

DATE:

5/15/2025

AGENDA ITEM (ACTION ITEM):

Consider/Approve of the Terms and Conditions with Acellus to serve as the K-5 Virtual Learning Platform for KCSD for the 2025-2026 school year.

APPLICABLE BOARD POLICY:

01.1 Legal Status of the Board and 04.32- Procurement

HISTORY/BACKGROUND:

The KCSD has utilized Acellus to deliver virtual learning coursework for students in grades K-5. This program is utilized by KCSD elementary schools for virtual learning. Acellus delivers comprehensive coursework in all content areas. Six schools utilized Acellus for the 2024-2025 school year for virtual learning for a total of 8 students. At this time, one student has been approved for virtual learning at the elementary level for the 2025-2026 school year. As schools have a need for a virtual learning platform, Acellus student licenses can be purchased for the duration of this agreement. The current cost of an annual license for one student is \$711.00. The cost is billed on a monthly basis for the time period a student is enrolled in Acellus. The monthly cost per student is \$79 per month. The price is subject to change based on when the student license is purchased.

FISCAL/BUDGETARY IMPACT:

The estimated cost is \$79 per month per approved student. This is a shared cost between KCSD and the elementary school KCSD will pay 50% of the cost through the General Fund and the remaining 50% will be paid using school funds.

RECOMMENDATION:

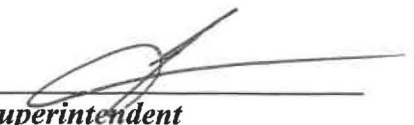
Approval of the Terms and Conditions with Acellus to serve as the K-5 Virtual Learning Platform for KCSD for the 2025-2026 school year.

CONTACT PERSON:

Matthew 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.



Acellus Gold Quote

ACELLUS EDUCATIONAL SERVICES | 11025 N. Ambassador Drive, Kansas City MO 64153

Date: 05/12/2025

Quote Valid Through: 06/11/2025

Quote Number: 1031380

Contact Information

Kenton County School District
Beechgrove Elementary School
1055 Eaton Drive
Ft Wright, KY 41017

[Edit](#)

Contact: Mr. Thad Dusing, Assistant Director [Edit](#)
Districtwide Programs
Phone: 859-314-3184
Email: thad.dusing@kenton.kyschools.us

QTY	DESCRIPTION	PRICE	EXTENDED PRICE
1	Acellus Gold Advantage Student License <ul style="list-style-type: none">License valid for 9 months	\$ 711.00	\$ 711.00
Amount to be Paid:			\$ 711.00

Acellus Gold Advantage is priced at \$79 per student per month, and a Special Education license is available for \$129 per student per month. The Amount to be Paid will be applied as a prepaid credit, with monthly costs deducted based on the number of active students. Once the prepaid credit is fully allocated, the school will be invoiced each month at the rates listed above for any students added to Acellus.

ACCEPTED BY:

NAME:

TITLE:

EMAIL:

PO NUMBER: (Optional)

ACCEPT

[TEACHER SIGN-IN](#)[GET THE APP](#)[GET ACELLUS FOR YOUR SCHOOL](#)[DEPLOYMENT](#)

STANDARD PURCHASE AND LICENSE TERMS

BY ACCEPTING DELIVERY OF THE PRODUCT OR SERVICES DESCRIBED IN OUR INVOICE OR OTHER DOCUMENTATION FROM US, YOU AGREE TO BE BOUND BY AND ACCEPT THESE STANDARD TERMS UNLESS BOTH PARTIES HAVE SIGNED A SEPARATE AGREEMENT, IN WHICH CASE THE SEPARATE AGREEMENT WILL GOVERN.

Standard Purchase and License Terms

The terms and conditions contained in this document (the “Standard Terms”) apply to any transaction whereby the International Academy of Science (sometimes referred to in this document as “we” “us” or “our”) provide to you our customer (referred to as “you” or “your” as identified in more detail on the applicable Grant or Quote Form (“Quote Form”)): (1) license rights to use our software products and course content, (2) hardware for use with the software products, or (3) services. These Standard Terms are an integral part of an agreement (the “Agreement”) that consists of (in order of precedence) a Quote Form, these Standard Terms, and any documents incorporated by reference into either the Quote Form or Standard Terms (including those incorporated by hyperlink reference). These documents constitute the entire Agreement between the parties and will supersede and replace any provisions in your purchase order or other contracting or purchasing documents that do not exactly mirror these terms. These Standard Terms may only be superseded or amended by other terms and conditions you and we have specifically agreed to in writing.

The Agreement will be effective as of the approval date of the applicable Grant or Quote and will be binding when the Quote Form has been executed by you. We reserve the right to require your submission of a purchase order in connection with your order.

Section 1.0: Software.

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

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

1.1.2 We own all rights necessary to grant licenses to the Acellus System. We own and retain all rights, title, and interest in and to the software, course content, and all ideas, concepts, methodologies, formats, specifications, and other know-how furnished by us in connection with this Agreement, as well as all related intellectual property rights.

1.1.3 All access and use of the Acellus System under this Agreement will be subject to our Privacy Policy (<https://www.science.edu/privacy>) and Student Data Privacy and Security Policy (<https://www.science.edu/student-privacy/>), which are expressly made a part of this Agreement.

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

1.2 Restrictions. You and your Users will use the Acellus System solely for the purposes stated in the applicable license grants and will not: (i) modify, copy, or create derivative works based on the Acellus System; (ii) frame or mirror any part of the Acellus System, other than for your own internal educational or training purposes and not in violation of any use or User restrictions; (iii) reverse engineer, decompile, or disassemble any portion of the Acellus System; (iv) access or allow others to access the Acellus System in order to build, market, or offer a competitive product or service, or copy any ideas, features, functions, answers, questions, contents, or graphics of the Acellus System; (v) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share, or otherwise commercially exploit or make the Acellus System available to any third party, other than to Users as contemplated by this Agreement; (vi) send spam or otherwise unsolicited messages through the Acellus System 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, on the Acellus System; (viii) intentionally send or store any viruses, worms, time bombs, Trojan horses, or other harmful or malicious code, files, scripts, agents, or programs on or through the Acellus System; (ix) interfere with or disrupt the integrity or performance of the Acellus System or the data contained therein; (x) attempt to gain unauthorized access to the Acellus System or its related systems or networks; (xi) publicly display or publicly perform the Acellus System without our prior written permission; or (xii) violate any applicable federal, state, or local laws.

1.3 System Availability. We will use commercially reasonable efforts to make the Acellus System available (subject to routine maintenance) to you and your Users via the Internet 24 hours a day, 7 days a week. However, the system may be unavailable from time to time, may be offered for a limited time, or may vary depending on your region or device. We strive to keep the system up and running; however, all online services suffer occasional disruptions and outages, and we are not liable for any disruption or loss you may suffer as a result. All access rights for you and your Users will be via the worldwide web using a browser and Internet connection compliant with the System Requirements (described in section 1.4), unless otherwise specified in the Quote Form. **NONETHELESS, ACCESS TO THE ACELLUS SYSTEM IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY**

ADDITIONAL WARRANTIES OF ANY KIND. WE DO NOT WARRANT THAT ACCESS TO THE SYSTEM WILL BE UNINTERRUPTED OR ERROR-FREE.

1.4 System Requirements. Our Acellus Technical Specifications webpage (“System Requirements”) (found at <https://www.science.edu/acellus/support/>) details the necessary hardware, software, system configuration, network infrastructure, and other operational requirements necessary for you to successfully operate and use the Acellus System. The System Requirements are subject to periodic change. You acknowledge that you are responsible for the cost, operation, and availability of, and you and your Users compliance with, all elements of the System Requirements.

1.5 System Updates and Alterations. You may need software updates to keep using the System. We may automatically check your version of the software and download software updates or configuration changes. Such updates are subject to these Terms unless other terms accompany the updates, in which case, those other terms apply. We do not guarantee that we will continue supporting the version of the System you purchased or licensed. Additionally, there may be times when we need to remove or change features or functionality of the System. We have no obligation to continue providing all features or functions of the version of the System you purchased or licensed.

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) use commercially reasonable efforts to prevent unauthorized access to, disclosure of, or use of the Acellus System, and notify us promptly of any such unauthorized access or use; and (iii) in connection with this Agreement, comply (and ensure compliance by your Users) with all applicable local, state, and federal laws, rules, and regulations.

1.7 Intellectual Property.

1.7.1 Reservation of Rights. The Software and Course Content we are providing is licensed to you, not sold. Subject to the limited rights expressly granted to you and your Users herein, we reserve all rights, title, and interest in and to the Acellus System, including all related intellectual property rights. No other rights are granted to you or your Users.

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

1.7.2.1 Upon termination of this Agreement, we agree to promptly return to you the Customer Data, at your request, except that we may retain non-personally identifiable, statistical data regarding Students’ answers and performance.

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

1.7.4 Trademarks. The trademarks, service marks, and logos ("Trademarks") used and displayed within the Software are registered or unregistered Trademarks of the International Academy of Science or its affiliates. Nothing in this agreement shall be construed as granting, by implication, estoppel, or otherwise any license or right to use any Trademark without the prior written consent of the Trademark owner. The names and logos pertaining to "Acellus", "International Academy of Science", or any Trademark within the Software may not be used in any way including in any advertising or publicity without the prior written consent of the International Academy of Science.

Section 2.0: General Terms.

2.1 Definitions. Within these Standard Terms, capitalized terms shall have their meaning as defined in Section 6.0 or as otherwise set forth.

2.2 Services. Subject to and conditioned on your acceptance and compliance with this Agreement, we shall provide you with the licenses, hardware, and/or services described in your Quote Form.

2.3 General Agreement. By accessing or using our Services, you represent, warrant, and agree that: (i) you have both the legal authority and the legal capacity to form a binding contract with us, including this Agreement, and, if you are a public body, that you have satisfied all conditions and requirements under state and local law for requesting, appropriating, expending and disbursing public funds sufficient to pay the contract price for our Services; (ii) you are not a person who is prohibited from receiving the Services under any applicable laws; and (iii) you will comply with this Agreement and all applicable laws, rules, and regulations. You further understand and agree that these representations, warranties, and agreements are material to our decision to enter into this Agreement, that we are relying on these representations, warranties, and agreements, and that our reliance is reasonable.

2.4 Fees and Payment.

2.4.1 Fees. You agree to timely pay all amounts due to us as shown on the Quote Form. Unless stated otherwise in the Quote Form, all such amounts are non-cancelable and non-refundable. We may suspend or cancel the Services or your access to the Acellus System if we do not receive an on time, full payment from you.

2.4.2 Billing. By providing us with a payment method, you represent that (i) you are authorized to use the payment method you provided; (ii) any payment information you provide is true and accurate; and (iii) we are authorized to charge you for all Services using your payment method.

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

2.5 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in the Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties. Neither party shall have authority to contract for or bind the other party in any manner whatsoever.

2.6 Monitoring Content. We may, but have no obligation to, monitor access to or use of the Services or Content or to review or edit any Content for the purpose of operating the Services, to ensure compliance with this Agreement, and to comply with applicable law or other legal requirements. We may disclose any information necessary to satisfy our legal obligations or to protect the Services, the System, or our customers. We may, in our sole discretion, refuse to post, remove, refuse to remove, or disable any Content, in whole or in part, that is alleged to be, or that we consider to be unacceptable, undesirable, inappropriate, or in violation of this Agreement.

2.7 Confidentiality.

2.7.1 Definition of Confidential Information. "Confidential Information" means all confidential and proprietary information disclosed by one party (the "Discloser") to the other (the "Receiver") and either designated as confidential or of a type reasonably expected to be confidential. Confidential Information includes information provided through any means, such as oral, written, or electronic. Confidential Information includes the Customer Data, the Acellus System, business and marketing plans, technology and technical information, product designs, and business processes, but does not include any information that, without breach of obligation owed to Discloser: (a) is or becomes generally known to the public; (b) was known to the Receiver prior to its disclosure by the Discloser; (c) was independently developed by the Receiver; or (d) is received from a third party.

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

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

2.7.4 Remedies. If the Receiver discloses or uses (or threatens to disclose or use) any Confidential Information of the Discloser in breach of this section, the Discloser will have the right, in addition to any other available remedies, to seek injunctive relief to prevent further (or the threatened) disclosure.

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

2.9 Force Majeure. We shall not be liable to Customer for any delay or failure to perform our obligations hereunder if such delay or failure arises from any cause or causes beyond our reasonable control. Such causes shall include, but are not limited to, acts of God, pandemics, floods, fires,

government restrictions, wars, insurrections, labor strife, or failure of suppliers, communication or data systems, subcontractors, or carriers to perform their obligations.

2.10 Not Construed Against Drafter. The language of the Agreement shall not be interpreted in favor of or against any party as the drafter of the Agreement.

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

2.12 Term and Termination.

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

2.12.2 Termination. We reserve the right at any time, and from time to time, to discontinue, temporarily or permanently, the Services or any part thereof or terminate any user's access to the Services or any part thereof. We may also modify, delete, or adapt the Services at any time without any notice or obligation to the user at our sole discretion. Your right to use and otherwise access the Services is automatically terminated if you violate the terms of this agreement. You agree that International Academy of Science will not be liable to you or any third party for any modification, suspension, or discontinuation of the Services, or any part thereof. Upon termination for any reason of your right to use and otherwise access the Services, you must cease all access to the Services. All provisions of the Standard Purchase and License Terms as to limitation and disclaimer of warranties, limitation of liability, our ownership rights, and your representations and indemnities shall survive termination.

2.12.3 Effect of Termination. Upon expiration or termination of the Agreement, except as expressly provided otherwise in this Agreement, (i) all rights, licenses, consents, and authorizations granted by either party to the other will immediately terminate; (ii) you shall immediately cease all use of any Services provided by us; and (iii) we will immediately disable all access to the Services provided to you.

2.12.4 Outstanding Fees. Termination will not relieve you of the obligation to pay any fees payable to us prior to the effective date of termination.

2.13 Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, we may assign this Agreement in its entirety without your consent, in connection with a transaction involving a sale of all or substantially all of our assets or equity through merger or otherwise. Any attempt by a party to assign its rights or

obligations under this Agreement in breach of this section will be void and of no effect. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors, and permitted assigns.

2.14 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. The International Academy of Science reserves the right to change these terms and conditions at any time without prior notice. To the extent of any conflict or inconsistency between the provisions in these Standard Terms and a Quote Form, the terms of the Quote Form will prevail.

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

2.16 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 certified mailing; (c) the second business day after sending by facsimile; or (d) the second business day after sending by email. Notices to us will be addressed to the attention of our representative, as listed on the Quote Form. Notices to you will be addressed to the attention of the person signing the Quote Form for you.

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

2.18 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.

2.19 Surviving Provisions. The following provisions will survive any termination or expiration of this Agreement: 1.6, 2.7, 2.12.4, 2.14, 2.15, 2.16, 2.18, 2.20, 3.1, 3.3, 3.4, 4.1, 4.2, 4.3, 4.4, 4.5, 5.0 (in its entirety), and 6.0 (in its entirety).

Section 3.0 Claims and Disputes.

3.1 Governing Law. THE AGREEMENT AND THESE STANDARD TERMS AND ANY SALE HEREUNDER WILL BE GOVERNED BY THE LAWS OF THE STATE OF MISSOURI, WITHOUT REGARD TO CONFLICTS OF LAWS RULES. MISSOURI LAW SHALL APPLY TO ANY AND ALL CLAIMS, WHETHER ARISING OUT OF TORT OR CONTRACT.

3.2 Venue. ANY AND ALL CLAIMS, WHETHER ARISING OUT OF TORT OR CONTRACT, MUST BE BROUGHT IN JACKSON COUNTY, MISSOURI. CUSTOMER CONSENTS TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED IN JACKSON COUNTY, MISSOURI. CUSTOMER SUBMITS TO THE JURISDICTION THEREOF AND WAIVES THE RIGHT TO CHANGE VENUE. CUSTOMER FURTHER CONSENTS TO THE EXERCISE OF PERSONAL JURISDICTION BY ANY JACKSON COUNTY COURT WITH RESPECT TO ANY SUCH PROCEEDING. ARBITRATION BROUGHT IN CONFORMITY WITH SECTION 5.0 OF THESE STANDARD TERMS SHALL ALSO BE VENUED AND CONDUCTED IN JACKSON COUNTY, MISSOURI.

3.3 Time Limitation for Bringing Claims. YOU AGREE THAT REGARDLESS OF ANY STATUTE OR LAW TO THE CONTRARY, ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATED TO USE OF THE ACELLUS SYSTEM, OR ANY PART THEREOF, OR THESE STANDARD TERMS MUST BE FILED WITHIN ONE (1) YEAR AFTER SUCH CLAIM OR CAUSE OF ACTION AROSE OR BE FOREVER BARRED.

3.4 Indemnities.

3.4.1 Our Indemnification of You. Subject to the conditions described below and the provisions of section 2.6, we will defend, indemnify and hold you harmless against any loss, damage, or costs (including reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings (collectively called "Claims") made or brought against you by a third party, as follows:

3.4.1.1 For Infringement. Our indemnity covers Claims alleging that your use of the Acellus System in accordance with the terms of this Agreement, or any information or material (collectively called "Material") furnished by us in connection with this Agreement infringes the intellectual property rights of a third party. This indemnification does not apply to Hardware. We will have no liability for any claim of infringement or misappropriation to the extent (a) the Material is based on specifications or directions you provided, (b) your use of a superseded or altered version of some or all of the Material if infringement or misappropriation would have been avoided by the use of a subsequent or unaltered release of the Material provided to you or (c) your use occurs in a jurisdiction other than the United States. If any portion of the Acellus System 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 affected feature or content; replace or modify the affected feature or content so that it becomes non-infringing and remains functionally equivalent; or refund you the portion of your license fees attributable to the affected feature or content.

3.4.1.2 Breach of Security. In the event that we suffer a security breach that affects you or your data, we will notify you promptly. We will indemnify you for the cost of damages directly related to the breach and we will reimburse your reasonable costs incurred in connection with notifying your users of the breach.

3.4.2 Your Indemnification of Us. Subject to the conditions described below and Section 4.0, and to the extent not prohibited by applicable law, you will defend, indemnify, and hold us harmless against any loss, damage, or costs (including reasonable attorneys' fees) incurred in connection with Claims made or brought against us by (i) a third party alleging that the Customer Data, your use of the Acellus System in violation of this Agreement, or any Material provided by you either: (a) infringes the intellectual property rights of a third party, or (b) has otherwise harmed a third party, or (ii) anyone who has suffered personal injury or property damage based upon you or your employees', agents', or students' negligence or intentional misconduct.

3.4.3 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.

Section 4.0: Disclaimers, Limitations, and Exclusions.

4.1 Courseware and Instruction Disclaimer. All Course Content is provided on an “as is,” “as available” basis. We do not warrant that the content of the course(s) or instruction will meet your expectations. We do not warrant the accuracy or reliability of any information provided. You acknowledge that any reliance on such information shall be at your sole risk. We reserve the right, in our sole discretion, to correct any errors or omissions in the instructional programs or course offerings.

4.2 Warranty Disclaimer. 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. YOU UNDERSTAND THAT USE OF THE SERVICES IS AT YOUR OWN RISK.

4.3 Limitation of Liability. EXCEPT FOR BREACHES OF CONFIDENTIALITY OBLIGATIONS (WHICH ARE LIMITED TO \$50,000 IN THE AGGREGATE FOR ALL CLAIMS AGAINST EITHER PARTY IN ANY CALENDAR YEAR) IN NO EVENT WILL EITHER PARTY’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS ACTUALLY PAID BY YOU TO US UNDER THE APPLICABLE QUOTE FORM.

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

4.5 In states where the exclusion or limitation of incidental or consequential damages is not allowed, the limitations or exclusions will apply to the greatest extent permitted by law.

Section 5.0: Binding Arbitration.

THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCEABLE BY THE PARTIES.

5.1 Any claim, dispute, or controversy (whether arising out of contract, tort, statute, common law or otherwise; and whether preexisting, present or future) arising from or relating to this Agreement, or the breach thereof, that cannot be settled amicably by the parties, except for any claim for injunctive relief pertaining to a party’s use, misappropriation, or disclosure of the Acellus System, Customer Data, or Confidential Information, shall be settled by arbitration (the “Arbitration”). This arbitration provision is bilateral and applies equally to all parties to this Agreement.

5.2 The Agreement shall be governed by and interpreted in accordance with the laws of the State of Missouri. The Arbitration proceedings, however, will be administered by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration rules, which you can find at www.adr.org. To the extent the applicable AAA rules conflict with this Agreement, this Agreement shall be binding.

5.3 This binding arbitration provision means all Claims will be resolved by a neutral arbitrator rather than a judge or jury. You should be aware that normal court procedures and rules may not apply. Additionally, your right to appeal may no longer exist or may be significantly limited.

5.4 Before engaging in Arbitration, all parties shall engage in good-faith efforts to resolve any claim or controversy. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of 60 days, then, upon notice by either party to the other, all disputes, claims, questions, or differences shall be finally settled by Arbitration.

5.5 The Arbitration shall be governed by the following rules: a) The Arbitration hearings shall be held in Jackson County, Missouri; b) The dispute shall be heard and determined by a single arbitrator (the "Arbitrator") who shall be selected in accordance with the AAA's Commercial Arbitration Rules; c) Each party will bear its own cost of any legal representation, discovery or research required to complete arbitration (all AAA fees will be divided evenly); d) The Arbitrator shall make his or her award in writing within two months of the start of the Arbitration – or within such time-period as agreed to in writing by the parties hereto; and f) The decision of the Arbitrator shall be final, conclusive, and binding upon the parties hereto. A judgment of any court having jurisdiction may be entered upon the Arbitration award.

5.6 Neither we nor you will have the right to litigate any Claim subject to this binding arbitration provision in court or to have a jury trial on that Claim or to engage in pre-arbitration discovery, except as provided for in the applicable arbitration rules or by agreement of the parties. Further, you will not have the right to participate as a representative or member of any class of claimants pertaining to any Claim. Any court having jurisdiction may enter judgment on the award rendered by the arbitrator(s). The existence or results of any arbitration will be treated as confidential.

5.7 All claims or controversies pertaining to the collection of amounts due to us arising out of sales hereunder may be litigated in court rather than through arbitration.

5.8 In a dispute involving \$25,000 or less, the dispute shall be resolved by the submission of documents and no hearing shall be held. If the arbitrator determines there is good cause for a hearing, it shall occur telephonically unless the arbitrator decides otherwise.

5.9 **Delegation Provision.** An arbitrator shall have exclusive authority to resolve any dispute relating to the Agreement's enforceability including any claim that all or any part of this Agreement is void or voidable.

5.10 Severability Clause. In the event any portion of this Arbitration agreement is found void or invalid, the remaining section shall survive and remain binding.

Section 6.0: Definitions.

- A. "Acellus System" or "System" means our proprietary Acellus Learning System, including but not limited to the Course Content and the Software. The Acellus System is most often Internet-based, but can also be used in a stand-alone environment.
- B. "Agreement" is comprised of a Quote Form, these Standard Terms, and any documents incorporated by reference into either the Quote Form or Standard Terms.
- C. "Claim" means any dispute or controversy (whether arising out of contract, tort, equity, statute, common law or otherwise; and whether preexisting, present or future) arising from or relating to this Agreement or any breach thereof.
- D. "Course Content" means all instruction, course materials, electronic data, and other information related to one or more courses and incorporated by us into the Acellus System, including but not limited to images, audio, and video.
- E. "Customer Data" means all electronic data, materials and other information you and/or your Users have entered or stored in the Acellus System, including, but not limited to data and records relating to student information, performance or use, teacher data and supplemental instructional materials.
- F. "Documentation" means technical specifications identified in this Agreement.
- G. "Hardware" means a hardware product, which is listed on the Quote Form and is intended to be used in connection with the Acellus System.
- H. "License Period" means the period of time during which you will have access to the Acellus System under this Agreement. This period will begin with your first use of the Acellus System, and (unless earlier revoked in accordance with this Agreement) will last for the duration of any Seat, Site, or Student Licenses purchased by you.
- I. "Named Student" means a specific Student identified by name and designated as the sole Student for a specific license.
- J. "Quote Form" means the Grant or Quote Form prepared and offered by us and approved by you indicating your acceptance of the terms and conditions of this Agreement.
- K. "Seat License" means a License that may be accessed during the License Period by any Student, but may only be accessed by one individual Student at a time. The License Period for a Seat License begins at the time of purchase and ends as stated in the Quote Form through which the License was purchased. (If not otherwise stated, the License Period is one year.)
- L. "Services" means the services we provide to you to assist in your implementation, or ongoing use, of the Acellus System, as applicable.
- M. "Software" means the educational software that we make available via the Acellus System.
- N. "Site License" means a License that may be accessed during the License Period by all authorized Students located in the specific physical site identified on the Quote Form. The License Period for a Site License begins at the time

of purchase and ends as stated in the Quote Form through which the License was purchased. (If not otherwise stated, the License Period is one year.)

O. "Student" means an individual who is enrolled in one or more courses in the Acellus System and for which you've purchased an adequate quantity of licenses.

P. "Student License" means a License to one or more courses assigned to a single, Named Student. The License Period for a Student License begins when the course content is first accessed by the Named Student and ends one year later.

Q. "Users" means individuals you authorize to use Acellus System and supply (or authorize us to supply) user identifications and passwords for. Users may include your staff, your students, and your students' parents.

R. "We", "Us", or "Our", whether or not capitalized, refer to the International Academy of Science.

S. "You", whether or not capitalized, refer to the customer.

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CONTACT INFORMATION

Acellus School Support Center

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