

**Sales Order**

Sales number:	2209
Contact Person:	Karl Gustafson
Valid until:	2018-08-10
Purchase Order Num:	
Payment Terms:	Net 30

Bill To	Ship To
Beau Gergel Gray Middle School 10400 US Highway 42 Union, KY, 41091	Gray Middle School 10400 US Highway 42 Union, KY, 41091

Effective Date:

Term 1 Start Date:	End Date:	Amount:\$0.00
Term 2 Start Date:	End Date:	Amount:\$0.00*
Term 3 Start Date:	End Date:	Amount:\$0.00*

\* Amount will be adjusted based on enrollment

Not to Exceed	Product Code	Product	List Price	Unit Price	Ext. Price	Discount:
1,032.00	SGMS-NP-000-7	STEM Gauge MS 7 STEM Gauge, Middle School. Includes 15 Topic-Based Item Sets that span Earth & Space Science, Life Science, and Physical Science. One-time payment for 7 year license	\$5.00	\$5.00	\$5,160.00	0.00%

Subtotal:	\$5,160.00
Discount:	\$0.00
Discounted Subtotal:	\$5,160.00
Tax:	\$0.00
Shipping:	\$0.00
Total	\$5,160.00

Currency: USD

**Grand Total**

Subtotal: \$5,160.00

		Discount:	\$0.00
		Discounted Subtotal:	\$5,160.00
Tax Rate:	0.00%	Tax:	\$0.00
Shipping Provider:		Shipping:	\$0.00
		Total	\$5,160.00

This Agreement (the "Agreement") is entered into by and between Measured Progress, Inc., a New Hampshire not-for-profit corporation, ("Measured Progress") and the party referenced on the Sales Order included with this Agreement ("Client"), and is effective as of the date on the Sale Order ("Effective Date"). The terms and conditions of this Agreement apply to the Sales Order included with this Agreement and all other Sales Orders referencing this Agreement and Addenda. For good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

**Services** Measured Progress will provide product(s) and/or the services in all cases only when authorized pursuant to and conditioned upon a Sales Order (the "Services").

**Support Services** Measured Progress will provide the Client with the planning, training and data integration services, if any, as set forth in the applicable Sales Order. Training and Planning days must be used within twelve (12) months of the date set forth on the applicable Sales Order, otherwise they shall be forfeited.

**Payment** Measured Progress shall invoice Client for all fees due as described in the applicable Sales Order. Invoices may be provided to Client by e-mail. Client shall pay all invoices in full in U.S. dollars within 30 days of the applicable invoice date. The parties shall cooperate to promptly resolve any dispute. Client shall reimburse Measured Progress for all fees and costs (including legal fees) incurred by Measured Progress in connection with collecting any overdue amounts. Measured Progress may, upon 10 days' prior written notice, suspend its performance hereunder for any payment past due. Performance by Measured Progress hereunder is subject to Client satisfying Measured Progress' credit approval process.

**Criteria and Acceptance** The Deliverables shall comply with the criteria set forth in each Sales Order and/or Statement of Work applicable to such Deliverables (the "Acceptance Criteria"). The Client shall have ten (10) business days from delivery of the Deliverables (the "Review Period") to review the same for compliance with the Acceptance Criteria. Unless the Client delivers a notice to Measured Progress stating in particular detail how some or all of the Deliverables did not meet the Acceptance Criteria during the Review Period (the "Compliance Notice"), the Deliverables shall be deemed accepted by the Client. Upon receipt of a Compliance Notice, Measured Progress shall have a reasonable period of time to review, revise and modify the Deliverables to comply with the Acceptance Criteria and the Compliance Notice. The Client and Measured Progress shall work in good faith and in a timely fashion to resolve any issues identified in the Compliance Notice during this time period. Upon acceptance or deemed acceptance by the Client of the Deliverables, Measured Progress will grant the appropriate license as hereinafter set forth.

**Measured Progress Proprietary Rights; Client License** All information, products, tests, testlets, items, questions, and formats (the "Content"), and proprietary software, as well as any know-how, methodologies or processes including, but not limited to, all copyrights, trademarks, trade secrets, software, and any other proprietary rights inherent therein, used by Measured Progress to provide the Content, Deliverables, or Services hereunder, whether developed alone or jointly with the Client or other third parties (collectively "Measured Progress Materials") shall remain the sole and exclusive property of Measured Progress. If product is a testlet, test form or similar product, such license does not include the right to modify, decompile or use separately any component, including items, formats or questions. Nothing herein is intended to, or shall, convey any right or ownership interest to Client or any other person or entity in or to such Measured Progress Materials. Notwithstanding the foregoing, (a) if a Sales Order is for subscription to Content, then upon payment of the applicable fees set forth in such Sales Order and during the Term only, Measured Progress grants to Client a non-exclusive, non-transferable license to use and access the Content for the Client's own use(s) (the "Content License") according to Measured Progress's directions and specifications included in the documentation for the Content subscription, and not for any other purpose whatsoever or for use by any other person or entity by, through or on behalf of the Client or (b) if a Sales Order is a license to use or access proprietary software, then upon payment of the applicable fees set forth in such Sales Order and during the Term only, Measured Progress grants to Client a non-exclusive, non-transferable license to use and access the proprietary software for the Client's own use(s) (the "Software License") according to Measured Progress's directions and specifications included in the documentation for the proprietary software, and not for any other purpose whatsoever or for use by any other person or entity by, through or on behalf of the Client. The Content License and Software License granted hereunder may not be sub-licensed or assigned by the Client. If there is any unauthorized use or access of any of the Content or the proprietary software, the Client must immediately notify Measured Progress by email to [ProductSupport@measuredprogress.org](mailto:ProductSupport@measuredprogress.org).

**License Limitations** Measured Progress and its licensors retain all rights not specifically granted to the Client, including the right to use and further license the Deliverables, Content and proprietary software for its own purposes and for its other clients. To the extent that the Services, Deliverables or Content License includes third party licensed materials, products or services, such Content License, Service or Deliverable shall be subject to the terms of the license between Measured Progress and the third party, and Measured Progress reserves the right to amend, modify and terminate the Content License, Service or Deliverable based upon the limitations imposed by the third party license. The parties understand and agree that any license hereunder does not include any right to, and the Client shall not, sell or sublicense the proprietary software, Content or Deliverables, in whole or in part, to any third party or contest Measured Progress's and its licensors' rights to the proprietary software, Deliverables or the Content. The parties understand and agree that the applicable license does not include any right to, and the Client shall not, sell

or sublicense Measured Progress Materials, services or documentation in whole or in part, to any third party or contest Measured Progress's and its licensors' rights to the Measured Progress Materials or related services or documentation.

**Client Data** All Client information and data stored by Client on Measured Progress' systems pursuant to this Agreement (the "Client Data") shall be Client's exclusive property and treated as confidential information, provided, however, Measured Progress may use and disclose such information (including without limitation demographic information and assessment results data) in an aggregate format where data concerning individual students, teachers, schools or districts may not be identified or derived. Client is solely responsible for the adequacy and accuracy of Client Data. Measured Progress may access such Client Data for the purpose of delivering the Services.

**Client Covenants** Client represents and warrants to Measured Progress that: (a) Client will use the Services and proprietary software in compliance with all Requirements of Law and in accordance with this Agreement and Measured Progress' acceptable-use policy as then in effect, and (b) Client has the right and authority and any and all necessary third-party authorizations and consents to provide Measured Progress with the Client-supplied software, Client-supplied hardware, Client Data and other materials supplied by Client hereunder. Client acknowledges and agrees that any personally identifiable information, credit card information, student or education-related information, or health information which is afforded protection under any Requirements of Law (the "Protected Data") will be transmitted and provided to Measured Progress in a protected or encrypted format in compliance with the Requirements of Law. The placing by Client of Protected Data in the Measured Progress environment without complying with the foregoing is a material breach of this Agreement. Client or its authorized third party is solely responsible for (i) the transmission of Protected Data to the Measured Progress-supplied software, (ii) the use and storage of any Protected Data, whether or not provided by Measured Progress, on Client supplied-software or Client-supplied hardware, and (iii) any approval, certification or audit for compliance with any Requirements of Law for Protected Data, and none of the same shall not be undertaken in reliance of any Services provided by Measured Progress.

**Availability** For so long as Measured Progress hosts the proprietary software pursuant to the Software License for the Client under the Agreement, this section shall apply. Measured Progress may experience website outages where the proprietary software cannot be accessed. MEASURED PROGRESS DOES NOT WARRANT THAT THE PROPRIETARY SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. Measured Progress will use reasonable efforts to make the proprietary software available 24 hours per day, 7 days per week, except for downtime for scheduled and unscheduled maintenance and events beyond the reasonable control of Measured Progress, including force majeure, and will promptly investigate any technical problems that the Client reports to Measured Progress. Measured Progress shall be permitted to retain a third party to provide hosting services. Client, at its sole cost and expense, is responsible for supplying computers and other hardware to be used at Client's site, Client's WAN and Client's telecommunications devices and to maintain the foregoing in good working order and condition in order to access the proprietary software. Client bears the entire risk of the performance or non-performance of all Client-Supplied software, computers, WAN, LAN and telecommunication device.

**Passwords and Security** For so long as Measured Progress hosts the proprietary software under the Agreement for the Client, this Section shall apply. Measured Progress will either provide the Client with user names and passwords or a mechanism for the Client to create them in the proprietary software for every user of the proprietary software ("Permitted Users"). No persons, other than Permitted Users, shall have access to and use of the proprietary software. The Client agrees at all times to maintain the confidentiality of all of its user names and passwords. The Client agrees not to permit a third party other than Permitted Users to use the proprietary software through its license. If there is any unauthorized use or access of any of the Client's accounts, the Client must immediately notify Measured Progress of the security breach by email.

**Designated Representatives** If applicable, Measured Progress and the Client shall each designate and make available to the other party via telephone and electronic mail, personnel who are knowledgeable about the Content, Deliverables or Services hereunder to whom questions can be referred. Measured Progress will provide a Product Support Team year round for questions and concerns about the Content, Deliverables, or Services. The Product Support Team will be accessible with a toll free customer service number Monday-Friday, excluding holidays. When customer service staff is not available to take a call, a voicemail system will be available to record the caller's message. Measured Progress will return phone and email messages in a timely manner. Phone: (877) 432-8294 Email: ProductSupport@measuredprogress.org Fax: 877-640-1785

**Assessment Program Format; Integration** If applicable, Measured Progress will provide to the Client the components of the Content or Deliverables in the formats set forth in the applicable Sales Order. Client is responsible for implementation of the Content and Deliverables through Client's own assessment platform(s), and all hosting and technical support to end users.

**Term; Termination** Unless terminated earlier pursuant to the terms hereof, a Sales Order shall determine commencement date and shall continue in effect as set forth in the applicable Sales Order (the "Term"). Either party may terminate by written notice to the other party if the other party breaches or fails to observe or perform any term or condition of such Sales Order or this Agreement and does not materially cure such breach or failure within 30 days after written demand (five days in the case of late payment of fees) by the non-breaching party specifying the nature of the breach in reasonable detail and stating such party's intention to terminate; provided however, that such written demand must be sent within 30 days of the event or such right to terminate shall be deemed waived, unless such breach is continuing or concerns the payment of fees. The failure to pay amounts owed when due shall be considered a material breach. Upon termination, all rights and obligations of the parties under such terminated Sale Order shall cease, except for those rights and obligations that, by the terms or the nature of the right or obligation, survive termination. Upon termination of a Sales Order: (a) Client must cease using, and Measured Progress will cease providing, the Content and access to the proprietary software, (b) the Content License and Software License shall terminate, and (c) Client shall remove copies of Content or Measured Progress Materials from Client's systems and property and certify the same to Measured Progress within 10 days of termination. Within 30 days after the effective date of any termination, Client shall pay Measured Progress all amounts owed through such effective date of termination. **The "Indemnification," "Limitation of Liability" and "Miscellaneous" provisions shall survive termination.**

Warranty Disclaimers MEASURED PROGRESS DOES NOT MAKE, AND MEASURED PROGRESS EXPRESSLY DISCLAIMS, ALL WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE CONTENT, PROPRIETARY SOFTWARE, DELIVERABLES AND SERVICES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

Indemnification To the maximum extent permitted by applicable law, each of Measured Progress and Client hereby agrees to indemnify and hold harmless the other party, and its respective employees, agents, officers, directors, affiliates and successors (the "Indemnitees") harmless against and from all liability, demands, claims, actions or causes of action, assessments, losses, fines, penalties, costs, damages and expenses, including reasonable attorneys' fees, (collectively "Damages") sustained or incurred by any of the Indemnitees, as a result of, arising out of or by virtue of any breach by such party, subject to the limitations set forth below. To the maximum extent permitted by applicable law, in addition to the indemnification obligations set forth above, the Client shall indemnify, defend, and hold Measured Progress, its affiliates, officers, directors, shareholders, principals, agents, servants, and employees, harmless from any and all Damages to the extent arising out of or relating to (1) the Client's failure to use corrections or enhancements provided to the Client by Measured Progress; (2) the Client's distribution, marketing or use of the Content for the benefit of parties other than the Client; or (3) the combination of the Content with non-Measured Progress products or services. In addition to these indemnification obligations, the Client shall indemnify, defend, and hold Measured Progress, harmless from any and all Damages arising out of or relating to (1) the Client's misuse or modification of the proprietary software; (2) the Client's distribution, marketing or use of the proprietary software for the benefit of parties other than the Client; (3) the combination of the proprietary software with non-Measured Progress products or services, or (4) the introduction of a virus, malware, spyware or any foreign software to the proprietary software by or as a result of the Client's use of or access to the platform.

Limitation of Liability IN NO EVENT SHALL MEASURED PROGRESS BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES—INCLUDING, WITHOUT LIMITATION, LOSS OF USE, INTERRUPTION OF BUSINESS, LOSS OF DATA OR LOSS OF PROFITS—ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THIS AGREEMENT, ANY SALES ORDER, THE CONTENT, ANY DELIVERABLE, OR ANY SERVICES EVEN IF EACH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL MEASURED PROGRESS HAVE LIABILITY IN THE AGGREGATE UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF THE ACTION, FOR ANY AMOUNT IN EXCESS OF THE TOTAL AMOUNT PAID BY CLIENT TO MEASURED PROGRESS UNDER THIS AGREEMENT DURING THE 12 MONTHS PRECEDING THE DATE THE CLAIM ARISES.

Other Definitions (A) "Addenda" means any exhibits or addendum included with this Agreement or referencing this Agreement or executed (or initialed) by each party to this Agreement. (B) "Deliverable" means any product or item to be delivered by Measured Progress to Client in accordance with a Sales Order, as detailed in a Statement of Work (if applicable), excluding however, any subscription for Content. (C) "Sales Order" means a document executed or agreed to by the parties identifying the Services agreed upon by the parties to be provided by Measured Progress to Client, the pricing for such Services and the term during which such Services are to be provided. (D) "Statement of Work" or "SOW" means a statement of work describing the specifications of the Services. The parties can execute a SOW to add Services to a Sales Order and SOW shall become an exhibit to the applicable Sales Order. (E) "Requirement of Law" means all federal, state and local laws, rules and regulations, and all orders, judgments, decrees or other determinations of any governmental (federal, state or local) authority, including without limitation, the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g.

Miscellaneous (A) Nothing in this Agreement will be construed to imply a joint venture, partnership or agency relationship between the parties, and Measured Progress will be considered an independent contractor. (B) This Agreement is for the sole benefit of the parties hereto and their permitted successors and assigns and shall not be construed as conferring any rights on any other party. (C) Neither party may assign its rights and liabilities under the Agreement without the consent of the non-assigning party, which shall not be unreasonably withheld, conditioned or delayed; *provided that* either party shall be obligated to assign this Agreement to a successor in interest in the event of a change of control resulting from a merger, sale of stock or sale of all or substantially all of the assets of a party relating to the Services and Measured Progress shall have the right to assign this Agreement to any affiliate upon written notice to Client. (D) This Agreement plus the Sales Orders and Addenda referencing it constitute the entire agreement between the parties relating to its subject matter. (E) If any portion or provision of this Agreement is held to be invalid, illegal or unenforceable, the remaining portions and provisions shall remain in full force and effect. (F) In the event of any conflict or inconsistency between the provisions of this Agreement and a Sales Order, the Agreement shall prevail unless the Sales Order or SOW references a specific provision in this Agreement that is being superseded. (G) Notices, requests and demands expressly contemplated shall be in writing and shall be deemed to have been duly given (a) 1 business day after being given to an overnight courier with a reliable system for tracking delivery or (b) 3 business days after the day of mailing, when mailed by United States mail, registered or certified mail, return receipt requested, postage prepaid. All notices shall be sent to the addresses indicated in the Sales Order. (H) This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. For purposes of this Agreement, a facsimile of a party's signature printed by a receiving facsimile machine or computer shall be deemed an original signature. (I) THIS AGREEMENT SHALL BE DEEMED TO BE A CONTRACT MADE UNDER, AND SHALL BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF DELAWARE, EXCLUDING ITS CONFLICT-OF-LAW RULES. (J) Except with respect to any payment obligations, neither party will be liable for any failure or delay in its performance under this Agreement due to causes beyond its reasonable control, and will be entitled to a reasonable extension of time to remedy any such delay or failure to perform. (K) EACH PARTY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY FOR ANY CLAIM ARISING OUT OF THE AGREEMENT OR THE RELATIONSHIP.

IN WITNESS WHEREOF, the parties have executed this Sales Order and Agreement by their duly authorized representatives.

Customer Authorizing Name Printed:

Customer Authorizing Signature:

Title:

Date:

Account Name/Address for Invoicing:

Measured Progress Authorizing Name Printed:

Measured Progress Authorizing Signature:

Title:

Date: