

## STATE OF FLORIDA

### PUBLIC SCHOOLS INSTRUCTIONAL MATERIALS CONTRACT

**WHEREAS**, under the provision of Section 1006.33, Florida Statutes, the Florida Department of Education has duly advertised for bids or proposals for the furnishing of instructional materials for use in the public schools of the State of Florida for a period of six (6) years; and

**WHEREAS**, pursuant to the said advertisements, sealed bids were submitted by various publishers and manufacturers, and the Commissioner of Education, after having given due consideration to the report of the State Instructional Materials Committees, which is provided for in Section 1006.31, Florida Statutes, did on the \_\_\_\_\_th day of \_\_\_\_\_ A. D. accept said bids for said instructional materials hereinafter mentioned, and reached an agreement with the hereinafter mentioned party, the publisher or manufacturer of the instructional materials;

**NOW THEREFORE**, this Public Schools Instructional Materials Contract (“Contract”), made and entered into this the 1st day of April of \_\_\_\_\_, between the State of Florida, by and through Charlie Crist as Governor and Kurt S. Browning as Secretary of State of the State of Florida, party of the first part hereinafter referred to as State of Florida, and \_\_\_\_\_ of the City of \_\_\_\_\_ State of \_\_\_\_\_, party of the second part, hereinafter referred to as Publisher,

**WITNESSETH**, that the Publisher for and in consideration of the adoption of certain of its instructional materials, as hereinafter specified on page(s) \_\_\_\_\_ of this Contract, for use in the public schools of the State of Florida covenants and agrees with the State of Florida as follows:

1. **CONTRACT PERIOD** - The Contract is for a period of six (6) years beginning the first day of April \_\_\_\_\_ and ending the last day of March \_\_\_\_\_, or in the event of the extension of all or part of the Contract hereinafter provided, for an additional period not to exceed two years from the first day of April \_\_\_\_\_.

2. **CONTRACT PRICE** – Beginning the first day of the Contract period, the Publisher agrees to supply the public schools of the State of Florida with the specific instructional materials at the prices provided herein, which are to be for the said instructional materials delivered f.o.b. to the Florida depository of the Publisher.

3. **LIQUIDATED DAMAGES**- Publisher agrees to furnish and make available for sale at all times throughout the term of this Contract, sufficient quantities of the adopted instructional materials, including any ancillary or free materials, to supply the needs of the school districts. Timely delivery of all materials hereunder is imperative. Therefore, in the event instructional materials, including ancillary or free materials, are not available Publisher shall pay liquidated damages equal to a percentage of the Contract price, per late day, as provided below. It is understood and agreed by the parties that the Publisher’s failure to deliver materials on time will result in substantial injury to the Department of Education (“Department”), the State of Florida, the school districts, and their students. However, since the

amount of damages resulting from such injury cannot be calculated with certainty the Publisher agrees to pay liquidated damages as specified herein, but not as a penalty or fine. Liquidated damage shall apply to the undelivered portion of the purchase order including major tools, teacher's editions, and any ancillary or free items.

In order for the Department to assess liquidated damages for late delivery to a school district, that district must report its purchases to FIMWEB by the April deadline. However, if FIMWEB does not allow reporting of certain ancillary or free materials, those items will still be subject to liquidated damages at the contract price for the major tool it is used with.

If the Publisher fails to deliver any materials ordered by a school district within 45 days of the date the purchase order was received by the Publisher's Depository liquidated damages will be assessed. The percentage shall increase incrementally depending on the length of the delay, as illustrated in the table below. The total liquidated damages shall be cumulative of the charges assessed for each late delivery period up to the actual date of delivery. The total liquidated damages shall not exceed the value of the undelivered portion of the purchase order.

Late delivery period: Percent of contract price applied per late day during period

After 45 day deadline but before August 1:	0.175%
August 2 through August 15	0.200%
August 16 through August 30	0.225%
September 1 through September 15	0.250%
September 16 through September 30	0.275%
October 1 through October 15	0.300%
October 16 through October 31	0.325%
November 1 through November 15	0.350%
November 16 through November 30	0.375%
December 1 through December 15	0.400%
December 16 through December 31	0.425%
January 1 and after	0.450%

For those ancillary or free items that can be reported on FIMWEB by the April deadline but do not have an initial purchase price or are otherwise delivered free with the purchase of a major tool, the liquidated damages will be assessed based on the contract price for the major tool that item is used with.

4. **DEPOSITORY** – The Publisher agrees to maintain or contract with a depository in the State of Florida. For the core subject areas of mathematics, language arts, science, social studies, reading, and literature the publisher agrees to maintain in the depository for the first two (2) years of the Contract an inventory of instructional materials which is sufficient to receive and fill orders and to ensure the availability of an inventory sufficient to receive and fill orders of instructional materials for growth, including the opening of a new school, and replacement during the 3<sup>rd</sup> and subsequent years of the original Contract period. For all other subject areas, the publisher agrees to maintain in the depository an inventory of instructional materials sufficient to receive and fill orders.

5. **SPECIFIED INSTRUCTIONAL MATERIALS AND CONTRACT PRICES:**

ISBN Number	Author, Title, Edition/Copyright of Instructional Materials	Contract Price
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**SYMBOL KEY**

(Used to show terms for “free” items)

- Free 1:1 ratio
- \* Free 1:Teacher for Elementary Grades K-3 (1:18)
- † Free 1:Teacher for Elementary Grades 4-5 (1:22)
- ‡ Free 1:Teacher for Secondary
- § Free 1:School - one time only
- Free 1:District - one time only
- # Free only with initial adoption and purchase
- ▲ Special ratio (See "Free Terms" column in contract for details)

6. **MATERIALS AND CONTENTS** – The Publisher further agrees that the instructional materials furnished under this contract shall at all times during the continuance of the same, be equal in all respects to the specimen copies furnished with the bid and the provisions of Section 1006.33, Florida Statutes, as to the content, paper, print, and binding, and no alteration in said instructional materials shall, during the life of this Contract, including any extension thereof as herein provided, be made without the consent in writing of the State of Florida. Provided, that any typographical errors that may be found in such instructional materials, or errors of fact, shall be corrected by the Publisher, but in no case shall any change be made in any instructional material that would result in any confusion in classes using the corrected instructional material and instructional materials previously purchased. It is hereby expressly understood and agreed by and between the parties hereto that the statements and representations contained in the “Manufacturing Standards and Specifications for Textbooks” and “Statement of Publisher Submitting Books for Adoption” are by reference made a part of this Contract as though set forth in full herein.

7. **LOWEST PRICE** – It is hereby stipulated and agreed by and between the parties to this Contract that if at any time during the life of this Contract any instructional materials herein included shall be sold in any other state at a lower price by said Publisher, than is designated in this Contract, the said lower price shall immediately become the Contract price herein, and shall be substituted in the place of the price designated in this Contract. The State of Florida upon ascertaining that any such instructional materials have been sold at a lower price to any state, county, school district or city in the United States, or to any person, firm or corporation, hereby reserves the right to demand and recover from the Publisher the difference between the Contract price herein stated and the lower price for which said instructional materials may be sold, and the Publisher hereby agrees in such event to pay said amount upon demand of the State of Florida.

8. **PRODUCTION OF INSTRUCTIONAL MATERIALS IN BRAILLE OR LARGE PRINT** – The Publisher grants, without prior written request, for any copyright held by

it or its agencies automatic permission to the Florida Department of Education or its agencies for the reproduction of textbooks and supplementary materials in Braille or large print or in the form of sound recordings for use by visually impaired students or other students with print disabilities as described in Section 701.10(b)(1) of the Code of Federal Regulations.

9. **NIMAS** - By agreeing to deliver the materials marked with "NIMAS" on this contract or purchase order, the publisher agrees to prepare and submit, on or before April 1, \_\_\_\_\_, a National Instructional Materials Accessibility Standard (NIMAS) file set to the National Instructional Materials Accessibility Center (NIMAC) that complies with the terms and procedures set forth by the NIMAC. Should the vendor be a distributor of the materials and not the publisher, the distributor agrees to immediately notify the publisher of its obligation to submit NIMAS file sets of the purchased products to the NIMAC. The files will be used for the production of alternate formats as permitted under the law for students with print disabilities. Under these guidelines, "*textbook*" means the principal tool of instruction used in the classroom. It is a printed book or books that contain most, if not all, of the academic content a student needs to learn to meet the State or Local Education Agency's curriculum requirements for that subject area. "*Related core materials*" are printed materials, other than textbooks, designed for use by students in the classroom in conjunction with a textbook and which, together with the textbook, are necessary to meet the curriculum requirements for the intended course. The materials should be directly related to the textbook and wherever possible they should be published by the publisher of the textbook. Related core materials do not include materials that are not written and published primarily for use by students in the classroom (e.g., trade books not bundled with the textbook, newspapers and reference works) nor ancillary or supplemental materials that are not necessary to meet the curriculum requirements for the intended course. For purposes of these definitions, the term "curriculum requirements for the intended course" refers to relevant curriculum standards and requirements as established by a state educational agency or local educational agency.

10. **INVOKING PROVISION OF STATUTE** – It is further understood and agreed between the parties hereto that the terms and conditions of this Contract are made in pursuance of Sections 1006.28-1006.43, Florida Statutes, and corresponding rules of the Contract as fully and to the same extent as though incorporated and fully set out in the body hereof. (In case of conflict or confusion Sections 1006.28-1006.43, Florida Statutes, will control.) It is further understood that the State of Florida shall not be liable to the Publisher in any sum whatever in consequence of the execution of this Contract, except as to those instructional materials purchased outright under the provisions of this Contract.

11. **RIGHT TO CHANGE LAW RESERVED BY STATE** – It is hereby understood and agreed between the parties hereto, and it is hereby made a condition of this Contract and each and every part thereof that nothing in this Contract shall be held or construed to limit, restrict or impair the right of the Legislature of the State of Florida to make any change or changes, alterations or amendments in the statutes of the State of Florida under which this Contract is made or awarded, anything in this Contract to the contrary notwithstanding. In all respects this Contract shall be deemed subordinate to the right of the Legislature of the State of

Florida to amend, modify or repeal any of the statutes of the State of Florida relating to instructional materials for the public schools, in which event the terms of this Contract insofar as it may be in conflict with future laws of the State of Florida as may be enacted by the Legislature on the subject of instructional materials shall be deemed abrogated and of no effect. In the event any material change in said statute shall be made which shall be to the disadvantage of the contracting parties hereto to continue this Contract under said statutes as changed, either party hereto may rescind this Contract by written notice of the intention to do so at any time within ninety (90) days after said statute takes effect.

12. **CONTRACT EXTENSION** – Upon agreement by and between the parties hereto and with the approval of the Commissioner of Education as provided in Section 1006.34 , Florida Statutes, all or part of this Contract upon all of its terms may be extended for a period not to exceed two (2) years from the date on which it would otherwise expire. Such option shall be exercised no later than thirty (30) days prior to such original expiration date, by written notice to the Publisher, duly executed by the Governor and the Secretary of State on behalf of the State of Florida.

13. **BOND** – The Publisher further agrees that at the time of the execution of this Contract it will give a performance bond in the sum of \$\_\_\_\_\_, payable to the Department of Education, conditioned on the faithful, honest and exact performance of this Contract, including any extension thereof as herein provided, and further providing for the payment of reasonable attorney’s fees in case of recovery in any suit upon the same. The performance bond shall cover the faithful, honest and exact performance by the Publisher, its subcontractors, suppliers, agents, independent contractors, representatives, and any of their employees of the terms and conditions of the Contract. The performance bond shall pay to the Department any damages it, the State of Florida, the school districts or their students incur as a result of the failure of the Publisher, its subcontractors, suppliers, agents, independent contractors, representatives, and any of their employees, to perform in regard to any part of the Contract, up to the face amount of the bond. The performance bond shall clearly state that its coverage includes payment of liquidated damages assessed under this Contract.

The surety on the bond shall be a guaranty or surety company authorized by the laws of the State to do business in Florida. The bond delivered by the Publisher shall not be exhausted by a single recovery, but may be sued on from time to time until the full amount thereof shall be recovered, and should the Department at any time during the continuance of this Contract require additional security for the faithful performance of the matters and things stipulated to be performed by the Publisher, the said Publisher, after thirty (30) days notice, will give such additional bond.

14. **ALIGNMENT WITH NEXT GENERATION SUNSHINE STATE STANDARDS-** The Publisher is aware that the Legislature passed Chapter 2008-235., Section 1, Laws of Florida, which requires the adoption of the Next Generation Sunshine State Standards. This law also requires a schedule for such adoption that will occur within the six year term of this Contract. The Publisher agrees to provide, within 30 days of request by the Department, a detailed correlation to the Next Generation Sunshine State Standards. Any instructional

materials (including any free or ancillary materials) that are determined by the Department, in its discretion, to conform to the Next Generation Sunshine State Standards shall continue to be available to the District School Boards under this Contract.

In the event any instructional materials (including any free or ancillary materials) are determined by the Department, in its discretion, to conflict with the Next Generation Sunshine State Standards when adopted, then such nonconforming materials will be eliminated from this Contract; notwithstanding any other provision contained in this Contract. The Department's decision on whether any instructional materials (including any free or ancillary materials) conform or conflict with the Next Generation Sunshine State Standards shall be final and not subject to review.

**15. MISCELLANEOUS CONTRACT PROVISIONS**

a. The provisions of section 287.058(1), Florida Statutes, are incorporated herein by reference.

b. This Contract shall be governed and construed in accordance with the laws of the State of Florida, and venue for any action to enforce its terms shall be in Leon County circuit court.

**IN WITNESS WHEREOF**, the State of Florida has caused this contract to be signed in triplicate by its Governor and Secretary of State, and caused the Great Seal of the State to be attached, and \_\_\_\_\_ has caused its name to be hereto signed in triplicate by its

\_\_\_\_\_.

\_\_\_\_\_  
Governor, State of Florida

State Seal

\_\_\_\_\_  
Secretary of State

\_\_\_\_\_  
Publisher

Corporate Seal  
(if any)

\_\_\_\_\_  
A Division/Subsidiary of

\_\_\_\_\_  
Name of Company Officer

\_\_\_\_\_  
Signature

**NOTICE TO PUBLISHER:**

Attach a corporate resolution giving authority (or a statement giving power of attorney) to the designated person to sign the contract on behalf of the Publisher. The document must specify both corporation and division names and relationships, as appropriate.