

DATE:

05/2/2024

AGENDA ITEM (ACTION ITEM):

Consider/Approve the purchase of Imagine Learning (Edgenuity) as the 6-12 Virtual Learning Platform for the KCSD for the 2024-2025 School year with a contract period of 8/1/24-7/31/25.

APPLICABLE BOARD POLICY:

01.1 Legal Status of the Board and 04.32 - Procurement

HISTORY/BACKGROUND:

The KCSD has utilized Imagine Learning (Edgenuity) to deliver virtual learning course work for students in grade 6-12. This program is utilized by all KCSD middle schools and high schools for virtual learning and course remediation. Imagine Learning delivers comprehensive course work in all content areas.

FISCAL/BUDGETARY IMPACT:

\$101,376.00 to be paid utilizing ARP funds.

RECOMMENDATION:

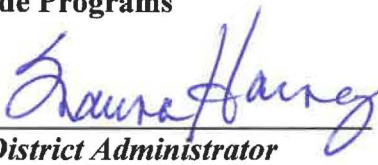
Approval to purchase the Imagine Learning (Edgenuity) program as the 6-12 Virtual Learning Platform for the KCSD for the 2024-2025 School year with a contract period of 8/1/24-7/31/25.

CONTACT PERSON:

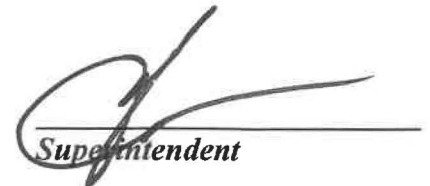
Matt Moore, Director of District Wide Programs



Principal/Administrator



District Administrator



Superintendent

*Use this form to submit your request to the Superintendent for items to be added to the Board Meeting Agenda.
Principal –complete, print, sign and send to your Director. Director –if approved, sign and put in the Superintendent’s mailbox.*



Price Quote

100 S. Mill Ave
 Suite 1700
 Tempe, AZ 85281
 877-725-4257

Date 5/2/2024
Quote No. Q-42636
Acct. No. 12216793
Total 101,376.00
Pricing Expires 08/24/2024

Attn: Accounts Payable Dept.
 1055 Eaton Drive - AP
 Fort Wright KY 41017
 United States

Renewal for Kenton County School District

Payment Term	Contract Start	Contract End
Net 30	8/1/2024	7/31/2025

Site	Description	End Date	Qty	Amount
Kenton County School District	Twenhofel Middle & Woodland Middle Schools access to Edgenuity 6-8 Comprehensive Concurrent User Edgenuity Academic Integrity for the district	07/31/2025	25	11,000.00
		07/31/2025	1	2,376.00
Turkey Foot Middle School	Edgenuity 6-8 Comprehensive Site License	07/31/2025	1	13,200.00
Scott High School	Edgenuity 9-12 Comprehensive Site License	07/31/2025	1	17,600.00
Summit View Academies	Edgenuity 6-12 Comprehensive Site License	07/31/2025	1	22,000.00
Dixie Heights High School	Edgenuity 9-12 Comprehensive Site License	07/31/2025	1	17,600.00
Simon Kenton High School	Edgenuity 9-12 Comprehensive Site License	07/31/2025	1	17,600.00

Discount 25,344.00
Subtotal 101,376.00
Tax Total 0.00
Total 101,376.00

Imagine Learning will audit enrollment count throughout the year. If more enrollments are found to be in use than purchased, Imagine Learning will invoice the customer for the additional usage.

This quote is subject to Imagine Learning LLC Standard Terms and Conditions . These Terms and Conditions are available at www.imaginelearning.com/standard-terms-and-conditions, may change without notice and are incorporated by this reference. By signing this quote or by submitting a purchase order or form purchasing document, Customer explicitly agrees to these Terms and Conditions resulting in a legally binding agreement. To the fullest extent permitted under applicable law, all pricing information contained in this quote is confidential, and may not be shared with third parties without Imagine Learning's written consent.

Attn: Accounts Payable Dept.

Signature: _____
Print Name: _____
Title: _____
Date: _____

Imagine Learning Representative

Kristen Scherer
Account Executive -
kristen.scherer@imaginelearning.com
imaginethefutureoflearning.com

Not valid unless accompanied by a purchase order. Please specify a shipping address if applicable. Please e-mail this quote, the purchase order and order documentation to AR@imaginelearning.com or fax to 480-423-0213.



THE KENTON COUNTY BOARD OF EDUCATION
 1055 EATON DRIVE, FORT WRIGHT, KENTUCKY 41017
 TELEPHONE: (859) 344-8888 / FAX: (859) 344-1531
 WEBSITE: www.kenton.kyschools.us
 Dr. Henry Webb, Superintendent of Schools

VENDOR ASSURANCES REGARDING PROTECTION OF PERSONAL AND CONFIDENTIAL INFORMATION

Data Security and Breach Protocols

Vendors that receive Personal Information from Kenton County Board of Education (herein referred to as “KCBOE”) as defined by and in accordance with Kentucky’s Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq., (the “Act”), shall secure and protect the Personal Information by, without limitation, complying with all requirements applicable to non-affiliated third parties set forth in the Act.

“Personal Information” is defined in accordance with KRS 61.931(6) as “an individual’s first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

- a) An account number, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
- b) A Social Security number;
- c) A taxpayer identification number that incorporates a Social Security number;
- d) A driver’s license number, state identification card number or other individual identification number issued by any agency as defined under the Act;
- e) A passport number or other identification number issued by the United States government; or
- f) Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by the Family Education Rights and Privacy Act, as amended 20 U.S.C. sec 1232g.”

As provided in KRS 61.931(5), a “non-affiliated third party” includes any person or entity that has a contract or agreement with the KCBOE and receives (accesses, collects or maintains) personal information from the KCBOE pursuant to the contract or agreement.

The vendor hereby agrees to cooperate with the KCBOE in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.

The vendor shall notify as soon as possible, but not to exceed seventy-two (72) hours, KCBOE, the Commissioner of the Kentucky State Police, the Kentucky Auditor of Public Accounts, the Commonwealth (Kentucky) Office of Technology, and the Commissioner of the Kentucky Department of Education of a determination of or knowledge of a breach, unless the exception set forth in KRS 61.932(2)(b)(2) applies and the vendor abides by the requirements set forth in that exception. Notification shall be in writing on a form developed by the Commonwealth (Kentucky) Office of Technology.

The vendor hereby agrees to report to the KCBOE, immediately and within seventy-two (72) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

The vendor hereby agrees that the KCBOE may withhold payment(s) owed to the vendor for any violation of the Act’s notification requirements.

The vendor hereby agrees to undertake a prompt and reasonable investigation of any security breach as defined under the Act in accordance with KRS 61.933.

Upon conclusion of an investigation of a security breach as defined under the Act as required by KRS 61.933, the vendor hereby agrees to an apportionment of the costs of the notification, investigation, and mitigation of the security breach.

In accordance with KRS 61.932(2)(a), the vendor shall implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices established by the Commonwealth (Kentucky) Office of Technology and that are reasonably designed to protect the Personal Information from unauthorized access, use, modification, disclosure, manipulation, or destruction.

Student Data Security

Pursuant to KRS 365.734, if the vendor is a cloud computing service provider (which is defined pursuant to KRS 365.734(1)(b) as any person or entity other than an educational institution that operates cloud computing services) or, through service to the KCBOE, becomes the equivalent of a cloud computing service provider, the vendor further hereby agrees that:

- The vendor shall not process student data as defined pursuant to KRS 365.734 for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the vendor receives express permission from the student's parent. The vendor shall work with the KCBOE to determine the best method of collecting parental permission.
- With a written agreement for educational research, the vendor may assist the KCBOE to conduct educational research as permitted by the Family Education Rights and Privacy Act of 1974, as amended, 20 U.S.C. sec. 1232g.
- Pursuant to KRS 365.734, the vendor shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purposes.
- Pursuant to KRS 365.734, the vendor shall not sell, disclose, or otherwise process student data for any commercial purpose.
- Pursuant to KRS 365.734, the vendor shall certify in writing to the agency that it will comply with KRS 365.734(2).

Family Educational Rights and Privacy Act, National School Lunch Act and Child Nutrition Act

If during the course of this agreement, the KCBOE discloses to the vendor any data protected by the Family Educational Rights and Privacy Act of 1974 (FERPA), as amended (20 U.S.C. sec. 1232g, *et seq.*), and its regulations, and data protected by the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. sec. 1751 *et seq.*), and the Child Nutrition Act of 1966 (CNA) (42 U.S.C. sec. 1771 *et seq.*), the vendor agrees that it is bound by and will comply with the confidentiality, security and redisclosure requirements and restrictions stated in FERPA, NSLA and CNA.

The vendor hereby agrees to report to the KCBOE, immediately and within seventy-two (72) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

The vendor agrees that FERPA-protected information is confidential information. FERPA-protected information includes, but is not limited to the student's name, the name of the student's parent or other family members, the address of the student or student's family, a personal identifier, such as the student's social security number, student number, or biometric record, other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name, and other information that, alone or in combination, is linked or linkable to a specific

student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

The vendor understands and acknowledges that any unauthorized disclosure of confidential information may be illegal as provided in FERPA and in the implementing federal regulations found in 34 CFR, Part 99. The penalty for unlawful disclosure could be a fine of not more than \$250,000 (under 18 U.S.C. sec. 3571) or imprisonment for not more than five years (under 18 U.S.C. sec. 3559), or both.

The vendor understands and acknowledges that children's free and reduced price meal and free milk eligibility information or information from the family's application for eligibility, obtained under provisions of the NSLA or the CNA is confidential information and that any unauthorized disclosure of confidential free and reduced price lunch information or information from an application for this benefit may be illegal. The penalty for unlawful disclosure could be a fine of not more than \$1,000.00 (under 7 C.F.R. 245.6) or imprisonment for up to one year (under 7 C.F.R. 245.6), or both.

In the event there is a conflict between this agreement and any other agreement between KCBOE and Vendor, the terms of this agreement shall apply.

Imagine Learning LLC

Vendor Name

100 S Mill Avenue Suite 1700 Tempe AZ 85281

Vendor Address

877-725-4257

Vendor Telephone

bids@imaginelearning.com

Vendor Email Address

DocuSigned by:

Kelly Staniec

Signature by Vendor's Authorized Representative

Kelly Staniec Vice President, Controller

Print Name

May 13, 2024

Date

IMAGINE LEARNING END USER TERMS OF SERVICE

VERSION 1.0

LAST REVISED ON: JANUARY 1, 2022

Welcome to Imagine Learning! Before using Imagine Learning's website, software, products, mobile application(s), and services (together, the "Services", "our Services", or "Company's Services"), it is important that you carefully read the following agreement. The website located at www.imaginelearning.com (the "Site") is a copyrighted work belonging to Imagine Learning LLC. ("Company", "us", "our", and "we"). Certain features of the Services may be subject to additional guidelines, terms, or rules, which will be posted as appropriate in connection with such features. All such additional terms, guidelines, and rules are incorporated by reference into these Terms of Service.

THESE TERMS OF SERVICE (THE "TERMS"), ALONG WITH COMPANY'S PRIVACY POLICY, SET FORTH THE LEGALLY BINDING TERMS AND CONDITIONS THAT GOVERN YOUR USE OF COMPANY'S SERVICES. BY USING THE SERVICES, YOU ARE ACCEPTING THESE TERMS. YOU MAY NOT USE THE SERVICES OR ACCEPT THE TERMS IF YOU ARE NOT AT LEAST 13 YEARS OLD. IF YOU DO NOT AGREE WITH ALL OF THE PROVISIONS OF THESE TERMS, DO NOT USE THE SERVICES.

THESE TERMS REQUIRE THE USE OF ARBITRATION (SECTION 10.3) ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND ALSO LIMIT THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF A DISPUTE.

1. ACCOUNTS

1.1 Account Creation. Before you use certain features of Company's Services, an account will be created for you ("Account") at the direction of the "Account Holder" (typically teachers or school administrators representing schools and/or school districts who subscribe to our Services). You represent and warrant that: (a) any registration information you provide to Account Holder will be truthful and accurate; and (b) you will maintain the accuracy of such information. You may request deletion of your Account by contacting the Account Holder. Company may suspend or terminate your Account in accordance with Section 8.

1.2 Account Responsibilities. You are responsible for maintaining the confidentiality of your Account login information and are fully responsible for all activities that occur under your Account. You agree to immediately notify Account Holder of any unauthorized use, or suspected unauthorized use of your Account or any other breach of security. Company cannot and will not be liable for any loss or damage arising from your failure to comply with the above requirements.

2. ACCESS TO THE SITE

2.1 License. Subject to these Terms, Company grants you a non-transferable, non-exclusive, revocable, limited license to use and access the Services solely for your own personal, noncommercial use.

2.2 Certain Restrictions. The rights granted to you in these Terms are subject to the following restrictions: (a) you shall not license, sell, rent, lease, transfer, assign, distribute, host, or otherwise commercially exploit the Services, whether in whole or in part, or any content displayed on the Services; (b) you shall not modify, make derivative works of, disassemble, reverse compile or reverse engineer any part of the Site or Services; (c) you shall not access the Services in order to build a similar or competitive website, product, or service; and (d) except as expressly stated herein, no part of the Services may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means. Unless otherwise indicated, any future release, update, or other addition to functionality of the Services shall be subject to these Terms. All copyright and other proprietary notices on the Services (or on any content displayed on any Service) must be retained on all copies thereof.

2.3 Modification. We reserve the right, at any time, to modify, suspend, or discontinue the Services (in whole or in part) with or without notice to you. You agree that Company will not be liable to you or to any third party for any modification, suspension, or discontinuation of the Services or any part thereof.

2.4 No Support or Maintenance. You acknowledge and agree that Company will have no obligation to provide you with any support or maintenance in connection with the Services.

2.5 Ownership. Excluding any User Content that you may provide (defined below), you acknowledge that all the intellectual property rights, including copyrights, patents, trademarks, and trade secrets, in the Services and their content

are owned by Company or our suppliers. Neither these Terms (nor your use of the Services) transfers to you or any third party any rights, title or interest in or to such intellectual property rights, except for the limited access rights expressly set forth in Section 2.1. Company and its suppliers reserve all rights not granted in these Terms. There are no implied licenses granted under these Terms.

2.6 Compliance with Law. You are responsible for using the Services in compliance with all applicable federal and state laws and regulations. You shall not use the Services in violation of any applicable law.

2.7 Use by Children Under 13. The Children’s Online Privacy Protection Act (“**COPPA**”) requires that all online service providers, including Company, obtain parental consent before knowingly collecting personally identifiable information from children under the age of 13. Company does not knowingly collect or solicit any personally identifiable information from children under the age of 13, and instead relies upon information provided to Company by Account Holder. Children under the age of 13 are prohibited from using the Services or creating an Account unless they are doing so with parental consent or with the consent of an Account Holder who is providing such consent in compliance with COPPA. If we learn that we have collected personal information from a person under the age of 13 that does not comply with COPPA, we will delete that information in a reasonably prudent amount of time. If you believe that a child under the age of 13 has provided personally identifiable information to us, please contact us at privacy@imaginelearning.com.

2.8 Accessibility. Company is committed to ensuring that the Services remain accessible to all individuals, regardless of disability. Company will take reasonable steps to ensure that the Services meet common industry standards for accessibility and materially comply with the requirements of the Americans with Disabilities Act (“**ADA**”), as applicable. If you have any suggestions about improvements Company can make to enhance the accessibility of the Services, please contact us at accessibility@imaginelearning.com.

3. USER CONTENT

3.1 User Content. “**User Content**” means any and all information and content that a user submits to, or uses with, the Services (e.g., content in the user’s profile or postings). You are solely responsible for your User Content. You assume all risks associated with use of your User Content, including any reliance on its accuracy, completeness or usefulness by others, or any disclosure of your User Content that personally identifies you or any third party. You hereby represent and warrant that your User Content does not violate our Acceptable Use Policy (defined in Section 3.3). You may not represent or imply to others that your User Content is in any way provided, sponsored, or endorsed by Company. Because you alone are responsible for your User Content, you may expose yourself to liability if, for example, your User Content violates the Acceptable Use Policy. We are not obligated to backup any User Content, and your User Content may be deleted at any time without prior notice. You are solely responsible for creating and maintaining your own backup copies of your User Content if you desire.

3.2 License. You hereby grant (and you represent and warrant that you have the right to grant) to Company an irrevocable, nonexclusive, royalty-free and fully paid, worldwide license to reproduce, distribute, publicly display and perform, prepare derivative works of, incorporate into other works, and otherwise use and exploit your User Content, and to grant sublicenses of the foregoing rights, solely for the purposes of including your User Content in the Services. You hereby irrevocably waive (and agree to cause to be waived) any claims and assertions of moral rights or attribution with respect to your User Content.

3.3 Acceptable Use Policy. The following terms constitute our “**Acceptable Use Policy**”:

(a) You agree not to use the Services to collect, upload, transmit, display, or distribute any User Content (i) that violates any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right; (ii) that is unlawful, harassing, abusive, tortious, threatening, harmful, invasive of another’s privacy, vulgar, defamatory, false, intentionally misleading, trade libelous, pornographic, obscene, patently offensive, promotes racism, bigotry, hatred, or physical harm of any kind against any group or individual or is otherwise objectionable; (iii) that is harmful to minors in any way; or (iv) that is in violation of any law, regulation, or obligations or restrictions imposed by any third party.

(b) In addition, you agree not to: (i) upload, transmit, or distribute to or through the Services any computer viruses, worms, or any software intended to damage or alter a computer system or data; (ii) send through the Services unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, or any other form of duplicative or unsolicited messages, whether commercial or otherwise; (iii) use the Services to harvest, collect, gather or assemble information or data regarding other users, including e-mail addresses, without their consent; (iv) interfere with, disrupt, or create an undue burden on servers or networks connected to the Services, or violate the regulations, policies or

procedures of such networks; (v) attempt to gain unauthorized access to our Services (or to other computer systems or networks connected to or used together with the Services), whether through password mining or any other means; (vi) harass or interfere with any other user's use and enjoyment of the Services; or (vi) use software or automated agents or scripts to produce multiple accounts on the Services, or to generate automated searches, requests, or queries to (or to strip, scrape, or mine data from) our Services (provided, however, that we conditionally grant to the operators of public search engines revocable permission to use spiders to copy materials from the Services for the sole purpose of and solely to the extent necessary for creating publicly available searchable indices of the materials, but not caches or archives of such materials, subject to the parameters set forth in our robots.txt file).

(c) You further agree that you will not: (i) publish or post screenshots, video, text or other reproductions of content from any course provided through the Services or (ii) use any technology, code, or other method to automatically skip content or answer questions provided through the Services. The building, use, or sharing of any such technology, code, or other methodology is strictly prohibited.

3.4 Enforcement. We reserve the right (but have no obligation) to review any User Content, and to investigate and/or take appropriate action against you in our sole discretion if you violate the Acceptable Use Policy or any other provision of these Terms or otherwise create liability for us or any other person. Such action may include removing or modifying your User Content, terminating your Account in accordance with Section 8, and/or reporting you to law enforcement authorities.

3.5 Feedback. If you provide us with any feedback or suggestions regarding the Services ("**Feedback**"), you hereby assign to Company all rights in such Feedback and agree that we shall have the right to use and fully exploit such Feedback and related information in any manner it deems appropriate. Company will treat any Feedback you provide to us as non-confidential and non-proprietary. You agree that you will not submit to Company any information or ideas that you consider to be confidential or proprietary.

3.6 Your Data. As an education technology company that may collect data about K-12 and postsecondary students, Company is subject to certain laws and regulations, some of which are described below. Please visit our Privacy Policy for more information on how we collect, use, and safeguard data.

(a) Company will materially comply with all applicable federal and state student privacy laws and regulations. We will provide access to Personal Information pertaining to K-12 students only to our employees and subcontractors who need to access the data.

(b) "**Personal Information**" means, collectively personally identifiable information as defined in applicable law including the Family Educational Rights and Privacy ("**FERPA**"), the California Consumer Privacy Act ("**CCPA**"), and the European Union's General Data Protection Regulation ("**GDPR**").

4. INDEMNIFICATION. You agree to indemnify and hold Company (and its officers, employees, and agents) harmless, including costs and attorneys' fees, from any claim or demand made by any third party due to or arising out of (a) your use of the Services, (b) your violation of these Terms, (c) your violation of applicable laws or regulations or (d) your User Content. Company reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify us, and you agree to cooperate with our defense of these claims. You agree not to settle any matter without the prior written consent of Company. Company will use reasonable efforts to notify you of any such claim, action or proceeding upon becoming aware of it.

5. THIRD-PARTY LINKS; OTHER USERS

5.1 Third-Party Links. The Services may contain links to third-party websites and services (collectively, "**Third-Party Links**"). Such Third-Party Links are not under the control of Company, and we are not responsible for any Third-Party Links. Company provides access to these Third-Party Links only as a convenience to you, and does not review, approve, monitor, endorse, warrant, or make any representations with respect to Third-Party Links. You use all Third-Party Links at your own risk and should apply a suitable level of caution and discretion in doing so. When you click on any of the Third-Party Links, the applicable third party's terms and policies apply, including the third party's privacy and data gathering practices. You should make whatever investigation you feel necessary or appropriate before proceeding with any transaction in connection with such Third-Party Links.

5.2 Other Users. Each Service user is solely responsible for any and all of its own User Content. Because we do not control User Content, you acknowledge and agree that we are not responsible for any User Content, whether provided by you or by others. We make no guarantees regarding the accuracy, currency, suitability, or quality of any User Content. Your interactions with other Service users are solely between you and such users. You agree that Company will not be

responsible for any loss or damage incurred as the result of any such interactions. If there is a dispute between you and any Service user, we are under no obligation to become involved.

5.3 Release. You hereby release and forever discharge Company (and our officers, employees, agents, successors, and assigns) from, and hereby waive and relinquish, each and every past, present and future dispute, claim, controversy, demand, right, obligation, liability, action and cause of action of every kind and nature (including personal injuries, death, and property damage), that has arisen or arises directly or indirectly out of, or that relates directly or indirectly to, the Services (including any interactions with, or act or omission of, other Service users or any Third-Party Links & Ads). IF YOU ARE A CALIFORNIA RESIDENT, YOU HEREBY WAIVE CALIFORNIA CIVIL CODE SECTION 1542 IN CONNECTION WITH THE FOREGOING, WHICH STATES: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

6. DISCLAIMERS

THE SITE IS PROVIDED ON AN "AS-IS" AND "AS AVAILABLE" BASIS, AND COMPANY (AND OUR SUPPLIERS) EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ALL WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, ACCURACY, OR NON-INFRINGEMENT. WE (AND OUR SUPPLIERS) MAKE NO WARRANTY THAT THE SITE WILL MEET YOUR REQUIREMENTS, WILL BE AVAILABLE ON AN UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE BASIS, OR WILL BE ACCURATE, RELIABLE, FREE OF VIRUSES OR OTHER HARMFUL CODE, COMPLETE, LEGAL, OR SAFE. IF APPLICABLE LAW REQUIRES ANY WARRANTIES WITH RESPECT TO THE SERVICES, ALL SUCH WARRANTIES ARE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE DATE OF FIRST USE.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

7. LIMITATION ON LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL COMPANY (OR OUR SUPPLIERS) BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY LOST PROFITS, LOST DATA, COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS, OR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES ARISING FROM OR RELATING TO THESE TERMS OR YOUR USE OF, OR INABILITY TO USE, THE SERVICES, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ACCESS TO, AND USE OF, THE SERVICES IS AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR DEVICE OR COMPUTER SYSTEM, OR LOSS OF DATA RESULTING THEREFROM.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, OUR LIABILITY TO YOU FOR ANY DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT (FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION), WILL AT ALL TIMES BE LIMITED TO A MAXIMUM OF FIFTY US DOLLARS (U.S. \$50). THE EXISTENCE OF MORE THAN ONE CLAIM WILL NOT ENLARGE THIS LIMIT. YOU AGREE THAT OUR SUPPLIERS WILL HAVE NO LIABILITY OF ANY KIND ARISING FROM OR RELATING TO THIS AGREEMENT.

SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

8. TERM AND TERMINATION.

8.1 Termination; Effect of Termination. Subject to this Section, these Terms will remain in full force and effect while you use the Services. We may suspend or terminate your rights to use the Services (including your Account) at any time for any reason at our sole discretion, including for any use of the Services in violation of these Terms. Upon termination of your rights under these Terms, your Account and right to access and use the Services will terminate immediately. You understand that any termination of your Account may involve deletion of your User Content associated with your Account from our live databases. Company will not have any liability whatsoever to you for any termination of your rights under these Terms, including for termination of your Account or deletion of your User Content. Even after your rights under these Terms

are terminated, the following provisions of these Terms will remain in effect: Sections 2.2 through 2.5, Section 2.7, and Sections 4 through 10.

8.2 Deletion of Personal Information. Upon termination of your Account, you may request that Account Holder direct Company to delete any Personal Information from its live databases. Company agrees to take commercially reasonable steps to honor any deletion requests received from Account Holder in a reasonable amount of time (not to exceed ninety (90) days). You understand and agree that Company may continue to have Personal Information in archive files or similar databases. You further agree that Company has no obligation to delete aggregated or de-identified information. Company may retain and use aggregated and de-identified information for any purpose that is consistent with applicable federal and state laws and regulations.

9. COPYRIGHT POLICY.

Company respects the intellectual property of others and asks that users of our Services do the same. In connection with our Services, we have adopted and implemented a policy respecting copyright law that provides for the removal of any infringing materials and for the termination, in appropriate circumstances, of users of our Services who are repeat infringers of intellectual property rights, including copyrights. If you believe that one of our users is, through the use of our Services, unlawfully infringing the copyright(s) in a work, and wish to have the allegedly infringing material removed, the following information in the form of a written notification (pursuant to 17 U.S.C. § 512(c)) must be provided to our designated Copyright Agent:

1. your physical or electronic signature;
2. identification of the copyrighted work(s) that you claim to have been infringed;
3. identification of the material on our services that you claim is infringing and that you request us to remove;
4. sufficient information to permit us to locate such material;
5. your address, telephone number, and e-mail address;
6. a statement that you have a good faith belief that use of the objectionable material is not authorized by the copyright owner, its agent, or under the law; and
7. a statement that the information in the notification is accurate, and under penalty of perjury, that you are either the owner of the copyright that has allegedly been infringed or that you are authorized to act on behalf of the copyright owner.

Please note that, pursuant to 17 U.S.C. § 512(f), any misrepresentation of material fact (falsities) in a written notification automatically subjects the complaining party to liability for any damages, costs and attorney's fees incurred by us in connection with the written notification and allegation of copyright infringement.

The designated Copyright Agent for Company is:

Designated Agent: Legal Department
Address of Agent: 8860 E Chaparral Road, Suite 100, Scottsdale, AZ 85250
Telephone: 480-675-7284
E-mail: legal@imaginelearning.com

10. GENERAL

10.1 Fees. At this time, all fee agreements are made with Account Holder. Any change to this policy would be effective upon thirty (30) calendar days' notice.

10.2 Changes. These Terms are subject to occasional revision, and if we make any substantial changes, we may notify you by sending you an e-mail to the last e-mail address you provided to us (if any), and/or by prominently posting notice of the changes on our Site. Any changes to these Terms will be effective upon the earlier of thirty (30) calendar days following our dispatch of an e-mail notice to you (if applicable) or thirty (30) calendar days following our posting of notice of the changes on our Site. These changes will be effective immediately for new users of our Services. Continued use of our Services following notice of such changes shall indicate your acknowledgement of such changes and agreement to be bound by the terms and conditions of such changes.

10.3 Dispute Resolution; Mandatory Arbitration. *Please read this Arbitration Agreement carefully. It is part of your contract with Company and affects your rights. It contains procedures for MANDATORY BINDING ARBITRATION AND A CLASS ACTION WAIVER.*

(a) *Applicability of Arbitration Agreement.* All claims and disputes (excluding claims for injunctive or other equitable relief as set forth below) in connection with the Terms or the use of any product or service provided by Company that cannot be resolved informally or in small claims court shall be resolved by binding arbitration on an individual basis under

the terms of this Arbitration Agreement. Unless otherwise agreed to, all arbitration proceedings shall be held in English. This Arbitration Agreement applies to you and Company, and to any subsidiaries, affiliates, agents, employees, predecessors in interest, successors, and assigns, as well as all authorized or unauthorized users or beneficiaries of services or goods provided under the Terms.

(b) *Notice Requirement and Informal Dispute Resolution.* Before either party may seek arbitration, the party must first send to the other party a written Notice of Dispute (“**Notice**”) describing the nature and basis of the claim or dispute, and the requested relief. A Notice to Company should be sent to: Attn: Legal Department, 8860 E Chaparral Road, Suite 100, Scottsdale AZ 85250. After the Notice is received, you and Company may attempt to resolve the claim or dispute informally. If you and Company do not resolve the claim or dispute within thirty (30) days after the Notice is received, either party may begin an arbitration proceeding. The amount of any settlement offer made by any party may not be disclosed to the arbitrator until after the arbitrator has determined the amount of the award, if any, to which either party is entitled.

(c) *Arbitration Rules.* Arbitration shall be initiated through the American Arbitration Association (“**AAA**”), an established alternative dispute resolution provider (“**ADR Provider**”) that offers arbitration as set forth in this section. If AAA is not available to arbitrate, the parties shall agree to select an alternative ADR Provider. The rules of the ADR Provider shall govern all aspects of the arbitration, including but not limited to the method of initiating and/or demanding arbitration, except to the extent such rules are in conflict with the Terms. The AAA Consumer Arbitration Rules (“**Arbitration Rules**”) governing the arbitration are available online at www.adr.org or by calling the AAA at 1-800-778-7879. The arbitration shall be conducted by a single, neutral arbitrator. Any claims or disputes where the total amount of the award sought is less than Ten Thousand U.S. Dollars (US \$10,000.00) may be resolved through binding non-appearance-based arbitration, at the option of the party seeking relief. For claims or disputes where the total amount of the award sought is Ten Thousand U.S. Dollars (US \$10,000.00) or more, the right to a hearing will be determined by the Arbitration Rules. Any hearing will be held in a location within 100 miles of your residence, unless you reside outside of the United States, and unless the parties agree otherwise. If you reside outside of the U.S., the arbitrator shall give the parties reasonable notice of the date, time and place of any oral hearings. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. If the arbitrator grants you an award that is greater than the last settlement offer that Company made to you prior to the initiation of arbitration, Company will pay you the greater of the award or \$2,500.00. Each party shall bear its own costs (including attorney’s fees) and disbursements arising out of the arbitration and shall pay an equal share of the fees and costs of the ADR Provider.

(d) *Additional Rules for Non-Appearance Based Arbitration.* If non-appearance based arbitration is elected, the arbitration shall be conducted by telephone, online and/or based solely on written submissions; the specific manner shall be chosen by the party initiating the arbitration. The arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise agreed by the parties.

(e) *Time Limits.* If you or Company pursue arbitration, the arbitration action must be initiated and/or demanded within the statute of limitations (i.e., the legal deadline for filing a claim) and within any deadline imposed under the AAA Rules for the pertinent claim.

(f) *Authority of Arbitrator.* If arbitration is initiated, the arbitrator will decide the rights and liabilities, if any, of you and Company, and the dispute will not be consolidated with any other matters or joined with any other cases or parties. The arbitrator shall have the authority to grant motions dispositive of all or part of any claim. The arbitrator shall have the authority to award monetary damages, and to grant any non-monetary remedy or relief available to an individual under applicable law, the AAA Rules, and the Terms. The arbitrator shall issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The arbitrator has the same authority to award relief on an individual basis that a judge in a court of law would have. The award of the arbitrator is final and binding upon you and Company.

(g) *Waiver of Jury Trial.* THE PARTIES HEREBY WAIVE THEIR CONSTITUTIONAL AND STATUTORY RIGHTS TO GO TO COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY, instead electing that all claims and disputes shall be resolved by arbitration under this Arbitration Agreement. Arbitration procedures are typically more limited, more efficient and less costly than rules applicable in a court and are subject to very limited review by a court. In the event any litigation should arise between you and Company in any state or federal court in a suit to vacate or enforce an arbitration award or otherwise, YOU AND COMPANY WAIVE ALL RIGHTS TO A JURY TRIAL, instead electing that the dispute be resolved by a judge.

(h) *Waiver of Class or Consolidated Actions.* ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED OR LITIGATED ON AN INDIVIDUAL BASIS AND

NOT ON A CLASS BASIS, AND CLAIMS OF MORE THAN ONE CUSTOMER OR USER CANNOT BE ARBITRATED OR LITIGATED JOINTLY OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER OR USER.

(i) *Confidentiality.* All aspects of the arbitration proceeding, including but not limited to the award of the arbitrator and compliance therewith, shall be strictly confidential. The parties agree to maintain confidentiality unless otherwise required by law. This paragraph shall not prevent a party from submitting to a court of law any information necessary to enforce this Agreement, to enforce an arbitration award, or to seek injunctive or equitable relief.

(j) *Severability.* If any part or parts of this Arbitration Agreement are found under the law to be invalid or unenforceable by a court of competent jurisdiction, then such specific part or parts shall be of no force and effect and shall be severed and the remainder of the Agreement shall continue in full force and effect.

(k) *Right to Waive.* Any or all of the rights and limitations set forth in this Arbitration Agreement may be waived by the party against whom the claim is asserted. Such waiver shall not waive or affect any other portion of this Arbitration Agreement.

(l) *Survival of Agreement.* This Arbitration Agreement will survive the termination of your relationship with Company.

(m) *Small Claims Court.* Notwithstanding the foregoing, either you or Company may bring an individual action in small claims court.

(n) *Emergency Equitable Relief.* Notwithstanding the foregoing, either party may seek emergency equitable relief before a state or federal court in order to maintain the status quo pending arbitration. A request for interim measures shall not be deemed a waiver of any other rights or obligations under this Arbitration Agreement.

(o) *Claims Not Subject to Arbitration.* Notwithstanding the foregoing, claims of defamation, violation of the Computer Fraud and Abuse Act, and infringement or misappropriation of the other party's patent, copyright, trademark or trade secrets shall not be subject to this Arbitration Agreement.

(p) *Courts.* In any circumstances where the foregoing Arbitration Agreement permits the parties to litigate in court, the parties hereby agree to submit to the personal jurisdiction of the courts located within Maricopa County, Arizona, for such purpose.

10.4 Export. The Services may be subject to U.S. export control laws and may be subject to export or import regulations in other countries. You agree not to export, reexport, or transfer, directly or indirectly, any U.S. technical data acquired from Company, or any products utilizing such data, in violation of the United States export laws or regulations.

10.5 Disclosures. Company is located at the address in Section 10.11. If you are a California resident, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Product of the California Department of Consumer Affairs by contacting them in writing at 400 R Street, Sacramento, CA 95814, or by telephone at (800) 952-5210.

10.6 Electronic Communications. The communications between you and Company use electronic means, whether you use the Site or send us emails, or whether Company posts notices on the Services or communicates with you via email. For contractual purposes, you (a) consent to receive communications from us in an electronic form; and (b) agree that all terms and conditions, agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications would satisfy if it were be in a hardcopy writing. The foregoing does not affect your non-waivable rights.

10.7 Entire Terms. These Terms constitute the entire agreement between you and us regarding the use of the Services. Our failure to exercise or enforce any right or provision of these Terms shall not operate as a waiver of such right or provision. The section titles in these Terms are for convenience only and have no legal or contractual effect. The word "including" means "including without limitation". Your relationship to Company is that of an independent contractor, and neither party is an agent or partner of the other.

10.8 Severability. If any provision of these Terms is, for any reason, held to be invalid or unenforceable, the other provisions of these Terms will be unimpaired and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

10.9 Assignment. These Terms, and your rights and obligations herein, may not be assigned, subcontracted, delegated, or otherwise transferred by you without Company's prior written consent, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void. Company may freely assign these Terms. The terms and conditions set forth in these Terms shall be binding upon assignees.

10.10 Copyright/Trademark Information. Copyright © 2022 IMAGINE LEARNING LLC. All rights reserved. All trademarks, logos and service marks (“Marks”) displayed on the Site are our property or the property of other third parties. You are not permitted to use these Marks without our prior written consent or the consent of such third party which may own the Marks.

10.11 Contact Information:

Legal Department
8860 E Chaparral Road, Suite 100, Scottsdale, AZ 85250
Telephone: 480-675-7284
E-mail: legal@imaginelearning.com