

SCHOOL DISTRICT OF OKALOOSA COUNTY
Purchasing Department



NOTICE OF INTENT TO PURCHASE SOLE SOURCE

FILE REFERENCE #: SS 23-07 Edmentum
DATE/TIME OF INITIAL POSTING: 08/22/22, 3:15PM CT
DATE/TIME POSTING REMOVED: 09/01/22, 4:00PM CT

The products and/or services listed on the attached page(s) are believed to be of a unique or proprietary nature and therefore only available from one source. If you believe you have a "like" product or service to offer, please submit your complete cost proposal including descriptive literature and detailed technical specifications by email to the attention of the buyer listed below. If you prefer you may mail your proposal to the buyer at:

Okaloosa County School District
Attn: Purchasing Department
120 Lowery Place SE
Fort Walton Beach, FL 32548
Buyer: Vince Windham
Buyer's Email: windhamv@okaloosaschools.com
Phone: (850) 833-7668

Justification for Sole Source Acquisition:

- Vendor is the exclusive distributor of commodity or sole provider of services.
- Vendor holds the production and copyrights to the commodity.
- Compatibility with existing equipment, inventory, systems, programs or services.
- Purchase of a used item that is immediately available.
- Purchase of a particular product for a pilot program, trial or testing.
- Vendor is the sole provider of the commodity or service for which the Board has established a standard"
- Commodity or service is a continuation of a major project previously purchased.
- Other (include an attached justification letter)

This notice was posted on August 22, 2022. All proposals must be received by the buyer no later than 4PM CT on September 1, 2022. Proposals received after this deadline will not be considered.

Thank you for your interest in Okaloosa County Schools.



Date: 08/05/2022
 Order Number: Q-440363
 Revision: 2
 Order Form Expiration Date: 09/15/2022

ORDER FORM

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Customer and Billing Address

Customer No.: 107579
 Customer Name: Okaloosa County School District
 Billing Address: 120 Lowery Pl SE
 Ft Walton Bch, FL 32548

Products and Services

Davidson Middle School

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island: Science Library - Program License	1309	09/16/2022	09/15/2023	12
ClassLink - SIS Integration - Study Island	1	09/16/2022	09/15/2023	12

Davidson Middle School Subtotal: \$2,618.00

Destin Middle School

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island: Science Library - Program License	596	09/16/2022	09/15/2023	12
ClassLink - SIS Integration - Study Island	1	09/16/2022	09/15/2023	12

Destin Middle School Subtotal: \$1,192.00

Antioch Elementary School

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island: Science Library - Program License	512	09/16/2022	09/15/2023	12
ClassLink - SIS Integration - Study Island	1	09/16/2022	09/15/2023	12

Antioch Elementary School Subtotal: \$1,024.00





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Northwest Florida Ballet

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island: Science Library - Program License	121	09/16/2022	09/15/2023	12
ClassLink - SIS Integration - Study Island	1	09/16/2022	09/15/2023	12

Northwest Florida Ballet Subtotal: \$242.00

Liza Jackson Preparatory Sch

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island: Science Library - Program License	625	09/16/2022	09/15/2023	12
ClassLink - SIS Integration - Study Island	1	09/16/2022	09/15/2023	12

Liza Jackson Preparatory Sch Subtotal: \$1,250.00

Bluewater Elementary School

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island: Science Library - Program License	489	09/16/2022	09/15/2023	12
ClassLink - SIS Integration - Study Island	1	09/16/2022	09/15/2023	12

Bluewater Elementary School Subtotal: \$978.00

WALKER ELEMENTARY SCHOOL

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island: Science Library - Program License	427	09/16/2022	09/15/2023	12
ClassLink - SIS Integration - Study Island	1	09/16/2022	09/15/2023	12

WALKER ELEMENTARY SCHOOL Subtotal: \$854.00





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Ft Walton Beach High School

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island: Science Library - Program License	680	09/16/2022	09/15/2023	12
ClassLink - SIS Integration - Study Island	1	09/16/2022	09/15/2023	12

Ft Walton Beach High School Subtotal: \$1,360.00

NICEVILLE HIGH SCHOOL

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island: Science Library - Program License	1058	09/16/2022	09/15/2023	12
ClassLink - SIS Integration - Study Island	1	09/16/2022	09/15/2023	12

NICEVILLE HIGH SCHOOL Subtotal: \$2,116.00

BAKER SCHOOL

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island: Science Library - Program License	895	09/16/2022	09/15/2023	12
ClassLink - SIS Integration - Study Island	1	09/16/2022	09/15/2023	12

BAKER SCHOOL Subtotal: \$1,790.00

Max Bruner Jr Middle School

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island: Science Library - Program License	794	09/16/2022	09/15/2023	12
ClassLink - SIS Integration - Study Island	1	09/16/2022	09/15/2023	12

Max Bruner Jr Middle School Subtotal: \$1,588.00





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CRESTVIEW SENIOR HIGH SCHOOL

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island: Science Library - Program License	992	09/16/2022	09/15/2023	12
ClassLink - SIS Integration - Study Island	1	09/16/2022	09/15/2023	12

CRESTVIEW SENIOR HIGH SCHOOL Subtotal: \$1,984.00

Elliott Point Elem School

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island: Science Library - Program License	250	09/16/2022	09/15/2023	12
ClassLink - SIS Integration - Study Island	1	09/16/2022	09/15/2023	12

Elliott Point Elem School Subtotal: \$500.00

Riverside Elementary School

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island: Science Library - Program License	444	09/16/2022	09/15/2023	12
ClassLink - SIS Integration - Study Island	1	09/16/2022	09/15/2023	12

Riverside Elementary School Subtotal: \$888.00

Addie R Lewis Elementary Sch

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island: Science Library - Program License	546	09/16/2022	09/15/2023	12
ClassLink - SIS Integration - Study Island	1	09/16/2022	09/15/2023	12

Addie R Lewis Elementary Sch Subtotal: \$1,092.00





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Annette P Edwins Elem School

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island: Science Library - Program License	205	09/16/2022	09/15/2023	12
ClassLink - SIS Integration - Study Island	1	09/16/2022	09/15/2023	12

Annette P Edwins Elem School Subtotal: \$410.00

BOB SIKES ELEMENTARY SCHOOL

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island: Science Library - Program License	415	09/16/2022	09/15/2023	12
ClassLink - SIS Integration - Study Island	1	09/16/2022	09/15/2023	12

BOB SIKES ELEMENTARY SCHOOL Subtotal: \$830.00

C W RUCKEL MIDDLE SCHOOL

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island: Science Library - Program License	1146	09/16/2022	09/15/2023	12
ClassLink - SIS Integration - Study Island	1	09/16/2022	09/15/2023	12

C W RUCKEL MIDDLE SCHOOL Subtotal: \$2,292.00

Eglin Elementary School

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island: Science Library - Program License	143	09/16/2022	09/15/2023	12
ClassLink - SIS Integration - Study Island	1	09/16/2022	09/15/2023	12

Eglin Elementary School Subtotal: \$286.00





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Choctawhatchee Senior High Sch

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island: Science Library - Program License	747	09/16/2022	09/15/2023	12
ClassLink - SIS Integration - Study Island	1	09/16/2022	09/15/2023	12

Choctawhatchee Senior High Sch Subtotal: \$1,494.00

Clifford Meigs Middle School

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island: Science Library - Program License	593	09/16/2022	09/15/2023	12
ClassLink - SIS Integration - Study Island	1	09/16/2022	09/15/2023	12

Clifford Meigs Middle School Subtotal: \$1,186.00

Destin Elementary School

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island: Science Library - Program License	372	09/16/2022	09/15/2023	12
ClassLink - SIS Integration - Study Island	1	09/16/2022	09/15/2023	12

Destin Elementary School Subtotal: \$744.00

Florosa Elementary School

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island: Science Library - Program License	258	09/16/2022	09/15/2023	12
ClassLink - SIS Integration - Study Island	1	09/16/2022	09/15/2023	12

Florosa Elementary School Subtotal: \$516.00





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Plew Elementary School

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island: Science Library - Program License	431	09/16/2022	09/15/2023	12
ClassLink - SIS Integration - Study Island	1	09/16/2022	09/15/2023	12

Plew Elementary School Subtotal: \$862.00

Kenwood Elementary School

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island: Science Library - Program License	306	09/16/2022	09/15/2023	12
ClassLink - SIS Integration - Study Island	1	09/16/2022	09/15/2023	12

Kenwood Elementary School Subtotal: \$612.00

Shoal River Middle School

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island: Science Library - Program License	907	09/16/2022	09/15/2023	12
ClassLink - SIS Integration - Study Island	1	09/16/2022	09/15/2023	12

Shoal River Middle School Subtotal: \$1,814.00

Laurel Hill School

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island: Science Library - Program License	277	09/16/2022	09/15/2023	12
ClassLink - SIS Integration - Study Island	1	09/16/2022	09/15/2023	12

Laurel Hill School Subtotal: \$554.00





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Longwood Elementary School

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island: Science Library - Program License	284	09/16/2022	09/15/2023	12
ClassLink - SIS Integration - Study Island	1	09/16/2022	09/15/2023	12

Longwood Elementary School Subtotal: \$568.00

Edge Elementary School

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island: Science Library - Program License	259	09/16/2022	09/15/2023	12
ClassLink - SIS Integration - Study Island	1	09/16/2022	09/15/2023	12

Edge Elementary School Subtotal: \$518.00

MARY ESTHER ELEMENTARY SCH

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island: Science Library - Program License	224	09/16/2022	09/15/2023	12
ClassLink - SIS Integration - Study Island	1	09/16/2022	09/15/2023	12

MARY ESTHER ELEMENTARY SCH Subtotal: \$448.00

Northwood Elementary School

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island: Science Library - Program License	368	09/16/2022	09/15/2023	12
ClassLink - SIS Integration - Study Island	1	09/16/2022	09/15/2023	12

Northwood Elementary School Subtotal: \$736.00





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Shalimar Elementary School

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island: Science Library - Program License	275	09/16/2022	09/15/2023	12
ClassLink - SIS Integration - Study Island	1	09/16/2022	09/15/2023	12

Shalimar Elementary School Subtotal: \$550.00

W C Pryor Middle School

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island: Science Library - Program License	716	09/16/2022	09/15/2023	12
ClassLink - SIS Integration - Study Island	1	09/16/2022	09/15/2023	12

W C Pryor Middle School Subtotal: \$1,432.00

Wright Elementary School

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island: Science Library - Program License	274	09/16/2022	09/15/2023	12
ClassLink - SIS Integration - Study Island	1	09/16/2022	09/15/2023	12

Wright Elementary School Subtotal: \$548.00

Okaloosa Stemm Academy

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island: Science Library - Program License	264	09/16/2022	09/15/2023	12
ClassLink - SIS Integration - Study Island	1	09/16/2022	09/15/2023	12

Okaloosa Stemm Academy Subtotal: \$528.00





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Destin High School

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island: Science Library - Program License	230	09/16/2022	09/15/2023	12
ClassLink - SIS Integration - Study Island	1	09/16/2022	09/15/2023	12

Destin High School Subtotal: \$460.00

Okaloosa School District - Tutoring

Products	Qty	License Start Date	License End Date	License Term (Months)
Courseware 24/7 Tutoring - Up to 10 hours	1000	09/16/2022	09/15/2023	12

Okaloosa School District - Tutoring Subtotal: \$29,000.00

Okaloosa Co School District - Elevate

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island Elevate Package	2	09/16/2022	09/15/2023	12

Okaloosa Co School District - Elevate Subtotal: \$5,000.00

Subtotal: \$70,864.00

Estimated Tax: \$0.00

Total US Funds: \$70,864.00

** Unless otherwise specified in this Order Form, the Start Date for your license(s) will be one of the following: (a) the day immediately following the expiration date of the prior license term or (b) the date in which we have accepted your order and have issued log-in credentials for your software license.

*** Services purchased are valid for an annual term. Any service offering that is not used during the applicable term will expire and cannot be carried over or used in subsequent periods.

Invoicing and Payment Terms

The full amount of Your Order will be invoiced when accepted by Us. Payment is due 15 days after invoice date.

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Purchase Order

You acknowledge that this Agreement is non-cancellable and you will submit a purchase order for the full amount of this Order Form. Your order will not be scheduled for delivery until you have submitted a purchase order referencing and conforming to this Order Form.

Acceptance

This offer will expire on the Order Form Expiration Date noted above unless we earlier withdraw or extend the offer in writing.

I represent that I have read the terms and conditions included in this Agreement, that I am authorized to accept this offer and the Agreement's terms and conditions on behalf of the customer identified above and that I do accept this offer on behalf of the customer who agrees to adhere to the Agreement's terms and conditions. To the extent that either parties process does not require that I execute this Order Form, I accept, acknowledge and agree to the terms and conditions identified in and referenced in this Agreement as signified by my receipt, use or access of the products and/or services identified. Please fax all pages to 1.877.519.9555 or email to orders@edmentum.com.

Customer Signature

Name (Printed or Typed)

Title

Date



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b. Our Use of Your Learning Paths. We may use Your Learning Paths and may provide them to our other customers.

c. Customer Created, Modified or Stored Content. Certain of our products enable you to create, customize or store content, documentation or otherwise. If you do, you accept, agree and acknowledge that (i) we can use and disseminate such items, (ii) at the expiration or termination of your licenses, we will not be returning these items to you and you have no rights in such items and (iii) you are responsible for ensuring that all laws, regulations and judicial precedence is followed in such creation, customization, disclosure or storage, including but not limited to intellectual property laws and you will indemnify us and our affiliates, successors and assigns in the event you fail to do so.

1.7 Limited Warranty for Software Products. Subject to the terms of Section 4.6, we warrant that the Subscription Software will perform in substantial accordance with the applicable Documentation during the Subscription Period. This warranty is contingent on the authorized use of the Software in accordance with the applicable Documentation. If we breach this express warranty, we will at our option and expense: (a) as soon as commercially practical, consistent with industry practice, modify the affected Software to conform in material respects with the applicable Documentation, or (b) provide a replacement for the affected Software which generally conforms with that Documentation, or (c) accept the return of the affected Software and refund you the portion of your purchase price attributable to the returned product proportionate to the period remaining on your contract. This will be our sole obligation, and your sole remedy, with respect to any breach of this warranty. EXCEPT FOR THE EXPRESS WARRANTY PROVIDED IN THIS SECTION, THE SOFTWARE IS PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS, WITHOUT ANY ADDITIONAL WARRANTIES OF ANY KIND. WE DO NOT WARRANT THAT THE LICENSED PROGRAM WILL PERFORM UNINTERRUPTED OR BE ERROR-FREE OR THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET YOUR PARTICULAR REQUIREMENTS OR PURPOSE.

2.0 THIRD PARTY SOFTWARE, HARDWARE AND SERVICES.

The following terms and conditions will apply to all Third Party Software that is included in any of the Software Products you have

licensed from us and all Third Party Software, Hardware and services listed on the Order Form:

2.1 Subject to Third Party’s Warranties and Terms. Third Party Software and Hardware products and services are distributed by us as a licensor or reseller. These products are provided subject to the separate license and sale terms, conditions and restrictions required by the third party. WE DO NOT PROVIDE, AND WE EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, ON ANY THIRD PARTY SOFTWARE, HARDWARE AND SERVICES WE SUPPLY OR MAKE AVAILABLE TO YOU. IN ADDITION, WE DO NOT GUARANTEE THE AVAILABILITY OF SUCH THIRD PARTY SOFTWARE, HARDWARE OR SERVICES AS SUCH SOFTWARE, HARDWARE OR SERVICES MAY BE MODIFIED OR REMOVED AT ANY TIME.

2.2 Warranty Claims. We will use reasonable commercial endeavors to facilitate warranty claims you may make against the third party supplying such products or services. **This is our sole obligation relative to these products or services.**

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

3.1 Mutual Cooperation. You and we mutually agree to cooperate with each other in a professional and courteous manner in the performance of our respective duties in the delivery of Professional Services.

3.2 Scheduling Changes Caused by You. You agree to notify us at least 5 business days in advance of your intention to reschedule previously confirmed on-site Professional Services sessions. If you do not provide such notice, and we are unable to re-assign the resources scheduled to provide your Professional Services, we reserve the right to charge you a cancellation fee of up to \$750 for each day cancelled without such notice.

3.3 Scheduling Changes Caused by Us. If we are required to reschedule (except for reasons caused in whole or in part by you or that are outside our reasonable control) a previously confirmed on-site Professional Services delivery session, we will use all reasonable efforts to provide you at least 5 business days’ notice. If we do not provide such notice, and you incur reasonable direct, non-refundable expenses which you have made good faith efforts to avoid, we will upon your written request (which must include documentation of these expenses) provide you a credit for such expenses. In no case, however, will the amount of credit exceed \$750.

3.4 Acceptance of Services and Warranty.

3.4.1 Warranty and Acceptance. We warrant that the Professional Services we provide will be performed in a workmanlike manner. If you reasonably determine that the Professional Services have not this standard, you must provide us written notice specifying any deficiencies in detail within 10 business days after the service delivery. We will then use reasonable commercial efforts to cure any such deficiencies promptly which may include our providing additional Professional Services at our expense. If you do not provide notice of any deficiencies to us within the 10 day period, your acceptance of the Professional Services will be considered final.

3.4.2 Failure to Cure. If you give us notice under subsection 3.4.1 and we are unable to cure the deficiency within 60 days after your notice, you may terminate the directly affected portions of service and obtain a refund of amounts you have paid for the terminated services.

3.4.3 Sole remedies. The remedies specified in this section 3.4 are your only Professional Services related remedies.

3.5 Compliance with Workplace Rules. We will have the person or persons we assign to perform the Professional Services comply with those of your lawful workplace rules you have provided to us and them in writing in advance.

3.6 Subcontractors. We may, in our reasonable discretion, use third parties, including, but not limited to agents, to perform any of our obligations regarding delivery of the Professional Services.

4.0 GENERAL TERMS

4.1 Fees and Payment

4.1.1 Fees. You agree to timely pay all amounts due to us as shown on the Order Form. Except if specified in the Order Form or in section 1.3.2 (re Outages) all such amounts are non-cancellable and non-refundable.

4.1.2 Taxes. Except to the extent you provide us with a valid tax exemption certificate authorized by the appropriate taxing authority covering all applicable taxes otherwise due and payable, we will invoice you for and you will pay any applicable direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including, but not limited to, value-added, gross receipts, sales, use or withholding taxes associated with your license or purchases under this Agreement, except for taxes based on our net income or real property.

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

4.2 Confidentiality

4.2.1 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 the Customer Data, the Software, 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.

4.2.2 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. You accept and acknowledge that you input the information and data into our Software, including any student personal information that you deem necessary and that we have no control over such input, that certain third parties may have access to such information and data to assist in enhancing the Software and in facilitating your Users use and access of the Software and that we may retain the data and information that you provide in accordance with our normal retention and destruction practices on certain or our servers, SAN and/or cloud backups.

4.2.3 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 order.

4.2.4 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.

4.3 Indemnities.

4.3.1 Our Indemnification of You. Subject to the conditions described below and the provisions of section 4.6, 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:

a. For Personal Injury or Property Damage. Our indemnity covers Claims alleging personal injury or property damage to the extent caused by the willful misconduct or gross negligence of our personnel while on your premises.

b. For Infringement. Our indemnity covers Claims alleging that your use of the Software 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 (iii) your use occurs in a jurisdiction other than the United States. If the Software becomes, or in our opinion is likely to become, the subject of an infringement claim, we may, at our option and expense, either procure for you the right to continue using the Software; replace or modify the Software so that it becomes non-infringing and remains functionally equivalent; or require the return of the affected Software and refund you the portion of your purchase price attributable to the returned product for the remaining order period.

4.3.2 Your Indemnification of Us. Subject to the conditions described below and section 4.6, 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 Software in violation of this Agreement, or any Material provided by you either: (a) infringes the intellectual property rights of a third party, or (b) has otherwise harmed a third party, or (ii) anyone who has suffered personal injury or property damage based upon you or your employees, agents or students negligence or intentional misconduct. The School Board's liability shall not exceed the waiver limits of sovereign immunity under Florida law.

4.3.3 Conditions. These indemnities will be conditioned on the party seeking indemnity: (a) promptly providing the other with a written notice of the Claim; (b) giving the other party sole control of the defense and settlement of the Claim, provided that the other party may not settle any Claim unless the party seeking indemnity is unconditionally released from liability; and (c) at no charge, providing the other party with all reasonable assistance relative to the defense of the Claim.

4.3.4 Exclusive Remedies. Our and your exclusive indemnification responsibilities are stated in this section 4.3.

4.4 Care of Customer Data. We will make periodic backups of Customer Data entered using our Subscription Software 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.

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

4.6 Disclaimers, Limitations and Exclusions.

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

4.6.2 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, INDEMNIFICATION OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS ACTUALLY PAID BY YOU TO US UNDER THE APPLICABLE ORDER FORM. THE ABOVE LIMITATION WILL NOT APPLY TO EITHER PARTY IN THE EVENT YOUR STATE STATUTES ARE FOUND TO GOVERN THIS AGREEMENT AND THEY SPECIFICALLY PROHIBIT A LIMITATION OF LIABILITY PROVISION.

4.6.3 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, LIQUIDATED, 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.

4.7 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.

4.8 Term and Termination

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

4.8.2 Termination for Cause. A party may terminate this Agreement for cause: (i) 30 days after written notice of a material breach to the other party if such breach remains uncured at the expiration of such period; or (ii) if the other party ceases to conduct business in the ordinary course, files a petition for liquidation bankruptcy, fails to have an involuntary petition for bankruptcy dismissed or converted to a non-liquidation bankruptcy within 60 days after filing, or makes an assignment of essentially all assets for the benefit of creditors.

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

4.9 Surviving Provisions. The following provisions will survive any termination or expiration of this Agreement: 1.6, 1.7, 2.1, 4.2, 4.3.1, 4.3.2, 4.3.4, 4.6, 4.9 and 5.0.

4.10 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.

4.11 Student/Parent Consents. You are responsible for obtaining any necessary or legally required consents from students, parents and/or guardians related to your Users access and use of the Software.

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

4.13 Governing Law. This Agreement will be governed by the internal laws of the State of Florida, without regard to its conflicts of laws rules unless the statutes or applicable rules governing your activities where your situated require that the laws of the State where your situated apply, in which case they will, without regard to the conflict or laws rules.

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

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

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

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

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

5.0 DEFINITIONS

- “**Concurrent License**” means a Subscription License that may be accessed during the Subscription Period by any User, but may only be accessed by one individual User at a time.
- “**Course Enrollment**” shall mean a Consumable License plus the non-exclusive services of a virtual instructor qualified to provide online teaching services associated with the Consumable License.

- **“Consumable License”** means a Subscription License to a single course assigned to a single, Named User. Prior to the Learner Preview Date, a Consumable License may be reassigned to a different Named User, or designated as unassigned and available for future use. The Subscription Period for a Consumable License begins when the course content is first accessed by the Named User and ends one year later.
- **“Customer Data”** means all electronic data, materials and other information you and/or your Users have entered or stored in the Software, including, but not limited to data and records relating to student information, performance or use, teacher data and supplemental instructional materials.
- **“Documentation”** means technical specifications identified in this Agreement.
- **“Hardware”** means a hardware product marketed by us which is listed on the Order Form and is intended to be used in connection with Software provided by us.
- **“License Period”** means the period of time during which you will have access to the Software you license under this Agreement. This period will begin with the Start Date identified in the applicable Order Form, and (unless earlier revoked in accordance with this Agreement) will last for the duration of the Subscription Period following the Start Date.
- **“Named User”** means a specific User identified by name and designated as the sole User of specific license.
- **“Order Form”** means the Order Form prepared and offered by us and returned to us by you indicating your acceptance of the terms and conditions of this Agreement.
- **“Reusable License”** means a Subscription License whereby only one Named User is designated to use the license at a time, but may be reassigned to another Named User during the Subscription Period. While a Reusable License is assigned to a specific Named User, it may not be used by any other User at any time until reassigned to another Named User.
- **“Software”** means online educational software that we make available either via our Internet-based learning management system (for Subscription Software) or via readable media or electronic download (for Perpetual Software).
- **“Professional Services”** means the services we provide to you to assist in your implementation, on-going use of the Software or our Academy services, as applicable.
- **“Software”** means software marketed by us which is listed on the Order Form. The term “Software” includes both our Software and Third Party Software.
- **“Site License”** means a Subscription License that may be accessed during the Subscription Term by all authorized Users located in the specific physical site identified on the Order Form.
- **“Subscription Software”** means Software licensed for a specified period of time (the Subscription Period).
- **“Subscription Period”** means the License Period for Subscription Software as identified on the Order Form.
- **“Third Party Software”** means software we acquire from a third party producer for distribution to our customers under licensing terms and conditions specified by the producer.
- **“Users”** means individuals you authorize to use Software and supply (or authorize us to supply) user identifications and passwords for and for which you’ve purchased an adequate quantity of licenses. Users may include your students and their parents to the extent permitted and in accordance with the roles as defined in the Documentation.
- **“We”, “Us” or “Our”**, whether or not capitalized, refer to the entity or entities identified on the first page of the Order Form (Edmentum, Inc., Archipelago Learning, Inc., Educational Options, Inc. or Education City, Inc.).