PURCHASE ORDER TERMS & CONDITIONS

1. **DEFINITIONS:** The term "SBBC" means The School Board of Brevard County, Florida. The term "Vendor" means the person, firm, or corporation from which the commodities or services have been ordered. The term "PO" means this Purchase Order.

2. **AGREEMENT:** This PO (when properly signed and bearing a PO number, including these Terms and Conditions), the applicable specifications, and the referenced solicitation document and/or executed agreement (as applicable, but in which case such terms shall prevail), constitute the sole and entire PO between the parties hereto. Vendor's acceptance of this PO is limited to the Terms and Conditions hereof, and written confirmation, commencing performance, or making deliveries hereunder constitutes such acceptance. No terms stated by Vendor in accepting or acknowledging this PO shall be binding upon SBBC unless accepted in writing by SBBC. No course of prior dealings between the parties and no usage of the trade shall be a relevant supplement or explain any of the Terms or Conditions hereof.

3. **ACCEPTANCE AND MODIFICATIONS:** Acceptance of this PO constitutes acceptance of all conditions herein stated. The terms and conditions of this PO, including price, delivery method/schedule, quantity, and specifications shall not be changed, rescinded, or modified, except in writing with the consent of SBBC Office of Purchasing Services. In the event the quantities of commodities/services as indicated on the face hereof are exceeded without prior written authorization from SBBC, excess quantities may be returned to Vendor at Vendor's expense

4. **ASSIGNMENT:** POs issued by SBBC are not transferable and cannot be assigned to any other vendor, contractor, bank, lending institution, or to any representative or individual. If the Vendor cannot supply the commodities or services, nor honor the contract, return the PO with a letter of explanation to Office of Purchasing Services, 2700 Judge Fran Jamieson Way, Viera, FL 32940-6601.

5. **INDEMNIFICATION; HOLD HARMLESS:** The Vendor shall protect, indemnify, hold harmless, and defend the School Board of Brevard County, Florida, its agents, officers, elected officials, servants, and employees from any and all costs and expenses, including, but not limited to, attorneys' fees, reasonable investigative and discovery costs, court costs, and all other sums which SBBC, its agents, officers, elected officials, servants, and employees may pay or become obligated to pay on account of any, all, and every claim or demand, or assertion of liability, including claims against SBBC for liability resulting from its negligence, or any claim and every claim or demand or assertion arisen out of the products, commodities, or services furnished by the Vendor, its agents, servants, or employees, or any of its equipment, when such persons or equipment are on premises owned or controlled by SBBC for the purpose of performing services, delivering products or commodities, installing equipment, or otherwise transacting business, whether such claim or claims be for damages, injury to person or property, including SBBC's property, or death of any person, group, or organization, whether employed by the Vendor or SBBC or otherwise. The indemnification obligations hereunder shall not be limited to any limitation on the amount, type of damages, compensation, or benefits payable by or for Vendor or any subcontractor under workers' compensation acts, disability benefit acts, other employee benefit acts, or any statutory bar.

6. **TERMINATION:** SBBC reserves the right to terminate any, all, or part of the commodities/services to be delivered or performed pursuant to this PO. In such event, SBBC shall be liable only for materials or components procured or work done or supplies partially fabricated within the authorization of this PO. In no event shall SBBC be liable for incidental or consequential damages by reasons of such termination.

7. **CANCELLATION:** SBBC reserves the right to cancel any PO in whole or in part without any penalty due to non-appropriation of funds, issuance in error, or for failure of the Vendor to comply with the terms, conditions, and specifications of this PO.

8. **BID TERMS:** If this PO is a result of a solicitation or proposal award, all conditions, provisions, and specifications of the solicitation shall become a part of, and are incorporated into, this PO.

9. **DOING BUSINESS WITH ONE'S AGENCY, s. 112.313, F.S.:** No employee of SBBC may purchase commodities or services from a firm in which said employee has a material interest, nor shall employees, directly or indirectly, purchase, sell, rent, or lease commodities or services for his/her own agency from any business entity of which he/she, spouse, or child has a material interest.

10. **JESSICA LUNSFORD ACT, s. 1012.465, F.S.:** All individuals who are permitted access on school grounds when students are present, individuals who may have direct contact with children or any student of SBBC, or who may have access to or control of school funds must be fingerprinted and background checked. In the event Vendor has personnel who are required to have security clearance, Vendor agrees to comply with the Act at its sole cost.

11. **DELIVERY, TITLE, AND RISK OF LOSS:** Unless expressly stated otherwise, all shipments must be made F.O.B. SBBC, at the address specified on the PO. Deliveries are to be inclusive of packing, crating, marking, excises, duties, importation fees, and all other transportation charges. Damage to any commodities not packed to insure proper protection to same will be charged to Vendor. Title shall pass to SBBC on delivery of the conforming commodities to the desired location. Delivery shall not be complete until the commodities have been received, inspected, and accepted by SBBC. The original shipping bill must be included with the invoice, including freight, as applicable. SBBC's count will be accepted as final and conclusive on any shipment not accompanied by an itemized packing slip. Vendor assumes full responsibility and liability for loss and/or damage even if SBBC has agreed to pay freight, express, or other transportation charges.

12. **DROP SHIPMENT:** Drop shipments are acceptable, but all invoicing must be in full accordance with the PO. All packages, freight bills of lading, invoices, and other pertinent documents must reference the PO number and the Vendor's name as indicated on the PO. Omission will cause refusal of the shipment.

13. **INSPECTION:** SBBC shall have a reasonable time after delivery within which to inspect the commodities. Commodities rejected will, at Vendor's expense, be returned to Vendor or otherwise disposed of as Vendor shall reasonably request. The cost of inspection of commodities rightfully rejected shall be charged to Vendor. If reasonable inspection discloses that part of the commodities received are defective or nonconforming, SBBC shall have the right to cancel any unshipped portion of the order. Payment for the commodities on this PO prior to inspection shall not constitute acceptance thereof and is without prejudice to any and all claims that SBBC may have against Vendor. The making or failure to make any inspection of, or payment for or acceptance of, the commodities shall in no way impair SBBC's right to reject nonconforming commodities, recover damages, or exercise any other remedy to which SBBC may be entitled, notwithstanding SBBC's knowledge of the nonconformity, its substantiality, or the ease of its discovery.

14. **MATERIAL SAFETY DATA SHEET (MSDS) - TOXIC SUBSTANCES IN CONSTRUCTION, REPAIR, OR MAINTENANCE OF EDUCATIONAL FACILITIES, s. 1013.49, F.S.:** (a) All toxic substances enumerated in the Florida Substance List established pursuant to s. 442.103, F.S., that are to be used in the construction, repair, or maintenance of educational facilities have restricted usage provisions; (b) Before any such substance may be used, the Vendor shall notify the district school superintendent in writing at least three (3) working days prior to using the substance. The notification shall contain: (i) the name of the substance to be used; (ii) where the substance is to be used; and (iii) when the substance is to be used. A copy of a material safety data sheet (MSDS) as defined in s. 442.102, F.S., shall be attached to the notification for each such substance.

15. **WARRANTY:** In addition to any warranty implied by law or fact and any other express warranties, Vendor expressly warrants and represents to SBBC that all commodities or services provided pursuant to this PO shall: (a) strictly conform to the requirements of this PO, (b) be free from defects in workmanship, materials, and design, (c) be merchantable, (d) be fit for its intended use, and (e) be new. Unless otherwise stated in the PO, no surplus, rebuilt, reconditioned, or used commodities shall be provided. Vendor warrants that any services shall: (f) be performed in a good and competent manner in accordance with professional industry standards (with the level of skill, knowledge and judgment required or reasonably expected of providers of comparable services), (g) meet the terms of this PO, and (h) be free from defects. This warranty for quality of services shall be effective for two (2) years after acceptance of all work unless specified otherwise in a solicitation award.

16. **INVOICING:** Except as otherwise stated in this PO, Vendor shall submit invoices upon Vendor's delivery of all commodities and/or completion of all services. Each such invoice shall be submitted by Vendor to the location shown in the purchasing conditions section, and shall include: (a) this PO number, (b) an itemization of the specific commodities and/or services provided by Vendor; (c) the applicable date of delivery for all such commodities and/or services; (d) an itemization of the respective unit prices, if applicable, for which payment or partial payment is invoiced; (e) the total invoice amount; and (f) SBBC's location to which the commodities and/or services have been delivered. If Vendor is providing commodities or services to SBBC under more than one PO, each such PO shall be invoiced separately. Any deviation will constitute nonpayment and returning of said invoices and/or material, unless prior arrangements with the ordering school or department have been made and approval granted by the Office of Accounting Services. Payment will be made only to the Vendor and Vendor's address as indicated on the PO.

17. **TAXES:** SBBC is a nonprofit governmental operation and is not subject to federal excise or state sales tax.

18. **PAYMENT:** Payment shall be made to Vendor within forty-five (45) days pursuant to Ch. 218, F.S.

19. **LEGAL COMPLIANCE:** The Vendor guarantees that the services to be performed and the commodities to be provided herein shall comply with all applicable federal, state, and local laws, ordinances, regulations, orders and decrees, including without limitation such of the following acts as may be applicable: Federal Consumer Product Safety Act, Federal Fair Labor Standards Act, Occupational Safety and Health Act, Federal Hazardous Substances Labeling Act, Federal Flammable Fabrics Act, and any applicable environmental regulations.

20. **LAW; VENUE:** The validity, interpretation, and performance of this PO shall be governed and construed in accordance with the laws of the State of Florida. Venue for any legal action shall lie in Brevard County, Florida.

21. **TIME IS OF THE ESSENCE:** Failure to deliver commodities/services of the quality and quantity and within the time(s) specified by this PO shall, at option of SBBC, relieve SBBC of any obligation to accept and pay for such commodities/services as well as any undelivered shipments, if any; and upon failure to deliver as specified, SBBC may buy like commodities/services elsewhere and charge Vendor with any increased cost or other loss incurred thereon pursuant to Ch. 672, F.S., unless deferred shipment is agreed to by SBBC in writing. Any failure by SBBC to exercise its option with respect to any shipment of commodities/services shall not be deemed to constitute a waiver with respect to subsequent shipments. This provision is not in lieu of, and SBBC does not waive, any remedies provided by law.

22. **FAILURE TO PERFORM:** Failure of the Vendor to perform as specified in this PO may be cause for termination of this PO. Vendors who default are subject to suspension and/or debarment from the approved vendors list. Failure to perform may also result in the recoupment of damages or the difference in cost for purchasing replacement commodities/services by SBBC.

23. **FORCE MAJEURE:** Performance of any obligation under this PO may be suspended by either party without liability to the extent that an act of God, war, riot, fire, explosions, accidents, sabotage, inability to obtain fuel or power, governmental laws, regulations, orders, or any other cause beyond the reasonable control of such party, or labor trouble, strike, lockout, or injunction delays, prevents, restricts, or limits the performance of this PO. The affected party shall invoke this provision by promptly notifying the other party of the nature and estimated duration of the suspension period. At SBBC's option, the PO may be terminated or modified. If SBBC fails to modify the PO, within thirty (30) days of receipt of notification from Vendor, the PO lapses with respect to any deliveries affected.

24. **ELECTRONIC/FACSIMILE TRANSMISSION**: If this PO is fully executed and is transmitted by fax or by other means of electronic transmission, such transmission shall have the legal significance of a duly executed original delivered to Vendor.

25. **PRICE PROTECTION; DISCOUNTS**: Vendor warrants that the price(s) set forth herein is/are equal to the lowest net price, and the terms and conditions of sale as favorable or better, as the price(s), terms, and conditions afforded by Vendor to any other customer for commodities/services of comparable grade or quality during the term hereof. Discounts are encouraged and should be included on any invoice, when available, to reduce the price from the one indicated on the PO itself.

26. **RELATIONSHIP OF THE PARTIES**: It is the parties' intention that Vendor, its employees, subcontractors, representatives, volunteers, and the like will be an independent contractor and not an employee of SBBC for all purposes, including, but not limited to, the application of the following, as amended: the Fair Labor Standards Act, minimum wage and overtime payments, the Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State of Florida revenue and taxation laws, the State of Florida workers' compensation laws, the State of Florida unemployment insurance laws, and the Florida Retirement System benefits. Vendor will retain sole and absolute discretion in the judgment of the manner and means of carrying out its activities and responsibilities hereunder.

27. **DISQUALIFYING CRIMES**: Vendor certifies by acceptance of this PO that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by the State of Florida or Federal Government. A person or affiliate who has been placed on the convicted contractor list following a conviction for a public entity crime may not provide any commodities/services or transact business with SBBC for a period of thirty-six (36) months from the date of being placed on the convicted contractor list.

28. **WAIVER**: No waiver by either Vendor or SBBC with respect to any breach or default of or with respect to any provisions or conditions of this PO shall be deemed to constitute a continuing waiver of any other breach or default of or with respect to the same or any other provision or condition of this PO.

29. **SEVERABILITY**: If any section, subsection, sentence, clause, phrase, or portion of this PO is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portion thereof.

30. **EQUAL OPPORTUNITY EMPLOYER**: SBBC is an Equal Employment Opportunity (EEO) employer and, as such, encourages Vendor to voluntarily comply with EEO regulations with regards to gender, age, race, veteran status, country of origin, and creed. In addition, Vendor shall comply with all applicable rules, regulations, and promulgations thereby pertaining to the avoidance or appearance of sexual harassment or on the job discrimination. Vendor shall maintain a work environment free of discrimination or unwelcome action of a personal nature. Any subcontracts entered into shall make deference to this clause with the same degree of application being encouraged. When applicable, Vendor shall comply with all new state and federal EEO regulations.

31. **RIGHT TO AUDIT RECORDS**: SBBC shall be entitled to audit the fiscal books and records of Vendor to the extent that such books and records relate to the performance of this PO or supplements thereto. Such books and records shall be maintained by Vendor for a period of three (3) years from the date of final payment under the PO, unless a longer or shorter period is otherwise authorized in writing by SBBC.

32. **FERPA**: To the extent services provided hereunder pertain to the access to student information, Vendor shall adhere to all standards included in the Family Educational Rights and Privacy Act (FERPA) and ss. 1001.41 and 1002.22, F.S. (the Protection of Pupil Privacy Acts), and other applicable laws and regulations as they relate to the release of student information.

33. **PUBLIC RECORDS**:

(a) **IF VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CH. 119, F.S., TO VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS PO, CONTACT SBBC'S CUSTODIAN OF PUBLIC RECORDS AT 321-633-1000, EXT. 11453, RECORDS MANAGEMENT, 2700 JUDGE FRAN JAMIESON WAY, VIERA, FL 32940, RECORDSREQUEST@BREVARDSCHOOLS.ORG.**

(b) This PO is subject to and governed by the laws of the State of Florida, including without limitation Ch. 119, F.S., which generally makes public all records or other writings made by or received by the parties. Vendor acknowledges its legal obligation to comply with s. 119.0701, F.S. Vendor shall keep and maintain public records, as that phrase is defined in the Florida Public Records Act, which would be required to be kept and maintained by SBBC in order to perform the scope of services. Vendor shall comply will all requirements for retaining public records and shall transfer, at no cost to SBBC, all public records in the possession of Vendor upon a request for such public records. See s. 119.0701(2)(b)4, F.S., for additional record keeping requirements.

(c) A request to inspect or copy public records relating to SBBC's contract for services must be made directly to SBBC's Custodian of Public Records. If SBBC does not possess the requested records. SBBC's Custodian of Public Records shall immediately notify Vendor of the request. Vendor must provide a copy of the records to SBBC or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Ch. 119, F.S. If Vendor does not timely comply with SBBC's request for records, SBBC shall be able to sue for breach of contract and the prevailing party shall be entitled to attorney's fees.

(d) Should Vendor fail to provide the requested public records to SBBC within a reasonable time, Vendor understands and acknowledges that it may be subject to penalties under ss. 119.0701(3)(c) and 119.10, F.S..

(e) Vendor shall not disclose public records that are exempt, or confidential and exempt, from public records disclosure unless specifically authorized by law for the duration of this PO term and following the completion, expiration, or termination of same if Vendor does not transfer the records to SBBC. Upon completion, expiration, or termination of this PO, Vendor shall transfer, at no cost to SBBC, all public records in its possession or keep and maintain public records required by SBBC to perform the services. If Vendor transfers all public records to SBBC, Vendor shall destroy any duplicate public records that are exempt, or confidential and exempt, from public records disclosure requirements. If Vendor keeps and maintains public records upon completion, expiration, or termination of the PO, Vendor shall meet all applicable requirements for retaining public records and provide requested records to SBBC pursuant to the requirements of this section. All public records stored electronically must be provided to SBBC in a format that is compatible with the information technology systems of SBBC.

I hereby certify that funds are available in the budget to cover this PO, and approval is hereby granted.

Director of Purchasing & Warehouse Services

The School Board of Brevard County is exempt from the following taxes:

1. State of Florida Sales Tax Certificate No. 15-10-049813-53C
2. Federal Excise Tax Exemption Certification Number 59-6000522

PURCHASING CONDITIONS: (See Reverse Side)

3. Itemized invoice for this purchase shall be rendered immediately following shipment.
4. Invoice must be marked ORIGINAL, and sent to: 2700 JUDGE FRAN JAMIESON WAY, VIERA, FL 32940-6601, ATTENTION: OFFICE OF ACCOUNTING SERVICES.
5. Unless otherwise specified, all shipments must be F.O.B. destination, Freight Prepaid.
6. The PO number must be shown by the Vendor on all related invoices, delivery papers, bill of lading, packages, and correspondence.
7. Any questions concerning this PO must be directed to the SHIP TO address or phone number stated above.