

WAYNE COUNTY BOARD OF EDUCATION ("WCBOE")
STANDARD CONTRACT/PURCHASE ORDER TERMS AND CONDITIONS

Last Updated: March 14, 2018

1. **Acceptance.** Contractor's acknowledgment of the terms of this Contract constitutes an agreement to comply with all terms and conditions set forth or referenced (i) in the Vendor Contract for Goods and/or Services, (ii) in the Standard Contract Terms and Conditions herein, (iii) on any attachments thereto, (iv) in any applicable solicitation documentation related to this Contract (including without limitation any request for proposals or invitation for bids or Contractor's response thereto) that deal with the same subject matter as this Contract, and (v) in any other terms and conditions of a written agreement signed by Contractor and the WCBOE that deals with the same subject matter as this Contract (collectively, the "Contract Documents"). The terms and provisions set forth in the Contract Documents shall constitute the entire agreement between Contractor and WCBOE with respect to the purchase by WCBOE of the (i) goods ("Goods") and/or (ii) services provided or work performed ("Services") as described in the Contract Documents. The agreements set forth in the Contract Documents are sometimes referred to herein as the "Contract." In the event of any conflict between any terms and conditions of the Contract Documents, the terms and conditions most favorable to WCBOE shall control. No additional or supplemental provision or provisions in variance herewith that may appear in Contractor's quotation, acknowledgment, invoice or in any other communication from Contractor to WCBOE shall be deemed accepted by or binding on WCBOE. WCBOE hereby expressly rejects all such provisions which supplement, modify or otherwise vary from the terms of the Contract Documents, and such provisions are superseded by the terms and conditions stated in the Contract Documents, unless and until WCBOE's authorized representatives expressly assent, in writing, to such provisions. Stenographic and clerical errors and omissions by WCBOE are subject to correction.
2. **Quantities.** Shipments must equal exact amounts ordered unless otherwise agreed to in writing by WCBOE. The award of a term contract neither implies nor guarantees any minimum or maximum purchases.
3. **Prices.** If Contractor's price or the regular market price of any of the Goods or Services covered hereunder is lower than the price stated in the Contract Documents on the date of shipment of such Goods or Services, Contractor agrees to give WCBOE the benefit of such lower price on any such Goods or Services. In no event shall Contractor's price be higher than the price last quoted or last charged to WCBOE unless otherwise agreed to in writing. No charges for transportation, boxing, crating, etc. are allowable unless such charges are included in the Contract Documents. Should the Contract Documents include any provision allowing an increase in the contract price due to external conditions, Contractor shall inform WCBOE of such change and WCBOE shall have the right to terminate the Contract if desired.
4. **Price Adjustments (term contracts only).** Any price changes, downward or upward, which might be permitted during the contract period must be general, either by reason of market change or on the part of the Contractor to other customers.
 - a. **Notification:** Must be given to WCBOE in writing concerning any proposed price adjustments. Such notification shall be accompanied by a copy of manufacturer's official notice or other acceptable evidence that the change is general in nature.
 - b. **Decreases:** WCBOE shall receive full proportionate benefit immediately at any time during the contract period.
 - c. **Increases:** All prices shall be firm against any increase for 180 days from the effective date of the Contract. After this period, a request for increase may be submitted with WCBOE reserving the right to accept or reject the increase, or cancel the Contract. Such action by WCBOE shall occur not later than 15 days after the receipt by WCBOE of a properly documented request for price increase. Any increases accepted shall become effective not later than 30 days after the expiration of the original 15 days reserved to evaluate the request for increase.
5. **Invoices.** It is understood and agreed that orders will be shipped at the established Contract prices in effect on dates orders are placed. Invoicing at variance with this provision will subject the Contract to cancellation. Applicable North Carolina sales tax shall be invoiced as a separate item. Invoices shall be sent to WCBOE's accounts payable department with a copy to the WCBOE Project Coordinator.
6. **Freight on Board.** All shipments of Goods are freight on board destination unless otherwise stated in the Contract Documents.
7. **Taxes.** Any applicable taxes shall be invoiced as a separate item.
8. **Payment Terms.** Payment terms are Net 30 days after receipt of correct invoice or acceptance of Goods or Services, whichever is later.
9. **Condition and Packaging.** Unless otherwise provided by special terms and conditions or specifications, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.
10. **Delays in Shipment.** Time and date of delivery are of the essence, except when delay is due to causes beyond Contractor's reasonable control and without Contractor's fault or negligence.
11. **Risk of Loss.** Contractor shall have the risk of loss of and damage to the Goods subject to the Contract Documents until such Goods are delivered to the destination and accepted by WCBOE or its nominee.

12. **Rejection.** All Goods and Services shall be received subject to WCBOE's inspection. Goods or Services that are defective in workmanship or material or otherwise not in conformity with the requirements of the Contract Documents may be rejected and returned at Contractor's expense or may be accepted at an appropriate reduction in price. WCBOE may require Contractor to promptly replace or correct any rejected Goods or Services and, if Contractor fails to promptly replace or correct such Goods or Services, WCBOE may contract with a third party to replace such Goods and Services and charge Contractor the additional cost.
13. **Compliance with All Laws.** Contractor warrants that all performance hereunder shall be in accordance with all applicable federal, state and local laws, regulations and orders.
14. **E-Verify Compliance.** Pursuant to N.C. Gen. Stat. § 143-133.3, Contractor represents and warrants that it is aware of and in compliance with 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 services pursuant to this Contract. Contractor shall also ensure that any of its subcontractors (of any tier) will remain in compliance with these laws at all times while providing subcontracted services in connection with this Contract.
15. **Iran Divestment.** Contractor certifies that it is not identified on a list created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.58 as a person or entity engaging in investment activities in Iran. Contractor further certifies that in the performance of this Agreement it shall not use any contractor or subcontractor that is identified on such a list.
16. **Warranties.** Contractor warrants that all Goods and Services delivered hereunder will be free from defects in materials and workmanship and will conform strictly to the specifications, drawings, or samples specified or furnished. This warranty shall survive any inspection, delivery, acceptance or payment by WCBOE of the Goods and Services and shall run to WCBOE and any user of the Goods or Services. This express warranty is in addition to Contractor's implied warranties of merchantability and fitness for a particular purpose which shall not be disclaimed. In addition to any other rights available at law or equity, WCBOE shall be entitled to all rights and remedies provided by the Uniform Commercial Code, Chapter 25 of the North Carolina General Statutes, for breach of express warranties and implied warranties of merchantability or fitness for a particular purpose, including but not limited to consequential and incidental damages.
17. **Indemnification.** Contractor shall indemnify and hold harmless WCBOE, its officers, agents, employees and assigns from and against all claims, losses, costs, damages, expenses, attorney's fees and liability that any of them may sustain (a) arising out of Contractor's failure to comply with any applicable law, ordinance, regulation, or industry standard or (b) arising directly or indirectly out of Contractor's performance or lack of performance of the terms and conditions of the Contract. In the event that any Goods or Services sold and delivered or sold and performed under the Contract Documents shall be defective in any respect whatsoever, Contractor shall indemnify and save harmless WCBOE, its officers, agents, employees and assigns from all loss or the payment of all sums of money by reason of all accidents, injuries or damages to persons or property that shall happen or occur in connection with the use or sale of such Goods or Services and are contributed to by said condition. In the event Contractor, its employees, agents, subcontractors and or lower-tier subcontractors enter premises occupied by or under the control of WCBOE in the performance of the Contract Documents, Contractor agrees that it will indemnify and hold harmless WCBOE, its officers, agents, employees and assigns, from any loss, costs, damage, expense or liability by reason of property damage or personal injury of whatsoever nature or kind arising out of, as a result of, or in connection with such entry.
18. **Insurance.** Unless such insurance requirements are waived or modified by WCBOE or Insurance and Risk Management, Contractor certifies that it currently has and agrees to purchase and maintain during its performance under the Contract the following insurance from one or more insurance companies acceptable to WCBOE and authorized to do business in the State of North Carolina: **Automobile** - Contractor shall maintain bodily injury and property damage liability insurance covering all owned, non-owned and hired automobiles. The policy limits of such insurance shall not be less than \$1,000,000 combined single limit each person/each occurrence. **Commercial General Liability** - Contractor shall maintain commercial general liability insurance that shall protect Contractor from claims of bodily injury or property damage which arise from performance under the Contract. This insurance shall include coverage for contractual liability. The policy limits of such insurance shall not be less than \$1,000,000 combined single limit each occurrence/mutual aggregate. **Workers' Compensation and Employers' Liability Insurance** - If applicable to Contractor, Contractor shall meet the statutory requirements of the State of North Carolina for workers' compensation coverage and employers' liability insurance. Contractor shall also provide any other insurance or bonding specifically recommended in writing by the DIRM or required by applicable law. Certificates of such insurance shall be furnished by Contractor to WCBOE and shall contain the provision that WCBOE be given 30 days' written notice of any intent to amend or terminate by either Contractor or the insuring company. Failure to furnish insurance certificates or to maintain such insurance shall be a default under the Contract and shall be grounds for immediate termination of the Contract.
19. **Termination for Convenience.** For good cause as determined by WCBOE in good faith, WCBOE shall have the right to terminate any work under the Contract Documents, in whole or in part, at any time at its complete discretion by providing 30 days' notice in writing from WCBOE to Contractor. If the Contract is terminated by WCBOE in accordance with this paragraph, Contractor will be paid in an amount which bears the same ratio to the total compensation as does the Goods or Services actually delivered or performed to the total originally contemplated in the Contract. WCBOE will not be liable to Contractor for any costs for completed Goods, Goods in process or materials acquired or contracted for, if such costs were incurred prior to the date of this Contract.

20. **Termination for Default.** WCBOE may terminate the Contract, in whole or in part, immediately and without prior notice upon breach of the Contract by Contractor. In addition to any other remedies available to WCBOE in law or equity, WCBOE may procure upon such terms as WCBOE shall deem appropriate, Goods or Services substantially similar to those so terminated, in which case Contractor shall be liable to WCBOE for any excess costs for such similar supplies or services and any expenses incurred in connection therewith.
21. **Contract Funding.** It is understood and agreed between Contractor and WCBOE that WCBOE's obligation under the Contract is contingent upon the availability of appropriated funds from which payment for Contract purposes can be made. No legal liability on the part of WCBOE for any payment may arise until funds are made available to WCBOE's Finance Officer and until Contractor receives notice of such availability. Should such funds not be appropriated or allocated, WCBOE may at its discretion immediately terminate the Contract. WCBOE shall not be liable to Contractor for damages of any kind (general, special, consequential or exemplary) as a result of such termination.
22. **Accounting Procedures.** Contractor shall comply with any accounting and fiscal management procedures prescribed by WCBOE to apply to the Contract. Contractor shall assure such fiscal control and accounting procedures as may be necessary for proper disbursement of and accounting for all project funds.
23. **Improper Payments.** Contractor shall assume all risks attendant to any improper expenditure of funds under the Contract. Contractor shall refund to WCBOE any payment made pursuant to the Contract if it is subsequently determined by audit that such payment was improper under any applicable law, regulation or procedure. Contractor shall make such refunds within 30 days after WCBOE notifies Contractor in writing that a payment has been determined to be improper.
24. **Contract Transfer.** Contractor shall not assign, subcontract or otherwise transfer any interest in the Contract without the prior written approval of WCBOE.
25. **Contract Personnel.** Contractor agrees that it has, or will secure at its own expense, all personnel required to perform the services set forth in the Contract.
26. **Key Personnel.** Contractor shall not substitute for key personnel assigned to the performance of the Contract without prior written approval from WCBOE Project Coordinator. "Key personnel" are defined as those individuals identified by name or title in the Contract Documents or in written communication from Contractor. "WCBOE Project Coordinator" is the individual at WCBOE responsible for administering the Contract.
27. **Contract Modifications.** The Contract may be amended only by written amendment duly executed by both WCBOE and Contractor. However, minor modifications may be made by WCBOE Project Coordinator to take advantage of unforeseen opportunities that: (a) do not change the intent of the Contract or the scope of Contractor's performance; (b) do not increase Contractor's total compensation or method of payment; and (c) either improve the overall quality of the product or service to WCBOE without increasing the cost, or reduce the total cost of the product or service without reducing the quantity or quality. All such minor modifications to the Contract must be recorded in writing and signed by both the Project Coordinator and Contractor, and placed on file with the Contract. No price adjustments will be made unless the procedure has been included in the Contract and a maximum allowable amount stipulated.
28. **Relationship of Parties.** Contractor is an independent contractor and not an employee of WCBOE. The conduct and control of the work will lie solely with Contractor. The Contract shall not be construed as establishing a joint venture, partnership or any principal-agent relationship for any purpose between Contractor and WCBOE. Employees of Contractor shall remain subject to the exclusive control and supervision of Contractor, which is solely responsible for their compensation.
29. **Advertisement.** The Contract will not be used in connection with any advertising by Contractor without prior written approval by WCBOE.
30. **Nondiscrimination.** During the performance of the Contract, Contractor shall not discriminate against or deny the Contract's benefits to any person on the basis of sexual orientation, national origin, race, ethnic background, color, religion, gender, age or disability.
31. **Conflict of Interest.** Contractor represents and warrants that no member of WCBOE or any of its employees or officers has a personal or financial interest or will benefit from the performance of the Contract or has any interest in any Contract, subcontract or other agreement related to the Contract. Contractor shall not permit any member of WCBOE or any of its employees or officers to obtain a personal or financial interest or benefit from the performance of the Contract or to have any interest in any Contract, subcontract or other agreement related to the Contract, during the term of the Contract. Contractor shall cause this paragraph to be included in all Contracts, subcontracts and other agreements related to the Contract.
32. **Gratuities to WCBOE.** The right of Contractor to proceed may be terminated by written notice if WCBOE determines that Contractor, its agent or another representative offered or gave a gratuity to an official or employee of WCBOE in violation of policies of WCBOE.
33. **Kickbacks to Contractor.** Contractor shall not permit any kickbacks or gratuities to be provided, directly or indirectly, to itself, its employees, subcontractors or subcontractor employees for the purpose of improperly obtaining or rewarding favorable treatment in connection with a WCBOE

Contract or in connection with a subcontract relating to a WCBOE Contract. When Contractor has grounds to believe that a violation of this clause may have occurred, Contractor shall promptly report to WCBOE in writing the possible violation.

34. **Monitoring and Evaluation.** Contractor shall cooperate with WCBOE, or with any other person or agency as directed by WCBOE, in monitoring, inspecting, auditing or investigating activities related to the Contract. Contractor shall permit WCBOE to evaluate all activities conducted under the Contract. WCBOE has the right at its sole discretion to require that Contractor remove any employee of Contractor from WCBOE property and from performing services under the Contract following provision of notice to Contractor of the reasons for WCBOE's dissatisfaction with the services of Contractor's employee.
35. **Financial Responsibility.** Contractor represents that it is financially solvent and able to perform under the Contract. If requested by WCBOE, Contractor agrees to provide a copy of its latest audited annual financial statements or other financial statements as deemed acceptable by WCBOE's Finance Officer. In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Contractor, the inability of Contractor to meet its debts as they become due or in the event of the appointment, with or without Contractor's consent, of an assignee for the benefit of creditors or of a receiver, then WCBOE shall be entitled, at its sole option, to cancel any unfulfilled part of the Contract without any liability whatsoever.
36. **Governmental Restrictions.** In the event any governmental restrictions are imposed which necessitate alteration of the material, quality, workmanship or performance of the items offered prior to their delivery, it shall be the responsibility of the Contractor to notify, in writing, the purchasing office at once, indicating the specific regulation which required such alterations. WCBOE reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract.
37. **Inspection at Contractor's Site.** WCBOE reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective contractor prior to Contract award, and during the Contract term as necessary for WCBOE determination that such equipment/item, plant or other facilities conform with the specifications/ requirements and are adequate and suitable for the proper and effective performance of the Contract.
38. **Confidentiality Information. Student Information.** If, during the course of Contractor's performance of the Contract, Contractor should obtain any information pertaining to students' official records, Contractor agrees to keep any such information confidential and to not disclose or permit to be disclosed, directly or indirectly, to any person or entity any such student information. The Contract shall not be construed by either party to constitute a waiver of or to in any manner diminish the provisions for confidentiality of students' records. Additionally, pursuant to N.C.G.S. 115C-401.1, Prohibition on the Disclosure of Information about Students, it is unlawful for a person who enters into a contract with a local board of education to sell personally identifiable information that is obtained from a student as a result of that person's performance under the Contract. **Employee Personnel Information.** If, during the course of Contractor's performance of the Contract, Contractor should obtain any information pertaining to employees of WCBOE's personnel records, Contractor agrees to keep any such information confidential and to not disclose or permit to be disclosed, directly or indirectly, to any person or entity any such personnel information. **Other Confidential Information.** (a) Contractor agrees that it will at all times hold in confidence for WCBOE all designs, know-how, techniques, devices, drawings, specifications., patterns, technical information, documents, business plans, item requirements, forecasts and similar data, oral, written or otherwise, conveyed by WCBOE to Contractor in connection herewith or procured, developed, produced, manufactured or fabricated by Contractor in connection herewith or procured, developed, produced, manufactured or fabricated by Contractor in connection with Contractor's performance hereunder (collectively, "Information"). Contractor shall exercise the same degree of care to prevent disclosure of any Information to others as it takes to preserve and safeguard its own proprietary information, but in any event, no less than a reasonable degree of care. Contractor shall not, without the prior written consent of WCBOE, reproduce any Information; nor disclose Information to any party; nor use any Information for any purpose other than performance for the benefit of Contractor hereunder. (b) Any technical knowledge or information of Contractor which Contractor shall have disclosed or may hereafter disclose to WCBOE in connection with the Goods or other performance covered by the Contract shall not, unless otherwise specifically agreed upon in writing by WCBOE, be deemed to be confidential or proprietary information and shall be acquired by WCBOE free from any restrictions as part of the consideration of the Contract.
39. **Schematic Designs.** As provided by N.C.G.S. 115C-105.53(c), schematic designs of school buildings are not considered public records or subject to public inspection, and Contractor shall keep in confidence any such designs in its possession for purposes of this Contract.
40. **Intellectual Property.** Contractor agrees, at its own expense, to indemnify, defend and save WCBOE harmless from all liability, loss or expense, including costs of settlement and attorney's fees, resulting from any claim that WCBOE's use, possession or sale of the Goods or Services infringes any copyright, patent or trademark or is a misappropriation of any trade secret.
41. **No Pre-Judgment or Post-Judgment Interest.** In the event of any action by Contractor for breach of contract in connection with the Contract, any amount awarded shall not bear interest either before or after any judgment, and Contractor specifically waives any claim for interest.
42. **Background Checks.** At the request of WCBOE's Project Coordinator, Contractor (if an individual) or any individual employees of Contractor involved in the performance of the Contract shall submit to WCBOE criminal background check and drug testing procedures.
43. **Jessica Lunsford Act.** As required by N.C.G.S. 115C-332.1, all Contractors, subcontractors, consultants, sub-consultants, and vendors shall conduct prior to the start of service and annually thereafter a review of the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry for all employees who will provide services under this contract that

involve direct interaction with WCBOE students. For Contractor'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/>. Any employee of the contractor, subcontractor, consultant, sub-consultant, or vendor found to be registered on any of the lists identified herein shall not perform any work under this contract and shall not be permitted to enter property owned by Wayne County Schools or Wayne County on behalf of Wayne County Schools. Failure to comply may result in legal action and termination of the contract for default.

44. **Safety Data Sheets.** Pursuant to the Hazard Communication Standard (29 C.F.R. §1910.1200, et seq.) and incorporated by reference, except as modified by 13 N.C.A.C. 07F .0101, Contractor shall provide all safety data sheets in accordance with federal and state regulations.
45. **Mediation.** If a dispute arises out of or relates to the Contract, or the breach of the Contract, the parties agree first to try in good faith to settle the dispute through negotiation. If the dispute cannot be settled through negotiation, Contractor agrees to offer to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules, or administered by another mediator jointly selected by the parties, before resorting to litigation.
46. **Attorney's Fees.** In the event of legal proceedings related to the Contract, WCBOE shall be entitled to recover its costs and reasonable attorney's fees to the maximum extent allowed by law, should WCBOE be the prevailing party.
47. **No Third Party Benefits.** The Contract shall not be considered by Contractor to create any benefits on behalf of any third party. Contractor shall include in all contracts, subcontracts or other agreements relating to the Contract an acknowledgment by the contracting parties that the Contract creates no third party benefits.
48. **Force Majeure.** If WCBOE is unable to perform its obligations or to accept the services or goods because of Force Majeure (as hereinafter defined), the time for such performance by WCBOE or acceptance of services will be equitably adjusted by allowing additional time for performance or acceptance of services equal to any periods of Force Majeure. "Force Majeure" shall mean any delays caused by acts of God, riot, war, terrorism, inclement weather, labor strikes, material shortages and other causes beyond the reasonable control of WCBOE.
49. **Ownership of Documents.** All documents created pursuant to the Contract shall, unless expressly provided otherwise in writing, be owned by WCBOE. Upon the termination or expiration of the Contract, any and all finished or unfinished documents and other materials produced by Contractor pursuant to the Contract shall, at the request of WCBOE, be turned over to WCBOE. Any technical knowledge or information of Contractor which Contractor shall have disclosed or may hereafter disclose to WCBOE shall not, unless otherwise specifically agreed upon in writing by WCBOE, be deemed to be confidential or proprietary information and shall be acquired by WCBOE free from any restrictions as part of the consideration of the Contract.
50. **Strict Compliance.** WCBOE may at any time insist upon strict compliance with these terms and conditions notwithstanding any previous course of dealing or course of performance between the parties to the contrary.
51. **General Provisions.** WCBOE's remedies as set forth herein are not exclusive. Any delay or omission in exercising any right hereunder, or any waiver of any single breach or default hereunder, shall not be deemed to be a waiver of such right or of any other right, breach, or default. If action be instituted by Contractor hereunder, WCBOE shall be entitled to recover costs and reasonable attorney's fees. Contractor may not assign, pledge, or in any manner encumber Contractor's rights under this Contract, or delegate the performance of any of its obligations hereunder, without WCBOE's prior, express written consent.
52. **Contract Situs.** All matters, whether sounding in contract or tort relating to the validity, construction, interpretation and enforcement of the Contract, will be determined in Wayne County, North Carolina. North Carolina law will govern the interpretation and construction of the Contract.
53. **Federal Tax Number or Social Security Number.** Upon request by WCBOE or its representatives, Contractor shall provide its federal tax identification number or, if Contractor is an individual, his or her Social Security Number.