all records, books of account and documentation pertaining to this Contract for the greater of the period required by applicable law or six (6) years following expiration or termination of this Contract; if, however, any litigation, claim or audit commences prior to expiration of said six (6) year period, then the Seller shall retain

the records until all litigation, claims or audit findings have been completely terminated or resolved without right of further appeal.

20. **Indemnification of School District and Limitation of Liability.**

(a) **Indemnification of School District.** Seller agrees to indemnify each of the School District and each of its respective directors, officers, and employees (the "Indemnified Parties") and to defend and hold each Indemnified Party harmless from and against any and all claims, damages, losses, liabilities and expenses (including all fees and charges of counsel with whom any Indemnified Party may consult and all expenses of litigation or preparation therefor) which any Indemnified Party may incur or which may be asserted against any Indemnified Party by any person, entity or governmental authority (including any person or entity claiming derivatively on behalf of the Seller), in connection with or arising out of or relating to the matters referred to in this Contract, whether (a) arising from or incurred in connection with any breach of a representation, warranty or covenant by the Seller, or (b) arising out of or resulting from any suit, action, claim, proceeding or governmental investigation, pending or threatened, whether based on statute, regulation or order, or tort, or contract or otherwise, before any court or governmental authority, or (c) the enforcement of this Contract, or (d) the design, development, manufacture, application, distribution, sale, use, or repair of any Goods or intellectual property provided by or through Seller, regardless of the legal theory upon which the claim may be based, including but not limited to allegations of intellectual property infringement; provided, however, that the foregoing indemnity agreement will not apply to claims, damages, losses, liabilities and expenses solely attributable to an Indemnified Party's gross negligence or reckless or willful misconduct. The indemnity agreement contained in this paragraph will survive the expiration of this Contract. The Seller may participate at its expense in the defense of any such action or claim.

(b) **Limitation of Liability. No Liability for Consequential or Indirect Damages.** IN NO EVENT IS EITHER PARTY [OR ITS REPRESENTATIVES] LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, [OR LOST OF PROFITS OR REVENUES] ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY AGREED OR OTHER REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

21. **Litigation Cooperation.** If at any time, including after the expiration or earlier termination of the term of this Contract, the School District becomes involved in a dispute or receives notice of a claim, or is involved in litigation concerning the Goods, the resolution of which requires the services or cooperation of the Seller, and the Seller does not otherwise have a duty to indemnify and defend the School District, the Seller shall provide such services and shall cooperate with the School District in resolving such claim or litigation as part of this Contract.

(a) **Notice of Claims.** If the Seller receives notice of a legal claim against it in connection with or in any way related to this Contract, the Seller shall (1) submit appropriate written notice of such claim to its insurance carrier within the time frame required for submission of

claims by the applicable insurance policy and, (2) within five (5) business days of receipt of notice of the claim, give notice of such claim to the School District.

22. Force Majeure. Notwithstanding anything to the contrary contained herein, neither party shall be liable to the other for any delays or failure in performance of obligations hereunder resulting from acts beyond its reasonable control, including, but not limited to, acts of God, acts of war, civil unrest or terrorism, shortage of supply, breakdowns or malfunctions, interruptions or malfunction of computer facilities, loss of data due to power failures or mechanical difficulties, labor difficulties, pandemic or the effects of a national, state or local emergency as declared by the appropriate elected official(s) of the jurisdiction (each, a “Force Majeure”), Notwithstanding the foregoing, in the event of a Force Majeure, and to the extent permitted, practicable or possible, each party agrees to make a good faith effort to perform its obligations hereunder and/or to negotiate an addendum to this Agreement to reflect an amended Scope of Work and compensation therefore. If either party is unable to perform due to a Force Majeure, neither party is obligated to perform during the period affected by the Force Majeure.

23. Confidentiality; Student Records; Publication Rights; Data Ownership.

(a) **Confidential Information.** The Seller shall keep in strict confidence all information acquired in connection with or as a result of this Contract that is not generally known to others (“Confidential Information”). During this Contract and at any time thereafter, without the prior written consent of the School District, the Seller shall not disclose or use to its advantage, profit or gain any Confidential Information or any other information subject to a third party’s proprietary right, such as a copyrighted or trademarked work.

(b) **Student Records.** The Seller shall keep in strict confidence as required and to the fullest extent required by any applicable law, including but not limited to the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (“FERPA”), any and all records and information, in whatever form or format received, pertaining to the School District’s individual students and children, including but not limited to any academic or grade information, attendance, truancy, discipline, receipt of special education services or supplementary educational services, social security or public benefits, or information as to race, ethnicity or disability. The Seller acknowledges and agrees that FERPA limits the transfer and re-transfer of education records and personally identifiable information in education records. The School District shall transmit information or records, or both, protected by FERPA solely to the individual named in the Contract, and such other duly authorized individuals as the Seller may specify by notice to the School District.

(c) **Publication Rights.** With regard to any reports, studies or other works developed in the course of this Contract, or as a result thereof, the Seller shall not publish Confidential Information or any other information which identifies students, employees or officers of the School District by name without first obtaining written consent from such individuals, or in the case of a student, his or her parent or legal guardian. The Seller shall provide to the School District for its review any proposed publication, brochure or advertisement that names the School District not less than thirty (30) calendar days prior to submission for publication, and the Seller shall remove the School District’s name and any information identifying the School District from the publication if the School District requests removal. The Seller shall not issue, publish or

divulge any materials developed or used in the performance of this Contract or make any statement to the media relating to the Contract without the prior consent of the School District.

(d) **Data Ownership.** The School District retains and reserves its ownership of, and all right, title and interest in, any and all data provided by the School District to the Seller under or in connection with this Contract. The Seller acknowledges and agrees that the School District grants to the Seller a limited, revocable, nonexclusive right and license to use any such School District data, which may include personally identifiable information subject to FERPA, solely for the Seller's use in carrying out the work set forth in this Contract and solely in conformity with FERPA and other applicable law. At any time during and after the expiration or earlier termination of this Contract, the School District may request that the Seller deliver to the School District all or any portion of any data provided by the School District; promptly upon receipt of any such request the Seller shall, without any charge to the School District, deliver to the School District the requested data in a usable format reasonably specified by the School District. School District data includes any information and data developed by the Seller, *e.g.*, by populating a database, as part of or associated with the sale of Goods set forth in this Contract. The Seller shall not destroy nor permit the destruction of any School District data, except upon the prior express written consent of the School District. Upon the expiration or earlier termination of this Contract, the Seller shall promptly and in any event not later than ten (10) business days after request by the School District, return to the School District all School District data then in the possession or control of the Seller. Once the Seller has returned all School District data, it shall promptly destroy and dispose of any remaining copies of the data in its possession or in the possession of any Subcontractor.

24. Goods; Intellectual Property.

(a) **Computer Programs.** The Seller shall ensure that all of its computer programs, tapes and software developed under this Contract comply with any pertinent specifications or requirements set by the School District.

(b) **License.** For the duration of the Contract, as the Parties may agree to extend it, Seller hereby grants, and shall require its Subcontractors, if any, to grant, to the School District the irrevocable, royalty-free right to reproduce, distribute copies of, adapt, display, perform, translate, and publish, throughout the universe, in any medium now known or hereafter invented, all materials and works of authorship, including without limitation studies, media, curricula, and other things of any nature, developed pursuant to this Contract.

25. Conflict of Interest.

(a) **Disclosure of Conflict of Interest.** The Seller represents, warrants and covenants that it has no public or private interest which does or may conflict in any manner with the performance of the work under the Contract and that neither it, nor any of its directors, officers, members, partners, employees or subcontractors, has or shall during the Contract acquire, directly or indirectly, any such interest. The Seller shall promptly and fully disclose by notice to the School District all interests which constitute or may constitute such a conflict.

(b) **Improper Gift; Improper Relationship.** The Seller represents, warrants and covenants that it has not directly or indirectly offered or given and shall not directly or

indirectly offer or give any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value to any School District employee who participated in the decision to authorize or enter into this Contract. The Seller warrants that, to its knowledge, neither a School District employee or officer who participated in the decision to enter into this Contract, nor any member of the employee's immediate family, receives more than \$1,000 per year from the Seller, has a direct or indirect investment worth \$1,000 or more in the Seller or is a director, officer, partner, trustee or employee of the Seller.

(c) **School District Employees Not to Benefit.** The Seller shall not make any payment or give anything of more than nominal value to any School District official or employee except in accordance with applicable law and School District policy. The Seller shall comply with the School District's vendor Code of Ethics (if any), and also, to the extent applicable, with the School District's Code of Ethics for School District officers and employees. The Seller shall disclose by notice to the School District the name of each School District official or employee who receives payment from the Seller, the amount such official or employee receives and the services rendered by the official or employee in consideration of the payment.

26. Default; Notice and Cure; Remedies.

(a) **Event of Default.** Each of the following constitutes an Event of Default by the Seller under this Contract:

- (i) Failure by the Seller or any subcontractor to comply with any term, covenant or condition set forth in this Contract.
- (ii) The Seller's (a) filing for bankruptcy, (b) making any assignment for the benefit of creditors, (c) consent to the appointment of a trustee or receiver (d) insolvency, as defined by applicable law, or (e) the filing of an involuntary petition against the Seller under the Federal Bankruptcy Code or any similar state or federal law which remains undismissed for a period of forty-five (45) days.
- (iii) Default by the Seller under any other agreement the Seller may have with the School District.
- (iv) Any material misrepresentation by the Seller in (A) this Contract, (B) any other document submitted to the School District by the Seller, or (C) otherwise by the Seller directly or indirectly to the School District in connection with the School District's decision to execute, deliver and perform this Contract.
- (v) Failure of the Seller to provide, within five (5) business days, assurance reasonably acceptable to the School District that it can perform its obligations in conformity with the terms of the Contract if (1) the School District has a reasonable basis to believe at any time during the Contract that Seller will not be able to perform the Contract; and (2) the School District demands in writing assurance of the Seller's performance.

- (vi) Misappropriation by the Seller of any funds provided under this Contract or failure by the Seller to notify the School District upon discovery of any misappropriation.
- (vii) Indictment of or other issuance of formal criminal charges against the Seller, or any of its directors, employees, agents or Subcontractors or any of the directors, employees or agents of a Subcontractor or any criminal offense or any other violation of applicable law directly relating to this Contract, the Goods, or which adversely affects the Seller's performance of this Contract in accordance with its terms, whether or not a court of law or other tribunal ultimately accepts a verdict or plea of guilty or no contest regarding the charged offense.
- (viii) Debarment or suspension of the Seller or any director, agent, employee or subcontractor of the Seller, or any person controlling, under common control with, or controlled by, the Seller under a federal, state or local law, rule or regulation.

(b) **Notice and Cure.** If the Seller commits or permits an Event of Default, the School District shall notify the Seller in writing of its determination that an Event of Default has occurred. The Seller shall have ten (10) business days from receipt of that notice, or such additional cure period as the School District may authorize in its sole discretion, to correct the Event of Default; provided, however, that no such notice from the School District or period of cure shall be required before invoking the remedies described in subsection 24.c if: (1) the Seller has temporarily or permanently ceased performing the Contract; (2) an emergency has occurred relating to the Contract, and that emergency requires immediate exercise of the School District's rights or remedies, as determined by the School District in its sole discretion; (3) the School District has previously notified the Seller more than once in the preceding twelve (12) month period of any Event of Default under this Contract; (4) an Event of Default occurs as described in subsection 24.a. vi., vii., or viii. above; or (5) the Seller breaches any of its obligations under Sections 12.d or 12.e of these Standard Terms and Conditions. Nothing set forth in this subsection 24.b shall create notice and cure rights with respect to Sections 3 – 5 and 10 of these Standard Terms and Conditions. Nothing set forth in this subsection 24.b shall limit the School District's rights under subsection 24.c or Sections 3 – 5 and 10.

(c) **Remedies.** If the Seller does not cure the Event of Default within the period allowed by the School District, or if the Seller commits or permits an Event of Default for which subsection 24.b above provides no notice or period of cure, then the School District may, without further notice or demand to the Seller, and without waiving or releasing the Seller from any of its obligations under this Contract, invoke and pursue any or all of the following remedies:

- (i) terminate this Contract by giving the Seller a notice of termination.
- (ii) perform, or cause a third party to perform, this Contract, in whole or in part. The Seller shall be liable to the School District, as damages, for all expenses incurred by the School District or a third party pursuant to this subsection 24.c.ii, together with interest at the prime

rate of interest as published from time to time by the *Wall Street Journal*, plus five percentage points (5.0%). The School District shall not in any event be liable for inconvenience, expense, loss of profits or other damage incurred by the Seller by reason of the School District's performance or paying such costs or expenses.

- (iii) withhold payment of, or offset against, any funds payable to or for the benefit of the Seller.
- (iv) collect, foreclose or realize upon any bond, collateral, security or insurance provided by or on behalf of the Seller.
- (v) any other legal or equitable remedy available to the School District, including but not limited to a legal action for breach and damages against the Seller.

27. Concurrent Pursuit of Remedies. The School District may exercise any or all of the remedies set forth in this Contract, each of which the School District may pursue separately or in conjunction with any other remedy or remedies, as the School District shall determine. The School District may in its sole discretion elect not to exercise any of the above remedies and may permit the Seller to continue to perform the Contract. No extension or indulgence granted by the School District to the Seller shall operate as a waiver of any of the School District's rights in connection with this Contract.

28. Entire Agreement. This Contract represents the complete, exclusive and fully integrated agreement between the parties hereto with respect to the subject matter hereof and supersedes prior negotiations, representations or agreements between the parties whether written, electronic or oral.

29. Setoff. The School District reserves the right to set off any amount owing at any time to Seller or any affiliate of Seller. In addition to all liens upon and rights of setoff against the Seller's money, goods or other property given to the School District by law, the School District shall have, with respect to the Seller's obligations to the School District under this Contract and to the extent permitted by law, a contractual possessory security interest in and a contractual right of setoff against, and the Seller hereby grants the School District a security interest in, and hereby assigns, conveys, delivers, pledges and transfers to the School District, all of the Seller's right, title and interest in and to, all of the Seller's deposits, moneys, retainage and other property now or hereafter in the possession of or on the premises of, or in transit to, the School District. Every such security interest and right of setoff may be exercised without demand upon or notice to the Seller. Every such right of setoff shall be deemed to have been exercised immediately upon the occurrence of a default hereunder and the lapse of any notice or cure period without any action of the School District, although the School District may enter such setoff on its books and records at a later time.

30. Successors and Assigns. This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns provided that the Seller may not assign this Contract in whole or in part without the School District's prior written consent.

31. **Severable.** If any term or provision of this Contract shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this Contract shall not be affected thereby, but each term and provision of this Contract shall be valid and be enforced to the fullest extent permitted by law.

32. **Counterparts.** This Contract may be executed in several or separate counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument. Delivery of an executed counterpart of signature page to this Contract by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart. Any party so executing this Contract by facsimile or other electronic transmission shall promptly deliver a manually executed counterpart, provided that any failure to do so shall not affect the validity of the counterpart executed by facsimile or other electronic transmission.

33. **Time is of the Essence.** Time shall be of the essence for all purposes under this Contract, provided that the School District's payment obligations shall include a grace period of up to 45 days pending issuance of a proper school order by the School District's board of school directors.

34. **Miscellaneous.** In this Contract, unless the School District and the Seller otherwise agree in writing, the singular includes the plural and the plural the singular; words importing any gender include the other genders; references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute referred to; the word "or" shall be deemed to include "and/or", the words "including", "includes" and "include" shall be deemed to be followed by the words "without limitation"; references to sections (or subdivisions of sections) or exhibits are to those of this Contract unless otherwise indicated; and references to agreements and other contractual instruments shall be deemed to include all subsequent amendments and other modifications to such instruments, but only to the extent such amendments and other modifications are not prohibited by the terms of this Contract. Section headings in this Contract are included for convenience of reference only and will not constitute a part of this Contract for any other purpose. If this Contract is executed by more than one party as Seller, the obligations of such persons or entities will be joint and several.

35. **Amendment; Waiver.** No modification, amendment, waiver or alteration of the terms of this Contract shall be binding unless the same shall be in writing and duly executed by the party bound thereby. No modification, amendment, waiver or alteration of this Contract, shall bind the School District until duly approved by the School District's board of school directors.

36. **Authority.** This Contract has been properly executed on behalf of the Seller and the School District. It is understood and agreed to by the parties that any and all actions which are or may be necessary to fully authorize the parties to enter into this Contract have been properly performed, subject to Section 3 of the Contract.

37. **Preservation of Rights.** No delay or omission on the School District's part to exercise any right or power arising under this Contract will impair any such right or power or be considered a waiver of any such right or power, nor will the School District's action or inaction impair any such right or power. The School District's rights and remedies hereunder are cumulative

and not exclusive of any other rights or remedies which the School District may have under other agreements, at law or in equity.

38. **Enforcement.** The School District shall be entitled to recover from Seller all costs and expenses (including, but not limited to, reasonable attorney's fees and court costs) which are incurred by the School District in enforcing its rights under this Contract.

39. **Choice of Law and Venue.** This Contract has been delivered to and accepted by the School District and shall be deemed to be made in Erie, Pennsylvania. This Contract shall be governed for all purposes by the laws of the Commonwealth of Pennsylvania, excluding any conflict of laws rules or principles. Any action or proceeding against any of the parties hereto relating in any way to this Contract or the subject matter hereof shall be brought exclusively in the United States District Court for the Western District of Pennsylvania, Erie Division, or in the Court of Common Pleas of Erie County, Pennsylvania, and the parties hereby consent to the exclusive jurisdiction of such courts in respect of such action or proceeding. The School District and the Seller agree that the venue provided above is the most convenient forum for both the School District and the Seller. The Seller waives any objection to venue and any objection based on a more convenient forum in any action instituted under this Contract.

2620394.v1