

ADDENDUM TO CURRICULUM ASSOCIATES, LLC TERMS OF USE

This Addendum (herein “Addendum”) amends the Curriculum Associates, LLC Terms of Use and all attachments, exhibits, physical or virtual documents, writings, references, click-through, clickwrap, shrink-wrap, or other similar terms or agreements incorporated therein or presented in connection with Customer’s access to or use of Curriculum Associates, LLC products or services (collectively, the “Agreement”), by and between Curriculum Associates, LLC (herein “Contractor”) and Murfreesboro City Schools (herein “Customer”). The parties acknowledge that Customer may purchase certain bundled print, consumable, digital, or related instructional materials through Tennessee Book Company Quote 006138, however, this Addendum governs Customer’s access to and use of Contractor’s products and services, including any digital i-Ready resources made available to Customer under or in connection with such purchase. In consideration of Customer’s use of Contractor’s form agreement, the mutual promises set out herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Agreement is amended as follows:

1. **Precedence.** Notwithstanding any other provision in the Agreement, the language in this Addendum takes precedence over all other terms, conditions, or language to the contrary or in conflict with the language herein, and the Agreement and this Addendum shall not be construed to create any ambiguity, it being the intent of the parties that this Addendum shall control.

2. **Indemnity, Limitation of Liability and Disclaimer of Warranty.** Article II, Section 29 of the Tennessee Constitution prohibits governmental entities from lending their credit to private entities and, therefore, prohibits an agreement by Customer to indemnify a third party or agree to a limitation of liability provision. Any indemnity or hold harmless provision contained in the Agreement requiring Customer to indemnify or hold harmless Contractor or any other person or entity and any limitation of liability in favor of Contractor is deleted. No provision of this Agreement shall act or be deemed a waiver by Customer of any immunity, including its rights or privileges afforded by the Tennessee Constitution or state law including but not limited to any provision of the Tennessee Governmental Tort Liability Act, T.C.A. § 29-20-101 *et seq.* Because Tennessee law may not allow Customer to agree to the disclaimer of warranties any such disclaimer of warranties shall be enforceable only to the extent permitted by Tennessee law, and Customer reserves all rights afforded to local governments under law for all general and implied warranties.

3. **Confidentiality.** The Agreement is a public record, and it, along with all documents or materials, in any format, including, but not limited to, paper, electronic, or virtual, that are public records pursuant to the Tennessee Open Records Act, set out in T.C.A. § 10-7-503 *et seq.*, are not confidential and are subject to disclosure in whole or in part, without regard to any provision contained in the Agreement declaring information confidential. Additionally, Customer must, upon proper request, release public documents and records as defined by T.C.A. § 10-7-503 *et seq.*, including, but not limited to, the Agreement and all records created and maintained related to the Agreement, without any requirement to disclose such request to Contractor or provide Contractor with notice or the time to obtain a protective order. Customer does not have the burden of establishing that information is not confidential information or that its release is authorized to release the records. This section 3 serves to meet such burden and authorization of disclosure.

4. **Governing Law.** The Agreement and the rights and obligations of the parties are governed by the laws of the state of Tennessee, without regard to its conflict of laws principles.

5. **Selection of Jurisdiction, Waiver of Jury Trial, Venue, Service of Process.** Pursuant to the Constitution and Laws of the State of Tennessee, Customer is a sovereign entity subject only to those courts with jurisdiction over Customer. If a dispute arises between the parties concerning any aspect of the Agreement, and it cannot be resolved by mutual agreement, any party may resort to resolution of the dispute by litigation in the state courts in Murfreesboro, Tennessee or the Federal court for the Middle District of Tennessee. However, neither party shall be obligated to provide any type of pre-suit notice before initiating a cause of action. The parties waive their right to a jury trial. The parties hereby consent to the mandatory and exclusive venue and jurisdiction of the state court located in Murfreesboro, Tennessee or the Federal court for the Middle District of Tennessee. Service of process on Customer shall comply with the Tennessee Rules of Civil Procedure or applicable federal rules, and Customer does not agree to any other service of process procedure.

6. **Responsibility for Litigation Costs, Expenses and Payment of Attorney's Fees.** Article II, Section 29 of the Tennessee Constitution prohibits governmental entities from lending their credit to private entities and, therefore, prohibits an agreement by Customer to indemnify a third party or agree to a limitation of liability provision. This prohibition extends to contractual provisions for the payment of attorney's fees. In the event of litigation between Customer and Contractor each party shall be solely and exclusively responsible for the payment of litigation costs, expenses and attorney's fees excepting those costs which may be awarded by a court of competent jurisdiction as specified by Tennessee law or applicable rules of civil procedure.

7. **No Unauthorized Click-Through Terms.** No District employee, teacher, administrator, student, parent, account user, or other individual may bind District to any click-through, clickwrap, browsewrap, online, electronic, supplemental, updated, or incorporated terms unless such terms are expressly approved in writing by District's authorized representative. Continued use of the Services, account access, login activity, acceptance by an individual user, or failure to object to online terms shall not constitute District's acceptance of any new, revised, or additional terms.

8. **Dispute Resolution.** The Parties acknowledge and agree that no mandatory negotiation, mediation, or waiting periods shall be required prior to the initiation of litigation. Either Party may file suit at any time in a court of competent jurisdiction. Any voluntary dispute-resolution efforts undertaken by the Parties shall not delay either Party's ability to pursue legal or equitable relief. The Parties further agree that any dispute-resolution procedures shall apply equally to both Parties, and no Party shall have a unilateral right to bypass any agreed procedure. Any mediation or settlement discussions shall occur at a mutually agreeable time, place, and format, including remote mediation. Each Party shall bear its own costs.

9. **Amendment.** This Addendum and the Agreement shall not be modified or altered other than by written agreement executed by both parties.

10. **Survival.** This Addendum shall survive the completion of or any termination of the

Agreement or other document which may accompany the Agreement or be incorporated by reference.

11. **No Presumption Against Drafter.** This Addendum shall not be construed for or against any party because that party or that party's legal representative drafted any of its provisions. Accordingly, this Addendum shall be construed without regard to the rule that ambiguities in a document are to be construed against the draftsman. No inferences shall be drawn from the fact that the final, duly executed Addendum differs in any respect from any previous draft hereof.

12. **FERPA Compliance.** For purposes of carrying out this Agreement, Contractor will perform an institutional service or function for which the Customer would otherwise use employees, and is hereby designated by Customer as a school official having a legitimate educational interest in accessing, using, and tracking student education records, as permitted by the Family Educational Rights and Privacy Act, (FERPA) (34 CFR Part 99.3).

- a. Contractor understands and agrees to comply with FERPA (20 U.S.C. § 1232g; 34 CFR Part 99) in that the storage and use of student education records by Contractor will comply with all FERPA requirements.
- b. Contractor understands and agrees that that it remains under direct control of Customer with respect to the use and maintenance of the education records. Contractor understands that the use of educational records is limited in scope and purpose. To access education records there must be a legitimate educational interest and must be essential to complete a function or task under this agreement.
- c. Contractor understands and agrees that it is prohibited from re-disclosing any personally identifiable information from the education records at any time or for any purpose whatsoever.
- d. Any failure to comply with applicable FERPA requirements by Contractor or any of its employees will be immediately reported to Customer by Contractor.

13. **Data Ownership.** In supplementation and not in limitation of the foregoing, the Customer retains and reserves the ownership of, and all rights, title, and interest in any and all data provided by the Customer to the Contractor under or in connection to this Agreement. The Contractor shall not destroy or permit the destruction of any Customer data, except upon the prior written consent of the Customer. On the expiration of the Term of this Agreement, when commercially reasonable, the Contractor shall promptly, and in no event not later than sixty (60) calendar days after request by the Customer, destroy and dispose of any remaining copies of the data in its possession or in the possession of any subcontractor.

14. **Compliance with Tenn. Code Ann. §49-1-221(c)(1)(A-D).** Pursuant to the requirements of Tenn. Code Ann. § 49-1-221(c), Contractor shall:

- a.) Verify that the digital or online materials do not violate Tenn. Code Ann. § 39-17-902;
- b.) Filter, block, or otherwise prevent access to pornography or obscenity through one's use of the digital or online materials;
- c.) Verify, in writing, that the Contractor's technology prevents a user from sending, receiving, viewing, or downloading materials that are harmful to minors, as defined in Tenn. Code Ann. § 39-17-901; and
- d.) Remove, within one (1) business day, upon the Customer's request, access to digital or

online materials for ages or audiences for which the Customer or state agency has determined the material to be age- or audience-inappropriate unless the deadline for removal is extended upon mutual agreement of the parties.

15. **Counterparts.** This Addendum may be executed in one or more counterparts by Customer and Contractor. If so executed, the signer shall deliver an original to the other party and the collective counterparts shall be treated as the fully executed document.

16. **Effective Date.** This Addendum shall be effective immediately after the Agreement is effective.

Contractor

Murfreesboro City Schools

Signature

Bobby N. Duke, III, Director of Schools

Date

Date

Printed Name

Approved as to form:

Title

Lauren Bush, Assistant City Attorney