



Price Proposal / Order Form  
Ockerman Elementary School  
February 14, 2018

myON, LLC, formerly known as Capstone Digital							
6625 W78th Street, Suite 220 Bloomington, MN 55439 Phone: (800) 864-3899 Fax: (888) 320-7496 Email: orders@myON.com							
Customer Billing Information							
Attention: Kim Best Ockerman Elementary School 8250 US Highway 42 Florence, Kentucky 41042-9604							
Products and Services							
Item #	Description	Term Start	Term End	Sites /QTY	Price (per building)	Discount	Subtotal
CDL508192	myON News (powered by News-O-Matic) <i>Ockerman Elementary School</i>	02-15-2018	05-31-2018	1	\$976.45	\$309.77	\$666.68
							Subtotal: \$666.68
							Sales Tax: \$0.00
							Total: \$666.68
Start Dates							
Unless otherwise specified in this order form, the renewal date for your license(s) will be: »Renewal: the day following expiration of the prior license term. »New License: 30 days after receipt and acceptance of the Order Form. After we have received your Purchase Order, signed contract, or signed order form, we will confirm the applicable start date.							
Services							
Any service offering that is not used during the applicable year may not be carried over or used in subsequent years.							
Invoice and Payment Terms							
The myON invoice will be sent upon receipt of your purchase order, signed contract, or signed order form - no purchase order is required. Payment of entire amount is due 30 days from your invoice date unless otherwise arranged in a myON contract.							
Order Notes							

Quote valid for 30 days.



#### System Requirements

All myON software has minimum and recommended system requirements. By ordering the software, you acknowledge that you have read and understand the system requirements, and that it is your responsibility to fulfill them. myON retains the right to update the requirements document from time to time, and you agree to comply with them as updated. You also confirm that all buildings and / or sites included in this order are in full compliance of the system requirements.

#### Professional Services

If your order includes Professional Services, they are described in a separate statement of work, which outlines your roles and responsibilities in support of myON Professional Services. Your support is critical to the successful delivery of these services.

#### Terms and Conditions

Your purchase of licensing rights to software and/or professional services contained in this order is subject to myON license Terms and Conditions, which are attached. This order and any documents it incorporates (including the Standard Terms and documents it references) form the entire agreement between You and myON about your purchase.

#### Purchase Order

No purchase order is required. You acknowledge that this agreement is non-cancellable. Your order will not be scheduled for delivery until You have submitted a signed Contract, signed Order Form, or purchase order referencing and conforming to this order. You acknowledge that any terms and conditions in any other documents You provide are superseded by the Terms and Conditions of this agreement.

#### Acceptance

myON, LLC has presented this proposal to you as an offer to contract under the terms and conditions of this agreement, including the standard terms. The signing and submitting of this proposal to myON, LLC will constitute your acceptance to contract on these terms and conditions; this offer will expire 30 days after the date of proposal, unless we withdraw or extend the offer in writing. Please have your authorized representative sign in the space below to accept this offer and confirm the agreement.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Quote valid for 30 days.

# Statement of Work

This statement of work is executed in accordance with the myON, LLC order form agreement, and is effective as of the date of the signed Purchase Order.

myON, LLC (“We”, “Us”, “Our”)	Ockerman Elementary School (“You”, “Your”)
6625 W78th Street, Suite 220	8250 US Highway 42
Bloomington, MN 55439	Florence, Kentucky 41042-9604
Customer Experience Coordinator	Kim Best
888-728-1266	(606) 283-1003
orders@myON.com	kim.best@boone.kyschools.us

- 1. Overview and Purpose.** The purpose of this Statement of Work is to define and communicate the goals, scope of services, work plan, milestones, and roles and responsibilities of each party as they relate to the Professional Services to be provided by Us to You. We have entered into this Statement of Work with a mutual desire to enable Your successful implementation and use of the myON, LLC solutions. Completion of this Statement of Work is the first step to achieving these goals and is critical to maximizing the benefit of Our Professional Services.
- 2. Description of Work.** myON, LLC will provide the following professional services as indicated on the myON, LLC order form. The Professional Services You have purchased from us to be implemented under this Statement of Work are as follows:
  - Implementation services including technical support and student data load assistance.
  - Login credentials to an online portal of additional educator resources.
- 3. Program Goals.** We are providing You the Professional Services identified under Description of Work in order to assist You in the implementation of the myON, LLC solution.
- 4. Roles and Responsibilities.** We commit to cooperating with You reasonably and in good faith in the performance of the Professional Services and You agree to do the same. If You do not, delays may result or You may not achieve the full benefits of our services. Other important roles and responsibilities are as follows: We agree to provide:
  - Certain myON, LLC personnel and agents, which may include a customer experience coordinator, a certified trainer, or a Customer support specialist(s).
  - The above personnel will, with Your assistance and dedication, strive to enhance Your experience using myON, LLC product.
  - Certain Training materials to support the training regimen will be provided.You agree to provide:
  - Administrative lead empowered to make program and policy decisions associated with the implementation of the proposed myON, LLC solution.
  - Technical lead who can ensure access to the appropriate technology resources required to implement the solution; including technical resources required for successful training of Customer staff.
  - Instructional staff, including Site Administrators, who will implement and monitor the solution with the targeted student population.
  - Training facilities, suitably equipped to access the myON, LLC software in accordance with the System Requirements.
  - Access to office workspace, telephone, computer with Internet access, and other facilities as may be requested by the myON, LLC staff in the performance of the Professional Services.
  - Coordination of customer personnel for onsite, online, and telephonic meetings.
  - Other resources as reasonably required by the myON, LLC staff for satisfactory and timely performance of the Professional Services.
  - Sufficient access to hardware and equipment necessary to provide adequate time-on-task for those learners selected to participate in the program.
  - Adequate time for staff professional development to ensure the competence of Your staff in operating and implementing the solution.
  - Coaching and follow up opportunities for Your staff to enhance implementation of the solution.
- 5. Work Plan and Schedule.** Unless otherwise agreed to by You and Us in writing, Professional Services will be scheduled within 30 days of our receipt of the signed Purchase Order. We will work with You to identify dates for conducting the Professional Services outlined in this Statement of Work. Subsequent scheduling changes requested by You may result in additional fees. If You need to change previously agreed-upon dates, You agree to provide Us no less than five (5) business days advance notice of a cancellation of an onsite Professional Services session or three (3) business days advance notice of a cancellation of a virtual Professional Services session. If You do not provide such notice, and we have not been able to re-assign myON, LLC staff assigned to You, or we incur additional expense or efforts, You may be responsible for additional charges.
- 6. Review and Acceptance.** Upon completion of each Professional Services session, myON, LLC will send an e-mail requesting your acknowledgement and acceptance of the Professional Services delivered. After 10 business days, unless there is a negative response your acceptance of the Professional Services session will be considered final.
- 7. Confidentiality.** You agree to keep the information, materials, logins, passwords, data, documentation or similar (the “Information”) that we provide you in connection with the services hereunder confidential and take all reasonable steps to ensure that the Information is only disclosed to Your teacher or Your students as appropriate and is not disclosed to or made

accessible to third parties. Upon notice of termination or expiration, send back all materials, passwords, software and anything else You receive in connection with Your license and ensure that neither Your teacher, students nor anyone else that You supplied access to Our products attempts to access Our product.

# License Agreement

The terms and conditions contained in this document (the “**Standard Terms**”) apply to any sales by myON, LLC (sometimes referred to in this document as “**We**”, “**Us**”, and “**Our**”) of license rights to software products and associated professional services. These Standard Terms are an integral part of an agreement (the “**Agreement**”) between Us and the Customer (referred to as “**You**” and “**Your**”) identified on a myON Order Form (an “**Order Form**”). The Agreement consists of (in order of precedence) an Order Form, these Standard Terms, and any documents incorporated by reference into either the Order Form or Standard Terms (including those incorporated by hyperlink reference (<https://www.myon.com/terms.html>, and <https://www.myon.com/privacy.html>)). You acknowledge that the Order Form and the Standard Terms will supersede and replace any conflicting provisions in Your purchase order or other purchasing documents. The Agreement will be effective as of the Order Date specified on the Order Form and will be binding when the Order Form has been signed by Your authorized representative. These Standard Terms may only be superseded by other terms and conditions You and We have specifically documented in a signed order form.

## 1.0 myON SOFTWARE.

The following terms and conditions will apply to the Software listed on the Order Form. During the Subscription Term, We grant You: A limited license to have Your Users access and use the Subscription Software and associated Documentation solely for Your internal educational purposes.

### 1.1 Maintenance and Access.

During the Subscription Period, We will maintain the Subscription Software on Our data center servers and will use commercially reasonable efforts to make the Subscription Software available (subject to routine maintenance windows) to You and Your Users via the Internet 24 hours a day, 7 days a week. All access rights for You and Your Users will be via the worldwide web using a browser and Internet connection compliant with the System Requirements (described in section 1.5).

### 1.2 Outage Periods.

The term “Outage Period” applies to Subscription Software and means a period of more than 48 consecutive hours in which Your Users are prevented from accessing the Subscription Software due to factors within Our control. Outage Periods exclude (a) planned downtime (for which We will give at least 8 hours notice by publishing maintenance windows on the login pages; or (b) any unavailability caused by an event of Force Majeure. In the unlikely event an Outage Period occurs, upon Your written request we will issue you a credit for the pro-rated share (based on the number of days of any Outage Period in the applicable month) of fees You have paid for the month during which the Outage Period occurs. Your request for this credit must be made within 30 days after the end of the Outage Period. You will not be entitled to this credit for any period during which You are in breach of this Agreement. Your sole and exclusive remedy for an Outage Period will be the credit described in this subsection.

### 1.3 General License Terms.

All of the above license grants are specifically subject to the following general terms and conditions:

- 1.3.1 All license grants to access and use myON Software and Documentation are non-exclusive, non-transferable and non-assignable.
- 1.3.2 All licenses granted are under intellectual property rights in the myON Software and Documentation, including copyrights and trade secrets, which We either own or have licensed from third parties. We and our licensors own and retain all rights, title and interest in and to the Software and all ideas, concepts, methodologies, formats, specifications, and other know-how furnished by Us or our licensors in connection with this Agreement, as well as all related patents, copyrights, trademarks, trade secrets and other intellectual property rights.
- 1.3.3 All access and use of Software under this Agreement will be subject to Our Privacy Policy, which is expressly made a part of this Agreement.
- 1.3.4 Licenses granted under this Agreement will be automatically revoked if this Agreement is terminated. We reserve the right to revoke any license granted under this Agreement if You fail to promptly cure a material breach of this Agreement after We have provided You with notice of the breach.

### 1.4 Restrictions.

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

### 1.5 System Requirements.

You acknowledge receipt of Our System Requirements document which details the necessary hardware, system configuration, network infrastructure, and bandwidth requirements to successfully operate and use the myON Software. The System Requirements are subject to periodic change without notice. You also acknowledge that You are responsible for the cost, operation and availability of, and compliance of Your Users with, all elements of the System Requirements.

# License Agreement

## 1.6 Responsibility for User Activity.

You are responsible for all activities that occur in User accounts and for compliance by Your Users with these Standard Terms. You will: (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data; (ii) provide user information to myON if bulk importing is required. myON will limit the distribution of Your User accounts to employees and contractors associated with Your account; (iii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the myON Software, and notify Us promptly of any such unauthorized access or use; and (iv) in connection with this Agreement, comply (and ensure compliance by Your Users) with all applicable local, state and federal laws, rules and regulations, including but not limited to the Children's Online Privacy Protection Act ("COPPA") and the Family Educational Rights and Privacy Act ("FERPA").

## 1.7 Intellectual Property

- 1.7.1 Reservation of Rights. The myON Software We are providing is licensed to You, not sold. Subject to the limited rights expressly granted to You and Your Users under these Standard Terms, We reserve all rights, title and interest in and to the myON Software and Documentation, including all related intellectual property rights (except for those owned by our third party vendors, which are reserved to them). No rights are granted to You or Your Users hereunder other than as expressly specified in these Standard Terms.
- 1.7.2 Rights to Customer Data. Customer Data is deemed Your Confidential Information under this Agreement. You hereby grant Us a nonexclusive license to use, modify, communicate and distribute the Customer Data solely for the purpose of performing Our obligations to You as specified by the Agreement.
- 1.7.3 Suggestions. We will have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the myON Software any suggestions, enhancement requests, recommendations or other feedback provided by You or Your Users.

## 1.8 Limited Warranty for Software Products.

Subject to the terms of section 3.4, We warrant that the Subscription Software will perform in substantial accordance with the applicable Documentation during the Subscription Term. This warranty is contingent on the authorized use of the Software in accordance with the applicable Documentation. If We breach this express warranty, We will at our option and expense: (a) as soon as commercially practical, consistent with industry practice, modify the affected myON Software to conform in all material respects with the applicable Documentation, or (b) provide a replacement for the affected myON Software which conforms in all material respects with that Documentation, or (c) accept the return of the affected myON Software and refund You the portion of Your purchase price attributable to the returned product. This will be Our sole obligation, and Your sole remedy, with respect to any breach of this warranty. EXCEPT FOR THE EXPRESS WARRANTY PROVIDED IN THIS SECTION, THE SOFTWARE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY ADDITIONAL WARRANTIES OF ANY KIND. WE DO NOT WARRANT THAT THE LICENSED PROGRAM WILL PERFORM UNINTERRUPTED OR BE ERROR-FREE OR THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET YOUR PARTICULAR REQUIREMENTS OR PURPOSE. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS. YOU MAY HAVE OTHERS, WHICH VARY FROM JURISDICTION TO JURISDICTION.

## 2.0 PROFESSIONAL SERVICES.

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

### 2.1 Statement of Work.

If this Agreement includes Professional Services, the Order Form will include a Statement of Work ("SOW") in our standard form and a description of the Professional Services. The SOW will define and communicate the goals, scope of services, work plan, and roles and responsibilities of each party as they relate to the delivery of Our Professional Services. The SOW will be governed by the terms of this Agreement.

### 2.2 Mutual Cooperation.

We mutually agree to cooperate with each other in a professional and courteous manner in the performance of our respective duties in the delivery of Professional Services. We may suspend delivery immediately upon written notice if Your employees or agents fail to act accordingly.

### 2.3 Changes to SOW and Schedule.

Any changes to the scope of work under a SOW will be made by a written amendment to the SOW signed by You and Us prior to implementation of the changes. Changes to the scope of work under a SOW may result in additional fees to You. Any changes You make to previously agreed upon dates for onsite delivery of Professional Services may likewise result in additional charges to You.

### 2.4 Acceptance of Services and Warranty.

- 2.4.1 Acceptance. Upon completion of each Professional Services session, We will provide You with an e-mail requesting Your acknowledgement and acceptance of the Professional Services delivered. If You reasonably determine that the Professional Services have not met the objectives and expectations outlined in the SOW, You must provide Us written notice specifying any deficiencies in detail within 10 business days after our request. We will use reasonable commercial efforts to cure any such deficiencies promptly and then resubmit the sign-off form for Your signature. If You do not provide notice of any deficiencies to Us within the 10 day period, Your acceptance of the Professional Services will be considered final. If the objectives and expectations stated in the SOW are subsequently determined by the parties to be inappropriate or to require modification due to changed circumstances, incorrect assumptions or other reasons at the time of actual delivery, You and We will cooperate in good faith to appropriately modify such requirements.
- 2.4.2 Warranty. We warrant that the Professional Services We provide will be performed in a worker-like manner, in accordance with generally accepted industry standards. For any material breach of this service warranty reported

# License Agreement

- within 30 days after acceptance (under the preceding subsection), We will provide additional Professional Services at Our expense in an effort to promptly cure the breach.
- 2.4.3 Failure to Cure. If You give us notice of a material deficiency under subsection 3.4.1 or of a material breach under subsection 3.4.2, and we are unable to cure the deficiency or breach within 60 days after Your notice, You may terminate the directly affected portions of serviced covered by the applicable SOW and obtain a refund of amounts You have paid for the terminated services.
- 2.4.4 Sole remedies. The remedies specified in this section 3.4 are Your only remedies for Our breach of service warranties or failure to meet the acceptance criteria.

## **2.5 Compliance with Workplace Rules.**

We will have the person or persons We assign to perform the Professional Services comply with those of Your workplace rules You have provided to them in advance.

## **2.6 Subcontractors.**

We may, in our reasonable discretion, use third party subcontractors to perform any of Our obligations regarding delivery of the Professional Services.

## **2.7 Expiration of Unscheduled Professional Services.**

We will use all reasonable efforts to schedule and deliver the Professional Services in accordance with Your schedule and requirements. However, unless we agree otherwise, we retain the right to terminate our obligations to deliver any Professional Services that have not been delivered within 12 months of the Order Date. In this case, We will provide You with 30 days notice of our intent to terminate and You will have 30 days after receipt of Our notice to schedule the Professional Services and avoid expiration.

## **3.0 Student Data Privacy**

### **3.1 Access to Confidential Data.**

myON's employees, agents and subcontractors (as well as licensed third parties who are held to the same standard as myON) may have access to confidential data maintained by the District to the extent necessary to carry out myON's responsibilities under the Contract. myON shall presume that all information received pursuant to the Contract is confidential unless otherwise designated by the District. Confidential information shall not include information which (i) is in the public domain prior to or after the time of disclosure, other than as a result of any improper inaction or action of myON hereunder, or thereafter comes into the public domain without breach of any confidentiality obligation; (ii) is known by myON prior to disclosure, as shown by written records existing prior to such disclosure; (iii) is disclosed to myON by an independent third party not in violation of any obligations of confidentiality to the District; or (iv) is independently developed by myON as demonstrated by myON's contemporaneous business records and without reference to or reliance on any confidential information received hereunder.

### **3.2 No Dissemination of Confidential Data.**

No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated except as authorized by law and with the written consent of the District, either during the period of the Contract or thereafter. Any data supplied to myON shall be considered the property of the District unless otherwise stated in writing. myON must return any and all data collected, maintained, created or used in the course of the performance of the Contract, in whatever form it is maintained, promptly at the request of the District. Data pertaining to the District in these systems will be shared with the District as needed for financial and use reporting.

### **3.3 Adherence to Data Privacy Laws.**

myON complies with all applicable local, state, and federal laws, rules and regulations. In addition, myON secures all confidential data to the best of our ability, and adhere to security best practices and industry standards. As an example of these best practices, each student and teacher account in myON uses a login with password. This information is SALT encrypted and building specific.

### **3.4 Data Destruction.**

myON destroys personally identifiable information 2 months after the school license period expires. Upon license expiration, school data can be retrieved by the system administrator upon request.

### **3.5 Subpoena.**

In the event that a subpoena or other legal process is served upon myON for records containing confidential information, myON shall promptly notify the District and cooperate with the District in any lawful effort to protect the confidential information.

### **3.6 Survives Termination.**

myON's confidentiality obligation under the Contract shall survive termination of the Contract.

### **3.7 Marketing.**

No students will ever be contacted regarding any service or opt-in marketing information. Supplying adults' email addresses (school administrators and faculty) is entirely optional. Supplying an email guarantees that you will be notified of changes to the system, changes to the license agreement, privacy policy, or terms of use, and other myON professional development opportunities.

## **4.0 GENERAL TERMS**

### **4.1 Fees and Payment**

- 4.1.1 Fees. You agree to pay all amounts due to Us as shown on the Order Form ("Total Fees"). Except in the case of Outages (as stated in section 1.2), all such amounts are non-cancellable and non-refundable. Amounts due for Software are based on access to Software and are not dependent on actual usage, nor are they contingent upon delivery of any future functionality or features.

# License Agreement

- 4.1.2 **Fiscal Funding.** This subsection will apply to You only if (a) the Order Form specifies amounts due after the end of Your fiscal year in which the Order Date occurs (the “Current Fiscal Year”) and (b) You are a government-funded entity subject to fiscal funding restrictions. If so: (a) You represent that You have received funding authority to pay the aggregate amounts due in the Current Fiscal Year; (b) for each subsequent fiscal year, You agree to include in Your budget request the portion of the Total Fees to become due during that year and use all reasonable and lawful means at Your disposal to obtain appropriations to pay such amounts when due under the Agreement. If despite these efforts You do not obtain funding in any future fiscal year for any portion of the Total Fees, You may terminate those licenses not covered by funding, but only if You (1) give Us written notice of a possible funding failure (including an explanation of the reasons, timing and extent) promptly after You become aware it is likely, (2) promptly provide Us with evidence of the funding failure when it actually occurs, and (3) certify to Us in writing that funds are not available to purchase any products similar to the affected MyON Software within the affected fiscal year(s). For any licenses You terminate under this subsection, You must pay pro rata license fees for the portion of the fiscal year prior to termination. Likewise, You must also pay for any Professional Services You actually receive during the affected fiscal year.
- 4.1.3 **Acceptance.** All Software will be deemed accepted upon delivery to You (or, for Subscription Software, upon making available to You online) and will thereafter be subject to the warranty provisions of this Agreement.
- 4.1.4 **Invoicing & Payment.** Unless otherwise stated in the Order Form, fees for products and services will be invoiced at the time of order with payment due net 30 days from the invoice date.
- 4.1.5 **Suspension of Access to MyON Software for Non-Payment.** If Your account is 30 days or more overdue (except with respect to charges then under reasonable and good faith dispute), in addition to any of Our other rights or remedies, We reserve the right to suspend Your access to the MyON Software and the delivery of Professional Services, without liability to You, until such amounts are paid in full.

## 4.2 Indemnities.

- 4.2.1 **Our Indemnification of You.** Subject to the conditions described below and the provisions of section 4.4, We will defend, indemnify and hold You harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings (collectively called “Claims”) made or brought against You by a third party, as follows: a. For Personal Injury or Property Damage. Our indemnity covers Claims alleging personal injury or property damage to the extent caused by the willful misconduct or negligence of Our personnel while on Your premises. b. For Infringement: Our indemnity covers Claims alleging that the use of the MyON Software as specified in this Agreement, or Our Professional Services, or any information, design, specification, instruction, software, data, material (collectively called “Material”) furnished by Us in connection with this Agreement infringes the intellectual property rights of a third party. If the MyON Software becomes, or in Our opinion is likely to become, the subject of an infringement claim, We may, at Our option and expense, either procure for You the right to continue using the MyON Software; replace or modify the MyON Software so that it becomes non-infringing and remains functionally equivalent; or require the return of the affected MyON Software and refund You the portion of Your purchase price attributable to the returned product.
- 4.2.2 **Your Indemnification of Us.** Subject to the conditions described below and section 3.4, and to the extent not prohibited by applicable law, You will defend, indemnify and hold Us harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with Claims made or brought against Us by a third party alleging that the Customer Data, Your use of the MyON Software in violation of this Agreement, or any Material provided by You either: (a) infringes the intellectual property rights of a third party, or (b) has otherwise harmed a third party.
- 4.2.3 **Conditions.** These indemnities will be conditioned on the party seeking indemnity: (a) promptly providing the other with a written notice of the Claim; (b) giving the other party sole control of the defense and settlement of the Claim, provided that the other party may not settle any Claim unless the party seeking indemnity is unconditionally released from liability; and (c) at no charge, providing the other party with all reasonable assistance relative to the defense of the Claim.
- 4.2.4 **Exclusive Remedies.** Our and Your responsibility for infringements is stated in this section 3.2. The indemnities in this section will be the exclusive remedies for infringements in connection with this Agreement.

## 4.3 Force Majeure.

The term “Force Majeure” means circumstances beyond the reasonable control of a party (such as acts of God, government restrictions, wars, insurrections, labor strife, or failure of suppliers, subcontractors, or carriers) which delay or prevent the party from performing under the terms of this Agreement. The party affected by an event of Force Majeure will promptly notify the other of the circumstances and the expected impact on its performance. Affected performance obligations will be suspended during the duration of the Force Majeure. In the event the Force Majeure persists for more than 90 days, the other party may terminate the affected portions of this Agreement.

## 4.4 Disclaimers, Limitations and Exclusions.

- 4.4.1 **Warranty Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN SECTIONS 1.8 AND 3.4 OF THIS AGREEMENT, WE MAKE NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND WE SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

# License Agreement

- 4.4.2 Limitation of Liability. EXCEPT FOR BREACHES OF CONFIDENTIALITY OBLIGATIONS OR INDEMNIFICATION OBLIGATIONS ARISING OUT OF PERSONAL INJURIES OR PROPERTY DAMAGE CLAIMS, IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS ACTUALLY PAID BY AND DUE FROM YOU FOR A PERPETUAL LICENSE OR, FOR SUBSCRIPTION SOFTWARE, DURING THE SUBSCRIPTION TERM. BECAUSE SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.
- 4.4.3 Exclusion of Consequential and Related Damages. EXCEPT FOR INDEMNIFICATION OBLIGATIONS, IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER FOR ANY LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PRECEDING SENTENCE WILL NOT APPLY TO INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM A BREACH OF A PARTY'S CONFIDENTIALITY OBLIGATIONS HEREUNDER, PROVIDED ANY SUCH DAMAGES WILL BE LIMITED TO \$100,000.

## 4.5 U.S. Governmental Users.

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

## 4.6 Term and Termination

- 4.6.1 Term of this Agreement. This Agreement will begin on the Order Date and will, unless earlier terminated in accordance with this section, continue in effect until:
  - (a) with respect to Subscription Software, the end of the last Subscription Term covered by this agreement;
  - (b) with respect to Professional Services, 90 days after acceptance.
- 4.6.2 Termination for Cause. A party may terminate this Agreement for cause: (i) 30 days after written notice of a material breach to the other party if such breach remains uncured at the expiration of such period; or (ii) if the other party ceases to conduct business in the ordinary course, files a petition for liquidation bankruptcy, fails to have an involuntary petition for bankruptcy dismissed or converted to a non-liquidation bankruptcy within 60 days after filing, or makes an assignment of essentially all assets for the benefit of creditors.
- 4.6.3 Outstanding Fees. Termination will not relieve You of the obligation to pay any fees payable to Us prior to the effective date of termination.

## 4.7 Surviving Provisions.

The following provisions will survive any termination or expiration of this Agreement: 1.4, 1.7, 1.8, 3.6, 4.2.2, 4.2.3, 4.2.4 and 4.4.

## 4.8 Assignment.

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

## 4.9 Counterparts.

This Agreement may be executed by e-mail or facsimile and in counterparts, which taken together will form one legal instrument.

## 4.10 Entire Agreement.

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

## 4.11 Governing Law.

If You are a publicly funded, non-profit educational institution, this Agreement will be governed by the internal laws of the State in which You are situated, without regard to its conflicts of laws rules. In all other cases, this Agreement will be governed by the internal laws of the State of Minnesota, without regard to its conflicts of laws rules.

## 4.12 Third Parties.

There are no third-party beneficiaries to this Agreement.

## 4.13 Notices.

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

## 4.14 Relationship of the Parties.

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

# License Agreement

## **4.15 Severability.**

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

## **4.16 Waiver and Cumulative Remedies.**

No failure or delay by either party to exercise a right under this Agreement will be a waiver of that right. Other than as expressly stated in this Agreement, the remedies provided in this Agreement are in addition to, and not exclusive of, any other remedies of a party at law or in equity.