



State of Oklahoma

Office of Management and Enterprise Services

**ADDENDUM 1 TO
STATE OF OKLAHOMA CONTRACT WITH EDGENUITY INC.
RESULTING FROM SOLICITATION NO. 0900000216**

This Addendum 1 (“Addendum”) is an Amendment to the Contract awarded to Edgenuity Inc. (“Edgenuity”) in connection with Solicitation No. 0900000216 (“Solicitation”) and is effective March 27, 2017.

Recitals

Whereas, the State issued a Solicitation for proposals to provide online course curriculum for K-12 Education, as more particularly described in the Solicitation;

Whereas, Edgenuity submitted a proposal which contained exceptions to the Solicitation terms; and

Whereas, the State and Edgenuity have negotiated the final terms under which Edgenuity will perform the Services under the Contract.

Now, therefore, in consideration of the foregoing and the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged the parties agree as follows:

1. Addendum Purpose.

This Addendum memorializes the agreement of the parties with respect to negotiated terms of the Contract that is being awarded to Edgenuity simultaneously with execution of this Addendum. The parties agree that Supplier has not yet begun performance of work contemplated by the Solicitation.

2. Negotiated Documents of the Contract.

2.1. The parties have negotiated certain terms of the Contract as follows:

- i. certain exceptions to the Solicitation as contained in Attachment A to this Addendum titled Edgenuity Exceptions to Solicitation; and
- ii. revisions to Edgenuity’s Standard Terms and Conditions as contained in Attachment B to this Addendum.

- 2.2. Accordingly, any reference to a Contract Document refers to such Contract Document as it may have been amended. If and to the extent any provision is in multiple documents and addresses the same or substantially the same subject matter but does not create an actual conflict, the more recent provision is deemed to supersede earlier versions. For avoidance of doubt, the documents titled "Standard Terms and Conditions" and "Exceptions" submitted with Edgenuity's response is superseded in its entirety by this Addendum.

**State of Oklahoma by and through the Office
of Management and Enterprise Services on
behalf of the Statewide Virtual Charter School
Board**

Edgenuity Inc.

By: _____

Name: James L. Reese, II

Title: Chief Information Officer

Date: _____

3-21-17

By: _____

Name: Sari G. Factor

Title: Chief Executive Officer

Date: 3/24/2017

Attachment A

Fuel Education Exceptions to Solicitation

Term & Section	Language
Patents and Copyrights (Section A.31, pg. 8)	Modified to add: "TO THE EXTENT ALLOWED UNDER LAW, THIS SECTION CONTAINS THE STATE'S EXCLUSIVE REMEDIES AND SUPPLIER'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS."
Ownership Rights (Section A.45, pg. 10)	Deleted in its entirety.
Source Code Escrow (Section A.46, pg. 11)	Deleted in its entirety.
Warrants (Section B.3, pg. 13)	Modified to add: "Further, Supplier warrants that commercially reasonable efforts will be made to maintain the online availability of the hosted services provided by Supplier. THE STATE'S EXCLUSIVE REMEDY AND SUPPLIER'S ENTIRE LIABILITY UNDER THIS WARRANTY WILL BE FOR SUPPLIER TO REPAIR THE NON-CONFORMING SERVICE, OR IF SUPPLIER CANNOT MAKE SUCH REPAIR WITHIN A REASONABLE PERIOD OF TIME, THEN SUPPLIER MAY TERMINATE ACCESS TO THE SERVICE AND REFUND THE PORTION OF THE FEE ATTRIBUTABLE TO SUCH NON-CONFORMING SERVICE. ALL LICENSED MATERIAL IS PROVIDED "AS IS" AND WITH ALL FAULTS. EXCEPT FOR THE ABOVE WARRANTIES, THE SERVICES ARE PROVIDED ON AN "AS-IS" AND "WHEN AVAILABLE" BASIS. ALL OTHER REPRESENTATIONS AND WARRANTIES CONCERNING THE LICENSED MATERIAL AND SERVICES ARE HEREBY EXPRESSLY DISCLAIMED TO THE EXTENT ALLOWED BY LAW, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THERE IS NO WARRANTY THAT THE OPERATION OR CONNECTIVITY OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT THE SERVICE WILL BE FREE OF ALL POSSIBLE METHODS OF UNAUTHORIZED ACCESS, ATTACK, OR INTRUSION."
Commercial Off-The-Shelf (Cots) Software (Section B.9, pg. 15)	Deleted in its entirety.

ATTACHMENT "B"



Edgenuity™
STANDARD TERMS AND CONDITIONS

This Terms and Conditions Document (“**Standard Terms**”) is a Contract Document in connection with the Contract issued as a result of Solicitation No. 0900000216 (the “**Solicitation**”) and entered into between Edgenuity Inc. (“**Edgenuity**”) and the State of Oklahoma by and through the Office of Management and Enterprise Services on behalf of the Statewide Virtual Charter School Board (“**SVCSB**” or “**Customer**”), the terms of which are incorporated herein.

These Standard Terms apply to the subscription for the Edgenuity Learning Management Software Service (“**Service**”). The Agreement for the Service consists of these Standard Terms and the applicable Quote (which references the purchased services, term, pricing, and other terms of the order). This Agreement is applicable to the products and/or services to be provided to a school, school district or other education institution or organization (“**Customer**”) by Edgenuity pursuant to an order under the Solicitation by Customer (“**Quote**”).

1. **LEARNING MANAGEMENT SOFTWARE SERVICE.** This Agreement provides Customer access to and usage of Edgenuity’s internet- based learning management software service solely for internal education-related and training-related purposes of the Customer.
2. **USE OF SERVICE.**
 - a. **Customer Owned Data.** All data and materials uploaded or entered within the Service by Customer remains the property of Customer, as between Edgenuity and Customer (**Customer Data**). Customer grants Edgenuity the right to use the Customer Data solely for purposes of performing under this Agreement. During the term of this Agreement, Customer may export its Customer Data to the extent allowed by functionality within the Service. Customer warrants and represents that Customer has appropriate rights to any Customer Data added to the Service.
 - b. **Customer Responsibilities.** Customer (i) must keep its passwords secure and confidential; (ii) is solely responsible for Customer Data and all activity in its account in the Service; (iii) must use commercially reasonable efforts to prevent unauthorized access to its account and notify Edgenuity promptly of any such unauthorized access; and (iv) may use the Service only under the Service’s written technical guides and applicable law. Customer authorizes its integrators or other third party vendors and Edgenuity to conduct initial setup and continued access of the Service in compliance with the terms of this Agreement, so long as the access is for the sole benefit of Customer. Further, Customer will provide Edgenuity the name and contact information for all third parties authorized by Customer necessary for Customer to receive the Services during the Term of this Agreement. Customer is solely responsible for compliance under all federal, state and local privacy laws and regulations for all such Customer authorized integrators or other third party vendor(s) that Customer mandates Edgenuity access the Service for its benefit under this Agreement.
 - c. **Licensed Material.** All audio, video and other content, curriculum, documentation and software (including without limitation applets and animations) provided by Edgenuity as part of the Service (Licensed Material) are licensed to Customer as follows: Edgenuity grants Customer a non-exclusive, non-transferable license during the term of each Quote to access and use such Licensed Material for internal educational and training purposes solely in connection with the Service. Notwithstanding anything in this Agreement, all Edgenuity third party web services are governed by Attachment A.
 - d. **Professional Development.** All implementation planning, program design, administrative and instructional training, consulting and coaching for education professionals will be provided by Edgenuity as described in the applicable Quote. Any professional development purchased will expire at the end of the term in the applicable Quote.
 - e. **Edgenuity Technical and Customer Support.** Edgenuity will provide technical and customer support for the Service under the terms of Edgenuity’s support policies found at www.edgenuity.com/support including all updates, bug fixes, and enhancements when generally made available.
3. **WARRANTIES and DISCLAIMERS.**
 - a. **Compliance Warranty.** Each party will comply with, and will cause each of its employees, agents, and contractors to comply with, all laws applicable to its performance under this Agreement, including without limitation the Family Educational Rights and Privacy Act (**FERPA**) and Children's Online Privacy Protection Act (**COPPA**).
 - b. **Professional Development and Instructional Services Warranty.** Edgenuity warrants that it will provide Professional Development and Instructional Services in a professional, workmanlike manner consistent with the terms of this Agreement and under generally accepted industry standards.
 - c. **Edgenuity Service Warranty.** Edgenuity warrants that commercially reasonable efforts will be made to maintain the online availability of the Service. CUSTOMER’S EXCLUSIVE REMEDY AND EDGENUITY’S ENTIRE LIABILITY UNDER THIS WARRANTY WILL BE FOR EDGENUITY TO REPAIR THE NON-CONFORMING SERVICE, OR IF EDGENUITY CANNOT MAKE SUCH REPAIR WITHIN A REASONABLE PERIOD OF TIME, THEN EDGENUITY MAY TERMINATE ACCESS TO THE SERVICE AND REFUND THE PORTION OF THE FEE ATTRIBUTABLE TO SUCH NON-CONFORMING SERVICE.
 - d. **DISCLAIMERS.** ALL LICENSED MATERIAL IS PROVIDED “AS IS” AND WITH ALL FAULTS. EXCEPT FOR THE ABOVE

WARRANTIES, THE SERVICES INCLUDING PROFESSIONAL DEVELOPMENT AND INSTRUCTIONAL SERVICES ARE PROVIDED ON AN "AS-IS" AND "WHEN AVAILABLE" BASIS. ALL OTHER REPRESENTATIONS AND WARRANTIES CONCERNING THE LICENSED MATERIAL AND SERVICES ARE HEREBY EXPRESSLY DISCLAIMED TO THE EXTENT ALLOWED BY LAW, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THERE IS NO WARRANTY THAT THE OPERATION OR CONNECTIVITY OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT THE SERVICE WILL BE FREE OF ALL POSSIBLE METHODS OF UNAUTHORIZED ACCESS, ATTACK, OR INTRUSION.

4. PAYMENT, INVOICING AND TAXES.

The prices and billing terms for the Service will be as set forth in the applicable Quote, except as set forth herein. As applicable, the Customer and Edgenuity shall comply with applicable Oklahoma law in invoicing and making payments. Payments for goods and services are due thirty (30) days after receipt of a proper invoice; however, Edgenuity agrees that payment received in accordance with applicable Oklahoma law allowing forty-five (45) days shall not constitute default hereunder nor entitle Edgenuity to late payment fees or interest. Pursuant to Section 6.A. of the Oklahoma Constitution and 68 O.S. §§ 1404, 1352, and 1356, Customer is exempt from the assessment of State sales, use and excise taxes.

5. MUTUAL CONFIDENTIALITY.

- a. **Definition of Confidential Information.** Confidential Information means all non-public information including Personally Identifiable Information (PII) as defined by applicable law, disclosed by a party (Discloser) to the other party (Recipient), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (Confidential Information). Edgenuity's Confidential Information includes without limitation the Service, its user interface design and layout and the Licensed Material.
- b. **Protection of Confidential Information.** The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this Agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this Agreement.
- c. **Exclusions.** Confidential Information excludes information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser; (ii) was known to the Recipient before its disclosure by the Discloser without breach of any obligation owed to the Discloser; (iii) is received from a third party without breach of any obligation owed to Discloser; (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order, but will provide Discloser with sufficient advance written notice to seek any pertinent public records protection and/or seek a protective order.
- d. **FERPA and Confidentiality.** Edgenuity's ability to provide services under this Agreement requires Customer to share student data containing confidential personally identifiable information ("PII") from education records maintained by Customer with Edgenuity. Edgenuity agrees to comply with all state and federal laws relating to student data and privacy, including the Family Educational Rights and Privacy Act, (20 U.S.C § 1232g; 34 CFR Part 99).

Student data released to Edgenuity will be limited to data points specifically listed in this Agreement. If Edgenuity determines that there is a legitimate need to receive or access additional student data and that such data is necessary to perform required duties, Edgenuity shall submit a written request to Customer detailing the data needed and state the purpose of the disclosure. If Customer determines that access is necessary and appropriate, this Agreement may be modified in accordance with the request. No additional data shall be provided until the Agreement is modified to reflect the additional data disclosures.

Edgenuity will safeguard the confidentiality and integrity of all data received pursuant to this Agreement, place limitations on its use, and maintain compliance with all applicable privacy laws. Edgenuity shall establish appropriate administrative, technical and physical safeguards to ensure the security and confidentiality of all student data.

Student information from education records cannot be published in a way that would allow individual students or their parents to be identified. Any reports or published information that is a result of or derived from confidential student data containing PII provided by Customer shall not allow individuals to be directly or indirectly identified and shall contain no individual student level data. Edgenuity may use student data from education records to perform contractual duties as required by this Agreement, but any published results must be presented in a manner which protects the privacy and confidentiality of students. Customer shall be provided the opportunity to review all results prior to publication.

Edgenuity shall require all staff to comply with the data security and confidentiality provisions set forth herein. Only those employees that are directly involved in performing tasks outlined herein and who have a legitimate interest in providing services according to the terms of this Agreement shall be entitled to access student data. Edgenuity shall take steps to maintain the confidentiality of student information from education records.

This Agreement does not constitute a release of student-level data for the Edgenuity's discretionary use. Access to (or disclosure of) confidential student information contained from education records pursuant to the terms of this Agreement shall not constitute an assignment

of ownership of the information provided. Customer retains all ownership rights to the data transferred pursuant to this Agreement, and Edgenuity shall not obtain any right, title, or interest in any of the data furnished by Customer.

Data transferred pursuant to this agreement may only be used to carry out the responsibilities throughout the duration of the projects, task and assignments specified herein. Any unauthorized use of the data files beyond the terms specified in the Agreement is not permitted. Edgenuity shall not use the data for purposes other than the projects, task and assignments identified herein.

Edgenuity shall immediately notify Customer if there is any unauthorized access or breach to the data provided by Customer and take reasonable steps to mitigate any breach. In the event a breach occurs, Edgenuity will take reasonable steps and implement corrective procedures to ensure that further breaches do not occur.

Customer shall be notified immediately if Edgenuity receives a request for the student data containing PII provided by Customer. If Edgenuity becomes legally compelled to disclose any confidential PII (whether by judicial or administrative order, applicable law, rule or regulation, or otherwise), then Edgenuity shall use all reasonable efforts to provide Customer with prior notice before disclosure so that Customer may seek a protective order or other appropriate remedy to prevent the disclosure. If a protective order or other remedy is not obtained prior to when any legally compelled disclosure is required, Customer shall only disclose that portion of the confidential PII that it is legally required to disclose.

Edgenuity may determine that it is necessary to employ a contractor or subcontractor to fulfill contractual obligations under the Contract. Edgenuity shall ensure, by written agreement, that any contractor or subcontractor employed by Edgenuity remains in compliance with FERPA.

Customer will immediately terminate this agreement and this agreement shall not be renewed due to the intentional breach of any of the terms and conditions of the data security and confidentiality provisions set forth herein by Edgenuity, and Customer, OMES, and/or SVCSB may revoke any other existing RFP's or contract with Edgenuity.

Customer may seek monetary, restitutive and punitive damages against Edgenuity for a breach of any of the terms and conditions of the data security and confidentiality provisions set forth herein as allowed by law.

Upon notification of a breach in the terms and conditions of the data security and confidentiality provisions set forth herein, Customer will not release any additional confidential personally identifiable information ("PII") from education records maintained by Customer to Edgenuity until corrective procedures have been implemented to ensure further breaches do not occur.

Upon completion of the services detailed in this agreement or upon termination of this agreement, Edgenuity shall immediately destroy all PII that was disclosed by Customer and provided to Edgenuity for the purposes detailed in this Agreement. Within ten (10) days of destruction, Edgenuity shall provide written notification to Customer of the date and method of destruction of these records.

6. EDGENUITY PROPERTY.

- a. **Reservation of Rights.** The content, documentation, software, workflow processes, user interface, designs, know-how, Licensed Material, and other items provided by Edgenuity as part of the Service are the proprietary property of Edgenuity and its licensors, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with Edgenuity. Customer may not remove or modify any proprietary marking or restrictive legends in the Service or Licensed Material. Edgenuity reserves all rights unless expressly granted in this Agreement.
- b. **Restrictions.** Customer may not (i) sell, resell, rent or lease the Service or Licensed Material or use it in a service provider capacity; (ii) use the Service to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise objectionable, unlawful or tortious material, or to store or transmit material in violation of third-party rights; (iii) interfere with or disrupt the integrity or performance of the Service or attempt to gain unauthorized access to the Service or their related systems or networks; (iv) use the Service or Licensed Material for other than internal Customer educational purposes; (v) reproduce, frame, mirror, modify, translate, enhance, decompile, disassemble, copy, download or reverse engineer the Service or the Licensed Material or modify, create derivative works based on the Service or any Licensed Material; or (vi) access the Service or use the Licensed Material to build a competitive service or product, or copy any feature, function or graphic for competitive purposes.

7. TERM AND TERMINATION.

- a. **Term.** This Agreement continues until all Quotes have expired, unless terminated by Customer and/or Edgenuity for material breach or otherwise terminated pursuant to the Solicitation.
- b. **Lack of Funding.** Upon termination due to lack of funding, Edgenuity will be entitled to a pro-rata portion of the fees for Service performed up to the date of termination.
- c. **Mutual Termination for Material Breach.** If either party is in material breach of this Agreement, the non-breaching party may terminate this Agreement at the end of a written thirty (30) calendar day notice and cure period, if the breach has not been cured.
- d. **Return of Customer Data.** Within sixty (60) days after termination, upon request, Edgenuity will make the Service available for Customer to export such data as provided in Section 2(a).

- e. **Suspension for Violations of Law.** Edgenuity may temporarily suspend the Service or remove the applicable Customer Data, or both, if it in good faith believes that, as part of using the Service, Customer has violated a law. Edgenuity will attempt to contact Customer in advance.
 - f. **Return or Destroy Edgenuity Property Upon Termination.** Upon expiration or termination of this Agreement for any reason, Customer must pay Edgenuity for any amounts owed, and destroy or return all property of Edgenuity. Customer will confirm its compliance with this destruction or return requirement in writing upon request of Edgenuity.
8. **LIABILITY LIMIT.**
- a. **EXCLUSION OF INDIRECT DAMAGES.** TO THE EXTENT ALLOWED UNDER OKLAHOMA LAW, NEITHER PARTY IS LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, COSTS OF DELAY; LOSS OF DATA, RECORDS OR INFORMATION; AND LOST PROFITS), EVEN IF IT KNOWS OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS.
 - b. **TOTAL LIMIT ON LIABILITY.** EITHER PARTY'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT, TORT OR OTHERWISE) DOES NOT EXCEED THE AMOUNT PAID BY CUSTOMER WITHIN THE 12-MONTH PERIOD BEFORE THE EVENT THAT GAVE RISE TO THE LIABILITY.
 - c. No provision of these Standard Terms, or other Supplements, Amendments, or other documents related to these Standard Terms, providing for a limitation of liability of the Vendor or other third parties, or indemnification or exculpation of Edgenuity or other third parties, shall be enforceable against the OMES/SVCSB/Customer except to the extent permitted by Oklahoma law. Notwithstanding any provisions to the contrary in these Standard Terms, any Supplement or Amendment to these Standard Terms or other documents related to these Standard Terms, Oklahoma law will govern the interpretation and enforceability of any limitation of liability, indemnity, or exculpation provision in these Standard Terms, Supplements or Amendments to these Standard Terms, or other applicable or related documents.
9. **INDEMNITY.**
- a. If and only to the extent allowed by applicable law, Edgenuity and Customer each, respectively, agree to be responsible for the negligent and intentional acts of their respective employees, agents, representatives, divisions, and affiliates that arise out of or are related to the performance of its obligations under this Agreement.
10. **OTHER TERMS.**
- a. **Governing Law.** Pursuant to Section A.17 of the Solicitation, this Agreement is governed by the laws of the state where the Customer resides, excluding any conflict of law principles. Nothing in this Agreement prevents either party from seeking injunctive relief in any court of competent jurisdiction.
 - b. **Entire Agreement and Changes.** This Agreement, Attachments "A", "B" and the Quote constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. Customer is not relying on any representation concerning this subject matter, oral or written, not included in this Agreement. No representation, promise or inducement not included in this Agreement is binding. No modification of this Agreement is effective unless signed by both parties, and no waiver is effective unless the party waiving the right signs a waiver in writing.
 - c. **No Assignment.** Neither party may assign or transfer this Agreement or a Quote to a third party, except that this Agreement with all Quotes may be assigned, without the consent of the other party, as part of a merger, or sale of substantially all the assets, of a party.
 - d. **Independent Contractors.** The parties are independent contractors with respect to each other.
 - e. **Feedback.** By submitting ideas, suggestions or feedback to Edgenuity regarding the Service, Customer agrees that such items submitted do not contain confidential or proprietary information; and Customer grants Edgenuity an irrevocable, unlimited, royalty-free and fully-paid perpetual license to use such items for any business purpose.
 - f. **Enforceability and Force Majeure.** If any term of this Agreement is invalid or unenforceable, the other terms remain in effect. Except for the payment of monies, neither party is liable for events beyond its reasonable control, including, without limitation force majeure events, failure of Internet services, any third party service and telecommunications services.
 - g. **Money Damages Insufficient.** Any breach by a party of this Agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach.
 - h. **No Additional Terms and Order of Precedence.** Edgenuity rejects additional or conflicting terms of any Customer form-purchasing document. If there is an inconsistency between this Agreement and any Quote, the Quote will prevail only with respect to pricing, duration and service specific terms.
 - i. **Survival of Terms.** Any terms that by their nature survive termination of this Agreement for a party to assert its rights and receive the protections of this Agreement, will survive.

Attachment A
Third Party Terms

1. DEFINITIONS.

Third Party Service means a web based software service procured by Edgenuity from a third party for use by Edgenuity in connection with the Service or Hardware.

Hardware means any hardware marketed or supplied by Edgenuity and identified on a Quote.

2. GENERAL.

- a. **Third Party Web Services.** Edgenuity is not the vendor of such Third Party Service however such Third Party Services are provided under the terms of the Agreement and any additional terms included within this Attachment A, except for the Middlebury Interactive Services, which is governed by their terms, as further detailed below.
- b. **Hardware.** Edgenuity is not the manufacturer of Hardware and such Hardware is provided subject to the separate sale terms provided by the manufacturer (including without limitation, return and exchange terms), all of which Customer agrees to abide by. Edgenuity makes no warranties with respect to the Hardware and any pre-installed associated software. Customer hereby grants Edgenuity permission to provide remote technical support for setup and diagnostic purposes for new Hardware if required. Customer owns the Hardware and has a license to any pre-installed software, subject to the applicable license agreement. During the term of the Agreement, if Customer modifies Hardware in any way, it may void the manufacturer's warranty. Upon termination of the Agreement, Edgenuity will remotely remove any and all Edgenuity content and software from the Hardware.

3. THIRD PARTY SERVICES. Some but not all of Edgenuity's Third Party Services are listed below.

- a. **ExploreLearning.** Without limiting any of the provisions of Section 2 above, access to and use of any ExploreLearning *Gizmos* (Gizmos) provided by Edgenuity are governed by the following additional terms:
 - i. Neither Customer nor any of its users are authorized to access or use any Gizmos, except: (i) users who are students and who are authorized by Customer to access and use the Service that includes or incorporates the Gizmos; and (ii) users who are teachers of those same students, provided that such teachers may use the Gizmos only for the purposes of assigning and managing assignments for those students;
 - ii. A Gizmo may only be used in connection with the Service with which that particular Gizmo has been provided, and may not be used in connection with any other class, program, application, or software.
 - iii. Customer understands and agrees that any access to or use of any Gizmo provided by Edgenuity by Customer or any of its users in contravention of the foregoing terms constitutes a material breach of the Agreement, and that if Customer desires to use a Gizmo in a manner that is not authorized by the Agreement, it is solely the responsibility of Customer (and not of Edgenuity) to obtain authorization for such use from the appropriate third party.
- c. **Education Testing Services (ETS) e-rater® Scoring Service.**
 - i. The score and/or feedback received from the e-rater® technology should be considered as one piece of evidence about a student's writing ability. When a score from the e-rater® engine is being used for an important decision about a student's performance, instructors should review and evaluate the score and/or feedback to ensure that the appropriate decision about placement or performance has been made.
 - ii. The user understands and agrees that the Scoring Service may not be used for any other purpose, or provided to any other party, than as described herein. As permitted under state or federal law, user shall indemnify and hold Edgenuity and/or Educational Testing Service (ETS) harmless from any and all claims arising out of the use of the Scoring Service or use of the scores and/or feedback to determine placement of, or grades for students, or any other purpose.
 - iii. THE E-RATER® SCORING SERVICE (SCORE AND GRAMMAR CHECKING FEATURE) PROVIDED BY ETS IS PROVIDED "AS-IS", WITHOUT WARRANTIES OF ANY KIND AND ETS DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE E-RATER® SCORING SERVICE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL ETS BE LIABLE TO CLIENT OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, PUNITIVE, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE THIRD PARTY PRODUCTS, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES.
 - iv. With regard to essays submitted to the site, you (Customer) hereby grant to ETS a non-exclusive, royalty-free, world-wide, irrevocable license to reproduce, transmit, display, disclose, archive and otherwise use any such files you submit to the site for the purposes of scoring and providing feedback. ETS will not retain any personally-identifiable information that may be associated with the essays. This license shall survive the termination of any license granted herein to ETS but in no event longer than 18 months. Any cessation of use of the site shall not result in the termination of any license you grant herein to ETS. Nothing herein shall preclude ETS from using information independently created by ETS.

- d. **Sophia® Learning Inc.** If this Agreement includes any Sophia Learning Inc. courses for use, the following language applies to any such purchase or use: "Customer agrees that the use of any Sophia course is prohibited for all students under the age of 13 years."

4. **THIRD PARTY HARDWARE AND SERVICES WARRANTIES.**

- a. **Hardware and Third Party Services Warranties.** ALL HARDWARE AND THIRD PARTY SERVICES ARE PROVIDED BY EDGENUITY "AS IS." EDGENUITY MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED.
 - i. Edgenuity transfers to Customer, to the extent transferable, transferrable warranties and indemnities Edgenuity receives from the manufacturer of the Hardware or Third Party Service. Edgenuity's sole obligation with respect to Hardware and Third Party Service will be to use reasonable commercial efforts to facilitate warranty and indemnification claims that Customer makes against the manufacturer of the Hardware or Third Party Service.
 - ii. Customer, recognizing that Edgenuity is not the manufacturer of Hardware or Third Party Service, expressly waives any claim that Customer may have against Edgenuity for product liability or infringement of any intellectual property right with respect to any Hardware or Third Party Service, as well as any right to indemnification from Edgenuity on account of any such claim made against Customer by a third party.

Attachment B
Instructional Services

1. DEFINITIONS.

Instructional Services means services provided by Edgenuity including student access to teachers and coaches, the development and implementation of policies and procedures for purposes of student outcomes, and other services stated in a Quote.

Virtual Program means a program of instruction created through technology and provided by Edgenuity, in which the student and teacher are separated by time, space, or both.

2. INSTRUCTIONAL SERVICES.

- a. **Edgenuity Teachers.** If specified in the Quote, Edgenuity will provide students with virtual access to teachers or coaches (or both) who are hired, trained, supervised and paid by Edgenuity.
 - i. Edgenuity teachers will be available during reasonable business hours.
 - ii. Edgenuity teachers will assist in the virtual delivery of the Licensed Material to students.
 - iii. Customer may make recommendations regarding the hiring, dismissal, discipline, and supervision of Edgenuity teachers, which recommendations Edgenuity may accept or reject in its sole discretion. No such recommendations are binding on Edgenuity, and as between Customer and Edgenuity. Edgenuity will have sole authority regarding such individuals.
- b. **Policies and Procedures.** Edgenuity may implement instructional policies and procedures for purposes of student outcomes that are in addition to or differ from existing Customer policies and procedures.
 - i. Where conflicts exist between policies, Edgenuity policies and procedures will take precedence unless otherwise agreed to by both parties in writing.
 - ii. Edgenuity will interpret and follow applicable Customer instructional policies according to the actual policy language and under applicable law.
 - iii. If Customer is utilizing Edgenuity's NCAA compliant Instructional Services, Customer must abide by all policies and procedures specific to NCAA guidelines.
- c. **Virtual Program Liaison.** Customer must designate an individual to serve as its primary liaison to Edgenuity for all communications related to the provision of Instructional Services and the Virtual Programs throughout the Term (**Primary Liaison**).
 - i. Customer may change the identity of the Primary Liaison from time to time upon reasonable written notice to Edgenuity.
 - ii. The Primary Liaison will serve as the primary point of contact for all communications with Edgenuity related to the Virtual Programs and for coordinating efforts necessary for the fulfillment of Customer's obligations as specified in this Agreement with respect to the Virtual Programs.
- d. **Administrative Services.** Customer shall be responsible for all day-to-day management of the Virtual Programs, subject in all cases to compliance with applicable law and Customer policies.
- e. **Exceptional Student Services.** If Customer is a public entity receiving federal funds, Customer is considered the "Local Educational Agency," and is responsible for the provision of special education.
 - i. The following are not services provided by Edgenuity: providing special education, creating, implementing or providing Individualized Education Programs (IEP), providing reasonable accommodations or any services of any nature under the Individuals with Disabilities Education Act, the Americans with Disabilities Act, section 504 of the Rehabilitation Act, or any similar law, whether federal, state or local.
 - ii. Notwithstanding the foregoing, Edgenuity will discuss, formulate and make adjustments and accommodations in furtherance of student IEPs or reasonable accommodations established by Customer, but solely to the extent that Edgenuity may do so without incurring direct or indirect costs.
- f. **State Testing.** Customer is responsible for providing appropriate accommodations for the administration of any state-mandated standardized testing. Customer is also responsible for receiving, distributing, administering, proctoring and returning any and all state-mandated standardized tests under applicable and documented state law, policies and procedures.

3. TERM AND TERMINATION.

- a. **Term.** This Attachment B will continue for the duration specified in the Quote, unless earlier terminated under the terms of the Agreement (**Term**).
- b. **Non-Solicitation.** During the Term, and for a period of one (1) year thereafter, Customer may not, directly or indirectly, solicit or make offers of employment to hire, in any capacity, or accept any services or work, from any employees, or contractors of Edgenuity who are associated (either directly or indirectly) with the performance of Instructional Services.