

**VITALSOURCE TECHNOLOGIES LLC
BULK ORDERS PURCHASE AGREEMENT**

This Bulk Orders Purchase Agreement (“**Agreement**”) is made and entered as of this ____ day of ____ 20__ (“**Effective Date**”) by and between VitalSource Technologies LLC (“**VST**”) and _____ (“**Institution**”). VST and Institution are each sometimes referred to as “**Party**” and together as the “**Parties**”.

1 DEFINITIONS

- 1.1 Connect Platform.** VST’s system used to manage and distribute Publisher’s Digital Content.
- 1.2 eTextbook.** Electronic version of a textbook or parts of a textbook or similar content that the Customer has obtained the rights to make available to its students.
- 1.3 eResource.** Proprietary product other than eTextbook, such as software (labs, assessments, course cartridges) or options to purchase print copies of eTextbooks.
- 1.4 Code.** Unique string of characters (the “Code”) that provides the student with access to the eTextbook or eResource once the code has been redeemed in Bookshelf.
- 1.5 System User.** Institution representative who has been given Connect training and access to Connect.
- 1.6 Terms and Conditions of Use.** The terms and conditions to which all uses of the VST platforms, Asset(s) and Product(s) accessed through the VST platforms are subject. Terms and conditions are maintained at [Legal section of the VitalSource support site.](#)

2 THE SERVICE

VST hereby agrees to sell Codes for eTextbooks and eResources to the Institution, and the Institution hereby agrees to purchase such Codes from VST, either through VST’s Connect Platform or through Institution’s submission of a Bulk Order Form (the “**Service**”).

Once this Bulk Orders Purchase Agreement has been executed and until it has terminated, Institution may submit Bulk Order Forms through VST’s Connect platform or via email to VST from time to time. Bulk Order Forms are subject to acceptance by VST in its sole discretion.

VST has the right to withdraw or remove any features of the Service at any time, and without prior notice to the Institution or User, with or without refunds or price adjustments, at VST’s sole discretion.

Access to and use of the Service is subject to the terms of this Agreement.

3 TERMS AND CONDITIONS OF USE

All Users of the Service, eTextbooks, and eResources will be required to agree to VST’s Terms and Conditions of Use. Notwithstanding the foregoing, Institution shall use its best efforts to inform each User of the restrictions applicable to use of the Service and shall enforce each User’s compliance, by means that include, without limitation, making appropriate electronic postings of the current Terms and Conditions of Use and by implementing appropriate security measures.

4 GRANT OF RIGHTS

The rights granted to Institution pursuant to this Agreement are non-exclusive and non-transferable. Except as expressly permitted by this Agreement, no part of any eTextbook or eResource may be stored, reproduced, or transmitted in any form and/or by any means without the express prior written permission of the Publisher of the eTextbook or eResource. Redistribution or other use that violates the Fair Use privilege under the U.S. copyright laws (see 17 USC Section 107, “U.S. Fair Use”) or that violates this Agreement or VST’s EULA is strictly prohibited. VST reserves all rights under applicable state and federal laws with respect to any such violations, including without limitation, laws prohibiting copyright infringement and providing remedies for breach of contract.

5 NON-WAIVER

No delay, omission, or failure of either Party to exercise or enforce any of its rights stated in this Agreement will act as a waiver of such rights.

6 TERMS OF PAYMENT

6.1 Invoices. VST will send an invoice to the Institution at the end of each week for any billable activity during that week. All payments (including without limitation all fees and applicable taxes) shall be due and payable within thirty (30) days of the date of the invoice. VST may apply a service charge to any unpaid balance at the rate of one and one half percent (1.5%) per month (but in no event more than the maximum allowed by law) for any amount not timely paid.

6.2 Returns. Within thirty (30) days of purchase, Institution may return any unused (unredeemed) redemption codes to VST via email at sm-orders@ingramcontent.com. Institution account will receive a credit for the amount of the purchase.

6.3 Currency. All obligations in this Agreement involving the payment of money shall be conducted in the currency of the United States of America.

7 TERMINATION

Either Party may terminate this Agreement upon written notice if (i) the other party breaches any term or condition set forth in the executed Agreement, and (ii) the breaching Party fails to cure such breach within thirty (30) days of receiving written notice thereof. In the event that Institution, whether knowingly or otherwise, materially breaches the terms set forth in this Agreement by allowing or enabling access or use of eTextbooks or eResources by persons not contemplated hereunder or if a User or professor or instructor breaches the VST EULA, VST may, at its sole discretion, immediately terminate this Agreement without any requirement to provide notice to Institution. In the event that VST terminates this Agreement for cause, all amounts payable by Institution to VST shall become immediately due. In the event that Institution terminates this Agreement for cause, VST shall refund to Institution the pro rata balance of any prepaid fees from the date of termination through the end of the term. Upon termination or expiration of this Agreement for any reason, the rights granted to Institution hereunder shall automatically terminate.

8 NOTICES

Except as otherwise provided herein, all written notices referred to in this Agreement must be sent by courier, overnight delivery service, or certified mail to

[Institution]:

VST:
 Legal Department
 Vital Source Technologies, Inc.
 One Ingram Blvd.
 La Vergne, TN 37086

9 GOVERNING LAW AND VENUE

Any disputes between the Parties shall be governed by the internal substantive laws of the State of Tennessee, without regard to its conflicts of law provisions, and the laws of the United States. Any dispute arising under this Agreement shall be heard by a state or federal court of competent jurisdiction in Davidson County, Tennessee. The Parties agree to waive any challenge to jurisdiction and/or venue.

10 WARRANTY DISCLAIMER; LIMITATION OF LIABILITY; REPRESENTATIONS

THE SERVICE, ETEXTBOOKS AND ERESOURCES ARE PROVIDED BY THE PARTIES "AS IS" WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE, ACCURACY, OMISSIONS, COMPLETENESS OR DELAYS, OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. INSTITUTION HEREBY ACKNOWLEDGES THAT USE OF THE SERVICE IS ENTIRELY AT INSTITUTION'S OWN RISK.

SOME JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OF IMPLIED WARRANTIES. IN SUCH JURISDICTIONS, THE AFOREMENTIONED DISCLAIMERS RELATED TO IMPLIED WARRANTIES MAY NOT APPLY TO YOU.

INSTITUTION'S SOLE REMEDY SHALL BE LIMITED TO THE RETURN OF THE FEES ACTUALLY PAID TO VITAL SOURCE PURSUANT TO A PARTICULAR ORDER FORM, AND THOSE FEES SHALL BE THE MAXIMUM LIABILITY OF VITAL SOURCE HEREUNDER. IN NO EVENT SHALL VITAL SOURCE BE SUBJECT TO ANY CLAIM FOR INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING

OUT OF THIS AGREEMENT, OR THE USE OF THE SERVICE, OR THE CONTENTS OF ANY BOOK INCLUDED IN THE SERVICE, WHETHER OR NOT VITAL SOURCE KNEW OR WAS INFORMED IN ADVANCE OF THE LIKELIHOOD OF SUCH DAMAGES.

10.1 Authority. Institution has taken all action necessary for the authorization, execution and delivery of this Bulk Orders Purchase Agreement and for the performance of all obligations of it under this Agreement. This Agreement, when executed and delivered by the Institution, shall constitute a valid and binding obligation of Institution, enforceable against the Institution in accordance with its terms. The execution, delivery and performance of this Agreement will not violate, be in conflict with or constitute, with or without the passage of time and giving of notice, either a default under any instrument, judgment, order, decree or contract to which Institution is a party or by which it is bound, or any provision of federal or state statute, rule or regulation applicable to Institution.

10.2 Institution eTextbooks and eResources. (i) Institution represents that they have obtained the rights to make eTextbooks and eResources available to its students pursuant to the terms of this Agreement. (ii) Institution will not, and will not permit others (including Users) to use “Web spiders” or any other automated retrieval mechanisms in any manner in connection with the Service or any content accessed via the Service, including without limitation use to assist in downloading or printing content. (iii) The content of the eTextbooks and eResources in the Service is protected by copyrights, trademarks, and other proprietary rights and that these rights are and will be valid and applicable to all forms, media and technologies existing now or hereinafter developed. (iv) Institution will not, and will not permit others (including Users) to modify, remove, delete, augment, add to, publish, transmit, participate in the transfer or sale of, create derivative works from, or in any way exploit any of the content of the books accessed via the Service, in whole or in part, except as provided in this Agreement, or as permitted under U.S. Fair Use. (v) Institution will not, and will not permit others (including Users) to post any content accessed via the Service to any third party website, or provide such content to others by any other means, such as blogs or RSS feeds, except as specifically authorized by this Agreement or as permitted under U.S. Fair Use. (vi) Institution will notify VST immediately of any known or suspected unauthorized use(s) of the Service, or any known or suspected breach of security, including loss, theft, or unauthorized disclosure of password information that may allow unauthorized use of the Service, eTextbooks or eResources.

10.3 Remedies. Due to the difficulty of calculating actual damages in the event of unauthorized use of the content, any breach of the terms of this Agreement shall result in Institution paying to VST, as liquidated damages, two (2) times the purchase price.

11 ASSIGNMENT

Institution will not assign, license, or otherwise transfer to any third parties, any of its rights, in whole or in part, under this Agreement, and will not permit others (including Users) to do so.

12 AUDIT

VST shall have the right, upon ten (10) days notice, to conduct an audit on Institution’s premises, during normal business hours, to ensure compliance with the terms set forth in this Agreement.

13 FORCE MAJEURE

VST’s performance may be subject to delay and interruption due to causes beyond its control, such as acts of God, power failure, acts of terrorism, natural disasters such as earthquakes and fire, equipment failure and the like.

14 ENTIRETY

This Agreement including all exhibits, schedules and addenda attached hereto, supersedes all other agreements, warranties or representations with regard to the eTextbook and eResources. Sales personnel are not authorized to make any new or changed warranties, either written or oral. This Agreement may only be amended by a written document signed by both VST and Institution. A User’s access to the Service is strictly limited to the period of time that the User is a student of Institution, or is otherwise qualified to be a User by virtue of his or her relationship with Institution. VST may, at its sole discretion, terminate or suspend Institution’s (or any User’s) access to all or part of the Service for cause, including, without limitation, actual or alleged violation of this Agreement, violation of the intellectual property rights of the publishers in any book’s content, fraud, or unauthorized transfer of any rights licensed to Institution under this Agreement. Upon termination, for any reason, Institution shall immediately cease using the Service and shall delete all content accessed via the Service residing on any hard drive or other storage device.

15 SIGNATURES

By completing the fields in the signature blocks below, the Parties represent and warrant that they have the legal right, power, and authority to entire into this Agreement and agree to be bound by the terms of the Agreement.

VITALSOURCE TECHNOLOGIES LLC:

[INSTITUTION NAME]:

Signature: _____

Signature: _____

Name: _____
(print)

Name: _____
(print)

Title: _____

Title: _____

Date: _____

Date: _____