

AGREEMENT

THIS AGREEMENT is made and entered into as of this _____ day of _____
2013 by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
(hereinafter referred to as "SBBC")
A body corporate and political subdivision of the State of Florida
Whose principal place of business is
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

and

EDMENTUM
(hereinafter referred to as Edmentum)
5600 West 83rd Street, Suite 300/8200 Tower
Bloomington, MN 55437

WHEREAS, SBBC desires to obtain an online/curriculum for credit recovery and credit acceleration to students enrolled in its school district; and

WHEREAS, SBBC desires to have the primary mode of instruction and assessment delivered through a digital platform,

WHEREAS, Edmentum is willing to provide SBBC with access to its fully digital Web-based courses and curriculum Plato Courseware and Edmentum Assessments.

NOW THEREFORE, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1 – RECITALS

1.01 **Recitals**. The parties agree that the fore going recitals are true and correct and that such recitals are incorporated herein by reference.

ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term Agreement:** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence **date approved by the board and conclude on June 30, 2016**. The term of the contract may, by mutual agreement between SBBC and Edmentum be extended for two additional one-year periods and, if needed, 180 days beyond the expiration date of the renewal period. Supply Management & Logistics Department will, if considering renewing, request a letter to renew from Edmentum, prior to the end of the contract period. Edmentum will be notified when any recommendation for renewal has been acted upon by SBBC.

2.02 **Description of Services:** Edmentum will provide SBBC with products and services including, where applicable, a license rights to use software products as set forth in Attachments A and B.

2.03 **Professional Development:** Edmentum will provide SBBC with 15 days of onsite training, per year and 18 virtual sessions, per year.

2.04 **Price and Payment:** The prices and billing terms for the products, services, and licenses will be as set forth in Attachment A.

2.05 **Inspection of Edmentum Records by SBBC:** Edmentum shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All Edmentum Records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC's agent or its authorized representative to permit SBBC to evaluate, analyze and verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify any and all invoices, billings, payments and/or claims submitted by Edmentum or any of Edmentum's payees pursuant to this Agreement. Edmentum's Records subject to examination shall include, without limitation, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement. Edmentum's Records subject to this section shall include any and all documents pertinent to the evaluation, analysis, verification and reconciliation of any and all expenditures under this Agreement without regard to funding sources.

(a) Edmentum's Records Defined. For the purposes of this Agreement, the term "Edmentum Records" shall include, without limitation, accounting records, payroll time sheets, cancelled payroll checks, W-2 forms, written policies and procedures, computer records, disks and software, videos, photographs, executed subcontracts, subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including sufficient supporting documentation and documentation covering negotiated settlements), and any other supporting documents that would substantiate, reconcile or refute any charges and/or expenditures related to this Agreement.

(b) Duration of Right to Inspect. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to Edmentum's Records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to Edmentum pursuant to this Agreement.

(c) Notice of Inspection. SBBC's agent or its authorized representative shall provide Edmentum reasonable advance notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction.

(d) Audit Site Conditions. SBBC's agent or its authorized representative shall have access to Edmentum's facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

(e) Failure to Permit Inspection. Failure by Edmentum to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this Section shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the denial of some or all of any Edmentum's claims for payment by SBBC.

(f) Overcharges and Unauthorized Charges. If an audit conducted in accordance with this Section discloses overcharges or unauthorized charges to SBBC by Edmentum in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by Edmentum. If the audit discloses billings or charges to which *Insert Name* is not contractually entitled, Edmentum shall pay said sum to SBBC within twenty (20) days of receipt of written demand under otherwise agreed to in writing by both parties.

(g) Inspection of Subcontractor's Records. Edmentum shall require any and all subcontractors, insurance agents and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by Edmentum to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payee's costs from amounts payable by SBBC to Edmentum pursuant to this Agreement and such excluded costs shall become the liability of Edmentum.

(h) Inspector General Audits. Edmentum shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

2.06 Notice. When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

- To SBBC: Superintendent of Schools
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

- With a Copy to: Executive Director of Instruction and Intervention
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

- To Edmentum: Mitchell Wacker
Sr. Director, Sales Operations
5600 West 83rd Street, Suite 300/8200 Tower
Bloomington, MN 55437

- With a Copy to: Wendy Passman
Regional Vice President
5600 West 83rd Street, Suite 300/8200 Tower
Bloomington, MN 55437

2.07 **Background Screening**: Edmentum agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of Edmentum or its personnel providing any services under the conditions described in the previous sentence. Edmentum shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to Edmentum and its personnel. The parties agree that the failure of Edmentum to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. Edmentum agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting in Edmentum's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

2.08 **Priority of Documents**: In the event of a conflict. The following priority of documents shall govern:

- First: This Agreement; then
- Second: Attachment A – Order Form
- Third: Attachment B – Standard Purchase and License Terms
- Fourth: RFP – 13-056E Online Credit Recovery & Acceleration Course
- Fifth: Proposal submitted by Edmentum in response to the RFP-0136E – Online Credit Recovery & Acceleration Course

ARTICLE 3 – GENERAL CONDITIONS

3.01 **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.02 **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

3.03 **Independent Contractor.** The parties to this agreement shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party or its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other party unless specifically authorized in writing to do so. No right to SBBC retirement, leave benefits or any other benefits of SBBC employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. SBBC shall not be responsible for social security, withholding taxes, contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

3.04 **Equal Opportunity Provision.** The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Agreement.

3.05 **Termination.** This Agreement may be canceled with or without cause by SBBC during the term hereof upon thirty (30) days written notice to Edmentum of its desire to terminate this Agreement. In the event of such termination, SBBC shall pay Edmentum for all services rendered through the effective date of termination.

3.06 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) days notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

3.07 **Annual Appropriation.** The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

3.08 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC with interest calculated from the date of the erroneous payment or overpayment. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by SBBC.

3.09 **Public Records.** Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law. Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets.

3.10 **Student Records**: Notwithstanding any provision to the contrary within this Agreement, any party contracting with SBBC under this Agreement shall fully comply with the requirements of Section 1002.22, Florida Statutes, or any other state or federal law or regulation regarding the confidentiality of student information and records. Each such party agrees, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Section 1002.22, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.11 **Compliance with Laws**. Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.12 **Place of Performance**. All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.13 **Governing Law and Venue**. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

3.14 **Entirety of Agreement**. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

3.15 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3.16 **Assignment.** Neither this Agreement or any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

3.17 **Incorporation by Reference.** Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

3.18 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.19 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.20 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.21 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.22 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.23 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.24 **Survival.** All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.25 **Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the date first above written.

FOR SBBC

(Corporate Seal)

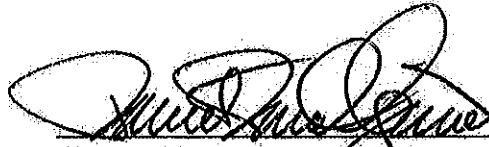
THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Laurie Rich Levinson, Chair

Robert W. Runcie,
Superintendent of Schools

Approved as to Form and Legal Content:

 07/05/13
Office of the General Counsel

FOR EDMENTUM

(Corporate Seal)

EDMENTUM

ATTEST:

By [Signature]

_____, Secretary

-or-

[Signature]
Witness

[Signature]
Witness

The Following Notarization is Required for Every Agreement Without Regard to Whether the Party Chose to Use a Secretary's Attestation or Two (2) Witnesses.

STATE OF Minnesota

COUNTY OF Hennepin

The foregoing instrument was acknowledged before me this 20th day of June, 2013 by Mitchell Wacker of

Edmentum, Inc. Name of Person _____, on behalf of the corporation/agency.

Name of Corporation or Agency

He/She is personally known to me or produced _____ (known to me)

as identification and did/did not first take an oath. _____ Type of Identification

My Commission Expires: 01/31/2015

[Signature]
Signature - Notary Public

Ruth Grodahl
Printed Name of Notary



(SEAL)

31038128
Notary's Commission No.



Date: 6/3/2013
 Order Number: 10114001
 Revision: 1
 Order Form Expiration Date: 9/1/2013

ORDER FORM

Please fax all pages to 1.877.619.9555 or email to orders@edmentum.com

Customer and Billing Address

Customer No.: 128576
 Customer Name: BROWARD COUNTY PUBLIC SCHOOLS
 Billing Address: 600 SE 3RD AVE
 FT LAUDERDALE, FL 33301-3125

Products and Services

Products	Quantity	License Start Date	License End Date	License Term (In Months)	Extended Price
District Wide Access to Secondary Academic Library, Advanced Placement & Beyond High School Library	1	2013	2014	12	\$325,000.00
District Wide Access to Secondary Academic Library, Advanced Placement & Beyond High School Library	1	2014	2015	12	\$325,000.00
District Wide Access to Secondary Academic Library, Advanced Placement & Beyond High School Library	1	2015	2016	12	\$325,000.00
Professional Development – Year 1	1	***	***	12	Included
Professional Development – Year 2	1	***	***	12	Included
Professional Development – Year 3	1	***	***	12	Included
Subtotal:					\$975,000.00

Subtotal:	\$975,000.00
Estimated Tax:	\$0.00
Total US Funds:	\$975,000.00

** Unless otherwise specified in this Order Form, the Start Date for your license(s) will be (a) for a renewal, the day following expiration of the prior license term and (b) with respect to all other licenses, promptly after we have accepted your signed Order Form, we will confirm to you the applicable Start Date for your software license(s).

*** Services are purchases with an annual term expiration. Any service offering that is not used during the applicable year, may not be carried over or used in subsequent years.

Order Notes

Customer has the option to renew the contract for 2 additional one year terms at the original price of \$325,000.00 per year.

Edmentum | N.W. 7504, P.O. Box 1450 | Minneapolis, MN 55486-7504 | www.edmentum.com
 Tax Exempt Certificate submission fax number: 877-530-4923





Date: 6/3/2013
 Order Number: 10114001
 Revision: 1
 Order Form Expiration Date: 9/1/2013

ORDER FORM

Please fax all pages to 1.877.519.9555 or email to orders@edmentum.com

Invoicing and Payment Terms

Payment Due Date	Payment Amount
07/15/2013	\$325,000.00
7/15/2014	\$325,000.00
7/15/2015	\$325,000.00
Total:	\$975,000.00

Terms and Conditions

For the purposes of this Order Form, "you" and "your" refer to Customer, and "we", "us" and "our" refer to edmentum Inc. and affiliates.

Acceptance

This offer will expire on the Order Form Expiration Date noted above unless we earlier withdraw or extend the offer in writing. I represent that I am authorized to accept this offer on behalf of the Customer identified above and I do accept this offer and agree to adhere to the terms and conditions identified and referenced within. Please fax all pages to 1.877.519.9555 or email to orders@edmentum.com.

Customer Signature:

Name (Printed or Typed): _____
 Title: _____
 Date: _____



The terms and conditions contained in this document (the "Standard Terms") apply to any transaction whereby we (sometimes referred to in this document as "we", "us" or "our") provide to you our customer (referred to as "you" or "your" as identified in more detail on the applicable Order Form ("Order Form")) (1) license rights to use our software products, (2) hardware for use with the software products, or (3) professional services. These Standard Terms are an integral part of an agreement (the "Agreement") that consists of (in order of precedence) an Order Form, these Standard Terms, and any documents incorporated by reference into either the Order Form or Standard Terms (including those incorporated by hyperlink reference). You acknowledge that the Order Form and the Standard Terms constitute the entire agreement between the parties and will supersede and replace any provisions in your purchase order or other contracting or purchasing documents that do not exactly mirror these terms. The Agreement will be effective as of the Order Date specified on the Order Form and will be binding when the Order Form has been executed by you. We reserve the right to require your submission of a purchase order in connection with your order. Capitalized terms used throughout the Agreement are defined in the Order Form, in section 6.0 (below), and elsewhere in these Standard Terms. These Standard Terms may only be superseded or amended by other terms and conditions you and we have specifically documented in a signed Order Form.

1.0 SOFTWARE. The following terms and conditions will apply to your transaction with us as described in more detail on the Order Form:

1.1 General License Terms. All software license rights that we grant you are specifically subject to the following general terms and conditions:

1.1.1 All licenses are non-exclusive, non-transferable and non-assignable.

1.1.2 We either own or have licensed from third parties all rights necessary to grant the licenses being granted to the Software and Documentation. We or our licensors own and retain all rights, title and interest in and to the Software and all ideas, concepts, methodologies, formats, specifications, and other know-how furnished by us or our licensors in connection with this Agreement, as well as all related intellectual property rights.

1.1.3 All access and use of Software under this Agreement will be subject to our Privacy Policy, which can be found at <http://www.edmentum.com/Privacy-Policy.aspx>, which is expressly made a part of this Agreement.

1.1.4 Licenses granted under this Agreement will be automatically revoked if this Agreement is terminated and automatically terminate on the expiration date as identified on the Order Form. We reserve the right to suspend or revoke any license granted under this Agreement if you breach this Agreement.

1.1.5 We reserve the right to terminate the access to any Software to the extent we end of life or similar the Software. If we exercise this right we will transition you to an appropriate alternative Software product that we own or license.

1.2 Restrictions. You and your Users will use the Software and Documentation solely for the purposes stated in the applicable license grants and will not: (i) modify, copy or create derivative works based on the Software or Documentation; (ii) frame or mirror any content forming part of the Software or Documentation, other than for your own internal educational or training purposes; and not in violation of an use or User restrictions; (iii) reverse engineer, decompile or disassemble the Software; (iv) access or allow others to access the Software or Documentation in order to build, market or offer a competitive product or service, or copy any ideas, features, functions, answers, questions, contents or graphics of the Software; (v) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Software available to any third party, other than to Users as contemplated by this Agreement; (vi) send spam or otherwise unsolicited messages in violation of applicable laws; (vii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material that is harmful to children or violates third party privacy rights; (viii) intentionally send or store any viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents or programs; (ix) interfere with

or disrupt the integrity or performance of the Software or the data contained therein; (x) attempt to gain unauthorized access to the Software or its related systems or networks; or (xi) publicly display or publicly perform the Software or Documentation without our prior written permission.

1.3 Subscription Software Operability:

1.3.1 Maintenance and Access. During the Subscription Period, we will use commercially reasonable efforts to make the Subscription Software available (subject to routine maintenance windows and unavailability not caused by us) to you and your Users via the Internet 24 hours a day, 7 days a week. All access rights for you and your Users will be via the worldwide web using a browser and Internet connection compliant with the System Requirements (described in section 1.4).

1.3.2 Outage Periods. The term "Outage Period" applies to Subscription Software and means a period of more than 48 consecutive hours in which your Users are prevented from accessing the Subscription Software due to factors completely within our control during a period that you are not in breach of this Agreement. Outage Periods exclude (a) planned downtime; or (b) any Force Majeure event. If you experience an Outage Period, then upon your written request we will issue you a credit for the pro-rated share of fees you have paid for usage during the month during which the Outage Period occurs. Your request for this credit must be made within 30 days after the end of the Outage Period. Your sole and exclusive remedy for an Outage Period will be the above credit.

1.4 System Requirements. Our System Requirements document (found at <http://support.edmentum.com/requirements.asp>) ("System Requirements") details the necessary hardware, software, system configuration, network infrastructure, bandwidth and other operational requirements necessary for you to successfully operate and use the Software. The System Requirements are subject to periodic change. You acknowledge that you are responsible for the cost, operation and availability of, and you and your Users compliance with, all elements of the System Requirements.

1.5 Responsibility for User Activity. You are responsible for all activities that occur in User accounts and for compliance by your Users with these Standard Terms. You will: (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data; (ii) use commercially reasonable efforts to prevent unauthorized access to, disclosure of or use of the Software, and notify us promptly of any such unauthorized access or use; and (iii) in connection with this Agreement, comply (and ensure compliance by your Users) with all applicable local, state and federal laws, rules and regulations.

1.6 Intellectual Property

1.6.1 Reservation of Rights. The Software we are

providing is licensed to you, not sold. Subject to the limited rights expressly granted to you and your Users herein, we reserve all rights, title and interest in and to the Software and Documentation, including all related Intellectual property rights (except for those owned by our third party vendors and licensors, which are reserved to them). No other rights are granted to you or your Users.

1.6.2 Rights to Customer Data. As between you and us, you own all rights, title and interest in and to all Customer Data. You hereby grant us a non-exclusive, royalty free license to perpetually use, modify, distribute and work with the Customer Data.

1.6.3 Suggestions. We will have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Software any suggestions, enhancement requests, recommendations or other feedback provided by you or your Users relating to the operation of the Software.

1.6.4 Custom Learning Paths

a. Rights to Custom Learning Paths. Certain Software allows you to customize the sequencing of instructional content to suit your instructional needs. "Your Learning Paths" refers to the custom learning paths you create using this feature of the Software. We make no warranties or commitments related to your ability to access or use Your Learning Paths during the term of your licenses or at the expiration or termination of your licenses.

b. Our Use of Your Learning Paths. We may use Your Learning Paths and may provide them to our other customers.

c. Customer Created, Modified or Stored Content. Certain of our products enable you to create, customize or store content, documentation or otherwise. If you do, you accept, agree and acknowledge that (i) we can use and disseminate such items; (ii) at the expiration or termination of your licenses, we will not be returning these items to you and you have no rights in such items and (iii) you are responsible for ensuring that all laws, regulations and judicial precedence is followed in such creation, customization, disclosure or storage, including but not limited to intellectual property laws and you will indemnify us and our affiliates, successors and assigns in the event you fail to do so.

1.7 Limited Warranty for Software Products. Subject to the terms of Section 4.6, we warrant that the Subscription Software will perform in substantial accordance with the applicable Documentation during the Subscription Period. This warranty is contingent on the authorized use of the Software in accordance with the applicable Documentation. If we breach this express warranty, we will at our option and expense: (a) as soon as commercially practical, consistent with industry practice, modify the affected Software to conform in material respects with the applicable Documentation, or (b) provide a replacement for the affected Software which generally conforms with that Documentation, or (c) accept the return of the affected Software and refund you the portion of your purchase price attributable to the returned product proportionate to the period remaining on your contract. This will be our sole obligation, and your sole remedy, with respect to any breach of this warranty. **EXCEPT FOR THE EXPRESS WARRANTY PROVIDED IN THIS SECTION, THE SOFTWARE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY ADDITIONAL WARRANTIES OF ANY KIND. WE DO NOT WARRANT THAT THE LICENSED PROGRAM WILL PERFORM UNINTERRUPTED OR BE ERROR-FREE OR THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET YOUR PARTICULAR REQUIREMENTS OR PURPOSE.**

2.0 THIRD PARTY SOFTWARE, HARDWARE AND SERVICES.

The following terms and conditions will apply to all Third Party Software that is included in any of the Software Products you have

licensed from us and all Third Party Software, Hardware and services listed on the Order Form:

2.1 Subject to Third Party's Warranties and Terms. Third Party Software and Hardware products and services are distributed by us as a licensor or reseller. These products are provided subject to the separate license and sale terms, conditions and restrictions required by the third party. **WE DO NOT PROVIDE, AND WE EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, ON ANY THIRD PARTY SOFTWARE, HARDWARE AND SERVICES WE SUPPLY OR MAKE AVAILABLE TO YOU. IN ADDITION, WE DO NOT GUARANTEE THE AVAILABILITY OF SUCH THIRD PARTY SOFTWARE, HARDWARE OR SERVICES AS SUCH SOFTWARE, HARDWARE OR SERVICES MAY BE MODIFIED OR REMOVED AT ANY TIME.**

2.2 Warranty Claims. We will use reasonable commercial endeavors to facilitate warranty claims you may make against the third party supplying such products or services. **This is our sole obligation relative to these products or services.**

3.0 PROFESSIONAL SERVICES. Professional Services listed on the Order Form will be provided subject to the following terms and conditions:

3.1 Mutual Cooperation. You and we mutually agree to cooperate with each other in a professional and courteous manner in the performance of our respective duties in the delivery of Professional Services.

3.2 Scheduling Changes Caused by You. You agree to notify us at least 5 business days in advance of your intention to reschedule previously confirmed on-site Professional Services sessions. If you do not provide such notice, and we are unable to re-assign the resources scheduled to provide your Professional Services, we reserve the right to charge you a cancellation fee of up to \$750 for each day cancelled without such notice.

3.3 Scheduling Changes Caused by Us. If we are required to reschedule (except for reasons caused in whole or in part by you or that are outside our reasonable control) a previously confirmed on-site Professional Services delivery session, we will use all reasonable efforts to provide you at least 5 business days' notice. If we do not provide such notice, and you incur reasonable direct, non-refundable expenses which you have made good faith efforts to avoid, we will upon your written request (which must include documentation of these expenses) provide you a credit for such expenses. In no case, however, will the amount of credit exceed \$750.

3.4 Acceptance of Services and Warranty.

3.4.1 Warranty and Acceptance. We warrant that the Professional Services we provide will be performed in a workmanlike manner. If you reasonably determine that the Professional Services have not this standard, you must provide us written notice specifying any deficiencies in detail within 10 business days after the service delivery. We will then use reasonable commercial efforts to cure any such deficiencies promptly which may include our providing additional Professional Services at our expense. If you do not provide notice of any deficiencies to us within the 10 day period, your acceptance of the Professional Services will be considered final.

3.4.2 Failure to Cure. If you give us notice under subsection 3.4.1 and we are unable to cure the deficiency within 60 days after your notice, you may terminate the directly affected portions of service and obtain a refund of amounts you have paid for

the terminated services.

3.4.3 Sole remedies. The remedies specified in this section 3.4 are your only Professional Services related remedies.

3.5 Compliance with Workplace Rules. We will have the person or persons we assign to perform the Professional Services comply with those of your lawful workplace rules you have provided to us and them in writing in advance.

3.6 Subcontractors. We may, in our reasonable discretion, use third parties, including, but not limited to agents, to perform any of our obligations regarding delivery of the Professional Services.

4.0 GENERAL TERMS

4.1 Fees and Payment

4.1.1 Fees. You agree to timely pay all amounts due to us as shown on the Order Form. Except if specified in the Order Form or in section 1.3.2 (re Outages) all such amounts are non-cancellable and non-refundable.

4.1.2 Taxes. Except to the extent you provide us with a valid tax exemption certificate authorized by the appropriate taxing authority covering all applicable taxes otherwise due and payable, we will invoice you for and you will pay any applicable direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including, but not limited to, value-added, gross receipts, sales, use or withholding taxes associated with your license or purchases under this Agreement, except for taxes based on our net income or real property.

4.1.3 Acceptance. All Software and Hardware will be deemed accepted upon our making it available to you online and will thereafter be subject to the warranty provisions of this Agreement.

4.2 Confidentiality

4.2.1 Definition of Confidential Information. "Confidential Information" means all confidential and proprietary information disclosed by one party (the "Discloser") to the other (the "Receiver") and either designated as confidential or of a type reasonably expected to be confidential. Confidential Information includes the terms and conditions of this Agreement (including pricing and other terms reflected in all Order Forms hereunder), the Customer Data, the Software, business and marketing plans, technology and technical information, product designs, and business processes, but does not include any information that, without breach of obligation owed to Discloser: (a) is or becomes generally known to the public; (b) was known to the Receiver prior to its disclosure by the Discloser; (c) was independently developed by the Receiver; or (d) is received from a third party.

4.2.2 Protection. The Receiver will not disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this Agreement, except with the Discloser's prior written permission. The Receiver will protect the Confidential Information of the Discloser as if it were the Receiver's own Confidential Information, and at a minimum, with reasonable care. This obligation will survive termination of this Agreement for a period of 3 years.

4.2.3 Compelled Disclosure. If by court order, legal requirement or regulatory authority the Receiver is forced to disclose Confidential Information of the Discloser, the Receiver will (to the extent legally permitted) give the Discloser prompt notice of the order and will provide, at the Discloser's request and cost, reasonable assistance to contest the disclosure.

4.2.4 Remedies. If the Receiver discloses or uses (or threatens to disclose or use) any Confidential Information of the

Discloser in breach of this section, the Discloser will have the right, in addition to any other available remedies, to seek injunctive relief to prevent further (or the threatened) disclosure.

4.3 Indemnities.

4.3.1 Our Indemnification of You. Subject to the conditions described below and the provisions of section 4.6, we will defend, indemnify and hold you harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings (collectively called "Claims") made or brought against you by a third party, as follows:

a. For Personal Injury or Property Damage. Our indemnity covers Claims alleging personal injury or property damage to the extent caused by the willful misconduct or gross negligence of our personnel while on your premises.

b. For Infringement. Our indemnity covers Claims alleging that your use of the Software in accordance with the terms of this Agreement, or any information or material (collectively called "Material") furnished by us in connection with this Agreement infringes the intellectual property rights of a third party. This indemnification does not apply to Hardware. We will have no liability for any claim of infringement or misappropriation to the extent (a) the Material is based on specifications or directions you provided, (b) your use of a superseded or altered version of some or all of the Material if infringement or misappropriation would have been avoided by the use of a subsequent or unaltered release of the Material provided to you or (iii) your use occurs in a jurisdiction other than the United States. If the Software becomes, or in our opinion is likely to become, the subject of an infringement claim, we may, at our option and expense, either procure for you the right to continue using the Software; replace or modify the Software so that it becomes non-infringing and remains functionally equivalent; or require the return of the affected Software and refund you the portion of your purchase price attributable to the returned product for the remaining order period.

4.3.2 Your Indemnification of Us. Subject to the conditions described below and section 4.6, and to the extent not prohibited by applicable law, you will defend, indemnify and hold us harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with Claims made or brought against us by (i) a third party alleging that the Customer Data, your use of the Software in violation of this Agreement, or any Material provided by you either: (a) infringes the intellectual property rights of a third party, or (b) has otherwise harmed a third party, or (ii) anyone who has suffered personal injury or property damage based upon you or your employees, agents or students negligence or intentional misconduct.

4.3.3 Conditions. These indemnities will be conditioned on the party seeking indemnity: (a) promptly providing the other with a written notice of the Claim; (b) giving the other party sole control of the defense and settlement of the Claim, provided that the other party may not settle any Claim unless the party seeking indemnity is unconditionally released from liability; and (c) at no charge, providing the other party with all reasonable assistance relative to the defense of the Claim.

4.3.4 Exclusive Remedies. Our and your exclusive indemnification responsibilities are stated in this section 4.3.

4.4 Care of Customer Data. We will make periodic backups of Customer Data entered using our Subscription Software and will otherwise use reasonable commercial care, consistent with general industry practice, to protect such data against loss. We are not responsible for lost Customer Data. You will be responsible for the maintenance of Customer Data held in our application and for replacing it if it is lost for any reason.

4.5 Force Majeure. The term "Force Majeure" means

circumstances beyond the reasonable control of a party (such as acts of God, government restrictions, wars, insurrections, labor strife, or failure of suppliers, communication or data systems, subcontractors, or carriers) which delay or prevent the party from performing under the terms of this Agreement. Affected performance obligations will be suspended during the duration of the Force Majeure. In the event the Force Majeure persists for more than 90 days, the other party may terminate the affected portions of this Agreement upon written notice.

4.6 Disclaimers, Limitations and Exclusions.

4.6.1 Warranty Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 3.4 OF THIS AGREEMENT, WE MAKE NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND WE SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

4.6.2 Limitation of Liability. EXCEPT FOR BREACHES OF CONFIDENTIALITY OBLIGATIONS (WHICH ARE LIMITED TO \$50,000 IN THE AGGREGATE FOR ALL CLAIMS AGAINST EITHER PARTY IN ANY CALENDAR YEAR) IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS ACTUALLY PAID BY YOU TO US UNDER THE APPLICABLE ORDER FORM. THE ABOVE LIMITATION WILL NOT APPLY TO EITHER PARTY IN THE EVENT YOUR STATE STATUTES ARE FOUND TO GOVERN THIS AGREEMENT AND THEY SPECIFICALLY PROHIBIT A LIMITATION OF LIABILITY PROVISION.

4.6.3 Exclusion of Consequential and Related Damages. IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER FOR ANY LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

4.7 U.S. Governmental Users. The Software and Documentation are "Commercial Items," as defined at 48 C.F.R. §2.101, and are licensed subject to Restricted Rights applicable to Commercial Items and only with those rights expressly granted under this Agreement. The U.S. Government will not be entitled to technical information that is not customarily provided to the public or to use, modify, reproduce, release, perform, display, or disclose the Software or Documentation except as allowed under this Agreement.

4.8 Term and Termination

4.8.1 Term of this Agreement. This Agreement will begin on the Order Date and will, unless earlier terminated in accordance with this section, continue in effect until the end of the last License Period covered by this Agreement.

4.8.2 Termination for Cause. A party may terminate this Agreement for cause: (i) 30 days after written notice of a material breach to the other party if such breach remains uncured at the expiration of such period; or (ii) if the other party ceases to conduct business in the ordinary course, files a petition for liquidation bankruptcy, fails to have an involuntary petition for bankruptcy dismissed or converted to a non-liquidation bankruptcy within 60 days after filing, or makes an assignment of essentially all assets for the benefit of creditors.

4.8.3 Outstanding Fees. Termination will not relieve you of the obligation to pay any fees payable to us prior to the

effective date of termination.

4.9 Surviving Provisions. The following provisions will survive any termination or expiration of this Agreement: 1.6, 1.7, 2.1, 4.2, 4.3.1, 4.3.2, 4.3.4, 4.6, 4.9 and 5.0.

4.10 Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, we may assign this Agreement in its entirety without your consent, in connection with a transaction involving a sale of all or substantially all of our assets or equity through merger or otherwise. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this section will be void and of no effect. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

4.11 Counterparts. This Agreement may be executed by facsimile and in counterparts, which taken together will form one legal instrument.

4.12 Entire Agreement. This Agreement constitutes the entire agreement between the parties, and supersedes all prior agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by both parties. To the extent of any conflict or inconsistency between the provisions in these Standard Terms and an Order Form, the terms of the Order Form will prevail.

4.13 Governing Law. This Agreement will be governed by the internal laws of the State of Minnesota, without regard to its conflicts of laws rules unless the statutes or applicable rules governing your activities where you are situated require that the laws of the State where you are situated apply, in which case they will, without regard to the conflict of laws rules.

4.14 Third Parties. There are no third-party beneficiaries to this Agreement.

4.15 Notices. All notices under this Agreement will be in writing and will be deemed given upon: (a) personal delivery; (b) the second business day after mailing; (c) the second business day after sending by confirmed facsimile; or (d) the second business day after sending by confirmed email. Notices to us will be addressed to the attention of Director of Customer Finance. Notices to you will be addressed to the attention of the person signing the Order Form for you.

4.16 Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

4.17 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be subject to modification by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement will remain in effect.

4.18 Waiver. No failure or delay by either party to exercise a right under this Agreement will be a waiver of that right.

5.0 DEFINITIONS

- "Concurrent License" means a Subscription License that may be accessed during the Subscription Period by any User, but may only be accessed by one individual User at a time.
- "Course Enrollment" shall mean a Consumable License plus the non-exclusive services of a virtual instructor qualified to

provide online teaching services associated with the Consumable License.

- **"Consumable License"** means a Subscription License to a single course assigned to a single, Named User. Prior to the Learner Preview Date, a Consumable License may be reassigned to a different Named User, or designated as unassigned and available for future use. The Subscription Period for a Consumable License begins when the course content is first accessed by the Named User and ends one year later.
- **"Customer Data"** means all electronic data, materials and other information you and/or your Users have entered or stored in the Software, including, but not limited to data and records relating to student information, performance or use, teacher data and supplemental instructional materials.
- **"Documentation"** means technical specifications identified in this Agreement.
- **"Hardware"** means a hardware product marketed by us which is listed on the Order Form and is intended to be used in connection with Software provided by us.
- **"License Period"** means the period of time during which you will have access to the Software you license under this Agreement. This period will begin with the Start Date identified in the applicable Order Form, and (unless earlier revoked in accordance with this Agreement) will last for the duration of the Subscription Period following the Start Date.
- **"Named User"** means a specific User identified by name and designated as the sole User of specific license.
- **"Order Form"** means the Order Form prepared and offered by us and returned to us by you indicating your acceptance of the terms and conditions of this Agreement.
- **"Reusable License"** means a Subscription License whereby only one Named User is designated to use the license at a time, but may be reassigned to another Named User during the Subscription Period. While a Reusable License is assigned to a specific Named User, it may not be used by any other User at any time until reassigned to another Named User.
- **"Software"** means online educational software that we make available either via our Internet-based learning management system (for Subscription Software) or via readable media or electronic download (for Perpetual Software).
- **"Professional Services"** means the services we provide to you to assist in your implementation, on-going use of the Software or our Academy services, as applicable.
- **"Software"** means software marketed by us which is listed on the Order Form. The term "Software" includes both our Software and Third Party Software.
- **"Site License"** means a Subscription License that may be accessed during the Subscription Term by all authorized Users located in the specific physical site identified on the Order Form.
- **"Subscription Software"** means Software licensed for a specified period of time (the Subscription Period).
- **"Subscription Period"** means the License Period for Subscription Software as identified on the Order Form.
- **"Third Party Software"** means software we acquire from a third party producer for distribution to our customers under licensing terms and conditions specified by the producer.
- **"Users"** means individuals you authorize to use Software and supply (or authorize us to supply) user identifications and passwords for and for which you've purchased an adequate quantity of licenses. Users may include your students and their parents to the extent permitted and in accordance with the roles as defined in the Documentation.
- **"We", "Us" or "Our"**, whether or not capitalized, refer to the entity or entities identified on the first page of the Order Form (Edmentum, Inc., Archipelago Learning, Inc., Educational Options, Inc. or Orchard Learning, LLC.)