

JEFFERSON COUNTY PUBLIC SCHOOLS CONTRACT FOR THE PROCUREMENT OF PROFESSIONAL SERVICES

THIS CONTRACT FOR PROCUREMENT OF PROFESSIONAL SERVICES (hereinafter "Contract") is entered into between the JEFFERSON COUNTY BOARD OF EDUCATION (hereinafter "Board"), a political subdivision of the Commonwealth of Kentucky, with its principal place of business at 3332 Newburg Road, Louisville, Kentucky 40218 and Edgenuity Inc. (hereinafter "Contractor"), with its principal place of business at 8860 E. Chaparral Road, Suite 100, Scottsdale, Arizona 85250.

WITNESSETH:

WHEREAS, the Board desires to procure the particular services of Contractor, which are more fully defined below; and

WHEREAS, Contractor has held itself out to be competent and capable of providing the services contracted for herein;

NOW, THEREFORE, in consideration of the mutual promises and agreements hereinafter set forth, the Board and Contractor (hereinafter "Parties") agree as follows:

ARTICLE I

Entire Agreement; Amendments

This Contract is the entire agreement between the Parties and supersedes any and all agreements, representations and negotiations, either oral or written, between the Parties before the effective date of this Contract. This Contract may not be amended or modified except in writing as provided in Article VIII. As applicable, this Contract is supplemented by the Board's Procurement Regulations currently in effect (hereinafter "Regulations") that are incorporated by reference into and made a part of this Contract. Contractor's Price Quote for Services and Terms & Conditions ("Edgenuity Terms") are attached and incorporated herein by reference and made a part of this Contract. In the event of a conflict between any provision of this Contract and any provisions of the Regulations, the Regulations shall prevail.

ARTICLE II

Services

Contractor agrees to provide the following services (hereinafter "Services") of a quality and in a manner that is within the highest standards of Contractor's profession or business. The Services are as follows:

District Wide Virtual Classroom and Web Administrator site licenses for the full Edgenuity course list as well as all age appropriate Remedial Content across grades 6-12. This site license will offer unlimited licenses and course access for every enrolled student, for every named District Site as specified by Jefferson County Public Schools. The Contract provides for 20 days of onsite professional development at no additional cost to the District during each year of the contract term.

ARTICLE III Compensation

The Board shall pay Contractor the total amount stated below (hereinafter "Contract Amount"). The Contract Amount shall be paid in a lump sum upon completion of the Services, unless a schedule of progress payments is stated below. The Contract Amount shall be for total performance of this Contract and includes all fees, costs and expenses incurred by Contractor including but not limited to labor, materials, taxes, profit, overhead, travel, insurance, subcontractor costs and other costs, unless otherwise stated below. To receive payment, Contractor must submit an itemized invoice or invoices. If progress payments are authorized, each invoice must specify the actual work performed. If payment of costs or expenses is authorized, receipts must be attached to the invoice.

Contract Amount:	<u>\$1,900,000.00</u>
Progress Payments (if not applicable, insert N/A):	<u>\$475,000.00/yearly</u>
Costs/Expenses (if not applicable insert N/A):	<u>N/A</u>
Fund Source:	<u>General Fund</u>

ARTICLE IV Term of Contract

Contractor shall begin providing the Services on August 11, 2014 and shall complete the Services no later than August 6, 2018, unless this Contract is modified as provided in Article VIII.

ARTICLE V Performance of Services by Contractor

The Services shall be provided by Contractor, and in no event shall Contractor subcontract with any other person to aid in the completion of the Services without the prior written approval of the Contract Administrator defined below.

Contractor shall appoint one person who shall be responsible for reporting to the Board on all Services performed under the terms of this Contract and who shall be available for consultation with the Contract Administrator.

Contractor is an independent contractor, not an employee. Contractor is responsible for the payment of all federal, state and local payroll taxes and providing unemployment insurance and workers compensation coverage to Contractor's employees. Contractor shall provide all equipment, materials and supplies necessary for providing the Services.

Contractor shall at all times during the term of this Contract comply with all applicable laws, regulations, rules and policies. Contractor shall obtain and keep in force all licenses, permits and certificates necessary for providing the Services.

Contractor agrees to hold harmless, indemnify, and defend the Board and its members, agents, and employees from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation, including the Contractor himself, in connection with the performance of this Contract. Contractor also agrees to hold harmless, indemnify, and defend the Board and its members, agents, and employees from any and all claims or losses incurred by any supplier, contractor, or subcontractor furnishing work, services, or materials to Contractor in connection with the

performance of this Contract. This provision survives termination of this Contract.

Unless waived in writing by the Contract Administrator, Contractor shall maintain during the term of this Contract policies of primary insurance covering the following risks and in at least the following amounts: commercial general liability, including bodily injury, property damage, personal injury, products and completed operations, and contractual, \$1,000,000; and automobile liability, \$1,000,000. Contractor shall furnish to the Contract Administrator certificates of insurance evidencing this coverage and naming the Board as an additional insured. Additionally, Contractor shall maintain workers compensation coverage with limits required by law; and professional errors and omissions coverage with minimum limits of \$1,000,000. Contractor shall furnish certificates of insurance evidencing this coverage to the Contract Administrator.

ARTICLE VI Equal Opportunity

During the performance of this Contract, Contractor agrees that Contractor shall not discriminate against any employee, applicant or subcontractor because of age, color, creed, disability, marital or parental status, national origin, race, sex, veteran status, religion, or political opinion or affiliation. If the Contract Amount is paid from federal funds, this Contract is subject to Executive Order 11246 of September 24, 1965 and in such event the Equal Opportunity Clause set forth in 41 Code of Federal Regulations 60-1.4 is hereby incorporated by reference into this Contract as if set forth in full herein.

ARTICLE VII Prohibition of Conflicts of Interest

It shall be a breach of this Contract for Contractor to commit any act which is a violation of the provisions of Article XI of the Regulations entitled "Ethics and Standards of Conduct," or to assist or participate in or knowingly benefit from any act by any employee of the Board which is a violation of such provisions.

ARTICLE VIII Changes

The Board and Contractor may at any time, by mutual agreement set forth in a written addendum, make changes in the definition of the Services; the scope of the Services; and the Contract Amount. The Contract Administrator and Contractor may, at any time, by mutual agreement set forth in a written addendum, make changes in the time within which the Services are to be performed; the schedule of Progress Payments; and mutual Termination of the Contract.

ARTICLE IX Termination for Convenience of the Board

The Board may terminate this Contract in whole or in part at any time by giving written notice to Contractor of such termination and specifying the effective date thereof, at least thirty (30) days before the specified effective date. The Board shall compensate Contractor for Services satisfactorily performed through the effective date of termination.

**ARTICLE X Termination
for Default**

The Board may, by written notice of default to Contractor, terminate the whole or any part of this Contract, if Contractor breaches any provision of this Contract, or so fails to make progress as to endanger performance of this Contract, and in either of these circumstances, does not cure the breach or failure within a period of five (5) days after receipt of notice specifying the breach or failure. In the event of termination for default, the Board may secure the required services from another contractor. The rights and remedies of the Board provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

**ARTICLE XI
Disputes**

Any differences or disagreements arising between the Parties concerning the rights or liabilities under this Contract, or any modifying instrument entered into under Article VIII of this Contract, shall be resolved through the procedures set out in the Regulations.

**ARTICLE XIII Contract
Administrator**

The Board shall appoint a Contract Administrator for the purposes of daily administrative decision-making pertaining to the Contract. If Contractor and the Contract Administrator disagree on any circumstance or set of facts pertaining to the administration or execution of this Contract, the Board shall resolve the matter after notification by either the Contract Administrator or the Contractor in the manner prescribed by the Regulations. If the Board fails to give notice to Contractor of the appointment of a Contract Administrator, the Contract Administrator shall be the Board's Chief Financial Officer.

**ARTICLE XIV
Right to Audit**

Both the Board and Contractor shall have the right to inspect and audit all accounting reports, books or records of the other party which concern the Services provided pursuant to this Contract. Upon reasonable notice in writing, inspection shall take place during normal business hours at the place of business to be inspected. Contractor and the Board shall retain all records relating to the performance of this Contract for five (5) years after the end of the term of this Contract.

**ARTICLE XV
Miscellaneous**

- A. All Articles shall be construed as read, and no limitation shall be placed on any Article by virtue of its descriptive heading.
- B. Any notices or reports by one Party to the other Party under this Contract shall be made in writing, to the address shown in the first paragraph of this Contract, or to such other address as may be designated in writing by one Party to the other. Notices shall be effective when received if personally delivered, or three days after mailing if mailed.

- C. If any part of this Contract is held to be void, against public policy or illegal, the balance of this Contract shall continue to be valid and binding.
- D. This Contract shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky.
- E. No delay or omission by either Party in exercising any right under this Contract shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of this Contract.
- F. At all times during the term of this Contract and where applicable, Contractor shall comply with the Family Educational Rights and Privacy Act of 1974. If Contractor has access to student records, Contractor shall limit its employees' access to those records to persons for whom access is essential to perform this Contract.
- G. Where applicable for licensure of software and content, Contractor shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Contractor or subcontractor for the duration of this Contract and shall reveal any final determination of a violation by the Contractor or subcontractor of the preceding KRS Chapters.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract to be effective as of August 11, 2014.

Contractor's Social Security Number or Federal Tax ID Number: 31-1692050

JEFFERSON COUNTY BOARD OF
EDUCATION

By: _____


Title: Donna M. Hargens, Ed.D.
Superintendent

Edgenuity, Inc
CONTRACTOR

By: 

Title: CEO

Cabinet Member: Dewey Hensley


(Initials)

Jefferson County Public Schools
**NONCOMPETITIVE NEGOTIATION
DETERMINATION AND FINDING**

1. An emergency exists which will cause public harm as a result of the delay in competitive procedures (Only the Superintendent shall declare an emergency.) —

State the date the emergency was declared by the superintendent: _____

2. There is a single source for the items within a reasonable geographic area —

Explain why the vendor is a single source: _____

3. The contract is for the services of a licensed professional, education specialist, technician, or an artist —

State the type of service: _____

4. The contract is for the purchase of perishable items purchased on a weekly or more frequent basis —

State the item(s): _____

5. The contract is for proprietary item(s) for resale: This can include the buying or selling of item(s) by students when it is part of the educational experience —

State the type(s) of item(s): _____

6. The contract is for replacement parts when the need cannot be reasonably anticipated and stockpiling is not feasible —

State the item(s): _____

7. The contract or purchase is for expenditures made on authorized trips outside the boundaries of Jefferson County Public Schools —

State the location: _____

8. The contract is for a sale of supplies at reduced prices that will afford Jefferson County Public Schools a savings (Purchase must be approved by Director of Purchasing) —

Explain the logic: _____

9. The contract is for the purchase of supplies which are sold at public auction or by receiving sealed bids —

State the items: Software purchased based on Kentucky purchasing cooperative bid of which JCPS is a member.

I have determined that, pursuant to K.R.S. 45A. 380, the above item(s) should be obtained by the Noncompetitive Negotiation Methods since competition is not feasible.

Dewey Hensley

Print name of person making Determination

Academic Services

School or Department

Dewey Hensley

Signature of person making Determination

8-4-14

Date

Edgenuity

Name of Contractor (Contractor Signature Not Required)

Requisition Number

Explanation of Noncompetitive Negotiation Methods can be found under K.R.S. 45A.380 and on page 15 in the Procurement Regulations

F-471-1

Revised 05/2011



Jefferson County Kentucky Board of Education

Price Quote for Services

Jefferson County Kentucky Board of Education

8860 E. Chaparral Road
Suite 100
Scottsdale AZ 85250
www.edgenuity.com

Date 6/23/2014

Quote # 11574

Vendor #

Page 1 of 3

Software Version		Account Executive		Payment Schedule	
Version 4		Jason Randall		Annual Payments	
Pricing Expires		Contract Start Date		Contract End Date	
9/21/2014		8/7/2014		8/7/2018	
Header	Quantity	Description			Amount
Year 1 of 4	1	Virtual Classroom and Web Administrator Site Licenses*. District Wide *Site License, for the Full Edgenuity Course List as well as all age appropriate Remedial Content across grades 6-12. Offering unlimited licenses and course access for every enrolled student, for every Named District Site as specified by Jefferson County Public Schools. The Licenses include software maintenance in accordance with Article V of Attachment A – Terms and Conditions For the intents and purposes within this document, the term 1 Year is defined as a rolling 12 month period of time. This contract will consist of a Four Year Commitment, with annual payments of \$475,000 per year. Total Contract Cost is \$1,900,000 sum total for the four year period. Year One of this contract also includes: 20 Days of Onsite Professional Development in accordance with Article VI of Attachment A- Terms and Conditions; at no additional cost to the District Year One Total Cost: \$475,000 – pricing includes testing and setup as applicable.			475,000.00

*Site license is not a CUL nor an SUL

District Contact

Signature Print Name _____

Title _____

Date _____

Warmest Regards,

Jason Randall
Edgenuity Inc. Representative
615.767.2706

The Contract consists of these Edgenuity Price Quotes for Services, for year(s) 1, 2, 3 + 4, which each include Edgenuity Inc.'s Terms and Conditions of Purchase and License ("Terms and Conditions") signed by both parties, attached hereto as ATTACHMENT A and incorporated by this reference into each Quote (all together these are the "Contract").

If this Quote includes any Sophia® Learning Inc. courses for purchase, the following language applies to any such purchase [and this language is also found in the above linked Terms and Conditions]: "Use of any Sophia course is prohibited for all students under the age of 13 years."

Not valid unless accompanied by a purchase order.

Any terms and conditions contained in a purchase order are disclaimed by Edgenuity and do not become part of any binding agreement between the parties. Please specify a shipping address if applicable.

Please sign and fax this quote, the district purchase order and order documentation to 480-423-0213.

8860 E. Chaparral Rd., Scottsdale, Arizona 85250 877.2020.EDU Fax: 480.423.0213 www.edgenuity.com



Price Quote for Services

8860 E. Chaparral Road
Suite 100
Scottsdale AZ 85250
www.edgenuity.com

Date: 6/23/2014

Quote # 11574

Page 2 of 3

Header	Quantity	Description	Amount
Year 2 of 4	1	<p>Virtual Classroom and Web Administrator Site Licenses*. District Wide Site License, for the Full Edgenuity Course List as well as all age appropriate Remedial Content across grades 6-12. Offering unlimited licenses and course access for every enrolled student, for every Named District Site as specified by Jefferson County Public Schools. The Licenses include software maintenance in accordance with Article V of Attachment A – Terms and Conditions</p> <p>Year Two of this contract also includes: 20 Days of Onsite Professional Development in accordance with Article VI of Attachment A- Terms and Conditions at no additional cost to the District</p> <p>Year Two Total Cost: \$475,000– pricing includes testing and setup as applicable.</p>	475,000.00
Year 3 of 4	1	<p>Virtual Classroom and Web Administrator Site Licenses. District Wide Site License, for the Full Edgenuity Course List as well as all age appropriate Remedial Content across grades 6-12. Offering unlimited licenses and course access for every enrolled student, for every Named District Site as specified by Jefferson County Public Schools. The Licenses include software maintenance in accordance with Article V of Attachment A – Terms and Conditions</p> <p>Year Three of this contract also includes: 20 Days of Onsite Professional Development in accordance with Article VI of Attachment A- Terms and Conditions at no additional cost to the District</p> <p>Year Three Total Cost: \$475,000 – pricing includes testing and setup as applicable.</p>	475,000.00

*Site license is not a CUL nor an SUL

The Contract consists of these Edgenuity Price Quotes for Services, for year(s) 1, 2, 3 + 4, which each include Edgenuity Inc.'s Terms and Conditions of Purchase and License ("Terms and Conditions") signed by both parties, attached hereto as ATTACHMENT A and incorporated by this reference into each Quote (all together these are the "Contract").

If this Quote includes any Sophia® Learning Inc. courses for purchase, the following language applies to any such purchase [and this language is also found in the above linked Terms and Conditions]: "Use of any Sophia course is prohibited for all students under the age of 13 years."

Not valid unless accompanied by a purchase order.
Any terms and conditions contained in a purchase order are disclaimed by Edgenuity and do not become part of any binding agreement between the parties. Please specify a shipping address if applicable.

Please sign and fax this quote, the district purchase order and order documentation to 480-423-0213.

8860 E. Chaparral Rd., Scottsdale, Arizona 85250 877.2020.EDU Fax: 480.423.0213 www.edgenuity.com



Price Quote for Services

Date: 6/23/2014

Quote # 11574

Page 3 of 3

Header	Quantity	Description	Amount
Year 4 of 4	1	<p>Virtual Classroom and Web Administrator Site Licenses*. District Wide Site License, for the Full Edgenuity Course List as well as all age appropriate Remedial Content across grades 6-12. Offering unlimited licenses and course access for every enrolled student, for every Named District Site as specified by Jefferson County Public Schools. The Licenses include software maintenance in accordance with Article V of Attachment A – Terms and Conditions</p> <p>Year Four of this contract also includes: 20 Days of Onsite Professional Development in accordance with Article VI of Attachment A- Terms and Conditions at no additional cost to the District</p> <p>Year Four Total Cost: \$475,000– pricing includes testing and setup as applicable.</p>	475,000.00
		<p>Upon the completion of this Four Year Contract, Jefferson County Public Schools retains the right to either renew this contract for an additional Four Year term at the same amount, and terms of \$475,000 per year, or Jefferson County Schools may choose to negotiate a new contract with Edgenuity based upon their discretion.</p> <p>Both parties agree that the Company's Standard Terms and Conditions in relationship to lack of funding regarding termination is amended as follows: Edgenuity understands that this Agreement is subject to the availability of funds, and that the unavailability of funds will give the District the right to opt out of this contract.</p> <p>The Company requests a written notification of 30 days, in the case of funding unavailability. Additionally, the District has the right to expand the products and services in use during this contract period, at their discretion, at which point a contract revision will be provided to the District.</p> <p style="text-align: right;">Total</p>	\$1,900,000.00

*Site license is not a CUL nor an SUL

The Contract consists of these Edgenuity Price Quotes for Services, for year(s) 1, 2, 3 + 4, which each include Edgenuity Inc.'s Terms and Conditions of Purchase and License ("Terms and Conditions") signed by both parties, attached herelo as ATTACHMENT A and incorporated by this reference into each Quote (all together these are the "Contract").

If this Quote includes any Sophia® Learning Inc. courses for purchase, the following language applies to any such purchase (and this language is also found in the above linked Terms and Conditions): "Use of any Sophia course is prohibited for all students under the age of 13 years."

Not valid unless accompanied by a purchase order.

Any terms and conditions contained in a purchase order are disclaimed by Edgenuity and do not become part of any binding agreement between the parties. Please specify a shipping address if applicable.

Please sign and fax this quote, the district purchase order and order documentation to 480-423-0213.

8860 E. Chaparral Rd., Scottsdale, Arizona 85250 877.2020.EDU Fax: 480.423.0213
www.edgenuity.com

ATTACHMENT A



Terms and Conditions

For the Purchase and License of Edgenuity Inc. Products and Services

TERMS AND CONDITIONS

This Terms and Conditions (this "Agreement"), dated as of August 11, 2014 ("Effective Date"), is made by and between Edgenuity Inc., a Nevada corporation located at 8860 E. Chaparral Road, Suite 100, Scottsdale AZ 85250 ("Edgenuity"), and the Jefferson County Board of Education, a political subdivision of the Commonwealth of Kentucky, with its principal address at 3332 Newburg Road, Louisville KY 40218, ("Client"). These terms and conditions (the "Terms") apply to the sale, provision, and license by Edgenuity of Products and Services, including (a) the license of Software and the provision of associated Software Maintenance, (b) the sale of Hardware for use with the Software, (c) the provision of related Professional Services, and (d) the provision of Instructional School Services. These Terms are an integral part of an agreement (the "Agreement") between Edgenuity and are identified in the Edgenuity Price Quote prepared for and delivered to Client by Edgenuity (a "Quote"). The Agreement consists of the Quote, these Terms, and any documents or instruments attached to or incorporated by reference into the Quote or these Terms (the "Other Documents"). In the event of any conflict or ambiguity among the aforementioned documents, and except as otherwise provided in this Agreement, such conflict or ambiguity shall be resolved in accordance with the following order of precedence: (1) the Quote; (2) these Terms; and (3) the Other Documents. Capitalized terms used in this Agreement shall have the definitions ascribed to such terms above, in Section I below, or elsewhere in this Agreement.

IMPORTANT: PLEASE READ THESE TERMS CAREFULLY.

ACCESSING OR USING EDGENUITY OR EDGENUITY-SUPPLIED SOFTWARE CONSTITUTES ACCEPTANCE OF THESE TERMS AND THE OTHER TERMS AND CONDITIONS OF THE AGREEMENT.

I. DEFINITIONS.

For purposes of this Agreement:

"Client Data" means all data and materials (regardless of format, whether physical, electronic, or otherwise) that Client or its Users have either (a) entered or stored in the Hardware or the Software, or (b) otherwise made available to Edgenuity, including data and records regarding or relating to Client's students, faculty, or administrators.

"Client Technology" means Client's network, routers, switches, computers, communication lines, and other equipment, hardware, software, Client Data, or data used in Client's operations.

"Copyright Materials" means all works of authorship of Edgenuity or its suppliers or licensors.

"Deliverables" means the tangible media on which Copyright Materials or Trade Secret Materials, either or both, may be delivered to Client under this Agreement.

"Documentation" means written information (whether contained in user or technical manuals, training manuals, specifications or otherwise) pertaining to the Software and made available by Edgenuity with the Software in any manner (including on-line or on CD-ROM).

"Edgenuity Licensed Content" or "Licensed Content" means the Edgenuity course content and materials, to include but not limited to Software and/or Third Party Software as defined below, that is licensed under this Agreement.

"Edgenuity Recommended Hardware Configurations" means the configuration requirements set forth on the document located at the following URL, which may be changed by Edgenuity from time to time with or without notice: <http://www.edgenuity.com/Support/System-Requirements>

Revised 02/19/2014

"Edgenuity Software" means the Hosted Application and the object code version of any other software developed or produced by Edgenuity that is identified on a Quote or that is included or provided with, or embedded in, any Hardware.

"Fees" means any and all amounts payable to Edgenuity as set forth on a Quote.

"Hardware" means any hardware marketed or supplied by Edgenuity and identified on a Quote.

"Hosted Application" means the object code version of that certain on-line hosted software program known as Edgenuity Virtual Schooling Software.

"Instructional Services" means the services that Edgenuity provides under Section VII of this Agreement.

"License Period" means the period of time, set forth on a Quote, during which Client will have a limited license to access and use the Software identified in that Quote or during which Edgenuity is to perform Services as identified in that Quote, subject to the terms and conditions of this Agreement.

"Products" means Hardware, Software, and Documentation.

"Professional Services" means any specific consulting or other professional services set forth in a Quote, and includes Training Services.

"Purchase Order" means a purchase order or other similar document or communication of Client.

"School Policies and Procedures" shall have the meaning as defined in Section VII. C.

"Services" means Software Maintenance, Professional Services, Instructional School Services and Deliverables; all as defined herein.

ATTACHMENT A

"Software" means any software marketed or supplied by Edgenuity and identified on a Quote or included or provided with, or embedded in, any Hardware, and may include (among other things) the Hosted Application, Edgenuity Licensed Content, other Edgenuity Software, and/or Third Party Software.

"Software Maintenance" means maintenance and support of any Software set forth in a Quote.

"Third Party Software" means software acquired or licensed by Edgenuity from a third party for use by Edgenuity and/or Client in connection with any Edgenuity Software or Hardware under licensing terms and conditions provided by the third party, and includes but is not limited to any Explore Learning Gizmos™ included in, incorporated into, or used in connection with any Edgenuity Software and Middlebury Interactive Services Powerspeak™ included in, incorporated into, or used in connection with any Edgenuity Software.

"Trade Secret Materials" means all non-public information of Edgenuity or its suppliers or licensors, and which may include patent applications, trade secrets, technical and non-technical data, financial information, business methods and models, drawings, processes, formulas, formats, ideas, concepts, know how, techniques, sketches, methodologies, models, inventions, processes, algorithms, and information regarding experiments, developments, designs, and specifications.

"Training Services" means any specific training services set forth in a Quote, including any professional development services.

"Users" means individuals who (a) are currently employed, associated, or affiliated with Client, and (b) are authorized by Client to access and use the Software or the Documentation, and may include Client's students and their parents, faculty, administrators, and staff.

"Work Product" means all tangible and intangible information, data, work, documents, reports, materials, deliverables, technology, know-how, and things conceived, created, produced, developed or delivered under or in connection with this Agreement.

II. ORDERS.

Client shall initiate an order for Products and Services by (a) executing the Quote, (b) delivering to Edgenuity a Purchase Order in connection with the Quote, and/or (c) accessing or using any Software (either by Client or any of its Users) following receipt of the Quote. Client shall be deemed to have accepted all of the terms and conditions of this Agreement, including the Quote and these Terms, upon initiation of the order, and this Agreement shall be effective as of the earlier of (i) the date that the Quote is executed by Client, (ii) the date that Client delivers a Purchase Order to Edgenuity, or (iii) the date that Client or its Users access or use any Software (the "Effective Date"). All orders are subject to credit approval and to acceptance by Edgenuity, which acceptance shall be evidenced by Edgenuity's execution of the Quote, or its delivery (by mail, facsimile, or other electronic means) to Client of written confirmation of acceptance.

Edgenuity specifically objects to any additional terms being added through a Purchase Order delivered by Client in connection with the order, and Client and Edgenuity agree that any additional terms contained in a Purchase Order shall not become part of the Agreement between the parties, and specifically that these Terms and all other terms and conditions of the Agreement shall supersede any conflicting, contrary, or additional terms and conditions contained in a Purchase Order.

III. HARDWARE.

Revised 02 19 2014

A. **Delivery and Title.** Subject to Client's timely payment of all applicable Fees, Edgenuity shall use its commercially reasonable efforts to deliver the Hardware to Client. Selection of the carrier and the delivery route shall be made by Edgenuity unless specified by Client.

B. **Acceptance.** All Hardware will be deemed accepted by Client upon delivery to Client, and Client waives any right to revoke acceptance thereafter.

C. **Reseller Status.** Client acknowledges and understands that Edgenuity is a reseller, not the manufacturer, of the Hardware, and as such, Hardware is provided subject to the separate license and sale terms, conditions, and restrictions provided by the manufacturer, all of which Client agrees to abide by. In the event that Client seeks to return or exchange any Hardware, Client shall be responsible to pay any return or exchange charges imposed by the third party vendor, and to comply with any and all applicable return merchandise authorization procedures.

IV. SOFTWARE.

A. **Access.** During the applicable License Period, and subject to (1) Client's timely payment of all Fees due under this Agreement, and (2) Client's compliance with all of the other terms and conditions of this Agreement, Edgenuity will house the Software on its data center servers and will use commercially reasonable efforts to make the Software available (subject to routine or required maintenance periods) to Client and its Users via the internet twenty-four (24) hours a day, seven-(7)-days-a-week. Such efforts shall include providing Client with certain user IDs and passwords ("Passwords") for use by Client in gaining access to and use of the Software. All access rights for Client and its Users will be via the worldwide web using a browser and internet connection compliant with the Edgenuity Recommended Hardware Configurations and any other system requirements provided by Edgenuity to Client in connection with the Quote, and shall be subject to the limited licenses granted below and the other terms and conditions of this Agreement.

B. **Acceptance.** All Software will be deemed accepted by Client upon the availability to Client of access to the Software, and Client waives any right to revoke acceptance thereafter.

V. SOFTWARE MAINTENANCE.

A. **Delivery.** During the applicable License Period, and subject to Client's timely payment of all applicable Fees and Client's compliance with all of the other terms and conditions of this Agreement, Edgenuity will use commercially reasonable efforts to provide Client with Software Maintenance to the extent provided in the Quote.

B. **Acceptance.** Software Maintenance will be deemed accepted by Client upon the availability of Software Maintenance to Client, and Client waives any right to revoke acceptance thereafter.

C. **Updates.** From time to time, Edgenuity may develop or license updates, upgrades, bug fixes, or modifications to the Software ("Updates"). If Client is receiving Software Maintenance from Edgenuity on the general release date of an Update, Edgenuity will provide Client with the Update and any related Documentation at no additional charge to Client. Otherwise, Edgenuity has no obligation to provide Client with any Updates or any related Documentation. Access to and use of any Update or Documentation provided hereunder shall be subject to all of the terms and conditions that apply to the related Software.

D. **Super Users.** If Client is receiving Software Maintenance from Edgenuity, then, in addition to standard support for faculty-Users via electronic mail or telephone, Client shall designate up to three (3)

Edgenuity Inc.

Page 2 of 11

ATTACHMENT A

Users who shall be responsible for adding and maintaining teachers, Client policies for teachers, customizing courses, and communications in regards to the hardware and software comprising Client's computer system of which the Software is a part (the "Super Users"). Super Users will be entitled to contact Edgenuity's support line during normal operating hours (between 8:00 a.m. and 8:00 p.m. Eastern Standard Time) on regular business days, excluding Edgenuity holidays, via telephone, electronic mail, or fax, to consult with Edgenuity technical analysts concerning problem resolution, bug reporting, documentation clarification, and general technical and support guidance. In the event that a Super User is no longer employed by Client, or is given materially different job functions, Client will substitute a new Super User for that Super User, provided, however, that in the event of any change of a Super User, Client must notify Edgenuity in writing of the change prior to the new Super User contacting Edgenuity.

E. Limitation. Edgenuity shall have no obligation to provide any maintenance or support of any kind with respect to any hardware or software product other than the Hardware and the Software stated in the quote.

VI. PROFESSIONAL SERVICES.

A. Delivery. Subject to Client's timely payment of all applicable Fees and Client's compliance with all of the other terms and conditions of this Agreement, Edgenuity shall provide Client with Professional Services in accordance with the terms of the Quote and this Agreement.

B. Acceptance. Professional Services will be deemed accepted upon performance of the Professional Services, unless Client reasonably believes that such performance is not in compliance with the terms of the Quote and this Agreement, and Client provides Edgenuity with written notice specifically describing such deficiency within ten (10) days of such performance, in which event Edgenuity shall have a reasonable amount of time to investigate and remedy any actual deficiency. Upon the expiration of this ten (10) day period, Client waives any right to revoke acceptance thereafter.

C. Personnel. Edgenuity and Client shall each designate a project representative. All Edgenuity and Client personnel assigned to participate on their behalf shall be knowledgeable in their assigned areas of responsibility. Unless otherwise provided in a Quote, each party has the right to determine the assignment and re-assignment of its personnel. Edgenuity's obligations under this Agreement may be performed by divisions, subsidiaries, or affiliates of Edgenuity. Edgenuity also may engage the services of independent contractors or subcontractors selected by Edgenuity to assist Edgenuity in the performance of its duties hereunder.

D. Changes. Any changes to the Professional Services, including the scope of work or the project timeframes, must be made by written amendment to the Quote signed by Edgenuity and Client prior to the implementation of the changes. Any changes may result in additional fees or charges to Client.

E. Unused Training Services. Any Training Services that have not been used by Client prior to the expiration or termination of this Agreement or the term applying to those Training Services, whichever is earlier (the "Unused Training Services"), shall expire upon such expiration or termination, and Client waives and forfeits all of its rights (if any) to all Unused Training Services and to any refund or cancellation of any Fees paid or payable for any Unused Training Services.

VII. INSTRUCTIONAL SERVICES

A. Delivery. Subject to Client's timely payment of all applicable Fees and Client's compliance with all other terms and conditions of this agreement, Edgenuity shall provide Client with all Instructional Services defined and set forth in accordance with the Quote and any and all Appendix (ces) or Other Documents of this agreement if the client has opted for such services.

B. Edgenuity Teachers. Edgenuity will provide all students with virtual access to teachers and/or coaches hired, trained, supervised, and paid by Edgenuity. The availability of teachers/coaches to Client will be during reasonable business hours. The teacher will assist in the virtual delivery of the Edgenuity Content to students. Each teacher shall be lawfully allowed to teach the grade and subject matter listed as part of the services under this Agreement and will be appropriately certified under applicable laws.

Client may make recommendations regarding the hiring, dismissal, discipline, and supervision of such teachers and/or coaches, which recommendations Edgenuity may accept or reject in its sole discretion. No such recommendations shall be binding on Edgenuity, and as between Client and Edgenuity, Edgenuity shall have sole authority regarding such individuals.

C. Policies and Procedures. Edgenuity may implement Instructional Services policies and procedures that may be reviewed with Client and that are in addition to or differ with existing Client policies and procedures in order to ensure the integrity of the program and successful student outcomes. Where conflicts exist between the parties regarding policy (ies), Edgenuity policies and procedures shall take precedence unless otherwise agreed to by both parties. Edgenuity has the right to follow policies according to the policy language and/or the law in the case where the Client has approved a policy, but Client is not administering that policy in accordance with policy language and/or the law. If conflicts arise between teachers and students and if no policies exist or have not been provided by Client addressing such conflicts and after Edgenuity has requested the Client to provide such in writing, Edgenuity shall have the right to create, develop and follow policies that address said conflicts until such time the Client provides said policies. If Client is utilizing Edgenuity's NCAA compliant Instructional Services, Client agrees to abide by all policies and procedures specific to NCAA guidelines.

D. Customer Relationship Specialist. Throughout the Term, Edgenuity shall designate an individual to serve as its program coordinator with respect to the Instructional Services (the "Customer Relationship Specialist").

VIII. DELIVERABLES.

In connection with its performance of any Software Maintenance, Professional Services or Instructional School Services hereunder, Edgenuity may provide Client with one or more Deliverables. All rights, title, and interest in and to any Deliverables and any Copyright Materials and Trade Secret Materials shall belong to and be retained by Edgenuity (or its suppliers and licensors, as applicable), subject to the following limited license: Conditioned upon Client's performance under this Agreement, including the timely payment of all Fees, Edgenuity hereby grants to Client a nonexclusive, nontransferable, limited license (without the right to grant sublicenses) to use the Deliverables and any Copyright Materials and Trade Secret Materials contained therein solely in connection with Client's authorized use of the Hardware and the Software.

ATTACHMENT A

IX. CLIENT OBLIGATIONS.

A. Edgenuity Recommended Hardware Configurations.

Client hereby acknowledges and agrees that all applicable Client Technology meets the Edgenuity Recommended Hardware Configurations required for Client's operation and use of the Hardware and Software pursuant to this Agreement, and that the Hardware and Software may not operate with Client Technology that does not comply with the Edgenuity Recommended Hardware Configurations. Client is responsible for the cost, operation, and availability of, and compliance of its Users with, all elements of the Edgenuity Recommended Hardware Configurations. Edgenuity will use commercially reasonable efforts to ensure that the Hardware and Software will operate, substantially in accordance with the applicable Documentation, with Client Technology that complies with the Edgenuity Recommended Hardware Configurations. Client shall be solely responsible for any Client Technology or other product that is required for Client's or its Users' access to or use of the Hardware or the Software, including the purchase and maintenance of any such product, and Client shall be responsible for payment of any fees or expenses incurred in connection with any performance testing and other product setup charges, which may be billed by Edgenuity separately.

B. User Activity. Client is responsible for all activities of Users and for the compliance of all Users with these Terms and all other terms of this Agreement. Client will (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Client Data; (ii) use reasonable efforts to prevent unauthorized access to, or use of, the Software or the Documentation, which must include, among other things, user identification numbers and passwords, IP address verification, or other secure method of user verification, and notify Edgenuity promptly of any such unauthorized access or use; and (iii) in connection with this Agreement, comply, and ensure compliance by all Users, with all applicable local, state, and federal laws, rules, and regulations, including the Children's Online Privacy Protection Act (COPPA) and the Family Educational Rights And Privacy Act (FERPA).

C. Client Cooperation. Client agrees to cooperate with Edgenuity in a professional, diligent, and courteous manner in connection with the performance of Edgenuity's obligations under this Agreement. Without limiting the generality of the foregoing, Client shall, at all times diligently comply with any reasonable request of Edgenuity to furnish to Edgenuity all technical matter, data, information, operating supplies, knowledgeable personnel, and access to and use of any Client Technology to the extent necessary or appropriate for the performance of Edgenuity's obligations under this Agreement. Client hereby grants to Edgenuity a nonexclusive, royalty-free license to access and use Client Technology during the Term solely for the purposes of performing Edgenuity's obligations under this Agreement.

D. Client's Liaison. Throughout the Term, Client shall designate an individual to serve as its primary liaison to Edgenuity for all communications related to the program if Client is utilizing Instructional Services. Client may change the identity of the Primary Liaison from time to time upon reasonable written notice to Edgenuity. The Primary Liaison will serve as the primary point of contact for all communications with Edgenuity related to the program and for coordinating efforts necessary for the fulfillment of Client's obligations specified in this Agreement with respect to the contracted project.

E. Administrative Services. Client shall be responsible for all day-to-day management of the program if Client is utilizing Instructional Services, subject in all cases to compliance with applicable law and school policies.

F. Exceptional Student Services. Client shall be responsible for compliance with applicable all state and federal laws and regulations regarding exceptional student services and Individual Education Plans (IEPs). Additionally, Client shall be responsible for all costs associated with compliance. Edgenuity, if Client is utilizing Instructional Services, shall make its staff available, as needed, for any IEP meetings and work with appropriate personnel to ensure that provisions of a student IEP that relate to Edgenuity staff, systems or curriculum are implemented to the fullest extent possible.

G. State Testing. Client shall be responsible for the provision of appropriate accommodations in which to administer all state mandated standardized tests in accordance with documented state law, policies and procedures.

H. User Cooperation. Client understands and agrees that the participation and cooperation of each User, and in particular each student User, is critical to the effective use of the Hosted Application and the other Software. Client agrees to use its best efforts to ensure that each User fully cooperates with Edgenuity in the use of the Hosted Application and the other Software by each User in accordance with this Agreement.

I. Suspension. Without limiting Edgenuity's other remedies under this Agreement, including termination, in the event of any material breach of any of the terms of this Section IX by Client, Edgenuity may immediately, upon written notice to Client of such breach, suspend Client's and its Users' access to and use of the Software, its delivery of any Software Maintenance or Professional Services, or performance of any of its other obligations under this Agreement, until such breach is cured to the reasonable satisfaction of Edgenuity.

X. INTELLECTUAL PROPERTY.

A. License. Conditioned upon Client's compliance with the terms and conditions of this Agreement, Edgenuity grants to Client and its Users a nonexclusive, nontransferable, and limited license to access and use (by use of a unique user name and password), solely for internal education-related and training-related purposes of Client and its Users (and in no event for providing services or assistance to any other parties, including any other educational institutions). The Software, Documentation, Edgenuity Licensed Content, Copyright Materials, Trade Secret Materials, Marks and Work Product (collectively the "Licensed Content") for which Client has paid the applicable Fees, are subject to and in accordance with the following terms:

1. Concurrent User Licenses ("CULs") are required for each concurrent user session, and Single User Licenses ("SULs") are required for each single user session. CULs and/or SULs must be purchased from Edgenuity prior to use. In the event that Client purchases Instructional Services, unless otherwise stated, all Instructional Services Fees include all necessary software licenses.

2. Software is in "use" on a computer when it is loaded in part or in whole into the temporary memory (i.e., RAM). The Software may be utilized on an unlimited number of computers, provided, however, that the number of allowed concurrent or single use sessions is limited to the number of CULs or SULs purchased. Installation or use on a network server, a terminal server, or an emulator of any type is not supported and is not allowed.

3. Solely with respect to Documentation, Client may make an unlimited number of copies (either in hardcopy or electronic form), provided that such copies are used only for Client's internal educational and training purposes and are not republished or

ATTACHMENT A

distributed beyond Client's premises, to include not posted on Client's externally available websites.

4. Edgenuity may require Client and its Users to agree (via a separate agreement, such as a "click-accept" agreement) to reasonable terms of use and restrictions as a condition of their initial access to the Software.

B. **Ownership.** This Agreement grants a license, not a transfer of title, to the Licensed Content. All title, ownership rights, and rights in the Licensed Content (including any images, "applets", animations, video, audio, and text incorporated in the Software) is owned by Edgenuity or its suppliers or licensors, and, subject to the limited rights expressly granted to Client and its Users under this Agreement, Edgenuity and its suppliers and licensors hereby expressly retain and reserve all rights, title, and interest in and to the Licensed Content, including all related patents, copyrights, trademarks, trade secrets, and other intellectual property rights.

C. **Client Data.** Client hereby grants Edgenuity a nonexclusive license to use, modify, reproduce, create derivative works of, and distribute Client Data solely for the purpose of performing Edgenuity's obligations under this Agreement. Except for the foregoing, Edgenuity shall have no rights, title, or interest in any Client Data.

D. **Feedback.** Edgenuity shall have and enjoy a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual right and license to use or incorporate into the Licensed Content any suggestions, enhancement requests, recommendations, or other feedback provided by Client or its Users relating to the operation or use of Licensed Content ("Feedback"). All Feedback is and shall be entirely voluntary and shall not, absent a separate written agreement, create any obligations of confidentiality for Edgenuity or otherwise be considered Confidential Information of Client hereunder.

E. **Customization.** Certain aspects of the Edgenuity Software, such as the scope and sequencing of Edgenuity Licensed Content, may be customized by Edgenuity upon request of Client ("Customization"), which Customization may be provided only to the extent set forth in the Quote and upon payment of any applicable Fees. With respect to any Customization, (a) Client shall have no ownership rights in the Edgenuity Software or any of the Edgenuity Licensed Content; (b) Client may use the Customization and distribute them, but only to those schools, campuses, or educational entities that are directly affiliated with Client and have purchased and hold a current and valid license to the Software used to create and utilize the Customization; and (c) Client grants Edgenuity a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual right and license to use, reproduce, display, distribute, modify, market, sell, and create derivative works from any Customization (including providing the Customization to any other Edgenuity customer).

F. **Limitations.** Client has no rights in or to the Licensed Content other than those expressly granted to Client under this Agreement. Without limiting the generality of the foregoing, Client and its Users shall have no right to, and Client specifically agrees not to (and not to permit its Users to):

1. Download all or any part of the Software or the Documentation, except to the limited extent expressly permitted by this Agreement;

2. Modify, copy, or create derivative works based on the Licensed Content;

3. Frame or mirror any content forming part of the Licensed Content;

4. Reverse engineer, attempt to reverse engineer, translate, alter, adapt, decompile, or disassemble the Licensed Content;

5. Access or allow others to access the Licensed Content in order to build, market, or offer a competitive product or service, or copy ideas, features, functions, or graphics of the Licensed Content;

6. License, sublicense, sell, resell, lease, transfer, assign, distribute, time share, or otherwise commercially exploit the Licensed Content in any form or in any manner, or make the Licensed Content available to any third party other than Client's Users or as otherwise permitted by this Agreement;

7. 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;

8. Intentionally send or store any viruses, worms, time bomb Trojan horses, or other harmful or malicious code, files, scripts, agents, or programs;

9. Interfere with or disrupt the integrity or performance of the Software or the data contained therein;

10. Attempt to gain unauthorized access to the Licensed Content or its related systems or networks;

11. Publicly display or publicly perform the Licensed Content without Edgenuity's prior written consent;

12. Remove or alter any proprietary notices or marks on the Licensed Content; or

13. Without the written consent of Edgenuity, provide any documentation referencing any Licensed Content in response to a FOIA or similar request.

G. **Third Party Providers.**

1. **General.** Client acknowledges and understands that the Hardware and the Software may include Third Party Providers. If the Hardware or Software or Services, or any aspect of the Quote, includes a Third Party Provider or other intellectual property owned by a third party, such software or services or other intellectual property is provided by Edgenuity to Client subject to any applicable copyright(s) and user license(s), the terms and conditions of which may be set forth in a license agreement accompanying such software or services or other intellectual property. Nothing contained herein shall be construed to grant any rights or license to use any Third Party Software or other third party intellectual property in any manner or for any purpose not expressly permitted by such license agreement.

2. **ExploreLearning Gizmos™.** Without limiting any of the provisions of Subsection 1 above, access to and use of any ExploreLearning Gizmos™ ("Gizmos") provided by Edgenuity (whether included in or incorporated into any Edgenuity Software, or otherwise) shall be subject to the following terms:

(a) Neither Client nor any of its Users are authorized to access or use any Gizmos, except: (i) Users who are students and who are authorized by Client to access and use the Edgenuity Software that includes or incorporates the Gizmos; and (ii) Users who are teachers of those same students, provided that such teachers may use the Gizmos only for the purposes of assigning and managing assignments for those students; and

(b) A Gizmo may only be used in connection with the Edgenuity Software with which that particular Gizmo has been provided, and may not be used in connection with any other class, program, application, or software.

(c) Client understands and agrees that any access to or use of any Gizmo provided by Edgenuity by Client or any of its Users in Edgenuity Inc.

ATTACHMENT A

contravention of the foregoing terms constitutes a material breach of this Agreement, and that if Client desires to use a Gizmo in a manner that is not authorized by this Agreement, it is solely the responsibility of Client (and not of Edgenuity) to obtain authorization for such use from the appropriate third party.

3. Middlebury Interactive Services (MIL) Powerspeak™. Without limiting any of the provisions of subsection 1 above, if this agreement includes any Middlebury Interactive Services (MIL) products, including but not limited to Powerspeak, Client acknowledges that with the use of MIL's products, the Client is subject to MIL's terms and conditions. For further information, please refer to MIL's terms and conditions which can be found online at:

<http://middleburyinteractive.com/index.php/lags/terms-of-use>.

Client understands and agrees that any access to or use of MIL products provided by Edgenuity by Client or any of its Users in contravention of the foregoing terms constitutes a material breach of this Agreement, and that if Client desires to use a MIL Product(s) in a manner that is not authorized by this Agreement, it is solely the responsibility of Client (and not of Edgenuity) to obtain authorization for such use from the appropriate third party.

4. Education Testing Services (ETS) e-rater® Scoring Service.

a). *The score and/or feedback received from the e-rater® technology should be considered as one piece of evidence about a student's writing ability. When a score from the e-rater® engine is being used for an important decision about a student's performance, instructors should review and evaluate the score and/or feedback to ensure that the appropriate decision about placement or performance has been made.*

The user understands and agrees that the e-rater® Scoring Service may not be used for any other purpose, or provided to any other party, than as described herein. User shall indemnify and hold Edgenuity and/or Educational Testing Service (ETS) harmless from any and all claims arising out of the use of the e-rater® Scoring Service or use of the scores and/or feedback to determine placement of, or grades for students, or any other purpose.

b). **THE E-RATER® SCORING SERVICE (SCORE AND GRAMMAR CHECKING FEATURE) PROVIDED BY ETS IS PROVIDED "AS-IS", WITHOUT WARRANTIES OF ANY KIND AND ETS DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE E-RATER® SCORING SERVICE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL ETS BE LIABLE TO CLIENT OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, PUNITIVE, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE THIRD PARTY PRODUCTS, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES.**

c). **License to Use Essays Submitted**

With regard to essays submitted to the site, you hereby grant to ETS a non-exclusive, royalty-free, perpetual, world-wide, irrevocable license to reproduce, transmit, display, disclose, archive and otherwise use any such files you submit to the site for the purposes of scoring and providing feedback. ETS will not retain any personally-identifiable information that may be associated with the papers. This license shall survive the termination of any license granted herein to ETS. Nothing herein shall preclude ETS from using information independently created by ETS.

5. Sophia® Learning Inc. If this Agreement includes any Sophia Learning Inc. courses for use, the following language applies to any such purchase or use, "Client agrees that the use of any Sophia course is prohibited for all students under the age of 13 years."

H. **Branding.** Unless otherwise agreed to by Edgenuity and Client, the Software will not contain advertisements or commercial branding other than standard brand identifiers used by Client, Edgenuity, or Edgenuity's suppliers and licensors.

I. **Evaluations.** In the event that the Quote provides for an evaluation, "pilot", or other trial License Period for any Licensed Content, whether or not free of charge (an "Evaluation"), all of the terms and conditions of this Agreement shall apply to the Evaluation, as supplemented by the terms set forth in the Quote, provided that, notwithstanding anything in this Agreement to the contrary:

1. The access to and use of the Licensed Content permitted under Section X.A above and under this Agreement, shall be limited solely to an evaluation by Client and its Users of the Licensed Content for prospective use in their internal, education-related operations;

2. The duration of the License Period for the Evaluation shall be as set forth in the Quote;

3. The number and the identity of the Users for the Evaluation shall be as set forth in the Quote;

4. Client and Users shall have no right to reproduce or make any copies of any Licensed Content, or any portion thereof; and

5. **THE LICENSED CONTENT IS PROVIDED BY EDGENUITY "AS IS." EDGENUITY MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO ANY LICENSED CONTENT.**

J. **Audits.**

Edgenuity may audit Client's and its Users' use of the Licensed Content for compliance with the terms and conditions of this Agreement at any time upon reasonable notice to Client. Client shall cooperate with any such audit, shall comply with any reasonable request of Edgenuity in connection with the audit, and shall provide Edgenuity with access to any and all documents and information necessary or appropriate for Edgenuity to complete the audit. In the event that any such audit reveals any use of the Licensed Content other than in accordance with and in full compliance with the terms and conditions of this Agreement, then, in addition to all of Edgenuity's other rights and remedies, Client shall promptly reimburse Edgenuity for all reasonable fees, costs, and expenses (including attorneys' fees) incurred by Edgenuity in connection with such audit.

K. **Termination of Licenses.**

Licenses granted under this Agreement will be automatically terminated and revoked upon the earlier of the expiration or termination of the applicable License Period or the expiration or termination of this Agreement. Edgenuity reserves the right to revoke any license granted under this Agreement upon the occurrence of a material breach of this Agreement by Client or its Users, which is not fully cured within ten (10) days after the date of first occurrence. Upon the revocation or termination of a license, Client and all Users must immediately discontinue their access to and use of the applicable Licensed Content, and Client and Users must destroy all copies of such Licensed Content that they have obtained or made.

L. **Work Product and Marks.**

Client agrees that no copyrightable aspects of the Work Product or any Mark shall be considered "work made for hire" within the meaning of the Copyright Act of 1976, as amended, and Client hereby

Edgenuity Inc.

Page 6 of 11

ATTACHMENT A

assigns to Edgenuity exclusively all right, title, and interest in and to all intellectual property rights in and to such Work Product and Marks that Client may have or obtain. Client acknowledges that the parties do not intend Client to be a joint author of the Work Product or the Marks within the meaning of the Copyright Act of 1976, as amended, and that in no event shall Client be deemed a joint author of the Work Product or the Marks. Client agrees to execute and deliver any additional documents and instruments, and take any other actions that may be necessary or requested by Edgenuity to give effect to the provisions of this Section.

XI. FEES AND PAYMENT.

A. **Fees.** Client agrees to pay all Fees. Except to the extent expressly provided in the Quote or in this Agreement, all Fees are non-cancellable and non-refundable, including (i) any Fees related to any Software or any other Product, (ii) any Fees related to any Professional Services, including Training Services and (iii) any fees related to any Instructional School Services. Amounts due for Products and Services are based on access to the Products and Services and are not dependent on actual usage, nor are they contingent upon delivery of any future functionality or features. Accordingly, and without limiting the generality of the first sentence of this section, in the event of any expiration, termination, renewal, account change or modification, or any other circumstance, Client shall have no right to the cancellation or refund of any Fees paid or payable for any Products and/or Services based on Client's lack of use or implementation of the Products or Services, including any Unused Training Services.

B. Invoicing and Payment.

Unless otherwise provided in the Quote, all Fees (including any Fees for any Products or Services) may be invoiced upon the Effective Date, and Client agrees to pay the net amount of each invoice, without offset or deduction, within 45 days after the invoice date. If any amount is not paid upon the due date, then Edgenuity shall be entitled to receive the amount due plus interest thereon at the rate of 1.5% per month (or such lower rate as shall be the highest permissible contract rate under applicable law) on all amounts that are not paid on or before the due date.

C. Taxes.

Except to the extent that Client provides Edgenuity with a valid tax exemption certificate authorized by the appropriate taxing authority, Edgenuity will invoice Client for, and Client agrees to promptly pay, any taxes, impositions, or other charges imposed or levied by any governmental authority, including any sales, use, value-added, or withholding taxes, in connection with this Agreement (except for any Edgenuity income or employee taxes).

XII. CONFIDENTIALITY.

A. **Protection.** Edgenuity and Client each (the "Receiving Party") agrees to hold Confidential Information of the other party (the "Disclosing Party") in strictest confidence and not to disclose such information to third parties or to use such information for any purpose whatsoever, except as authorized by this Agreement or in connection with the Receiving Party's obligations under this Agreement. The Receiving Party shall take reasonable precautions to protect the confidentiality of such.

B. **Definitions.** "Confidential Information" means any information relative to the Disclosing Party, its business, or its operations, that is clearly marked "confidential" or "proprietary", or that ought to be treated as confidential under the circumstances surrounding the disclosure,

provided that Confidential Information shall not include information that: (i) at the time of disclosure, or thereafter, becomes publicly known through means other than a party's breach of this Agreement; (ii) was known to the Receiving Party as of the time of its disclosure without any obligation of confidentiality, the proof of such knowledge to be the burden of the Receiving Party; (iii) was independently developed by the Receiving Party without the use of any of the Disclosing Party's Confidential Information; (iv) was subsequently learned from a third party not under a confidentiality obligation to the Disclosing Party or any other party; or (v) is public record pursuant to applicable state law. "Confidential Materials" means all tangible materials containing Confidential Information, including written or printed documents and computer disks or tapes, whether machine or use readable. Edgenuity's Confidential Information includes the contents of any Edgenuity Licensed Content, Quote, the Software, the Documentation, the Deliverables, Copyright Materials, and Trade Secret Materials. Client's Confidential Information includes the Client Data.

C. **Allowed Disclosure.** The Receiving Party may disclose Confidential Information or Confidential Materials only to Receiving Party's employees, agents, and consultants who have a "need to know" such information, and who have agreed, in writing, to protect the confidentiality of the Confidential Information and the Confidential Material to the same extent as provided in this Agreement.

D. **Compelled Disclosure.** If the Receiving Party is forced to disclose any Confidential Information or Confidential Materials of the Disclosing Party by order of a court or other legal authority, or by operation of law, the Receiving Party will, to the extent legally permitted, give the Disclosing Party prompt notice thereof and will provide the Disclosing Party a reasonable opportunity to prevent such disclosure.

E. **Unauthorized Disclosure.** The Receiving Party shall notify the Disclosing Party immediately upon the discovery of any unauthorized use or disclosure of the Disclosing Party's Confidential Information or Confidential Materials, and will cooperate with the Disclosing Party in every reasonable way to assist the Disclosing Party in regaining possession of the Confidential Information or Confidential Material and in preventing its further unauthorized use or disclosure.

F. **Return of Confidential Information.** Promptly upon the Disclosing Party's request, the Receiving Party shall return to the Disclosing Party all originals, copies, reproductions, and summaries of Confidential Information and Confidential Materials, or, at the Disclosing Party's option, certify the destruction thereof.

G. **Remedies.** The Receiving Party's disclosure or use (or threat to disclose or use) any Confidential Information of the Disclosing Party in breach of this Agreement will cause immediate and irreparable harm to the Disclosing Party and the Disclosing Party shall be entitled to immediate injunctive relief against any actual or threatened violation, in addition to any of its other rights and remedies.

H. **No Transfer.** This Agreement does not transfer to the Receiving Party any title to or ownership rights in any of the Disclosing Party's Confidential Information.

I. **Student Data for Purpose of Study.** Client may share student records with Edgenuity pursuant to this Agreement for the sole purpose of conducting a study on behalf of Client to improve instruction. Edgenuity shall destroy or return all identifiable student information when no longer needed for purposes of the study.

ATTACHMENT A

XIII. INFRINGEMENT AND INDEMNIFICATION.

A. **Infringement.** Edgenuity agrees to defend or settle, at its option or discretion, any claim, action, demand, lawsuit, or proceeding (each, a "Claim") made or brought against Client alleging that any portion or aspect of any Edgenuity Licensed Content, Marks, Edgenuity Software, related Documentation, Software Maintenance, Professional Services, Instructional School Services, Deliverable, or any U.S. patent, copyright, trade secret, trademark, or other intellectual property of Edgenuity made available to Client under this Agreement (each, an "Edgenuity Item") infringes any patent, copyright, trademark, or other intellectual property right of a third party, provided that: (i) the subject Edgenuity Item is used strictly as permitted by this Agreement; (ii) the Claim does not arise from any modification, alteration, or customization of the Edgenuity Item made by or at the request of Client; (iii) the Claim could not have been avoided if Client had substituted its use of the infringing Edgenuity Item with an update or release provided to Client prior to such Claim; and (iv) Client gives Edgenuity prompt written notice of the Claim, tenders to Edgenuity the defense or settlement of the Claim, at Edgenuity's expense, and cooperates with Edgenuity, at Edgenuity's expense, in defending or settling the Claim. If one or more of the conditions set forth in sub-clauses (i), (ii), (iii) or (iv) are not satisfied, then Edgenuity shall have no liability or other obligation to Client with respect to the Claim. If an Edgenuity Item becomes, or in Edgenuity's opinion likely to become, the subject of an infringement Claim, Edgenuity may, at its sole option and expense, procure for Client the right to continue using such item as provided hereunder, modify such item so that it is no longer infringing, replace such item with another item of equal or superior functional capability, or require the return or cessation of use of the item and refund Client the portion of the Fees paid that are attributable to the item. THE RIGHTS GRANTED TO CLIENT UNDER THIS SECTION SHALL BE CLIENT'S SOLE AND EXCLUSIVE REMEDY AND EDGENUITY'S SOLE LIABILITY FOR ANY ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER INTELLECTUAL PROPERTY RIGHT.

B. **Indemnification.** Client agrees to indemnify, defend, and hold harmless Edgenuity and its shareholders, directors, officers, employees, agents, contractors, consultants, affiliates, and subsidiaries from and against any and all Claims, and any losses, damages, settlements, taxes, contributions, penalties, fines, costs, or expenses (including reasonable attorneys' fees), arising from: (i) any act or omission on the part of Client, any party acting on Client's behalf, and any User; (ii) any injuries or death to any Edgenuity personnel, or any damage to Edgenuity property suffered in the performance of the Services, except as may result from the gross negligence or willful misconduct of Edgenuity; (iii) the occurrence or nonoccurrence of any event alleged to be proximately caused by any Client Technology; (iv) any allegation that any Client Technology infringes any third party patent, trademark, copyright, or other right; and (v) the use of any Product or Service by Client or any User other than as expressly permitted by this Agreement.

XIV. WARRANTIES AND DISCLAIMERS.

A. **Edgenuity Software Warranties.** Edgenuity warrants that the Edgenuity Software will operate substantially in accordance with the applicable Documentation during the applicable License Period, provided that the Edgenuity Software is used in accordance with Edgenuity's Recommended Hardware Configurations and the terms and conditions of this Agreement. This warranty is voided to the extent of any alterations, modifications, or access to or use of the Edgenuity

Software not authorized by Edgenuity. Client must notify Edgenuity of any breach of this warranty promptly in writing. Upon Edgenuity's receipt of such notice, Edgenuity may, at its election and expense, either (i) as soon as commercially practical, consistent with industry practice, modify the affected Edgenuity Software to conform in all material respects with the applicable Documentation; (ii) provide a replacement for the affected Edgenuity Software which conforms in all material respects with the applicable Documentation; or (iii) terminate access to and use of the affected Edgenuity Software and refund to Client a pro-rated portion of the Fees paid that is attributable to the affected Edgenuity Software. THE REMEDIES SET FORTH IN THIS SECTION SHALL BE CLIENT'S SOLE REMEDY AND EDGENUITY'S SOLE LIABILITY WITH RESPECT TO A BREACH OF THE WARRANTY SET FORTH IN THIS SECTION.

B. **Hardware and Third Party Software Warranties.** ALL HARDWARE AND THIRD PARTY SOFTWARE IS PROVIDED BY EDGENUITY "AS IS." EDGENUITY MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO ANY HARDWARE OR THIRD PARTY SOFTWARE. Client, recognizing that Edgenuity is not the manufacturer of Hardware or the producer of Third Party Software, expressly waives any claim that Client may have against Edgenuity based upon any alleged or actual product liability or infringement of any patent, copyright, trade secret, or other intellectual property right with respect to any Hardware or Third Party Software, as well as any right to indemnification from Edgenuity on account of any such claim made against Client by a third party. Edgenuity hereby transfers to Client, to the extent transferable, whatever transferrable warranties and indemnities Edgenuity receives from the manufacturer of the Hardware or the producer of the Third Party Software, including any transferable warranties and indemnities respecting patent infringement. Edgenuity's sole obligation with respect to Hardware and Third Party Software shall be to use reasonable commercial efforts to facilitate warranty and indemnification claims that Client makes against the manufacturer or producer of the Hardware or the Third Party Software.

C. **Service Warranties.** Edgenuity warrants that it will provide Services (i.e., Software Maintenance, Professional Services, Instructional School Services and Deliverables) in a professional, workmanlike manner consistent with the terms of this Agreement and in accordance with generally accepted industry standards of care and competence. These warranties are voided to the extent of any alterations or modifications to the Services not authorized by Edgenuity. Client must notify Edgenuity of any breach of these warranties promptly in writing within ten (10) days of Edgenuity's performance that is the subject of the breach. Upon Edgenuity's receipt of such notice, Edgenuity may, at its election and expense, either (i) use reasonable efforts to re-perform or correct any defect in the Software Maintenance, Professional Services, Instructional School Services or Deliverables, at no charge to Client; or (ii) terminate performance of the applicable Software Maintenance, Professional Services, Instructional School Services or Deliverables and refund the Fees paid by Client to Edgenuity that are appropriately apportioned for and attributable to the affected Service. THE REMEDIES SET FORTH IN THIS SECTION SHALL BE CLIENT'S SOLE REMEDY AND EDGENUITY'S SOLE LIABILITY WITH RESPECT TO A BREACH OF THE WARRANTIES SET FORTH IN THIS SECTION.

D. **Disclaimers.** EXCEPT FOR THE EXPRESS LIMITED WARRANTIES AND REPRESENTATIONS CONTAINED IN THIS AGREEMENT, ALL PRODUCTS AND SERVICES ARE PROVIDED ON AN "AS-IS" AND "AS-AVAILABLE" BASIS, AND ALL

ATTACHMENT A

CONDITIONS, REPRESENTATIONS, AND WARRANTIES CONCERNING ANY PRODUCT OR SERVICE, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, ARE HEREBY EXPRESSLY DISCLAIMED AND EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW, INCLUDING ANY WARRANTY OF MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, SATISFACTORY QUALITY, OR NON-INTERFERENCE, OR ANY WARRANTY ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THE ABOVE LIMITATION MAY NOT APPLY. THESE WARRANTIES GIVE CLIENT SPECIFIC LEGAL RIGHTS, AND CLIENT MAY ALSO HAVE OTHER RIGHTS, WHICH VARY FROM JURISDICTION TO JURISDICTION. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS LIMITED WARRANTIES SET FORTH ABOVE FAIL OF THEIR ESSENTIAL PURPOSE. UNLESS OTHERWISE EXPRESSLY PROVIDED IN WRITING BY EDGENUITY, ANY SPECIFICATIONS OR OTHER INFORMATION, ORAL OR WRITTEN, INCLUDED OR FURNISHED WITH ANY PRODUCTS OR SERVICES PROVIDED UNDER THIS AGREEMENT ARE DESCRIPTIVE AND ARE NOT INTENDED AS WARRANTIES.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EDGENUITY DOES NOT MAKE ANY WARRANTY OR REPRESENTATION REGARDING THE USE OF THE SOFTWARE IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE, AND EDGENUITY DOES NOT WARRANT OR REPRESENT THAT (A) THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE; (B) THE SOFTWARE WILL BE FREE OF ALL POSSIBLE METHODS OF ACCESS, ATTACK, OR INTRUSION, OR (C) THE SOFTWARE WILL SATISFY ANY PARTICULAR REQUIREMENT OR PURPOSE. THE RISK OF PERFORMANCE OF THE SOFTWARE IS ASSUMED BY CLIENT.

Edgenuity reserves the right to alter the features, specifications, capabilities, functions, licensing terms, availability, or other characteristics of any of the Software or Documentation, and Edgenuity may, at its sole discretion, alter Hardware and Software configurations from time to time. Client will be notified in advance of any updates or significant software or platform changes beyond standard Software Maintenance.

E. **Warranty Statements.** If a formal, written warranty statement is made by Edgenuity with respect to a particular Product, and that warranty statement is delivered or made available to Client with that particular Product, then the terms of the warranty statement shall apply to that Product, and those terms are incorporated herein by this reference. In the event of a conflict between a term of these Terms and a term of the warranty statement, the term of the warranty statement shall prevail.

F. **Representations and Warranties of Client.** Client represents and warrants to Edgenuity that:

1. Client has the full power and authority to execute, deliver and perform under this Agreement;

2. This Agreement is valid, binding, and enforceable against Client in accordance with the terms herein, no provision requiring its performance is in conflict with Client's obligations under any other agreement, and Client is not subject to any law prohibiting its execution or performance of this Agreement;

3. With respect to the performance of Client's obligations under this Agreement, Client will comply with, and will cause each of its employees, agents, and contractors to comply with, all laws applicable to its performance under this Agreement;

4. Client will not use, and will not allow any of its students, or any third party, to use, the Edgenuity Licensed Content or any Edgenuity Service in a manner that is, or that potentially is, (i) illegal, (ii) a legal risk to Edgenuity, (iii) degrading to the quality, goodwill, reputation of Edgenuity, its business, or its products or services, or (iv) a violation of any of the terms and conditions of this Agreement; and

5. Client shall be responsible and liable for all of the acts and omissions of all of its past and present employees, agents, contractors, and students under or in connection with this Agreement, and for their compliance with the requirements and other terms and conditions of this Agreement.

XV. LIMITATIONS OF LIABILITY.

A. **No Consequential Damages.** CLIENT SHALL NOT BE ENTITLED TO, AND NEITHER EDGENUITY NOR ITS SUPPLIERS OR LICENSORS SHALL BE LIABLE TO CLIENT OR ANY OF ITS USERS FOR, ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE, INCLUDING COVER, BUSINESS INTERRUPTION, LOSS OF PROFIT, REVENUE, DATA, OR GOODWILL, OR CLIENT TECHNOLOGY DAMAGE, FAILURE, OR MALFUNCTION, EVEN IF EDGENUITY OR ITS SUPPLIERS OR LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, REGARDLESS OF HOW SUCH DAMAGES WERE CAUSED, AND REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS OR EXCLUSIONS OF CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES, SOME OR ALL OF THE FOREGOING LIMITATIONS MAY NOT APPLY.

B. **Limitation of Damages and Other Losses.** IN NO EVENT SHALL CLIENT'S TOTAL AND AGGREGATE RECOVERY FROM EDGENUITY FOR ANY AND ALL CLAIMS EXCEED THE LESSER OF (I) FEES ACTUALLY PAID BY CLIENT FOR THE PRODUCT(S) OR SERVICE(S) GIVING RISE TO THE CLAIM(S); OR (II) THE TOTAL SUM OF FIFTY THOUSAND DOLLARS (\$50,000). THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT.

C. **Claims Regarding Content; Indemnification.** Client understands and acknowledges that the Software is a tool to assist Client in virtual learning using multimedia materials and collecting data on the internet, and that Client, its Users, and third parties, and not Edgenuity or its suppliers or licensors, are responsible for ensuring the content of such communications, training materials, web sites and data. Client agrees that Client will not bring any suit against, or assert any Claim against, Edgenuity or its suppliers or licensors based on the content of such communications, web sites or data, even if such content is obscene, illegal, or otherwise offensive. Client agrees to indemnify and hold harmless Edgenuity, its suppliers, directors, officers, agents and employees from and against any and all Claims, damages, judgments, assessments, losses, liabilities and expenses (including reasonable fees and disbursements of counsel) arising out of, or in connection with, any communications generated by Client and any content created by Client using the Software.

ATTACHMENT A

D. Applicability. THE LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT APPLY TO ALL CAUSES OF ACTION OR CLAIMS IN THE AGGREGATE UNDER ANY LEGAL OR EQUITABLE THEORY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE. Client agrees that the limitations of liability and disclaimers set forth in this Agreement will apply regardless of whether Client has accepted the Software or any other Product or Service delivered by Edgenuity. Client acknowledges and agrees that Edgenuity has set its prices and entered into this Agreement in reliance upon the disclaimers of warranty and limitations of liability set forth herein, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the parties.

E. Time Limitation. No action arising out of the performance of any obligation under this Agreement may be brought by either party more than two (2) years after such cause of action accrues, except that an action for nonpayment may be brought within two (2) years after the date of last payment.

XVI. TERM AND TERMINATION.

A. Term.

This Agreement will be effective as of the Effective Date and shall continue in full force and effect until the end of the last License Period covered by this Agreement, unless earlier terminated in accordance with the terms of this section (the "Term").

B. Termination.

1. Nonpayment. If Edgenuity believes in good faith that Client's ability to make payments may be impaired, or if Client fails to pay any invoice when due and does not make such payment within ten (10) days after receipt of such notice from Edgenuity of such failure, Edgenuity may, in its sole and absolute discretion, either (a) suspend access to or the delivery or performance of any Product or Service until such payment is made; or (b) terminate this Agreement.

2. Material Breach. Either party may terminate this Agreement for the material breach of the other party which material breach has remained uncured for a period of fifteen (15) days after the date of notice thereof to the breaching party. In the event that Client terminates this Agreement for a material breach by Edgenuity, Edgenuity shall return a pro-rated portion of the Fees received by Edgenuity from Client pursuant to this Agreement for the Products and/or Services that are the subject of the breach.

3. Insolvency. Either party may immediately terminate this Agreement, with notice, upon (i) the institution by or against the other party of insolvency, receivership, or bankruptcy proceedings or any other proceedings for the settlement of the other party's debts; (ii) the other party making an assignment for the benefit of creditors; (iii) the other party becoming insolvent; or (iv) the other party's dissolution or ceasing to do business (or its adoption of a resolution for either).

4. Termination of Instructional School Services. Either party may terminate any Instructional School Services provided under this Agreement at the end of a school year by giving 90 days written notice prior to Client's published school end date. Edgenuity may terminate Instructional School Services immediately upon delivery of written notice to Client in the event Client adopts or amends School Policies related to [but not limited to] the provision of Instructional Services without the prior written approval of Edgenuity.

5. Effects. Termination or expiration of this Agreement shall not relieve Client of any obligation to pay any Fees payable to Edgenuity prior to the Effective Date of the termination or expiration. In addition, the exercise of the right to terminate this Agreement shall be in addition to any other right and remedy provided in this Agreement or existing at law or in equity that is not otherwise excluded or limited under this Agreement.

XVII. MISCELLANEOUS.

A. Force Majeure. Neither party to this Agreement shall be liable for delays or failures in performance under this Agreement (other than obligations relating to payment, confidentiality, and protection of ownership and intellectual property rights) resulting from acts or events beyond the reasonable control of such party (a "Force Majeure Event"), including acts of war, terrorism, acts of God, earthquake, flood, embargo, riot, sabotage, labor dispute, governmental act, failure of the internet, power failure, or energy, utility, or telecommunications interruptions, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses its reasonable commercial efforts to promptly correct such failure or delay in performance. In the event that a Force Majeure Event lasts for more than 90 days, and the delayed cannot correct its failure or delay in performance during that period of time, despite using its reasonable commercial efforts to do so, the other party may terminate the affected portions of this Agreement.

C. Relationship of the Parties. Edgenuity is an independent contractor with respect to Client. Neither party is nor shall be considered to be, an employee, agent, distributor, partner, joint venturer, or representative of the other party, and neither party shall have the authority to act on behalf of or in the name of the other party, or to bind the other party in any manner whatsoever.

D. Governing Law. Any action related to this Agreement shall be governed by and construed in accordance with the laws of the State of Arizona, without reference to conflicts of laws principles that would result in the application of the laws of another jurisdiction. The state and federal courts located in Maricopa County, Arizona shall have exclusive jurisdiction and venue over any dispute arising hereunder or related hereto, and the parties hereby consent to the personal jurisdiction and venue of these courts. Notwithstanding the foregoing, Edgenuity shall have the right to seek injunctive or pre-judgment relief in any court of competent jurisdiction to prevent or enjoin the misappropriation, misuse, infringement, or unauthorized disclosure of Edgenuity's Confidential Information or intellectual property rights. No Federal Acquisition Regulations shall be construed to apply to Edgenuity without Edgenuity's written agreement thereto. The United Nations Convention for the International Sale of Goods shall not apply to this Agreement.

E. Export Control. The sale, resale, or other disposition of Products and any related technology or documentation are subject to the export control laws, regulations, and orders of the United States of America and may be subject to the export and/or import control laws, regulations, and orders of other countries. Client agrees to comply with all such laws, regulations, and orders and acknowledges that it shall not directly or indirectly export or import any Products to any country to which such export, import, or transmission is restricted or prohibited. Client acknowledges and agrees that Client is responsible to obtain any license to export, re-export, import, or transmit as may be required.

F. Severability. In the event that 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 shall

ATTACHMENT A

be interpreted so as best to accomplish the objectives of the original portion to the fullest extent permitted by law, and the remaining provisions shall remain in full force and effect.

G. **Assignment.** Neither this Agreement, nor any rights hereunder, may be assigned by operation of law or otherwise, in whole or in part, by Client without the prior, written consent of Edgenuity.

H. **Third Parties.** There are no third party beneficiaries to this Agreement.

I. **Waivers.** Any waiver of any rights under this Agreement must be in writing and signed by the waiving party, and any such waiver shall not operate as a waiver of any further right hereunder.

J. **Entire Agreement; Construction.** This Agreement is the entire agreement between the parties with respect to its subject matter, and supersedes any and all prior or contemporaneous, conflicting or additional communications, negotiations or agreements. As used in this Agreement, the term "including" shall mean "including, without limitation," the term "includes" shall mean "includes, without limitation," and terms appearing in the singular shall include the plural and terms appearing in the plural shall include the singular.

K. **Amendments.** This Agreement may be amended only in writing and signed by both parties; and any purported oral amendment to this Agreement shall be void and have no effect.

L. **Marketing.** Client agrees that Edgenuity may use Client's name, logo, and trademarks, and may disclose that Client is a customer of Edgenuity, in Edgenuity advertising, promotion and similar public disclosures; provided, however, that such advertising, promotion or similar public disclosures shall not indicate that Client in any way endorses any Edgenuity Products or Services without Client's prior consent.

M. **Background Investigations.** To the extent required by applicable Law and validated and approved by the Client and if the Client shall have additional requirements beyond the applicable Law (which shall be explicitly detailed in writing by Client and provided to and agreed upon by Edgenuity), Edgenuity shall perform or cause to be performed or ensure that such background checks have been performed on its employees and agents engaged in the delivery of Edgenuity Licensed Content or the performance of Edgenuity Services.

N. **Notices.** All notices under this Agreement will be in writing and will be deemed given upon: (i) receipt thereof if delivered by facsimile, electronic mail, hand delivery, or overnight delivery service; or (ii) three days after deposit in the U.S. mail, postage prepaid, return receipt requested, if mailed. Notices to Edgenuity will be addressed to the attention of the Chief Learning Officer. Notices to Client will be addressed to the individual who executes the Quote on behalf of Client.

O. **Headings.** The headings contained in these Terms are for purposes of convenience only and shall not affect the meaning or interpretation of this Agreement.

P. **Counterparts.** The execution of the Quote or any other instrument evidencing the effectiveness of this Agreement may be made in two or more original or facsimile counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument.

Q. **Survival.** All provisions of Sections X, XI, XII, XIII, XIV, XV and XVII except for XVII, Sub-section L, and any other provisions which must survive in order to give effect to their meaning, shall survive the expiration or termination of this Agreement.

IN WITNESS WHEREOF, the Parties have entered into this Agreement effective as of the Effective date provided above.

EDGENUITY, Inc.
a Nevada corporation

Jefferson County Board of Education of
Jefferson County Kentucky

X *Sari B Factor*
Name/Title: SARI FACTOR, CEO
Date: 7/31/14

X _____
Name/Title: _____
Date: _____