

General Purchase Order Terms and Conditions

1. Applicability.

(a) This purchase order is an offer by National Heritage Academies, Inc. (hereinafter, "NHA") for the purchase of the goods or services specified on the face of this purchase order (the "**Goods**"; together hereinafter "**Goods**", as applicable) from the party to whom the purchase order is addressed (the "**Supplier**") in accordance with and subject to these terms and conditions (the "**Terms**"; together with the terms and conditions on the face of the purchase order, the "**Order**"). This Order, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the Order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Order. The Order expressly limits Supplier's acceptance to the terms of the Order. These Terms prevail over any terms or conditions contained in any other documentation and expressly exclude any of Supplier's general terms and conditions of sale or any other document issued, including any invoice, by Supplier in connection with this Order.

(b) These Terms apply to any repaired or replacement Goods provided by the Supplier hereunder.

(c) NHA is not obligated to any minimum purchase or future purchase obligations under this Order.

(d) Supplier shall enter into written agreements with all subcontractors and subconsultants, which shall include: (i) a provision that the subcontractor or subconsultant assumes toward Supplier all of the obligations that Supplier assumes toward NHA under this Agreement; (ii) a provision that the subcontractor or subconsultant is not in privity with NHA and shall not seek compensation directly from NHA; and (iii) a provision that NHA is a third-party beneficiary of the subcontract or agreement, entitled to enforce any rights thereunder for their benefit.

2. Acceptance. This Order and any amendments shall be deemed to have been accepted by the Supplier if any of the following occur; (i) shipment of the Goods or any portion thereof; (ii) commencement of any work onsite or (iii) performance of any services hereunder. Any discrepancy in fulfilling the terms of this Order must be resolved between NHA and Supplier prior to the delivery of any Goods.

3. Delivery Date. Supplier shall deliver the Goods in quantities and on the date(s) specified in this Order or as otherwise agreed in writing by the parties (the "**Delivery Date**"). Timely delivery of the Goods is of the essence. If Supplier fails to deliver the Goods in full on the Delivery Date, NHA may terminate the Order immediately by providing written notice to Supplier and Supplier shall indemnify NHA against any losses, claims, damages, and reasonable costs and expenses directly attributable to Supplier's failure to deliver the Goods on the Delivery Date.

4. Quantity. NHA assumes no obligation for Goods shipped more than the quantity ordered. Any shipments greater than the quantity of Goods ordered are subject to rejection by

NHA. Any such rejected Goods shall be returned to the Supplier at Supplier's risk and expense. If NHA does not reject the Goods and instead accepts the delivery of Goods at the increased or reduced quantity, the Price for the Goods shall be adjusted on a pro-rata basis.

5. Delivery Location. All Goods shall be delivered to the address specified in the Order (the "**Delivery Location**") during normal business hours or as otherwise instructed by NHA.

6. Shipping Terms. Supplier shall give written notice of shipment to NHA when the Goods are delivered to a carrier for transportation. Supplier shall provide NHA all shipping documents, including the commercial invoice, packing list, and any other documents necessary to release the Goods to NHA within two (2) business days after Supplier delivers the Goods to the transportation carrier. The Order number must appear on all shipping documents, shipping labels, invoices, correspondence and any other documents pertaining to the Order.

7. Title and Risk of Loss. Title passes to NHA upon delivery of the Goods to the Delivery Location. All deliveries shall be FOB destination and Supplier bears all risk of loss or damage to the Goods until delivery of the Goods to the Delivery Location. Supplier is responsible for maintaining and providing proof of delivery.

8. Packaging. All goods shall be packed for shipment according to NHA's instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition. Supplier must provide NHA prior written notice if it requires NHA to return any packaging material. Any return of such packaging material shall be made at Supplier's expense.

9. Amendment and Modification. No change to an Order is binding upon NHA unless it is in writing, specifically states that it amends this Order, and is signed by an authorized representative of NHA.

10. Inspection and Rejection of Nonconforming Goods. NHA has the right to inspect the Goods on or after the Delivery Date. NHA, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If NHA rejects any portion of the Goods, NHA has the right, effective upon written notice to Supplier, to: (a) rescind the Order in its entirety; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require replacement of the rejected Goods. If NHA requires replacement of the Goods, Supplier shall, at its expense, promptly replace the nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Goods. If Supplier fails to timely deliver replacement Goods, NHA may replace them with goods from a third party and charge Supplier the cost thereof and terminate this Order for cause pursuant to Section 23. Any inspection or other action by NHA under this Section shall not reduce or otherwise affect Supplier's obligations under the Order, and NHA shall have the right to conduct further inspections after Supplier has carried out its remedial actions.

11. Price. The price of the Goods is the price stated in the Order (the "**Price**"). Unless otherwise specified as tax-exempt purchase in the Order, Supplier's invoice shall include all costs to the Delivery Location, including, but not limited to, all sales, use or excise taxes. No increase

in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of NHA.

12. Most Favored Customer. Supplier represents and warrants that the price for the Goods is the lowest price charged by Supplier to any of its external customers for similar volumes of similar Goods. If Supplier charges any other customer a lower price, Supplier must apply that price to all Goods under this Order. If Supplier fails to meet the lower price, NHA, at its option, may terminate this Order without liability pursuant to Section 23.

13. Payment Terms. Supplier shall issue an invoice to NHA on or any time after the completion of delivery and only in accordance with the Terms. Unless otherwise agreed to in writing, NHA shall pay all properly invoiced amounts due to Supplier Net 30 days, or otherwise agreed to in writing, after NHA's receipt of such invoice, except for any amounts disputed by NHA in good faith. In the event of a payment dispute, NHA shall deliver a written statement to Supplier prior to the date payment is due on the disputed invoice listing all disputed items and providing a reasonably detailed description of each disputed item. Amounts not so disputed are deemed accepted and must be paid, notwithstanding disputes on other items, within the period set forth in this Section 13. The parties shall seek to resolve all such disputes expeditiously and in good faith. Supplier shall continue performing its obligations under the Order notwithstanding any such dispute.

14. Setoff. Without prejudice to any other right or remedy it may have, NHA reserves the right to set off at any time any amount owed to it by Supplier to NHA against any amount payable by NHA to Supplier.

15. Warranties. Supplier warrants to NHA that for a period of twelve months from the Delivery Date, all Goods and work will: (a) be free from any defects in workmanship, material and design; (b) conform to applicable specifications, drawings, designs, samples and other requirements specified by NHA; (c) be fit for their intended purpose and operate as intended; (d) be merchantable; (e) be free and clear of all liens, security interests or other encumbrances; and (f) not infringe or misappropriate any third party's patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by NHA. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of NHA's discovery of the noncompliance of the Goods with the foregoing warranties. Supplier shall, at its own cost and expense, replace or repair the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods to Supplier and the delivery of repaired or replacement Goods to NHA.

16. General Indemnification. Supplier shall defend, indemnify and hold harmless NHA and NHA's subsidiaries, affiliates, successors or assigns and their respective directors, officers, shareholders and employees and NHA-managed public schools (collectively, "**Indemnitees**") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "**Losses**") arising out of or occurring in connection with the products purchased from Supplier or Supplier's negligence, willful misconduct or breach of the

Terms. Supplier shall not enter into any settlement without NHA's or Indemnatee's prior written consent.

17. Intellectual Property Indemnification. Supplier shall, at its expense, defend, indemnify and hold harmless NHA and any Indemnatee against any and all Losses arising out of or in connection with any claim that NHA's or Indemnatee's use or possession of the Goods infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Supplier enter into any settlement without NHA's or Indemnatee's prior written consent.

18. Transportation. If the services being provided by Supplier include field trip, athletic, or other transportation services to NHA or any NHA managed School, Supplier shall furnish transportation services for the period identified in the corresponding trip confirmation. Supplier will conduct criminal background checks (defined below) and referrals, at its sole expense, on any of its employees or agents providing such services. Supplier shall immediately notify NHA of any negative criminal background check results to NHA for review and approval. Supplier further certifies that each driver shall (a) possess a valid license or permit issued by the State authorizing such person to operate the vehicle; (b) possess a satisfactory driving record; and (c) meet any other criteria required by applicable law, rules or regulations pertaining to the transportation of students. Supplier, at its own expense, shall maintain the vehicle(s) assigned to provide services according to the specifications of the vehicle maintenance manual and established by the applicable laws and regulations.

19. Criminal Background Checks. Supplier, at its expense and prior to the commencement of any services being provided to NHA NHA-managed public schools, shall conduct criminal background checks (“CBC”) of all employees, subcontractors, and agents offering services to NHA or a School as required by applicable current state and federal law. Supplier certifies to NHA that no employee working with students of NHA: (i) has been convicted of a violent or serious felony; (ii) is the subject of a pending criminal action of a violent or serious felony; or (iii) has been convicted of a sexual offense or any additional crime that by applicable state and federal law, NHA-managed school board policy, or NHA policy prohibits an individual from working with or around minor children or within a school. Supplier shall not assign an employee, subcontractor or agent to of Supplier unless such employee, subcontractor or agent has a clear CBC. Supplier agrees to cooperate with any audit conducted by NHA or regulatory agency and provide confirmation of each CBC obtained for each employee, subcontractor, or agent assigned to provide services to NHA or NHA-managed public school upon request and in accordance with applicable law.

20. Insurance. During the term of the Order, Supplier shall, at its own expense, maintain and carry insurance in full force and effect as defined below. All insurance policies shall be issued by companies licensed to do business in the states where the Goods are delivered, or the operations are performed and must be rated “A-” “VIII” or better by A.M. Best. The Commercial General Liability & Automobile Liability insurance policies shall include waivers of subrogation against NHA, its subsidiaries, directors, officers, employees and affiliates. All insurance policies shall require that the insurer endeavor to provide at least thirty (30) days written notice to NHA prior to cancellation. All Liability insurance policies shall apply as primary to and non-contributory with any other insurance afforded to NHA, its subsidiaries, affiliates, directors, officers and employees

and NHA-managed public schools but only for claims arising solely from Supplier's provision of goods or services hereunder.

Supplier shall provide certificates of insurance evidencing the required coverage prior to the commencement of any Goods under these Terms and endeavor to provide renewal certificates prior to the expiration of any required policy of insurance. Each certificate shall name both NHA and the respective NHA-managed public school as additional insureds.

Supplier must provide coverage for all subcontractors used in connection with these Terms under these required insurance policies or require that each subcontractor maintain and evidence its own insurance policies in accordance with the requirements herein.

These insurance requirements shall not in any way limit Supplier's indemnity obligations to NHA or an NHA-managed public school as set forth elsewhere in an agreement, nor shall they relieve or decrease the liability of Supplier in any way. NHA does not in any way represent that the insurance or limits of insurance specified above are sufficient or adequate to protect the Supplier's interests or liabilities. The Supplier is responsible at Supplier's sole expense for providing any additional insurance Supplier deems necessary to protect Supplier's interests.

(a) Workers' Compensation & Employer's Liability covering all Supplier employees and Disability Benefits Insurance (where applicable) in accordance with applicable Statutory, federal or other legal requirements and Employer's Liability Insurance in an amount of not less than \$1,000,000 per accident for bodily injury by accident, \$1,000,000 policy limit by disease and \$1,000,000 per employee for bodily injury by disease, or as may be legally required, whichever is greater. The policy cannot contain an exclusion for any employee, owner, sole proprietor, member or officer.

(b) Commercial General Liability Insurance written on an ISO occurrence form or its equivalent including coverage for bodily injury, property damage, products/completed operations, personal injury, advertising injury, broad form property damage, independent contractors, no exclusions other than those included in the basic policy, blanket contractual liability with limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate unless approved. The policy shall include NHA, its subsidiaries, affiliates, directors, officers and employees as additional insured with respect to their vicarious liability arising from Supplier's provision of Goods pursuant to these Terms on a primary/non-contributory basis including ongoing and completed operations. Waiver of subrogation must be included.

(c) Commercial Automobile Liability providing coverage for owned, hired, and non-owned motor vehicles used in connection with these Terms in an amount of not less than \$1,000,000 per occurrence Combined Single Limit (CSL) for bodily injury and property damage. If vehicles are used for transporting any Hazardous Materials, the policy shall be endorsed to provide pollution liability on ISO form endorsement 9948 or its reasonable equivalent with proof of an MCS90 endorsement. The policy shall include NHA, its subsidiaries, affiliates, directors, officers and employees as additional insured with respect to their vicarious liability arising from services pursuant to these Terms.

(d) Professional Liability/Errors and Omissions coverage as applicable of not less than \$5,000,000 per claim and aggregate. If coverage is written on a claims-made basis, coverage with respect to any and all work performed in connection with these Terms shall be endeavored to be maintained for a period of at least three (3) years after the expiration or termination of the Order.

(e) Privacy & Security (Cyber) Liability with a \$1,000,000/ \$1,000,000 Limit per occurrence and in the aggregate to include third party coverage. The policy shall include NHA its subsidiaries, affiliates, directors, officers and employees as Additional Insured for their vicarious liability arising from services pursuant to these Terms.

21. Compliance with Law. Supplier shall comply with all applicable laws, regulations and ordinances. All chemicals, equipment, and materials proposed and/or used in the performance of the Order shall conform to the requirements of the Occupational Safety and Health Act of 1970. The SDS (Safety Data Sheets; formerly Material Safety Data Sheets: MSDS) must be sent with the product to communicate the hazards of chemical products. Supplier has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Order.

22. Termination. NHA may terminate any Order, in whole or in part, at any time with or without cause for undelivered Goods on five (5) days' prior written notice to Supplier. In addition to any remedies that may be provided under these Terms, NHA may terminate this Order with immediate effect upon written notice to the Supplier, either before or after the acceptance of the Goods, if Supplier has not performed or complied with any of these Terms, in whole or in part. If the Supplier becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, then NHA may terminate this Order upon written notice to Supplier. If NHA terminates the Order for any reason, Supplier's sole and exclusive remedy is payment for the Goods received and accepted by NHA prior to the termination.

23. Limitation of Liability. Nothing in this Order shall exclude or limit (a) Supplier's liability under Sections 15, 16, 17 and 25 hereof, or (b) Supplier's liability for fraud, personal injury or death caused by its negligence or willful misconduct.

24. Waiver. No waiver by any party of any of the provisions of the Order shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in the Order, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Order shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

25. Confidential Information.

(a) All non-public, confidential or proprietary information of NHA, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by NHA to Supplier, whether disclosed orally or disclosed or accessed in written, electronic or other

form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the Order is confidential, solely for the use of performing the Order and may not be disclosed or copied unless authorized by NHA in writing. Upon NHA's request, Supplier shall promptly return all documents and other materials received from NHA. NHA shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) known to the Supplier at the time of disclosure; or (c) rightfully obtained by the Supplier on a non-confidential basis from a third party.

(b) **Protection of Sensitive Information** - If NHA provides access to Supplier of confidential information with sensitive information, for example without limitation, bank and credit card account numbers, income and credit histories and social security numbers, student financial aid information, as well as "Personally Identifiable Information" from student education records as defined by the Family Educational Rights and Privacy Act of 1974 ("FERPA"), Supplier shall maintain the confidentiality, integrity, and availability of all such information, through implemented administrative, technical and physical safeguards in compliance with law and shall not re-disclose such sensitive information as directed by federal and state laws including without limitation, the Gramm Leach Bliley Act of 1999, FERPA, HIPAA/HITECH, and state laws on protection of such sensitive information.

(c) **HIPAA/HITECH** - When applicable, while performing its duties and obligations under this Order, Supplier shall, and shall cause its employees, other members of its workforce, faculty, agents, and subcontractors, to comply with all laws and regulations that apply to the confidentiality and security of patient information, including HIPAA/HITECH, and regulations issued thereunder (including without limitation the Omnibus Rule), which are now in effect or which may subsequently be in effect. The parties agree that if necessary, they shall amend this Agreement to comply with or effectuate HIPAA and/or HITECH and the regulations issued thereunder.

(d) **Data Breach Notification** - Supplier shall immediately, and no later than three (3) business days, notify NHA of any potential data breach of which it becomes aware.

(e) **Computer Systems and Data Security** - Supplier represents and warrants that the computer systems it uses in conjunction with providing the goods and services under this Agreement, and the data housed therein or methods of transmission, have security protection from intrusion in accordance with applicable federal government standards and are encrypted in accordance with NIST Standards for encryption and security of data. Any copies of data which are disposed of shall likewise be disposed of only in accordance with such standards.

26. **Force Majeure**. If either party is unable to perform its obligations under this Agreement because of a force majeure, neither party shall be liable to the other for direct or consequential damages resulting from lack of performance. "Force Majeure" shall mean fire, earthquake, flood, act of God, strikes, work stoppages, or other labor disturbances, riots or civil commotions, acts of terrorism or other hostilities, litigation, war or other act of any foreign nation,

power of government, or governmental agency or authority, or any other cause like or unlike any cause above mentioned which is beyond the control of either party.

27. Assignment. Supplier shall not assign, transfer, delegate or subcontract any of its rights or obligations under the Order without the prior written consent of NHA. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Supplier of any of its obligations hereunder.

28. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in the Order shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. No relationship of exclusivity shall be construed from this Order.

29. No Third-Party Beneficiaries. This Order is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

30. No Indebtedness. No indebtedness created by any NHA-managed public school shall constitute indebtedness of the respective State in which the public school is located or the State's political subdivisions, and no indebtedness of the charter school shall involve or be secured by the faith, credit, or taxing power of the respective State or its political subdivisions.

31. Suspension and Debarment. Supplier certifies that to the best of its knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency and shall not knowingly enter into any covered transaction with a person who is proposed for debarment under federal regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction.

32. Limitations to the Use of NHA's Name. Supplier shall not use NHA's name or the name of the respective NHA-managed public school in any public advertising, publications, social networking sites, or on the Internet, without NHA's express prior written consent to the specific contemplated use. Such requests shall be directed to NHA's Legal & Compliance department. This restriction shall extend to all tiers of sub-consultants / subcontractors of Supplier and any other party engaged by Supplier because of this Agreement. Supplier shall not, without express prior written consent in each case, use any NHA trademark in advertising, publicity, promotional, or any other activities or context including social networking sites and the Internet. This restriction shall extend to all tiers of sub-consultants / subcontractors of Supplier and any other party engaged by Supplier because of this Agreement.

33. Governing Law. All matters arising out of or relating to this Order shall be governed by and construed in accordance with the laws of the State of Michigan without giving effect to any choice or conflict of law provision or rule (whether of the State of Michigan or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Michigan.

34. Submission to Jurisdiction. Any legal suit, action or proceeding arising out of or relating to this Order shall be instituted in the federal or the courts of the State of Michigan in each case located in the City of Grand Rapids and County of Kent, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. TO THE EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HEREBY KNOWINGLY AND WILLINGLY WAIVES AND SURRENDERS SUCH PARTY'S RIGHT TO TRIAL BY JURY AND AGREES THAT SUCH LITIGATION SHALL BE TRIED TO A JUDGE SITTING ALONE AS THE TRIER OF BOTH FACT AND LAW, IN A BENCH TRIAL, WITHOUT A JURY.

35. Cumulative Remedies. The rights and remedies under this Order are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

36. Notices. All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth on the face of this Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), e-mail (with confirmation of delivery) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Order, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

37. Severability. If any term or provision of this Order is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

38. Survival. Provisions of this Order which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Order including, but not limited to, the following provisions: Setoff, Warranties, General Indemnification, Intellectual Property, Indemnification, Insurance, Limitation of Use of NHA's Name, Compliance with Laws, Confidentiality, Governing Law, Submission to Jurisdiction and Survival.