

**SALES AGREEMENT**  
**between Contra Costa County and QUMPUS, INC., d/b/a Better World Books**

THIS SALES AGREEMENT (the "Agreement") is effective as of April 1, 2020 (the "Effective Date") between Contra Costa County, a political subdivision of the State of California located at 777 Arnold Dr #210, Martinez, CA 94553 (hereinafter referred to as "Seller") and Qumpus, Inc., d/b/a Better World Books, a Georgia corporation, with a mailing address of 55740 Currant Rd, Mishawaka, IN 46545 (hereinafter referred to as "BWB" and "Purchaser") (respectively as the "Party" and collectively as the "Parties").

**RECITALS**

WHEREAS, BWB is engaged in the business of acquiring, collecting, transporting, and selling large volumes of previously owned books and materials (hereinafter "Surplus Books," "books" or "materials"), and generating income for, including but not limited to, libraries, colleges and universities, student groups, booksellers, and others, as well as for literacy and education causes around the world;

WHEREAS, Seller owns books and materials that it wishes to sell, destroy, or give away that are in saleable condition, as defined herein, and otherwise comply with the quality requirements that BWB may establish in its own discretion and communicate to Seller from time to time (hereinafter "Surplus Books," "books" or "materials");

WHEREAS, Seller desires to sell Surplus Books to BWB and to receive revenues from BWB's sale of Surplus Books subject to the terms and conditions set forth in this Agreement; and,

WHEREAS, BWB has agreed to pay Seller a portion of proceeds from the sale of Surplus Books that BWB purchases from Seller subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto promise and agree as follows:

**DEFINITIONS**

**ARC:** BWB's Antiquarian, Rare and Collectibles department.

**Content and Condition Requirements for Books and Materials:** BWB does not accept books or materials which are not in saleable condition, as defined herein and online at <https://services.betterworldbooks.com/libraries/material-guidelines/>, including activity books and workbooks; annuals and yearbooks; audio cassettes, VHS tapes, LP records, and computer software; books published by magazines (e.g., *Reader's Digest Condensed* or *Time-Life Books*); *Britannica and World Book Encyclopedia*; case law and procedural law books; custom course packets; dated reference material that is over five (5) years old); directories and telephone books; duplicate copies in excess of twenty (20) copies per title; free copies, examination copies or advanced reading copies; incomplete DVD, Blu-ray Disc, or Books on CD sets or DVDs, Blu-ray Discs, or Books on CDs missing either the case or original artwork; journals and periodicals; microfilm and microfiche; newspapers and magazines; non-western script books; tax and government documents or forms.

**Literacy or Education Partner:** An organization or public institution dedicated to providing or supporting literacy, education and reading programs, or other charitable causes, with a proven operating history, shall be eligible to receive proceeds from sales as set forth in Article III herein.

**Marketplace Commission:** Fees charged to sellers by online retailers for marketing and selling books.

**Minimum Quantity Requirements and Shipping Specifications:** In order to maintain the percent of Net Proceeds payable to Seller, as outlined herein in Article III, Seller agrees to ship, on a per shipment basis, **fourteen to thirty-one (14 - 31) cartons of Surplus Books**. Shipping cartons must be filled to capacity using a standard-sized shipping carton, measuring approximately 18 X 12 X 10 inches.

**Net Proceeds:** Net Proceeds equal the item's selling price, less marketplace commission, discounts, returns, and shipping charges or reimbursements.

**Payment Method:** If applicable, Payment Methods available for selection by the Seller are as follows: (1) cash payment via check; (2) BetterWorldBooks.com credit; (3) credit to Seller's Deposit Account with Baker & Taylor, Inc.; (4) credit to Seller's Deposit Account with collectionHQ; (5) credit to Seller's Deposit Account with Ingram Library Services, Inc.

**Prescreen Process:** If applicable, Seller shall complete the Prescreen Process either by using the prescreen feature on the BWB online client portal by entering a book's associated ISBN number to determine if that book will be accepted by BWB for shipment to BWB or by emailing BWB an Excel file or CSV file containing a list of the inventory the Seller wishes to ship to BWB. At a minimum, the list must contain the book's associated ISBN number, title, and author. BWB will analyze the file and return to the Seller a list indicating which books BWB may accept for resale. Seller agrees only to provide books to BWB that have been accepted by BWB via the Prescreen Process as herein described.

**Saleable Condition Books:** Books which are free from substantial spine or cover damage, water spots or other discoloration, torn or missing pages, and without substantial markings.

**Shipping Charges and Reimbursements:** Fees charged by online retailers and sellers to cover the cost of shipping books. These fees are typically applied to books sold via online marketplaces that offer free shipping to the buyer.

**Surplus Books:** Books and materials that Seller owns and wishes to sell, destroy, donate, or otherwise give away that are in saleable condition, as defined herein, and which otherwise comply with the quality requirements that BWB may establish in its own discretion and communicate to Seller from time to time.

## **ARTICLE I Seller's Rights and Obligations**

1.1 Seller shall designate a representative who shall be responsible for administrative matters pertaining to this Agreement. The representative shall have authority to designate Surplus Books and to authorize BWB to receive Surplus Books directly or through BWB's agent.

1.2 Seller shall be responsible for selecting, collecting, and packaging all Surplus Books. Seller **is not** obligated to use the Prescreen Process as defined herein unless the Parties otherwise agree in writing.

1.3 Seller shall designate twenty-seven (27) potential freight locations and provide the Surplus Books ready for pick up by BWB or BWB's agent at that location.

1.4 Seller shall comply with the Minimum Quantity Requirements and Shipping Specifications as described herein unless the Parties otherwise agree in writing.

1.5 Seller shall comply with BWB's Content and Condition Requirements as defined herein unless the Parties otherwise agree in writing.

1.6 The BWB online client portal shall be used by Seller, if applicable, to order supplies and to schedule a pick up pursuant to Article I herein.

## **ARTICLE II BWB's Rights and Obligations**

2.1 BWB shall provide account management for the Seller's account and shall be responsible for administrative matters pertaining to the performance of BWB's obligations under this Agreement.

2.2 BWB shall arrange and pay for all shipment of Surplus Books from twenty-seven (27) potential freight locations designated by Seller to a warehouse storage facility operated by BWB, or BWB shall pick up Surplus Books from a

designated location.

2.3 Nothing in this Agreement shall limit BWB's ability to sell, to discard in an environmentally sensitive manner, to recycle, or to donate any Surplus Books supplied by Seller.

2.4 BWB shall be responsible for all aspects of the pricing, advertising, bookselling, inventorying, storage, and customer service relating to the Surplus Books purchased from Seller.

2.5 BWB shall disburse proceeds of Surplus Book sales in accordance with Article III herein.

2.6 Seller's representative shall have access to account and sale information on BWB's client portal.

### **ARTICLE III Distribution of Sales Proceeds**

3.1 BWB shall determine all prices for Surplus Books in its sole discretion.

3.2 BWB shall disburse proceeds from Surplus Books supplied by Seller as follows:

(a) BWB shall pay **ten percent (10%)** of Net Proceeds directly to Seller via the Seller's selected Payment Method.

(b) BWB shall pay for any Surplus Books that are processed and sold by the ARC during the Initial Term and any Renewal Term an amount equal to or greater than one thousand dollars (\$1,000.00) a total of fifty percent (50%) of Net Proceeds to the Seller. This amount shall be calculated as follows: (50% of the Net Proceeds) - (the total % of Net Proceeds as calculated in Sections 3.2(a) = additional % of Net Proceeds to be paid to the Seller. Section 3.2 (c) does not apply if the payment rate to the Seller in Section 3.2 (a) is set to zero percent (0%).

3.3 BWB shall provide cash payment via check to Seller of the amount determined in Paragraph 3.2 above on a reasonable basis. No payment shall be issued to Seller if the amount due to Seller is less than one hundred dollars (\$100.00) at the end of a quarter, and Seller must accrue at least fifty dollars (\$50.00) each quarter in order to be eligible for any payment. Payment via check must be cashed within ninety (90) days from the date of issue; otherwise, the payment shall be forfeited to the Purchaser and a replacement check shall not be issued.

3.4 No payment will be made to Seller if the Seller does not meet the Minimum Quantity Requirements and Shipping Specifications, as defined herein. Moreover, no payment will be made to Seller if the Seller fails to provide books to BWB in Saleable Condition, also as defined herein. BWB reserves the right to deduct from any amount due to Seller the actual shipping costs incurred by BWB in the event that Seller fails to make a good faith effort to either meet its Minimum Quantity Requirements and Shipping Specifications or to provide to BWB books in Saleable Condition. In such cases, BWB will notify the Seller's representative.

3.5 BWB will not make any further payments to Seller, net proceeds will cease to accrue, and no additional amounts will be due to in the future if Seller ceases to ship books in Saleable Condition to BWB for a period of twelve (12) months, calculated from the last date of receipt by BWB of a shipment of Seller's Surplus Books.

3.6 Seller can review records relating to the determination of Net Proceeds at BWB's client portal, and any amounts payable to Seller pursuant to Paragraph 3.2(a).

3.7 Seller may change its Payment Method at any time by submitting a written request via email to the Seller's designated BWB representative or Client Services. The new Payment Method will begin the month following written notice by Seller to BWB.

### **ARTICLE IV Unsold Books**

4.1 BWB reserves the right to remove any book from a marketplace at any time. Any unsold books due to market

demand, condition and/or failure to sell within a timeframe (to be determined solely by BWB) may be discarded by BWB in an environmentally sensitive manner, recycled, or donated at any time by BWB to a Literacy or Education Partner or any other eligible organization of BWB's choosing. BWB shall not owe Seller any further compensation for any unsold Surplus Books which are discarded, recycled, donated or have been listed for sale by the Purchaser for longer than three hundred and sixty-five (365) days.

## **ARTICLE V Term and Termination**

5.1 This Agreement shall take effect on the Effective Date and shall continue thereafter from the Effective Date ("Initial Term") if or until terminated by either Party pursuant to Section 5.2 herein.

5.2 Notwithstanding anything herein to the contrary, the Parties agree that either Party has the right to terminate this Agreement with thirty (30)-days' notice to the other Party, and thereafter, BWB has the right to refuse to purchase any more Surplus Books from Seller, and Seller has the right to refuse to sell any more Surplus Books to BWB.

## **ARTICLE VI Title to Property**

6.1 Title to Seller's Surplus Books that Seller supplies to BWB shall pass to BWB when Seller ships the Surplus Books to BWB or its agent, or when BWB picks up the Surplus Books from a location designated by Seller. Nothing in this Agreement shall be construed as creating a bailment or consignment relationship between BWB and Seller.

## **ARTICLE VII Miscellaneous**

7.1 Any notice required or permitted to be given to either Party shall be in writing and shall be deemed to be sufficiently given and received in all respects when either Party personally delivers or emails the notice to other the Party at the Notice Email as below listed.

7.2 All terms, covenants and conditions of this Agreement are contained herein. There are no other warranties, obligations, covenants, or understandings between the Parties other than those expressed herein. Any prior agreements, warranties, obligations, covenants or understandings between the Parties other than those expressed herein are superseded by this Agreement.

7.3 This Agreement may not be assigned by either Party without the express prior written consent of the other Party hereto. Such written consent shall not be unreasonably withheld by either Party, provided, however, that this Agreement and the rights and remedies of the Parties hereto shall inure to the benefit of the Parties and their corporate successors or the purchasers of substantially all of the assets or stock of either Party. Subject to the terms of the foregoing sentence, this Agreement shall be binding upon the Parties hereto and their respective successors, legal representatives, and permitted assigns.

7.4 The failure of either Party to enforce any part of this Agreement or the failure of either Party to declare a default shall apply only to that particular instance and shall not operate as the Party's continuing waiver or estoppel barring enforcement of any term or provision herein.

7.5 This Agreement shall be governed by and constructed in accordance with the internal laws of the state, commonwealth or province of incorporation or organization of the Seller without regard to the application of conflicts of laws principles.

7.6 Neither Party is nor shall be a partner, joint venturer, agent or representative of the other Party solely by virtue of this Agreement. Neither Party has the right, power or authority to enter into any contract or incur any obligation, debt or liability on behalf of the other Party.

7.7 No Party shall be liable for any delay or failure in its performance of any of the acts required by this Agreement when such delay or failure arises for reasons beyond the reasonable control of such Party. The Party so affected, however, shall use its best efforts to avoid or remove such causes of nonperformance and to complete

performance of the act delayed, whenever such causes are removed.

7.8 To facilitate execution, this Agreement may be executed pursuant to the process set forth in the Electronic Signatures in Global and National Commerce Act (15 U.S.C. §7001 et seq.) or in as many counterparts as may be required to reflect all Parties' assent. All counterparts will collectively constitute a single agreement.

7.9 **Representation of Authority.** Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each individual represents and warrants that such individual is duly authorized and empowered to enter into this Agreement on behalf of the respective below-listed Party and to bind such Party hereto.

7.10 **Terms and Conditions.** Seller acknowledges that the terms and conditions as outlined herein, including the rights and obligations of BWB, may change from time to time as market conditions dictate and at BWB's sole discretion, and BWB will communicate any changes to Seller within thirty (30) days of the effective date of any such changes.

IN WITNESS WHEREOF, the Parties below executed this Agreement as of the day, month and year first above written.

<b>Seller: <u>Contra Costa County</u></b>  <b>By:</b> _____  <b>Name: <u>Melinda S. Cervantes</u></b>  <b>Title: <u>County Librarian</u></b>  <b>Address: <u>777 Arnold Dr #210, Martinez, CA 94553</u></b>  <b>Notice Email:</b> <b><u>Melinda.cervantes@library.cccounty.us</u></b>	<b>QUMPUS, INC.,</b>  <b>d/b/a Better World Books, Purchaser</b>  <b>By:</b> _____  <b>Name: <u>Dustin Holland</u></b>  <b>Title: <u>President and CEO</u></b>  <b>Address: <u>55740 Currant Rd, Mishawaka, IN 46545</u></b>  <b>Notice Email: <u>legal@betterworldbooks.com</u></b>
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