

Agreement for Purchase of Goods

This Agreement for Purchase of Goods (the "Agreement") is entered into by and between _____ County First Steps to School Readiness Local Partnership ("Local Partnership") and _____ ("Vendor") as of this ____ day of _____, 20__ (the "Effective Date"). In this Agreement the Local Partnership and Vendor sometimes shall be referred to individually as a party and collectively as the parties.

WHEREAS, Local Partnership desires to purchase certain Goods, as defined below, from Vendor; and

WHEREAS, Vendor desires to provide to Local Partnership the Goods pursuant to the terms of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises set forth herein, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Sale of Goods.**

a. **Goods.** Vendor hereby agrees to sell and the Local Partnership hereby agrees to purchase the goods (the "Goods") as identified in such Orders as the Local Partnership shall execute from time to time (each an "Order") and identified in Exhibit A. Each Order may include: (i) the description and quantity of the Goods; (ii) the price and payment terms for the Goods; (iii) the delivery requirements for the Goods; and (iv) such other terms applicable to the Goods as the parties shall mutually agree. Any reference to the term "Agreement" shall include the applicable Order. In the event of any conflict between the provisions of the main body of this Agreement and any Order, the terms of the Order will control only if such Order expressly acknowledges the conflicting term(s) of the main body of this Agreement and provides that the parties mutually agree that the terms of the Order shall control with respect to such term(s). Otherwise the terms of the main body of this Agreement shall control. While present on any Local Partnership premise, Vendor shall comply with all Local Partnership policies.

b. **Delivery Terms.** All Goods shall be delivered at the time designated on the applicable Order, Freight On Board (FOB) destination, and freight prepaid. Title to and risk of loss of Goods supplied under this Agreement shall pass to Local Partnership upon delivery and acceptance of Goods.

c. **Acceptance of Goods.** All Goods purchased hereunder shall be subject to Local Partnership's inspection and acceptance. By providing notice to Vendor, Local Partnership may reject any Goods which Local Partnership determines do not comply with the requirements of this Agreement. Upon such rejection, Local Partnership shall have the option to require Vendor to: (i) immediately provide replacement Goods acceptable to Local Partnership; or (ii) refund to Local Partnership all amounts which Local Partnership has paid for the rejected Goods. Vendor shall comply with either (i) or (ii) above within five (5) days of Local Partnership's notice of rejection.

d. **Warranties.** Vendor warrants that all Goods delivered hereunder shall: (i) be free from defects in workmanship, material, and manufacture; (ii) be transferred to Local Partnership with good title, free of any liens, security interests or other encumbrances; (iii) comply with the requirements of this Agreement; (iv) conform to any drawings, proposals, responses or descriptions provided to Local Partnership; and (v) be of merchantable quality and shall be fit and suitable for the purpose intended. The foregoing warranties are conditions to this Agreement and are in addition to all other warranties, express or implied, and shall survive any delivery, inspection, acceptance or payment by Local Partnership. If any warranties specified herein or otherwise, applicable are breached by the Vendor, Local Partnership may elect to: (i) require the Vendor to correct, at Vendor's sole expense, any defect or nonconformance by repair or replacement; or (ii) return any defective or nonconforming Goods to Vendor at Vendor's expense, in which case Vendor immediately shall refund to Local Partnership the price of the Goods. The foregoing remedies are in addition to all other remedies available at law or equity and shall not be deemed to be exclusive. The foregoing representation and warranties shall survive acceptance of the Goods.

2. **Payment.** Vendor shall submit to Local Partnership invoice(s) and any supporting documentation which Local Partnership requests regarding the Goods provided to Local Partnership. Local Partnership shall pay all undisputed invoices for accepted Goods within forty five (45) days of the receipt of the applicable invoice. Local Partnership shall be entitled to offset or reduce any amounts owed to Vendor in such amounts which Vendor owes to Local Partnership pursuant to this Agreement. Payment of compensation to Vendor may be dependent upon and subject to the allocation and payment of funds to the Local Partnership and is contingent upon availability of such funds. Local Partnership has the authority, without damages or penalty, to terminate the Agreement or any Order at any time or to change the amount of the allocation to Vendor and negotiate changes, if needed, in the scope of the Agreement should the amount of funding be less from that anticipated.

3. **Term and Termination.** This Agreement shall begin on the Effective Date and continue for a period of one (1) year thereafter. Upon expiration of the initial term of this Agreement and any subsequent renewal term, this Agreement automatically shall renew for successive periods of one (1) year each, unless either party provides the other party with notice of non-renewal prior to the expiration of the then current term. Local Partnership may terminate this Agreement or any Order at any time in its sole discretion by providing notice of termination to Vendor at least thirty (30) days prior to the effective date of such termination. Additionally, Local Partnership may suspend performance of any or all of this Agreement by providing notice to Vendor. The following sections shall survive termination of this Agreement: 1(d), 4, 5, 6, 7, 11 and 12.

4. **Indemnification.** Vendor shall indemnify, defend and hold harmless Local Partnership and its officers, directors, employees, agents, successors, and assigns from and against all losses, damages, liabilities, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kinds, including reasonable attorneys' fees ("Losses") arising out of or resulting from: (a) any defect in Goods, (b) Vendor's breach of any representation, warranty, covenant, or obligation under this Agreement; (c) Vendor's negligence, gross negligence or willful misconduct; and (d) any claim that any of the Goods infringes upon,

violates or misappropriates and third party patent, copyright, trademark, service mark, trade secret or other right. Local Partnership shall promptly notify Vendor in writing of any suit or claim related to any Loss and shall cooperate with Vendor at Vendor's sole cost and expense in the defense of any such suit or claim. Vendor shall take and have sole control of the defense and settlement of any suit or claim.

5. **Confidentiality.**

a. **Nondisclosure.** The term "Confidential Information" means any and all information disclosed by Local Partnership to Vendor pursuant to this Agreement or to which Vendor otherwise has access to or obtains in the performance of this Agreement. Vendor agrees: (i) not to use any Local Partnership Confidential Information for its own use or for any purpose except only in connection with performing its obligations under this Agreement; (ii) to hold Local Partnership's Confidential Information in strict confidence and not to disclose such Confidential Information to any third party; and (iii) to take all reasonable measures to protect the confidentiality of and avoid disclosures or use of Local Partnership's Confidential Information. No copies of Local Partnership's Confidential Information may be made unless expressly authorized by this Agreement or approved in writing by Local Partnership. Upon termination of this Agreement, Vendor immediately shall return to Local Partnership all Confidential Information.

b. **Exceptions.** The obligations set forth in the above section, shall not apply to and the term Confidential Information shall not include any information which: (i) was known to Vendor prior to being disclosed by Local Partnership; (ii) is approved for release by written authorization of Local Partnership; (iii) is rightfully received from a third party who provided such information without breach of any separate confidentiality obligation and without restriction on subsequent disclosure; or (iv) is independently developed without reference to the Local Partnership's Confidential Information. In addition, Confidential information may be disclosed to the extent required by court order or as otherwise required by law, provided that, if Vendor is required to make any such disclosure, Vendor notifies Local Partnership promptly upon learning of the possibility of any such requirement, but only to the extent it is permitted to provide such notice, and has given Local Partnership a reasonable opportunity and (cooperated with Local Partnership) to contest or limit the scope of such required disclosure (including application for a protective order).

c. Vendor acknowledges and agrees that the unauthorized disclosure or use of Local Partnership's Confidential Information will cause irreparable harm and significant injury which will be difficult to ascertain and incapable of adequately compensating solely in terms of monetary damages. Accordingly, Vendor agrees that the Local Partnership shall have the right to the issuance of immediate injunctive relief enjoining any breach or threatened breach of Vendor's obligations hereunder.

6. **Security and Privacy of Data**

a. **Family Educational Rights and Privacy Act of 1974 ("FERPA").** To comply with FERPA and the Family Privacy Protection Act of 2002, Vendor shall maintain the

confidentiality of any student educational and personal information or records to which it has access. Vendor shall use and/or disclose protected student educational and personal information or records only to the extent necessary to satisfy obligations under this Agreement and may only do so consistent with this Agreement and FERPA. Such information may not be released without a properly completed authorization signed by the student's parent or guardian. If information is released pursuant to the receipt of a properly completed authorization, documentation of the release must be maintained. A copy of the authorization must be included in this documentation.

b. **Protected Health Information.** To the extent either of the parties exchanges or provides access to protected health information, the parties shall execute a business associate agreement and otherwise comply with the applicable provisions of the then current Health Insurance Portability and Accountability Act.

7. **Document Inspection and Retention.**

a. During normal business hours, Local Partnership and any of its representative(s) shall have the right to enter Vendor's premises, or other such places where duties under the Agreement are being performed, to inspect, monitor, assess, audit, or otherwise evaluate the performance of this Agreement. Local Partnership shall have the right to audit, examine and make copies, excerpts or transcripts from all records unless otherwise precluded by federal or state law, contact and conduct private interviews with Vendor's employees and perform on-site reviews of all matters relating to this Agreement. Vendor shall maintain an accounting system with the supporting fiscal records adequate to assure that all claims for funds are in accordance with the Agreement and with all applicable laws, regulations and policies, both federal and state.

b. Vendor shall ensure that all Vendor and permitted subcontractor materials, documents, papers, accounting records, or other evidence pertaining to costs incurred under this Agreement will be maintained for a period of at least six (6) years after the final payment under this Agreement and that Local Partnership and any of its duly authorized representatives shall have access to any such materials for the purpose of making audits, examinations, excerpts, and transcripts for no less than six (6) years after the date of final payment under this Agreement or a resolution of audit findings, whichever is later. Vendor agrees to retain all financial records and programmatic records, supporting documents, and statistical records for a period of six (6) years after the last payment is made under the Agreement including any amendments and/or extensions to the Agreement. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the six (6) year period, the records shall be retained until the completion of the action and resolution of all issues which arise from it, or until the end of the regular six (6) year period, whichever is later.

c. The provisions of this Agreement are applicable to any permitted subcontractor. If any inspection, audit, or evaluation is made on the premises of the Vendor, or permitted subcontractor, Vendor shall provide and require each permitted subcontractor to provide all reasonable facilities and assistance for the safety and convenience of the authorized

representatives in the performance of their duties. All such inspections and evaluations shall be performed in such a manner that will not unreasonably delay work and any subcontract permitted by Local Partnership shall contain a provision, which sets forth the subcontractor's agreement with the terms set forth in this section.

8. **Criminal History Review.** Vendor shall ensure, to the greatest extent possible, that individuals with any record of engaging in child or elder abuse or neglect, or having any other issues that affects their suitability for providing Goods under this Agreement or any applicable Order; shall not provide Goods under this Agreement or any applicable Order. Prior to receipt of funds under this Agreement, the Vendor must demonstrate to the satisfaction of Local Partnership that it has a process in place for reviewing the background of all employees engaged in providing Goods under this Agreement. At a minimum, this process shall include a Department of Social Services Central Registry and South Carolina Law Enforcement Division check.

9. **Compliance with Law.** In the performance of this Agreement Vendor will comply with all applicable laws, rules, regulations ordinances, and other government directives including but not limited to compliance with Title VI and VII of the Civil Rights of 1964; Section 504 of the Rehabilitation Act of 1973, as amended, and regulations issued pursuant thereto; the Americans with Disabilities Act of 1990 and regulations issued pursuant thereto; the Drug Free Workplace Act, S.C. Code Ann. Sections 44-107-10, et. Seq. 1976, as amended; and any similar applicable laws, regulations, or rules. Vendor shall maintain all applicable licenses, permits, or other government required permissions to perform its obligations pursuant to this Agreement.

10. **Insurance.** During the term of this Agreement, Vendor shall maintain insurance in the following amounts: _____

11. **Subcontracting.** Vendor shall not engage a subcontractor to provide the Goods under this Agreement or any applicable Order without express written consent from Local Partnership.

12. **Miscellaneous.**

a. **Further Assurances.** Vendor shall, upon Local Partnership's reasonable request, and at its sole cost and expense, promptly execute such documents and perform such acts as may be necessary to give full effect to the terms of this Agreement.

b. **Independent Contractors.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, Local 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.

c. **No Public Statements or Use of Trademarks.** Neither party shall issue or release any announcement, statement, press release, or other publicity or marketing materials

relating to this Agreement, otherwise use the other party's trademarks, service marks, trade names, logos, domain names, or other indicia of source, association, or sponsorship, in each case, without the prior written consent of the other party.

d. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and sent to the addresses as listed on the signature page. Notices sent in accordance with this Section shall be deemed effectively given: (i) when received, if delivered by hand (with written confirmation of receipt); (ii) when received, if sent by a nationally recognized overnight courier (receipt requested); (iii) when received, if mailed, by certified or registered mail; or (d) if delivery is refused at the address for such notice.

e. Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

f. Entire Agreement. This Agreement, together with all Orders and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

g. Assignment. Neither party shall assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the other party's prior written consent. Any purported assignment, delegation, or transfer in violation of this Section is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns and each party's obligations hereunder shall survive any change in control or ownership of such party.

h. No Third-Party Beneficiaries. Except as set forth in Section 5 (Indemnification), this Agreement 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 any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of this Agreement.

i. Amendment; Modification; Waiver. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the waiving party. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement 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.

j. Severability. Any term or provision of this Agreement that is held invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provisions in any other situation or in any other jurisdiction.

k. Governing Law; Submission to Jurisdiction.

(i) This Agreement and all related documents, and all disputes and other matters arising out of or relating to this Agreement, are governed by, and construed in accordance with, the laws of the State of South Carolina without regard to the conflict of laws provisions thereof or of any other jurisdiction to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of South Carolina.

(ii) Any dispute for which a party is permitted to bring a court proceeding shall be instituted exclusively in the United States for this District of South Carolina or the courts of the State of South Carolina located in the county of Local Partnership's principal place of business and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding; provided that an action to enforce a judgment or order of any such court may be enforced in any court having competent jurisdiction.

l. Counterparts. This Agreement may be executed in two or more counterparts, each of which when executed shall be deemed an original, but all of which taken together shall constitute one and the same agreement. Facsimile and electronic transmission (including the email delivery of documents in Adobe PDF format) of any signed original counterpart or retransmission of any signed facsimile transmission shall be deemed the same as delivery of the original.

m. Flow Down Clauses. Vendor agrees to comply with the terms of Exhibit B attached hereto and incorporated by reference.

IN WITNESS WHEREOF, the parties hereby agree to this Agreement by affixing their signatures below.

[Signature Page to Follow]

LOCAL PARTNERSHIP:

_____ County First Steps to School Readiness
Local Partnership

By: _____

Name: _____

Title: _____

Address:

VENDOR:

By: _____

Name: _____

Title: _____

Address:

EXHIBIT A

This Order is made by and between _____ County First Steps Board Local Partnership (“Local Partnership”) and _____ (“Vendor ”) effective as of _____, 20____ (the “Order Effective Date”) pursuant to the Agreement for Purchase of Goods entered into by and between Local Partnership and Vendor on or about _____(the “Agreement”).

1. Description and quantity of the Goods:
2. Price and payment terms for the Goods:
3. Delivery requirements for the Goods:
4. Such other terms applicable to the Goods as the parties shall mutually agree:

IN WITNESS WHEREOF, the parties hereby agree to this Order by affixing their signatures below.

LOCAL PARTNERSHIP:

_____ County First Steps to School Readiness
Local Partnership

By:_____

Name:_____

Title:_____

VENDOR:

By:_____

Name:_____

Title:_____