



FLOYD COUNTY BOARD OF EDUCATION  
Danny Adkins, Superintendent  
442 KY RT 550  
Eastern, KY 41622  
Telephone (606) 886-2354 Fax (606) 886-4550  
www.floyd.kyschools.us

Linda C. Gearheart, Board Chair Member - District 1  
William Newsome, Jr., Vice-Chair - District 3  
Dr. Chandra Varia, Member- District 2  
Keith Smallwood, Member - District 4  
Steve Slone, Member - District 5

**Floyd County Board Of Education  
Issue Paper**

Date: May 13, 2021

Action/Discussion Item: Approve an agreement between the Floyd County Board of Education and Great Minds to provide English Language Arts curriculum, teacher and student resources as well as digital resources (3 years) for all students Grades K-8.

Applicable Statutes or Regulation: Board Policy states that only the Board of Education may enter into contracts and agreements.

Issue/Background: The Floyd County School District is developing a systemic curriculum for English/Language Arts. District staff as well as school administrators and teachers met with Great Minds and reviewed the available text, materials and other resources. The team unanimously agreed that the available materials associated with Great Minds, will benefit teaching and learning tremendously.

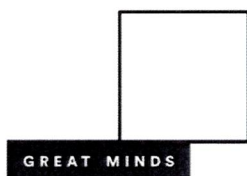
Budget/Financial Issues: The cost of \$603,897.08 will be paid from ESSER Funds. This price contains a multi-year discount and will be available to all students in all Floyd County Schools.

Recommended Action: Approve the agreement between the Floyd County Board of Education and Great Minds.

Contact: Davida Marson, Rachel Crider & Brent Rose  
Chief(s) of Instruction

606-886-2354  
Telephone

  
Brent Rose, Davida Marson, Rachel Crider      Danny Adkins Jr.      Superintendent



## Great Minds Quote

Date	April 15, 2021	Quote Number	00153963
Expiration Date		Contact Name	Rachel Crider
Prepared By	Wendy Zuber	Phone	
Email	wendy.zuber@greatminds.org	Email	rachel.crider@floyd.kyschools.us
Bill to Name	Floyd County School District	Ship to Name	Floyd County School District
Bill To	106 North Front Avenue	Ship To	106 North Front Avenue
	Prestonsburg, KY 41653		Prestonsburg, KY 41653

### Make payment to:

Great Minds PBC Tax ID: 84-3785772

### Mail payment to:

Great Minds PBC  
P.O. Box 200283  
Pittsburgh, PA 15251-0283

**Phone:** 202.223.1854

**Email:** [ordertracking@greatminds.org](mailto:ordertracking@greatminds.org)

Wit and Wisdom - Print	ISBN	Quantity	List Price	Discount	Total Price
Grade 7					
Grade 7 Module 4 Fever 1793	9780689848919	450.00	\$8.99	30.00%	\$2,831.85
Grade Multiple					
Grade 2 Module 3 I Have a Dream - Dr. Martin Luther King, Jr.	9780375858871	16.00	\$18.99	30.00%	\$212.69
Grade 1 Module 3 Feel the Wind	9780064450959	225.00	\$5.99	30.00%	\$943.43
Grade 1 Module 3 Owl at Home	9780064440349	225.00	\$4.99	30.00%	\$785.93
Grade 1 Module 3 The Boy Who Harnessed the Wind	9780803735118	18.00	\$17.99	30.00%	\$226.67
Grade 1 Module 3 Gilberto and the Wind	9780140502763	225.00	\$7.99	30.00%	\$1,258.43
Grade 1 Module 3 Feelings	9780688065188	225.00	\$7.99	30.00%	\$1,258.43
Grade 1 Module 3 Brave Irene	9780312564223	18.00	\$8.99	30.00%	\$113.27
Grade 1 Module 4 Bigfoot Cinderrrrrella	9780698118713	225.00	\$7.99	30.00%	\$1,258.43
Grade 2 Module 4 The Digestive System	9781433336775	16.00	\$10.99	30.00%	\$123.09
Grade 2 Module 4 Bone Button Borscht	9781550743265	108.00	\$7.95	30.00%	\$601.02



Grade 2 Module 2 Journey of a Pioneer	9780756640057	216.00	\$4.99	30.00%	\$754.49
Grade 2 Module 2 Plains Indians	9781432949617	216.00	\$9.95	30.00%	\$1,504.44
Grade 2 Module 2 John Henry	9780140566222	16.00	\$8.99	30.00%	\$100.69
Grade 2 Module 2 The Legend of the Bluebonnet: An Old Tale of Texas	9780698113596	16.00	\$7.99	30.00%	\$89.49
Grade 2 Module 3 Separate Is Never Equal: Sylvia Mendez and Her Family's Fight for Desegregation	9781419710544	16.00	\$18.95	30.00%	\$212.24
Grade 2 Module 3 Martin Luther King, Jr. and the March on Washington	9780448424217	432.00	\$3.99	30.00%	\$1,206.58
Grade 2 Module 3 Ruby Bridges Goes to School: My True Story	9780545108553	432.00	\$3.99	30.00%	\$1,206.58
Grade 2 Module 3 The Story Of Ruby Bridges	9780439472265	216.00	\$6.99	30.00%	\$1,056.89
Grade 3 Module 1 Ocean Sunlight: How Tiny Plants Feed the Seas How Tiny Plants Feed the Seas	9780545273220	9.00	\$18.99	30.00%	\$119.64
Grade 3 Module 2 Starry Messenger Galileo Galilei	9780374470272	135.00	\$8.99	30.00%	\$849.56
Wit & Wisdom, Grade 3 Module 2 Moonshot: The Flight of Apollo 11	9781416950462	135.00	\$19.99	30.00%	\$1,889.06
Grade 3 Module 2 One Giant Leap	9780147511652	135.00	\$8.99	30.00%	\$849.56
Grade 3 Module 2 Zathura A Space Adventure	9780618253968	9.00	\$18.99	30.00%	\$119.64
Grade K Module 3 School Then and Now	9780822546412	110.00	\$6.99	30.00%	\$538.23
Grade K Module 3 Transportation Then and Now	9780822546375	110.00	\$6.99	30.00%	\$538.23
Grade K Module 3 Communication Then and Now	9780822546399	110.00	\$6.99	30.00%	\$538.23
Grade K Module 3 The Little House	9780395259382	220.00	\$7.99	30.00%	\$1,230.46
Grade K Module 3 When I Was Young in the Mountains	9780140548754	220.00	\$7.99	30.00%	\$1,230.46
Grade K Module 3 Now & Ben The Modern Inventions of Benjamin Franklin	9780312535698	220.00	\$8.99	30.00%	\$1,384.46
Grade K Module 4 Africa	9780531292754	220.00	\$5.95	30.00%	\$916.30
Grade K Module 4 Australia	9780531292785	220.00	\$5.95	30.00%	\$916.30
Grade 3 Module 4 Emma's Rug	9780618335237	9.00	\$7.99	30.00%	\$50.34
Grade 3 Module 4 When Marian Sang	9780439269674	9.00	\$18.99	30.00%	\$119.64
Grade 3 Module 4 Action Jackson	9780312367510	135.00	\$8.99	30.00%	\$849.56
Grade 3 Module 4 A River of Words	9780802853028	135.00	\$18.00	30.00%	\$1,701.00
Grade 3 Module 4 Alvin Ailey	9780786810772	135.00	\$7.99	30.00%	\$755.06
Grade 3 Module 1 Amos & Boris	9780312535667	135.00	\$8.99	30.00%	\$849.56
Grade 3 Module 1 Giant Squid Searching for a Sea Monster	9781429680233	135.00	\$8.95	30.00%	\$845.78
Grade 3 Module 1 Shark Attack!	9781465435064	135.00	\$4.99	30.00%	\$471.56

Grade 3 Module 1 The Fantastic Undersea Life of Jacques Cousteau	9780375844706	135.00	\$7.99	30.00%	\$755.06
Grade 4 Module 1 The Circulatory Story	9781580892094	135.00	\$7.95	30.00%	\$751.28
Grade 4 Module 2 Mountains	9780688154776	135.00	\$7.99	30.00%	\$755.06
Grade 4 Module 3 Colonial Voices: Hear Them Speak	9780147511621	135.00	\$8.99	30.00%	\$849.56
Grade 4 Module 3 George vs. George	9781426300424	135.00	\$6.95	30.00%	\$656.78
Grade 4 Module 3 The Scarlet Stockings Spy	9781585362301	68.00	\$16.95	30.00%	\$806.82
Grade 4 Module 3 Woods Runner	9780375859083	270.00	\$7.99	30.00%	\$1,510.11
Grade 4 Module 3 Woods Runner (Audio)	9780307710321	9.00	\$25.00	30.00%	\$157.50
Grade 4 Module 4 Understanding Greek Myths	9780778745143	135.00	\$9.95	30.00%	\$940.28
Grade 4 Module 4 Gifts from the Gods Ancient Words and Wisdom	9780544810860	135.00	\$9.99	30.00%	\$944.06
Grade 4 Module 4 Pushing up the Sky	9780803721685	68.00	\$21.99	30.00%	\$1,046.72
Grade 4 Module 4 Walk Two Moons	9780064405171	270.00	\$8.99	30.00%	\$1,699.11
Grade 4 Module 1 Love That Dog	9780064409599	270.00	\$7.99	30.00%	\$1,510.11
Grade 4 Module 2 Hatchet	9781416936473	270.00	\$8.99	30.00%	\$1,699.11
Grade 4 Module 2 Hatchet (Audio)	9780807204771	9.00	\$25.00	30.00%	\$157.50
Grade 1 Module 1 Museum ABC - Hardcover	9780316071703	113.00	\$19.99	30.00%	\$1,581.21
Grade K Module 4 Antarctica	9780531292761	220.00	\$5.95	30.00%	\$916.30
Grade 1 Module 2 Never Smile at a Monkey	9780544228016	225.00	\$7.99	30.00%	\$1,258.43
Grade 1 Module 2 Me . . . Jane	9780316045469	113.00	\$17.99	30.00%	\$1,423.01
Grade 1 Module 2 What Do You Do with a Tail Like This?	9780618997138	225.00	\$7.95	30.00%	\$1,252.13
Grade 1 Module 2 Sea Horse Read and Wonder: The Shyest Fish in the Sea	9780763641405	225.00	\$7.99	30.00%	\$1,258.43
Grade 1 Module 4 Cendrillon A Caribbean Cinderella	9780689848889	18.00	\$8.99	30.00%	\$113.27
Grade 1 Module 4 The Rough-Face Girl	9780698116269	18.00	\$8.99	30.00%	\$113.27
Grade 1 Module 4 Adelita A Mexican Cinderella Story	9780142401873	225.00	\$7.99	30.00%	\$1,258.43
Grade 1 Module 1 Tomas and the Library Lady	9780375803499	225.00	\$7.99	30.00%	\$1,258.43
Grade 1 Module 1 That Book Woman	9781416908128	225.00	\$17.99	30.00%	\$2,833.43
Grade 1 Module 1 Waiting for the Biblioburro	9781582463537	225.00	\$16.99	30.00%	\$2,675.93
Grade 1 Module 1 My Librarian Is a Camel	9781590780930	113.00	\$16.99	30.00%	\$1,343.91
Grade 1 Module 1 Green Eggs and Ham	9780394800165	450.00	\$9.99	30.00%	\$3,146.85
Grade 1 Module 2 Seven Blind Mice	9780698118959	225.00	\$7.99	30.00%	\$1,258.43

Grade 1 Module 4 Cinderella	9780689814747	225.00	\$7.99	30.00%	\$1,258.43
Grade 1 Module 4 A Glass Slipper, Gold Sandal: A Worldwide Cinderella	9780805079531	18.00	\$18.99	30.00%	\$239.27
Grade 1 Module 4 The Korean Cinderella	9780064433976	225.00	\$7.99	30.00%	\$1,258.43
Grade 2 Module 1 Sky Tree	9780064437509	216.00	\$7.99	30.00%	\$1,208.09
A Color of His Own	9780679887850	216.00	\$7.99	30.00%	\$1,208.09
Grade 2 Module 1 The Little Yellow Leaf	9780061452239	216.00	\$16.99	30.00%	\$2,568.89
Grade 2 Module 1 How Do You Know It's Fall?	9780531225752	216.00	\$5.95	30.00%	\$899.64
Grade 2 Module 2 The Story of Johnny Appleseed	9780671667467	216.00	\$7.99	30.00%	\$1,208.09
Grade 2 Module 2 John Henry: An American Legend An American Legend	9780394890524	432.00	\$7.99	30.00%	\$2,416.18
Grade 2 Module 2 Johnny Appleseed	9780688140250	16.00	\$7.99	30.00%	\$89.49
Grade 2 Module 1 Why Do Leaves Change Color?	9780062382016	216.00	\$6.99	30.00%	\$1,056.89
Grade 2 Module 4 The Digestive System	9780531207314	216.00	\$6.95	30.00%	\$1,050.84
Grade 2 Module 4 Good Enough to Eat A Kid's Guide to Food and Nutrition	9780064451741	216.00	\$7.99	30.00%	\$1,208.09
Grade 2 Module 4 The Vegetables We Eat	9780823421534	216.00	\$7.99	30.00%	\$1,208.09
Grade 2 Module 4 Stone Soup An Old Tale	9780689711039	216.00	\$7.99	30.00%	\$1,208.09
Grade 3 Module 3 The Keeping Quilt	9780689844478	135.00	\$7.99	30.00%	\$755.06
Grade 3 Module 3 Coming to America: The Story of Immigration	9780590441513	135.00	\$17.99	30.00%	\$1,700.06
Grade 3 Module 3 Grandfather's Journey	9780547076805	135.00	\$7.99	30.00%	\$755.06
Grade 3 Module 3 Tea With Milk	9780547237473	135.00	\$7.99	30.00%	\$755.06
Grade 3 Module 3 Family Pictures	9780892392070	9.00	\$10.95	30.00%	\$68.99
Grade 4 Module 2 SAS Survival Handbook	9780062378071	68.00	\$21.99	30.00%	\$1,046.72
Grade 5 Module 1 Thunder Rolling in the Mountains	9780547406282	442.00	\$7.99	30.00%	\$2,472.11
Grade 5 Module 2 The Phantom Tollbooth	9780394820378	210.00	\$7.99	30.00%	\$1,174.53
Grade 5 Module 3 The River Between Us	9780142403105	210.00	\$7.99	30.00%	\$1,174.53
Grade 5 Module 3 The Boys' War	9780395664124	105.00	\$11.99	30.00%	\$881.27
Grade 5 Module 4 We Are the Ship: The Story of Negro League Baseball	9780786808328	210.00	\$19.99	30.00%	\$2,938.53
Grade 6 Module 3 Blood on the River: James Town, 1607	9780142409329	432.00	\$7.99	30.00%	\$2,416.18
Grade 6 Module 4 Shipwreck at the Bottom of the World: The Extraordinary...	9780375810497	432.00	\$12.99	30.00%	\$3,928.18



Grade 6 Module 4 I Am Malala: How One Girl Stood Up...	9780316327916	432.00	\$10.99	30.00%	\$3,323.38
Grade 6 Module 1 Bud, Not Buddy	9780553494105	432.00	\$8.99	30.00%	\$2,718.58
Grade 6 Module 1 Out of the Dust	9780590371254	432.00	\$7.99	30.00%	\$2,416.18
Grade 6 Module 2 The Odyssey	9780763647919	432.00	\$19.99	30.00%	\$6,044.98
Grade 6 Module 2 Ramayana	9780811871075	432.00	\$29.95	30.00%	\$9,056.88
Grade 6 Module 3 Written in Bone: Buried Lives of Jamestown and Colonial Maryland	9780822571353	90.00	\$22.99	30.00%	\$1,448.37
Grade 7 Module 1 The Midwife's Apprentice	9781328631121	450.00	\$7.99	30.00%	\$2,516.85
Grade 7 Module 1 Castle Diary The Journal of Tobias Burgess	9780763621643	450.00	\$6.99	30.00%	\$2,201.85
Grade 7 Module 1 The Canterbury Tales	9780140380538	450.00	\$5.99	30.00%	\$1,886.85
Grade 7 Module 2 Code Talker	9780142405963	450.00	\$8.99	30.00%	\$2,831.85
Grade 7 Module 2 Farewell to Manzanar	9781328742117	450.00	\$9.99	30.00%	\$3,146.85
Grade 7 Module 3 Animal Farm	9780451526342	450.00	\$9.99	30.00%	\$3,146.85
Grade 7 Module 4 An American Plague: The True and Terrifying Story...	9780395776087	90.00	\$21.99	30.00%	\$1,385.37
Grade 8 Module 1 The Crossover	9780544935204	463.00	\$8.99	30.00%	\$2,913.66
Grade 8 Module 2 All Quiet on the Western Front	9780449213940	463.00	\$6.99	30.00%	\$2,265.46
Grade 8 Module 3 A Midsummer Night's Dream	9780743477543	463.00	\$5.99	30.00%	\$1,941.36
Grade 8 Module 4 Claudette Colvin: Twice Toward Justice	9780312661052	463.00	\$12.99	30.00%	\$4,210.06
Grade K Module 4 Asia	9780531292778	220.00	\$5.95	30.00%	\$916.30
Grade K Module 4 Europe	9780531292792	220.00	\$5.95	30.00%	\$916.30
Grade K Module 4 The Story of Ferdinand	9780448456942	20.00	\$4.99	30.00%	\$69.86
Grade K Module 4 South America	9780531292815	220.00	\$5.95	30.00%	\$916.30
Grade K Module 4 Barefoot Books World Atlas	9781846863332	110.00	\$19.99	30.00%	\$1,539.23
Grade K Module 4 Introducing North America	9781432980511	220.00	\$8.95	30.00%	\$1,378.30
Grade K Module 4 Why Mosquitoes Buzz in People's Ears: A West African Tale	9780140549058	20.00	\$7.99	30.00%	\$111.86
Grade K Module 4 Moon Rope	9780152017026	20.00	\$7.99	30.00%	\$111.86
Grade K Module 1 Chicka Chicka Boom Boom	9780689835681	220.00	\$8.99	30.00%	\$1,384.46
Grade K Module 1 Last Stop on Market Street	9780399257742	20.00	\$17.99	30.00%	\$251.86
Grade K Module 1 My Five Senses	9780062381927	220.00	\$6.99	30.00%	\$1,076.46
Grade K Module 1 My Five Senses - Paperback	9780689820090	220.00	\$7.99	30.00%	\$1,230.46
Grade K Module 1 Rap a Tap Tap: Here's Bojangles - Think of That!	9780590478830	220.00	\$17.99	30.00%	\$2,770.46
Grade K Module 2 Farm Animals	9780545099936	220.00	\$3.99	30.00%	\$614.46

Grade K Module 2 The Little Red Hen - Library Binding	9780803729353	220.00	\$17.99	30.00%	\$2,770.46
Grade K Module 2 The Three Billy Goats Gruff	9780899190358	220.00	\$7.99	30.00%	\$1,230.46
Grade K Module 2 Three Little Pigs - Board Book	9780060082369	220.00	\$6.99	30.00%	\$1,076.46
Grade K Module 2 The Year At Maple Hill Farm - Board Book	9780689845000	220.00	\$8.99	30.00%	\$1,384.46
Grade K Module 3 Home Then and Now	9780822546436	110.00	\$6.99	30.00%	\$538.23

PhD Science - Print	ISBN	Quantity	List Price	Discount	Total Price
Grade Multiple					
Grade 2 Module 2 The Buffalo are Back	9780525422150	108.00	\$17.99	30.00%	\$1,360.04

Print \$259,562.99

Solution Subtotal	\$259,562.99
Discount	(\$77,868.90)
Shipping and Handling	\$25,956.44
Estimated Sales Tax	\$0.00
Estimated S&H Tax	\$0.00
<b>Total Solution:</b>	<b>\$207,650.53</b>

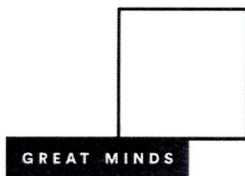
#### Great Minds Policies

**Returns:** Returned items must be received within 45 days of receipt. Returned items will incur a \$50 return fee and 10% restocking fee. Damaged items will not be credited. A completed return authorization will be required for processing.

**Reporting Missing/Damaged Materials:** Please carefully review your shipment upon arrival. We will be glad to resolve any order discrepancies within 10 business days of receipt. Please report any discrepancies to Great Minds Customer Success via [info@greatminds.org](mailto:info@greatminds.org). Any missing or damaged items reported after 10 days will be the responsibility of the customer to replace.

- 1) **Applicability.**  
a) These terms and conditions of sale (these "Terms") govern the sale of goods ("Goods") and the performance of all services ("Services") by Great Minds PBC or any affiliate identified on the Sales Confirmation (as this and all capitalized terms are defined herein) ("Seller", to the purchaser ("Customer").  
b) An accompanying invoice, statement of work, and/or price quote (the "Sales Confirmation" and these Terms (collectively, this "Agreement") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Customer's general terms and conditions of purchase regardless whether or when Customer has submitted its purchase order or such terms. Fulfillment of Customer's order does not constitute acceptance of any of Customer's terms and conditions and does not serve to modify or amend these Terms.  
c) Customer accepts these Terms by making a purchase from or placing an order with Seller or otherwise requesting Goods or engaging Seller to perform or procure any Services. By accepting delivery of the Goods or by engaging the Seller to provide any Services, Customer agrees to be bound by and accepts these Terms unless Customer and Seller have signed a separate agreement, in which case the separate agreement will govern.  
d) The terms and conditions set forth at <https://greatminds.org/digital-terms-conditions> shall apply with respect to Services made available electronically or digitally ("Digital Services") and Customer agrees to the terms set forth therein.
- 2) **Delivery of Goods.**  
a) Goods will be delivered within a reasonable time after the receipt of Customer's purchase order, subject to availability of finished Goods. Seller shall not be liable for any delays, loss or damage in transit.  
b) Unless otherwise agreed in writing by the parties, Seller shall deliver the Goods to Seller's fulfillment location (the "Delivery Point") using Seller's standard methods for packaging and shipping such Goods. Customer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point.  
c) Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Customer. Each shipment will constitute a separate sale, and Customer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Customer's purchase order.  
d) If for any reason Customer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller's notice that the Goods have been delivered at the Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Customer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Customer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Customer picks them up, whereupon Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 3) **Non-Delivery.**  
a) The quantity of any installment of Goods as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Customer on delivery unless Customer can provide conclusive evidence proving the contrary.  
b) The Seller shall not be liable for any non-delivery of Goods (even if caused by Seller's negligence) unless Customer gives written notice to Seller of the non-delivery within five days of the date when the Goods would in the ordinary course of events have been received.  
c) Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.
- 4) **Shipping Terms.** Delivery shall be made FOB Seller.
- 5) **Title and Risk of Loss.** Title and risk of loss passes to Customer upon delivery of the Goods at the Delivery Point.
- 6) **Amendment and Modification.** These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.
- 7) **Inspection and Rejection of Nonconforming Goods.**  
a) Customer shall inspect the Goods within 5 days of receipt ("Inspection Period"). Customer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. "Nonconforming Goods" means only the following: (i) product shipped is different than identified in Customer's purchase order; or (ii) product's label or packaging incorrectly identifies its contents.  
b) If Customer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Customer in connection therewith. Customer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller's facility. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Customer's shipment of Nonconforming Goods, ship to Customer, at Customer's expense and risk of loss, the replaced Goods to the Delivery Point.  
c) Customer acknowledges and agrees that the remedies set forth in Section (b) are Customer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 7(b), all sales of Goods to Customer are made on a one-way basis and Customer has no right to return Goods purchased under this Agreement to Seller.
- 8) **Services.**  
a) Customer may order services from or through Seller from time to time.  
b) Where Services are ordered in a statement of work ("SOW"), each SOW hereby incorporates these Terms and constitutes a separate agreement with respect to the Services performed, Seller, or any of its affiliates on behalf of Seller, may execute a SOW. In the event of an addition to or conflict between any term or condition of a SOW and these Terms, these Terms will control, except as expressly amended in the applicable SOW by specific reference to this Agreement. Each such amendment will be applicable only with respect to such SOW and not to any future SOW. Changes to the scope of the Services described in a SOW will be made only in a writing executed by authorized representatives of both parties. Seller will have no obligation to commence work in connection with any such change, unless and until the change is agreed upon in that writing executed by both parties. All such changes to the scope of the Services will be governed by these Terms and the applicable SOW. Each SOW may be signed in separate counterparts each of which shall be deemed an original and all of which together will be deemed to be one original.
- 9) **Intellectual Property.** All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "Intellectual Property Rights") in and to all documents, work product, and other materials that are delivered to Customer under this Agreement or prepared by or on behalf of Seller in the course of delivering the Goods or performing the Services, including any items identified as such in the Order Confirmation (collectively, the "Deliverables") except for any Customer materials shall be owned by Seller. Seller hereby grants Customer a license to use all Intellectual Property Rights free of additional charge and on a non-exclusive, worldwide, non-transferable, non-sublicensable, fully paid-up, royalty-free, and perpetual basis to the extent necessary to enable Customer to make reasonable use of the Goods, the Deliverables and the Services.
- 10) **Price.**  
a) Customer shall purchase the Goods or Services, as applicable, from Seller at the price (the "Price") set forth in the Agreement.  
b) All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any Governmental Authority on any amounts payable by Customer. Customer shall be responsible for all such charges, costs and taxes; provided, that, Customer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.
- 11) **Payment Terms.**  
a) Customer shall pay all invoiced amounts due to Seller within 30 days from the date of Seller's invoice. Customer shall make all payments hereunder by wire transfer and in US dollars.  
b) Customer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Customer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Customer fails to pay any amounts when due hereunder and such failure continues for 30 days following written notice thereof.  
c) Customer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.
- 12) **Limited Warranty.**  
a) Seller warrants to Customer that on the date of shipment of any Goods such Goods will materially conform to the specifications set forth in the Sales Confirmation and will be free from material defects in material and workmanship.  
b) Seller warrants to Customer that it shall perform any Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement.  
c) SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS OR SERVICES, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.  
d) Seller shall not be liable for a breach of the warranty set forth in Section 12(a) or Section 12(b) unless: (i) Customer gives written notice of the defect, reasonably described, to Seller within 10 days of the time when Customer discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Goods and Customer (if requested to do so by Seller) returns such Goods to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Customer's claim that the Goods are defective.  
e) The Seller shall not be liable for a breach of the warranty set forth in Section 12(a) if: (i) Customer makes any further use of such Goods after giving such notice; (ii) the defect arises because Customer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) Customer alters or repairs such Goods without the prior written consent of Seller.  
f) Subject to Section 12(d) and Section 12(e) above, Seller shall, in its sole discretion, either: (a) use its reasonable commercial efforts to reperform or cause to be reperformed any Services not in substantial compliance with these warranties, (c) repair or replace such Goods (or the defective part), or (c) refund amounts paid by Customer related to the portion of the Goods or Services not in substantial compliance, as applicable; provided, in each case, that, if Seller so requests, Customer shall, at Seller's expense, return any such Goods to Seller.  
g) THE REMEDIES SET FORTH IN SECTION 12(f) SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 12(a) OR SECTION 12(b).
- 13) **Limitation of Liability.**  
a) IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.  
b) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER.  
c) The limitation of liability set forth in Section 13(b) above shall not apply to (i) liability resulting from Seller's gross negligence or willful misconduct and (ii) death or bodily injury resulting from Seller's acts or omissions.
- 14) **Waiver.** No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
- 15) **Force Majeure.** The Seller shall not be liable or responsible to Customer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockdowns, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.
- 16) **Assignment.** Customer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Customer of any of its obligations under this Agreement.
- 17) **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement 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.
- 18) **No Third-Party Beneficiaries.** 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 or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.
- 19) **Governing Law.**  
a) The construction and validity of these Terms shall be governed by the laws of the state where Customer is located, without giving effect to its conflict of laws rules, regardless of where any order was placed or filed, the place of performance of the Services or delivery of reports, or where any other act or performance occurred.  
b) All Services provided by Seller shall be deemed to be provided in the state where the Customer is located. Customer agrees to the exclusive jurisdiction of the federal and state courts located in the state where the Customer is located, with respect to the adjudication of any dispute arising out of or in connection with the provision of the Services or these Terms.
- 20) **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 the Sales Confirmation 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), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, 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.
- 21) **Severability.** If any term or provision of this Agreement 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.





## Great Minds Quote

Date	April 28, 2021	Quote Number	00155888
Expiration Date		Contact Name	Rachel Crider
Prepared By	Wendy Zuber	Phone	(606) 886-2354
Email	wendy.zuber@greatminds.org	Email	rachel.crider@floyd.kyschools.us
Bill to Name	Floyd County School District	Ship to Name	Floyd County School District
Bill To	106 North Front Avenue	Ship To	106 N FRONT AVE
	Prestonsburg, KY 41653		PRESTONSBURG, KY 41653

### Make payment to:

Great Minds PBC Tax ID: 84-3785772

### Mail payment to:

Great Minds PBC  
P.O. Box 200283  
Pittsburgh, PA 15251-0283

**Phone:** 202.223.1854

**Email:** ordertracking@greatminds.org

Wit and Wisdom - Print	ISBN	Quantity	List Price	Discount	Total Price
Grade K					
Wit & Wisdom Grade K Student Edition Set (Modules 1-4; Books #1-4)	978-1-68386-609-1	1332.00	\$20.58	17.00%	\$22,752.42
Wit & Wisdom Grade K Teacher Edition Set (Books #1-4; Modules 1-4)	978-1-68386-600-8	20.00	\$196.17	57.00%	\$1,687.06
Grade 1					
Wit & Wisdom Grade 1 Teacher Edition Set (Books #1-4; Modules 1-4)	978-1-68386-601-5	18.00	\$196.17	57.00%	\$1,518.36
Wit & Wisdom Grade 1 Student Edition Set (Modules 1-4; Books #1-4)	978-1-68386-610-7	1389.00	\$20.58	17.00%	\$23,726.06
Grade 2					
Wit & Wisdom Grade 2 Teacher Edition Set (Books #1-4; Modules 1-4)	978-1-68386-602-2	16.00	\$196.17	57.00%	\$1,349.65

Wit & Wisdom Grade 2 Student Edition Set (Modules 1-4; Books #1-4)	978-1-68386-611-4	1314.00	\$20.58	17.00%	\$22,444.96
Grade 3					
Wit & Wisdom Grade 3 Teacher Edition Set (Books #1-4; Modules 1-4)	978-1-68386-603-9	9.00	\$196.17	57.00%	\$759.18
Wit & Wisdom Grade 3 Student Edition Set (Modules 1-4; Books #1-4)	978-1-68386-612-1	1302.00	\$20.58	17.00%	\$22,239.98
Grade 4					
Wit & Wisdom Grade 4 Teacher Edition Set (Books #1-4; Modules 1-4)	978-1-63255-157-3	9.00	\$196.17	57.00%	\$759.18
Wit & Wisdom Grade 4 Student Edition Set (Modules 1-4; Books #1-4)	978-1-68386-613-8	1230.00	\$20.58	17.00%	\$21,010.12
Grade 5					
Wit & Wisdom Grade 5 Teacher Edition Set (Books #1-4; Modules 1-4)	978-1-68386-605-3	7.00	\$196.17	57.00%	\$590.47
Wit & Wisdom Grade 5 Student Edition Set (Modules 1-4; Books #1-4)	978-1-68386-614-5	1326.00	\$20.58	17.00%	\$22,649.94
Grade 6					
Wit & Wisdom Grade 6 Student Edition Set (Modules 1-4; Books #1-4)	978-1-68386-615-2	1296.00	\$20.58	17.00%	\$22,137.49
Wit & Wisdom Grade 6 Teacher Edition Set (Books #1-4; Modules 1-4)	978-1-68386-606-0	6.00	\$196.17	57.00%	\$506.12
Grade 7					
Wit & Wisdom Grade 7 Student Edition Set (Modules 1-4; Books #1-4)	978-1-68386-616-9	1350.00	\$20.58	17.00%	\$23,059.89
Wit & Wisdom Grade 7 Teacher Edition Set (Books #1-4; Modules 1-4)	978-1-68386-607-7	6.00	\$196.17	57.00%	\$506.12
Grade 8					
Wit & Wisdom Grade 8 Student Edition Set (Modules 1-4; Books #1-4)	978-1-68386-617-6	1389.00	\$20.58	17.00%	\$23,726.06
Wit & Wisdom Grade 8 Teacher Edition Set (Books #1-4; Modules 1-4)	978-1-68386-608-4	6.00	\$196.17	57.00%	\$506.12

Discounts are contingent upon product configuration and volume. Any changes the quantity of products and the configuration of products purchased could affect discount pricing.

Wit and Wisdom - Online	ISBN	Quantity	List Price	Discount	Total Price
-------------------------	------	----------	------------	----------	-------------



Grade 1					
Wit & Wisdom Grade 1 Digital Teacher Edition--Modules 1-4	978-1-68386-901-6	54.00	\$190.00	54.90%	\$4,627.26
Grade 2					
Wit & Wisdom Grade 2 Digital Teacher Edition--Modules 1-4	978-1-68386-902-3	48.00	\$190.00	54.90%	\$4,113.12
Grade 3					
Wit & Wisdom Grade 3 Digital Teacher Edition--Modules 1-4	978-1-68386-903-0	27.00	\$190.00	54.90%	\$2,313.63
Grade 4					
Wit & Wisdom Grade 4 Digital Teacher Edition--Modules 1-4	978-1-68386-904-7	27.00	\$190.00	54.90%	\$2,313.63
Grade 5					
Wit & Wisdom Grade 5 Digital Teacher Edition--Modules 1-4	978-1-68386-905-4	21.00	\$190.00	54.90%	\$1,799.49
Grade 7					
Wit & Wisdom Grade 6 Digital Teacher Edition--Modules 1-4	978-1-68386-906-1	18.00	\$190.00	54.90%	\$1,542.42
Grade 8					
Wit & Wisdom Grade 7 Digital Teacher Edition--Modules 1-4	978-1-68386-907-8	18.00	\$190.00	54.90%	\$1,542.42
Grade Multiple					
Wit & Wisdom in Sync License (Print/Digital School Yr)	GM-01288	11928.00	\$10.00	37.00%	\$75,146.40
Wit & Wisdom Grade 8 Digital Teacher Edition--Modules 1-4	978-1-68386-908-5	18.00	\$190.00	54.90%	\$1,542.42
Wit & Wisdom Affirm License (School Yr)	GM-01118	11928.00	\$7.00	21.29%	\$65,719.70
Wit & Wisdom Kindergarten Digital Teacher Edition--Modules 1-4	978-1-68386-900-9	60.00	\$190.00	54.90%	\$5,141.40

Discounts are contingent upon product configuration and volume. Any changes the quantity of products and the configuration of products purchased could affect discount pricing.

Print	\$264,506.73
Online	\$258,066.00

Solution Subtotal	\$522,572.73
Discount	(\$144,841.65)
Shipping and Handling	\$18,515.47
Estimated Sales Tax	\$0.00
Estimated S&H Tax	\$0.00
<b>Total Solution:</b>	<b>\$396,246.55</b>

#### Great Minds Policies

**Returns:** Returned items must be received within 45 days of receipt. Returned items will incur a \$50 return fee and 10% restocking fee. Damaged items will not be credited. A completed return authorization will be required for processing.



**Reporting Missing/Damaged Materials:** Please carefully review your shipment upon arrival. We will be glad to resolve any order discrepancies within 10 business days of receipt. Please report any discrepancies to Great Minds Customer Success via [info@greatminds.org](mailto:info@greatminds.org). Any missing or damaged items reported after 10 days will be the responsibility of the customer to replace.

- 1) **Applicability.**
- a) These terms and conditions of sale (these "Terms") govern the sale of goods ("Goods") and the performance of all services ("Services") by Great Minds PBC or any affiliate identified on the Sales Confirmation (as this and all capitalized terms are defined herein) ("Seller"), to the purchaser ("Customer").
- b) An accompanying invoice, statement of work, and/or price quote (the "Sales Confirmation" and these Terms (collectively, this "Agreement") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Customer's general terms and conditions of purchase regardless whether or when Customer has submitted its purchase order or such terms. Fulfillment of Customer's order does not constitute acceptance of any of Customer's terms and conditions and does not serve to modify or amend these Terms.
- c) Customer accepts these Terms by making a purchase from or placing an order with Seller or otherwise requesting Goods or engaging Seller to perform or procure any Services. By accepting delivery of the Goods or by engaging the Seller to provide any Services, Customer agrees to be bound by and accepts these Terms unless Customer and Seller have signed a separate agreement, in which case the separate agreement will govern.
- d) The terms and conditions set forth at <https://greatminds.org/digital-terms-conditions> shall apply with respect to Services made available electronically or digitally ("Digital Services") and Customer agrees to the terms set forth therein.
- 2) **Delivery of Goods.**
- a) Goods will be delivered within a reasonable time after the receipt of Customer's purchase order, subject to availability of finished Goods. Seller shall not be liable for any delays, loss or damage in transit.
- b) Unless otherwise agreed in writing by the parties, Seller shall deliver the Goods to Seller's fulfillment location (the "Delivery Point") using Seller's standard methods for packaging and shipping such Goods. Customer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point.
- c) Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Customer. Each shipment will constitute a separate sale, and Customer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Customer's purchase order.
- d) If for any reason Customer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller's notice that the Goods have been delivered at the Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Customer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Customer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Customer picks them up, whereupon Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 3) **Non-Delivery.**
- a) The quantity of any installment of Goods as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Customer on delivery unless Customer can provide conclusive evidence proving the contrary.
- b) The Seller shall not be liable for any non-delivery of Goods (even if caused by Seller's negligence) unless Customer gives written notice to Seller of the non-delivery within five days of the date when the Goods would in the ordinary course of events have been received.
- c) Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.
- 4) **Shipping Terms.** Delivery shall be made FOB Seller.
- 5) **Title and Risk of Loss.** Title and risk of loss passes to Customer upon delivery of the Goods at the Delivery Point.
- 6) **Amendment and Modification.** These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.
- 7) **Inspection and Rejection of Nonconforming Goods.**
- a) Customer shall inspect the Goods within 5 days of receipt ("Inspection Period"). Customer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. "Nonconforming Goods" means only the following: (i) product shipped is different than identified in Customer's purchase order; or (ii) product's label or packaging incorrectly identifies its contents.
- b) If Customer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Customer in connection therewith. Customer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller's facility. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Customer's shipment of Nonconforming Goods, ship to Customer, at Customer's expense and risk of loss, the replaced Goods to the Delivery Point.
- c) Customer acknowledges and agrees that the remedies set forth in Section (b) are Customer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 7(b), all sales of Goods to Customer are made on a one-way basis and Customer has no right to return Goods purchased under this Agreement to Seller.
- 8) **Services.**
- a) Customer may order services from or through Seller from time to time.
- b) Where Services are ordered in a statement of work ("SOW"), each SOW hereby incorporates these Terms and constitutes a separate agreement with respect to the Services performed, Seller, or any of its affiliates on behalf of Seller, may execute a SOW. In the event of an addition to or a conflict between any term or condition of a SOW and these Terms, these Terms will control, except as expressly amended in the applicable SOW by specific reference to this Agreement. Each such amendment will be applicable only with respect to such SOW and not to any future SOW. Changes to the scope of the Services described in a SOW will be made only in a writing executed by authorized representatives of both parties. Seller will have no obligation to commence work in connection with any such change, unless and until the change is agreed upon in that writing executed by both parties. All such changes to the scope of the Services will be governed by these Terms and the applicable SOW. Each SOW may be signed in separate counterparts each of which shall be deemed an original and all of which together will be deemed to be one original.
- 9) **Intellectual Property.** All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "Intellectual Property Rights") in and to all documents, work product, and other materials that are delivered to Customer under this Agreement or prepared by or on behalf of Seller in the course of delivering the Goods or performing the Services, including any items identified as such in the Order Confirmation (collectively, the "Deliverables") except for any Customer materials shall be owned by Seller. Seller hereby grants Customer a license to use all Intellectual Property Rights free of additional charge and on a non-exclusive, worldwide, non-transferable, non-sublicensable, fully paid-up, royalty-free, and perpetual basis to the extent necessary to enable Customer to make reasonable use of the Goods, the Deliverables and the Services.
- 10) **Price.**
- a) Customer shall purchase the Goods or Services, as applicable, from Seller at the price (the "Price") set forth in the Agreement
- b) All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any Governmental Authority on any amounts payable by Customer. Customer shall be responsible for all such charges, costs and taxes; provided, that, Customer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.
- 11) **Payment Terms.**
- a) Customer shall pay all invoiced amounts due to Seller within 30 days from the date of Seller's invoice. Customer shall make all payments hereunder by wire transfer and in US dollars.
- b) Customer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Customer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Customer fails to pay any amounts when due hereunder and such failure continues for 30 days following written notice thereof.
- c) Customer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.
- 12) **Limited Warranty.**
- a) Seller warrants to Customer that on the date of shipment of any Goods such Goods will materially conform to the specifications set forth in the Sales Confirmation and will be free from material defects in material and workmanship.
- b) Seller warrants to Customer that it shall perform any Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement.
- c) **SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS OR SERVICES, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**
- d) Seller shall not be liable for a breach of the warranty set forth in Section 12(a) or Section 12(b) unless: (i) Customer gives written notice of the defect, reasonably described, to Seller within 10 days of the time when Customer discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Goods and Customer (if requested to do so by Seller) returns such Goods to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Customer's claim that the Goods are defective.
- e) The Seller shall not be liable for a breach of the warranty set forth in Section 12(a) if: (i) Customer makes any further use of such Goods after giving such notice; (ii) the defect arises because Customer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) Customer alters or repairs such Goods without the prior written consent of Seller.
- f) Subject to Section 12(d) and Section 12(e) above, Seller shall, in its sole discretion, either: (a) use its reasonable commercial efforts to reperform or cause to be reperformed any Services not in substantial compliance with these warranties, (c) repair or replace such Goods (or the defective part), or (c) refund amounts paid by Customer related to the portion of the Goods or Services not in substantial compliance, as applicable; provided, in each case, that, if Seller so requests, Customer shall, at Seller's expense, return any such Goods to Seller
- g) **THE REMEDIES SET FORTH IN SECTION 12(f) SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 12(a) OR SECTION 12(b).**
- 13) **Limitation of Liability.**
- a) **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**
- b) **IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER.**
- c) The limitation of liability set forth in Section 13(b) above shall not apply to (i) liability resulting from Seller's gross negligence or willful misconduct and (ii) death or bodily injury resulting from Seller's acts or omissions.
- 14) **Waiver.** No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
- 15) **Force Majeure.** The Seller shall not be liable or responsible to Customer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockdowns, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.
- 16) **Assignment.** Customer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Customer of any of its obligations under this Agreement.
- 17) **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement 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.
- 18) **No Third-Party Beneficiaries.** 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 or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.
- 19) **Governing Law.**
- a) The construction and validity of these Terms shall be governed by the laws of the state where Customer is located, without giving effect to its conflict of laws rules, regardless of where any order was placed or filed, the place of performance of the Services or delivery of reports, or where any other act or performance occurred.
- b) All Services provided by Seller shall be deemed to be provided in the state where the Customer is located. Customer agrees to the exclusive jurisdiction of the federal and state courts located in the state where the Customer is located, with respect to the adjudication of any dispute arising out of or in connection with the provision of the Services or these Terms
- 20) **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 the Sales Confirmation 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), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, 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.
- 21) **Severability.** If any term or provision of this Agreement 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.