

Tennessee State Textbook and Instructional Materials Quality Commission

April 20, 2015

Textbook Contract

The Background:

Pursuant to T.C.A. § 49-6-2203, the State Textbook and Instructional Materials Quality Commission may promulgate rules establishing minimum manufacturing standards and specifications for textbooks and instructional materials and establishing the conditions under which it contracts with publishers. The commission may make contracts with the publishers for a period of no less than thirty-six (36) months nor more than seventy-three (73) months. The commission may extend any existing contracts entered after April 27, 1984, for one (1) additional year if it notifies the affected publishers at least one (1) year prior to the beginning of the extension period.

A revised Textbook Contract is being presented to the commission for approval. The contract was revised based on the changes to the textbook laws in accordance with Pub. Ch. 981 passed by the 2014 Session of the 108th Tennessee General Assembly. Most notably the new textbook contract has been updated to:

- Incorporate the Statement of Publisher Assurances required by T.C.A. § 49-6-2202(c),
- Incorporate the definition of “textbooks” contained in T.C.A. § 49-6-2202(e), and
- Reflect the new and lower bond requirements contained in T.C.A. § 49-6-2203(j).

The Office of the Tennessee Attorney General and Reported assisted in the revision of the contract and has approved the document.

CONTRACT

Between the State of Tennessee Textbook Commission and [NAME OF PUBLISHER]

THIS CONTRACT AND AGREEMENT (“Contract”) entered this _____ day of _____, 2015, between the Textbook and Instructional Materials Quality Commission of the State of Tennessee (“Commission”) and **[NAME OF PUBLISHER]**, a partnership, corporation, or other business organization existing under the laws of the State of _____ (“Publisher”).

WHEREAS Publisher timely submitted a bid in response to the Commission’s invitation to bid for the Commission’s upcoming textbook adoption; and

WHEREAS the Commission reviewed the textbooks submitted by Publisher and all other participating publishers and prepared the comprehensive list of textbooks, attached hereto as Exhibit A, for approval by the state board of education, as required under Tenn. Code Ann. § 49-6-2202;

WHEREAS the Publisher now desires to provide the textbooks in Exhibit A that are identified as being provided by Publisher.

NOW THEREFORE, in consideration of the terms hereinafter set forth and for valuable consideration, receipt hereof is acknowledged, the Commission and the Publisher now enter into this Contract for the sale and purchase of the textbooks in Exhibit A identified as being provided by Publisher, in accordance with the terms and conditions herein prescribed:

1. Authorized to Conduct Business. The Publisher must be authorized to do business in the State of Tennessee throughout the term of this Contract.

2. Obligation and Term. The Publisher shall supply and sell all the textbooks and instructional materials set forth in Exhibit A identified as being provided by Publisher (“Publisher’s Textbooks”) for a period of seventy-three (73) months, beginning June 1, 2015, and ending June 30, 2021 (“term”). “Textbook” or “textbooks” includes “electronic textbook” or “electronic textbooks,” which means computer software, interactive videodisc, magnetic media, CD-ROM, computer courseware, local and remote computer assisted instruction, online service, electronic medium or other means of conveying information to the student or otherwise contributing to the learning process through electronic means. Exhibit A is incorporated by reference into and made a part of this Contract.

3. Pricing. (a) The Publisher agrees that the prices of Publisher’s Textbooks, which prices are listed in Exhibit A, do not exceed prices Publisher currently offers elsewhere. The Commission may require the publisher to print or affix in each book the retail price of the book as fixed by the Commission.

(b) If, during the term of this Contract, Publisher offers to sell or sells any of Publisher’s Textbooks in any other state or political subdivision at a lower price than the price listed in Exhibit A: (1) the Publisher shall give written notice of such lower price to the Commission, (2) the price of such textbook under this Contract shall automatically decrease to match the lower price, and (3) the lower price of such textbook under the Contract shall be reflected on the Tennessee Book Company (“State Textbook Depository”) website.

4. Manufacturing Standards. The Publisher agrees that Publisher’s Textbooks shall meet or exceed the Official “Minimum Manufacturing Standards and Specifications for Textbooks” adopted by the National Association of State Textbooks Administrators (“Manufacturing Standards”). The Publisher shall remedy any deficiency in a textbook’s compliance with the Manufacturing Standards within sixty (60) days after written notice of such deficiency. Any failure to timely remedy a deficiency shall constitute a breach of this Contract

with respect to a single textbook or to an entire series of textbooks if the textbooks constitute an interdependent series of textbooks.

5. Accuracy. The Statement of Publisher Assurances that the Publisher has submitted pursuant to Tenn. Code Ann. § 49-6-2202(c) is attached hereto as Exhibit B and made a part of this contract.

6. Depository. The Publisher shall furnish to and maintain at the State Textbook Depository at all times a sufficient supply of Publisher's Textbooks so that Publisher's Textbooks are readily available and accessible to the public school systems of this State. The Publisher shall pay all shipping and freight costs to transport Publisher's Textbooks to the State Textbook Depository. In the event Publisher does not maintain a sufficient supply of Publisher's Textbooks at the State Textbook Depository, the Publisher shall promptly provide, when requested by the Commission, written notice of when the Publisher will supply the Publisher's Textbooks to the State Textbook Depository.

7. Accessible Materials. The Publisher agrees to prepare and submit to the National Instructional Materials Access Center (NIMAC), no later than June 30, 2015, electronic files for Publisher's Textbooks that comply with NIMAC's National Instructional Materials Accessibility Standard (NIMAS) format. Publisher also agrees to prepare and submit to NIMAC, within ninety (90) days of a request by any of the State of Tennessee's NIMAC Authorized Users, NIMAS files for any textbooks created, developed, or owned by the Publisher since June 1, 2008.

8. Free Materials. The Publisher shall identify and list all textbooks and supplies that will be provided by the Publisher to the local school systems free of charge when the school systems purchase Publisher's Textbooks. The Publisher shall provide such textbooks and supplies to all local school systems in accordance with the Commission's "Policies and Procedures for Free Materials and Samples," which is available on the Tennessee Department of Education website.

9. Unlawful Content. If, during the term of this Contract, the Commission identifies textbook content in any of Publisher's Textbooks that is contrary to the laws of this state, the Publisher agrees to elide such content after written notice from the Commission. Failure to elide within one hundred twenty (120) days after such notice shall constitute a breach of this Contract.

10. Bond. Pursuant to Tennessee Code Annotated § 49-6-2203(j), the Publisher shall file with the Contract a good and sufficient bond with a surety company licensed to do business in the state of Tennessee in the sum determined by the Commission, but no less than two thousand dollars (\$2,000) nor more than ten thousand dollars (\$10,000), and conditioned upon the faithful performance of all conditions of this Contract and the provisions of Tennessee Code Annotated, Title 49, Chapter 6, Part 22.

11. Sample Copies. Publisher shall file at least one set of Publisher's Textbooks, including all supplementary materials, with the secretary of the Textbook Commission on or before the date specified by the Commission in the adoption schedule for each cycle, but no later than the start date of the advisory panel review. Upon request of a Commission member in his or her official capacity, Publisher shall send the Commission member one set of samples.

12. Assignment. The Publisher shall not assign in whole or in part the rights, obligations or liabilities under this Contract without obtaining the prior written approval of the Commissioner of Education. An approved assignee shall assume, in writing, all terms and conditions of this Contract, including the obligation to execute a bond. The Publisher shall remain jointly and severally liable along with any approved assignee.

13. Change in Law. The Commission shall have the right to terminate this Contract if changes in state law or State Board of Education rules bring about substantial changes to curriculum and public education that either necessitate a textbook adoption before the expiration of the Contract term or render Publisher's Textbooks useless in the State of Tennessee. A termination under this paragraph in order to comply with applicable law shall not constitute a breach by the Commission or the State of Tennessee.

14. Contract Execution. The parties shall execute this Contract in duplicate. One copy shall be filed with the Commission and the second shall be delivered to the Publisher.

15. Revised Editions. The Commission expressly reserves the right to permit the purchase and use of revised editions of Publisher's Textbooks, provided that the revised editions of Publisher's Textbooks meet the specifications of the Manufacturing Standards, the prices of the revised editions are the same as or lower than the prior editions, and the revised editions may be successfully used with the editions now listed by the Commission.

16. Powers Reserved to the Commission. All powers not expressly outlined in this Contract are expressly and fully reserved to the Commission, and in all matters not expressly or by necessary implication provided for in this Contract, the decision of the Commission shall prevail.

17. Completeness. This Contract represents the entire understanding of the parties relating to the subject matter herein. No term shall be modified or waived, except by written instrument signed by both parties.

18. Payment. Publisher and its agents shall receive Publisher's pay and compensation solely and exclusively from the sale of Publisher's Textbooks under this Contract. Neither the State of Tennessee nor the Commission shall be liable to the Publisher or the Publisher's agents in any manner or for any sum whatsoever under this Contract except for such textbooks the State of Tennessee is now or may hereinafter be authorized by law to purchase directly from the Publisher.

19. Breach. Breach or failure to comply with any provision of this Contract may result in forfeiture of Publisher's bond and/or termination of this Contract. If the Publisher fails to properly perform its obligations under this Contract, the State will provide written notice of bond forfeiture and/or Contract termination. This notice will: (1) specify in reasonable detail the nature of the breach; (2) provide the Contractor with an opportunity to cure; and (3) shall specify the effective date of termination in the event the Contractor fails to correct the breach. An opportunity to cure will not apply to circumstances in which the Contractor intentionally withholds its services or where there have been repeated problems with respect to identical or similar issues. In such cases, termination may be effective immediately.

20. Strict Performance. Failure by either party to insist in any one or more cases upon the strict performance of any of the terms, conditions, or provisions of this Contract shall not be construed as a waiver of such term, condition, or provision.

21. Notice. (a) All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be delivered: (1) in person, (2) by certified mail, postage prepaid, and return receipt requested, (3) by a commercial overnight courier service that guarantees next day delivery and provides a receipt, (4) by facsimile transmission with recipient confirmation, or (5) by e-mail with recipient confirmation. Such notices shall be addressed as follows:

If to the Commission:

James ("Monty") Wilson
Deputy Director, Content and Resources
Tennessee Department of Education
Andrew Johnson Tower, 11th floor
710 James Robertson Parkway
Nashville, TN 37243
James.M.Wilson@tn.gov

Telephone # (615) 253-3160
FAX # (615) 253-5567

If to the Publisher:

[Publisher Contact Name & Title]
[Publisher NAME]
[Address]
[Address 2]
[Email Address]

[Telephone # Number]
[FAX # Number]

or to such other address as either party may from time to time specify in writing to the other party. Any notice shall be effective only upon delivery, which for any notice given by facsimile or e-mail shall mean notice that has been received by the party to whom it is sent as evidenced by confirmation slip or recipient confirmation.

22. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Publisher agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Publisher acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated §§ 9-8-101 through 9-8-407.

23. Records. The Publisher shall maintain documentation for all services under this Contract. The books, records, and documents of the Publisher, insofar as they relate to work performed under this Contract, shall be maintained for a period of three (3) full years from the conclusion of the Contract and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

This Contract shall be effective for the period beginning June 1, 2015, and ending on June 30, 2021 and is hereby agreed to and executed by both parties by signature by its duly authorized representative upon the day and year set forth below.

STATE TEXTBOOK COMMISSION

**[NAME OF PUBLISHER]
PUBLISHER**

BY

BY

Candice McQueen
Secretary of Commission
State Commissioner of Education

Signature, Publisher's Authorized Representative

Date

Printed Name, Publisher's Authorized Representative

Employment Title, Publisher's Authorized Representative

Date