



Date: 11/27/2018  
Order Number: Q-110313  
Revision: 1  
Order Form Expiration Date: 4/12/2019

#### ORDER FORM

Please fax all pages to 1.877.519.9555 or email to [orders@edmentum.com](mailto:orders@edmentum.com)  
To Pay by Credit Card: Call 214.294.9901 or e-mail [creditcardprocessing@edmentum.com](mailto:creditcardprocessing@edmentum.com)

#### Customer and Billing Address

Customer No.: 124047  
Customer Name: BLACK HAWK COLLEGE  
Billing Address: 6600-34th Ave  
Moline, IL 61265

#### Products and Services

##### BLACK HAWK COLLEGE

Products	Qty	License Start Date	License End Date	License Term (Months)
Adaptive Assessment with Prescriptions: Core Library - Program License	100	4/13/2019	4/12/2020	12
Fixed Form Assessment with Prescriptions: Higher Education and Career Readiness Library - Program License	1	4/13/2019	4/12/2020	12
Courseware: Core Library - Concurrent License	20	4/13/2019	4/12/2020	12
Courseware: Higher Education and Career Readiness Library - Concurrent License	35	4/13/2019	4/12/2020	12
Courseware Virtual Standard Service Package	1	Year 1	***	12
<b>BLACK HAWK COLLEGE Subtotal:</b>				<b>\$20,669.75</b>

<b>Subtotal:</b>	<b>\$20,669.75</b>
<b>Estimated Tax:</b>	<b>\$0.00</b>
<b>Total US Funds:</b>	<b>\$20,669.75</b>

\*\* 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

PO Due Date	Payment Due Date	Amount
Due at Time of Order	Net 15	\$1,000.00
3/28/2019	4/12/2019	\$4,730.00
6/16/2019	7/1/2019	\$14,939.75
	<b>Total</b>	<b>\$20,669.75</b>

#### Terms and Conditions

For the purposes of this Order Form, "you" and "your" refer to Customer, and "we", "us" and "our" refer to edmentum Inc. and affiliates. This Order Form and any documents it incorporates (including the Standard Purchase and License Terms located at <http://www.edmentum.com/standardterms> and the documents it references) form the entire agreement between you and us ("Agreement"). You acknowledge that any terms and conditions in

Edmentum | N.W. 7504, P.O. Box 1450 | Minneapolis, MN 55485-7504 | [www.edmentum.com](http://www.edmentum.com)





Date: 11/27/2018  
Order Number: Q-110313  
Revision: 1  
Order Form Expiration Date: 4/12/2019

#### ORDER FORM

Please fax all pages to 1.877.519.9555 or email to [orders@edmentum.com](mailto:orders@edmentum.com)  
To Pay by Credit Card: Call 214.294.9901 or e-mail [creditcardprocessing@edmentum.com](mailto:creditcardprocessing@edmentum.com)

your purchase order or any other documents you provide that enhance our obligations or restrictions or contradict the Agreement do not have force and effect.

#### Purchase Order

You acknowledge that this Agreement is non-cancellable and you will submit a Purchase Order with this Order Form covering the initial portion of the amount and you will submit future Purchase Orders based on the Invoicing and Payment Terms table and timely make corresponding payment(s) for the remaining amount(s) owed.

#### Customer Contact for Future Purchase Orders:

Name:

Email Address:

#### EdOptions Academy Post Pay Option

Included in this Agreement is your option to enroll students in our EdOptions Academy (the "EdOptions Academy Post Pay Option"). You may exercise this option at any time during the 365 day period beginning on the date that your order under the Agreement is processed (the "Option Exercise Period") by sending an email to [teacherneeded@edmentum.com](mailto:teacherneeded@edmentum.com) and identifying your desire to exercise this option. If you either (a) notify us of your decision to exercise the EdOptions Academy Post Pay Option within the Option Exercise Period or (b) actually enroll any of your students in any of the EdOptions Academy courses/programs, you agree that (i) the fees your required to pay us for each Academy enrollment shall be as identified on Appendix A during the Option Exercise Period, after which the fees shall be as agreed to by the parties, all such fees to be payable by you within fifteen (15) days of your receipt of our invoice, (ii) you will not be required to issue an additional purchase order to cover any of your Academy enrollments and (iii) the terms and conditions identified in or referenced in this Agreement, including those on Appendix A, shall exclusively control.

#### 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 Agreements 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 Agreements 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](mailto:orders@edmentum.com).

Customer Signature:

Name (Printed or Typed): MIKE G MELEG

Title: PURCHASING MANAGER

Date: 1/24/2019

Edmentum | N.W. 7504, P.O. Box 1450 | Minneapolis, MN 55485-7504 | [www.edmentum.com](http://www.edmentum.com)





Date: 11/27/2018  
Order Number: Q-110313  
Revision: 1  
Order Form Expiration Date: 4/12/2019

ORDER FORM

Please fax all pages to 1.877.519.9555 or email to [orders@edmentum.com](mailto:orders@edmentum.com)  
To Pay by Credit Card: Call 214.294.9901 or e-mail [creditcardprocessing@edmentum.com](mailto:creditcardprocessing@edmentum.com)

### Appendix A: EdOptions Academy Products

All courses (or programs to the extent enrollments in one or more programs occurs) included in the table below will be available for enrollment at the indicated price.

#### 18 Week Course Pricing (1/2 Credit Course)

Core Courses	\$295.00
CTE and Elective Courses	\$295.00
Health and Fitness Courses	\$295.00
World Language Courses	\$325.00
Advanced World Language Courses	\$325.00

Advanced Courses	\$325.00
Extension Fee	\$50.00
Test Prep Courses	\$325.00
Remediation Courses	\$325.00

#### 9 Week Course Pricing (1/2 Credit Course)

9 Week Semester Courses	\$200.00
-------------------------	----------

9 Week Semester Extension Fee	\$25.00
-------------------------------	---------

#### Program Pricing (Per Student)

Career Pathways to Graduation	\$1,800.00
-------------------------------	------------

College Pathways to Graduation	\$2,500.00
--------------------------------	------------

#### Terms and Conditions for Academy Products:

Prices identified above do not include taxes and any taxes imposed on your purchases shall be invoiced and payable by you. We reserve the right to immediately invoice you for any services that you purchase. We provide a 14-day grace period for enrollments that are dropped within 14 days from enrollment at no charge.

#### Roles and Responsibilities:

##### **Our Responsibilities**

We will administer the program with the support of your staff.

We will be responsible for the following:

- Provide the licensed courses to students using the program.
- Provide qualified teachers for each course.
- Provide live training and/or training through webinar(s) for individuals selected by you to facilitate the program, in accordance with the services you have purchased.
- Provide an online registration and course enrollment process.
- Provide online access to student progress on an ongoing basis to appropriate personnel that you identify.
- Provide access to the online courses that You've licensed 24 hours 7 days a week for student and organization use, subject to normal downtime for updates and maintenance.
- Provide reporting on student progress throughout each course and program.
- Access to learning management system which gives access to student info, student's official gradebook, and communications concerning student.
- Printable access to an enrolled students transcript.

Edmentum | N.W. 7504, P.O. Box 1450 | Minneapolis, MN 55485-7504 | [www.edmentum.com](http://www.edmentum.com)





Date: 11/27/2018  
Order Number: Q-110313  
Revision: 1  
Order Form Expiration Date: 4/12/2019

#### ORDER FORM

Please fax all pages to 1.877.519.9555 or email to [orders@edmentum.com](mailto:orders@edmentum.com)  
To Pay by Credit Card: Call 214.294.9901 or e-mail [creditcardprocessing@edmentum.com](mailto:creditcardprocessing@edmentum.com)

#### Your Responsibilities

You will work with us to design and implement a program that meets the educational needs of the students selected to participate in the program.

You will be responsible for the following:

- Designate one person who will be the program administrator. This person will be responsible for coordinating the operation of the program with our staff.
- Arrange for our training to your staff involved in the program. The training will be provided through virtual sessions.
- Submit enrollment forms and other miscellaneous required documents via our Student Information System.
- Determine what course(s) students will take and assist students or administrators in accurately inputting required information.
- Ensure that students participating in this program have regular access to the internet.
- Provide proctors for the exams associated with each course.
- Promptly notify us in the event that you become aware of a change in law or regulation that impacts the operation of the program or the policies in place governing a student's participation in the program.
- Promptly contact us if a student withdraws, is suspended, or has other status changes that will affect the student's participation or progress in class.
- Using reasonable efforts to ensure that your students understand and adhere to our policies, including but not limited to our Student Code of Conduct policy.

Edmentum | N.W. 7504, P.O. Box 1450 | Minneapolis, MN 55485-7504 | [www.edmentum.com](http://www.edmentum.com)



AND YOU DO NOT AGREE TO ANY TERMS AND CONDITIONS IDENTIFIED IN THIS DOCUMENT OR OTHER DOCUMENTATION THAT ENHANCE ANY OF YOUR OBLIGATIONS OR EXPOSURES BEYOND THOSE IDENTIFIED IN THE RESULTING PURCHASE ORDER. **edmentum**

MGM 1/28/19

## STANDARD SERVICE PURCHASE AND SOFTWARE LICENSE TERMS

The Terms and Conditions contained in this document (the "Standard Terms") apply to any transaction whereby we (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 Order Form ("Order Form")) (1) license rights to use our Software for a fixed term, (2) Materials for use with the Software, or (3) Professional Services. These Standard Terms are an integral part of an agreement (the "Agreement") that consists of (in order of precedence) an Order Form, these Standard Terms, and any documents incorporated by reference into either the Order Form or Standard Terms (including those incorporated by hyperlink reference). You acknowledge that the Order Form and the Standard Terms 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. We do not agree to any terms and conditions identified in a purchase order or other documentation that enhance any of our obligations or exposures beyond those identified in the resulting agreement. The Agreement will be effective as of the Order Date specified on the Order Form and will be binding when the Order Form has been executed by you. We reserve the right to require your submission of one or more purchase orders in accordance with the terms outlined in your Order Form. Capitalized terms used throughout the Agreement are defined in the Order Form, in section 5.0 (below), and elsewhere in these Standard Terms. These Standard Terms may only be superseded or amended by other terms and mutually agreed upon conditions you and we have specifically documented here on 01/28/2019 in a signed Order Form. **ED** 1/28/19

**1.0 SOFTWARE:** The following terms and conditions will apply to your transaction with us as described in more detail on the Order Form:

**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 either own or have licensed from third parties all rights necessary to grant the licenses being granted you in the Software. We or our licensors own and retain all rights, title and interest in and to the Software and all ideas, concepts, methodologies, formats, specifications, and other know-how furnished by us or our licensors in connection with this Agreement, as well as all related intellectual property rights.

**1.1.3** All access and use of Software under this Agreement will be subject to our Privacy Policy, which can be found at <http://www.edmentum.com/Privacy> which is 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 license expiration date as identified on the Order Form. We reserve the right to suspend or revoke any license granted under this Agreement if you breach this Agreement.

**1.1.5** We reserve the right to terminate access to any Software to the extent we end of life or similar the Software. If we exercise this right we will transition you to an appropriate alternative Software product that we own or license.

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

**1.3 Software Operability:**

**1.3.1 Maintenance and Access.** During the Subscription Period, we will use commercially reasonable efforts to make the Software available (subject to routine maintenance windows and unavailability not caused by us) to you and your Users via the Internet 24 hours a day, 7 days a week. 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).

**1.3.2 Outage Periods.** The term "Outage Period" means a period of more than 48 consecutive hours in which your Users are prevented from accessing the Software due to factors completely within our control during a period that you are not in breach of this Agreement. Outage Periods exclude (a) planned downtime and (b) any Force Majeure event. If you experience an Outage Period, then upon your written request we will issue you a credit for the pro-rated share of fees you have paid for usage during the month during which the Outage Period occurs. Your request for this credit must be made within 30 days after the end of the Outage Period. Your sole and exclusive remedy for an Outage Period will be the above credit.

**1.4 System Requirements.** Our System Requirements document (found at <http://www.edmentum.com/support>) ("System Requirements") details the necessary hardware, software, system configuration, network infrastructure, bandwidth and other operational requirements necessary for you to successfully operate and use the Software. 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 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 Software, 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.



AND YOU DO NOT AGREE TO ANY TERMS AND CONDITIONS IDENTIFIED IN THIS DOCUMENT OR OTHER DOCUMENTATION THAT ENHANCE ANY OF YOUR OBLIGATIONS OR EXPOSURES BEYOND THOSE IDENTIFIED IN THE RESULTING PURCHASE ORDER. **edmentum**

MGM 1/28/19

## STANDARD SERVICE PURCHASE AND SOFTWARE LICENSE TERMS

**EO** The Terms and Conditions contained in this document (the "Standard Terms") apply to any transaction whereby we (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 Order Form ("Order Form")) (1) license rights to use our Software for a fixed term, (2) Materials for use with the Software, or (3) Professional Services. These Standard Terms are an integral part of an agreement (the "Agreement") that consists of (in order of precedence) an Order Form, these Standard Terms, and any documents incorporated by reference into either the Order Form or Standard Terms (including those incorporated by hyperlink reference). ~~You acknowledge that the Order Form and the Standard Terms 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. We do not agree to any terms and conditions identified in a purchase order or other documentation that enhance any of our obligations or exposures beyond those identified in the resulting agreements.~~ **EO** The Agreement will be effective as of the Order Date specified on the Order Form and will be binding when the Order Form has been executed by you. We reserve the right to require your submission of one or more purchase orders in accordance with the terms outlined in your Order Form. Capitalized terms used throughout the Agreement are defined in the Order Form, in section 5.0 (below), and elsewhere in these Standard Terms. These Standard Terms may only be superseded or amended by other terms and mutually agreed upon conditions you and we have specifically documented here on 01/28/2019 in a signed Order Form. **EO** 1/28/19

**1.0 SOFTWARE:** The following terms and conditions will apply to your transaction with us as described in more detail on the Order Form:

**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 either own or have licensed from third parties all rights necessary to grant the licenses being granted you in the Software. We or our licensors own and retain all rights, title and interest in and to the Software and all ideas, concepts, methodologies, formats, specifications, and other know-how furnished by us or our licensors in connection with this Agreement, as well as all related intellectual property rights.

**1.1.3** All access and use of Software under this Agreement will be subject to our Privacy Policy, which can be found at <http://www.edmentum.com/Privacy> which is 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 license expiration date as identified on the Order Form. We reserve the right to suspend or revoke any license granted under this Agreement if you breach this Agreement.

**1.1.5** We reserve the right to terminate access to any Software to the extent we end of life or similar the Software. If we exercise this right we will transition you to an appropriate alternative Software product that we own or license.

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

**1.3 Software Operability:**

**1.3.1 Maintenance and Access.** During the Subscription Period, we will use commercially reasonable efforts to make the Software available (subject to routine maintenance windows and unavailability not caused by us) to you and your Users via the Internet 24 hours a day, 7 days a week. 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).

**1.3.2 Outage Periods.** The term "Outage Period" means a period of more than 48 consecutive hours in which your Users are prevented from accessing the Software due to factors completely within our control during a period that you are not in breach of this Agreement. Outage Periods exclude (a) planned downtime and (b) any Force Majeure event. If you experience an Outage Period, then upon your written request we will issue you a credit for the pro-rated share of fees you have paid for usage during the month during which the Outage Period occurs. Your request for this credit must be made within 30 days after the end of the Outage Period. Your sole and exclusive remedy for an Outage Period will be the above credit.

**1.4 System Requirements.** Our System Requirements document (found at <http://www.edmentum.com/support>) ("System Requirements") details the necessary hardware, software, system configuration, network infrastructure, bandwidth and other operational requirements necessary for you to successfully operate and use the Software. 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 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 Software, 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.

## 1.6 Intellectual Property

**1.6.1 Reservation of Rights.** The Software 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 Software and any Materials we provide, including all related intellectual property rights (except for those owned by our third-party vendors and licensors, which are reserved to them). No other rights are granted to you or your Users.

**1.6.2 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 to the extent that we do so in compliance with applicable law and our Online Learning Programs Privacy Policy.

**1.6.3 Suggestions.** We will have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Software any suggestions, enhancement requests, recommendations or other feedback provided by you or your Users relating to the Software.

### 1.6.4 Custom Learning Paths

- a. **Rights to Custom Learning Paths.** Certain Software allows you to customize the instructional content of the Software to suit your instructional needs. "Your Learning Paths" refers to the custom learning paths you create using this feature of the Software. We make no warranties or commitments related to your ability to access or use Your Learning Paths during the term of your licenses or at the expiration or termination of your licenses.
- b. **Our Use of Your Learning Paths.** We may use or modify Your Learning Paths and may provide them to our other customers.
- c. **Customer Created, Modified or Stored Content.** Certain Software enables 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.** Subject to the terms of Section 4.6, we warrant that the Software will perform in substantial accordance with the applicable Documentation during the Subscription Period. This warranty is contingent on your use of the Software in accordance with this Agreement and the applicable Documentation. If we breach this express warranty, and you promptly inform us of such in writing, we will at our option and expense: (a) modify the affected Software to generally conform with the applicable Documentation, or (b) provide a replacement for the affected Software which generally conforms with that Documentation, or (c) refund you the portion of your license price related to the applicable Software that is attributable to the remaining Subscription Period. 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 SOFTWARE WILL PERFORM UNINTERRUPTED OR BE ERROR-FREE OR THAT THE SOFTWARE WILL MEET YOUR PARTICULAR REQUIREMENTS.

**2.0 THIRD PARTY SOFTWARE AND SERVICES.** The following terms and conditions will apply to all Third-Party Software and Third Party Services.

**2.1 Subject to Third Party's Warranties and Terms.** Third Party Software and Third Party Services are distributed by us as a licensor, distributor or reseller. These products and services 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 ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, ON ANY THIRD-PARTY SOFTWARE AND SERVICES WE SUPPLY OR MAKE AVAILABLE TO YOU. IN ADDITION, WE DO NOT GUARANTEE THE AVAILABILITY OF SUCH THIRD-PARTY SOFTWARE OR SERVICES AND SUCH SOFTWARE 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 met 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 Professional 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 and acknowledge that by submitting a signed Order Form, you are representing to us that the employee or agent signing on your behalf has the requisite authority to bind you to the terms and conditions of the Agreement, including the payment obligations identified 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. To the extent that you fail to timely pay all amounts due as identified on the applicable Order Form, you accept that we can institute any and all collection efforts and legal claims that we deem appropriate and that you shall pay us for all costs and expenses (including attorney's fees) we incur in connection with such collection efforts and claims.

**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 will be deemed accepted upon our making it available to you online and will thereafter be subject to the limited 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 that is either designated as confidential or of a type that should be reasonably expected to be confidential. Confidential Information includes the Customer Data, our 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 and will provide, at the Discloser's request and cost, reasonable assistance to contest the disclosure.

**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 Users use of the Software in accordance with the terms of this Agreement, or any Materials furnished by us in connection with this Agreement infringes the intellectual property rights of a third party. We will have no indemnification obligations or other liability for any claim of infringement or misappropriation to the extent (a) based on specifications or directions you provided, (b) your use of a superseded or altered version of some or all of the Software or Materials if infringement would have been avoided by the use of a subsequent or unaltered release of the Software or Materials 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 Subscription 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 materials, data or information provided by you or your representatives 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 or Users negligence or intentional misconduct.

**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 you enter into our Software and will otherwise use reasonable commercial care, consistent with general industry practice, to protect such Customer Data against loss. We are not responsible for lost Customer Data. You will be responsible for the maintenance of Customer Data held in our Software or learning management systems and for replacing it if it is lost or destroyed 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 SECTIONS 1.7 OR 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 MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SOFTWARE PRODUCTS AND SERVICES 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 DURING THE PRIOR TWELVE MONTHS. 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 Form Date and will, unless earlier terminated in accordance with this section, continue in effect until the end of the last Subscription Period identified in the applicable Order Form.

**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 and Communication.** 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. To the extent that your license includes our

providing a virtual instructor associated with the licensed content, you accept and acknowledge that such virtual instructor may periodically be communicating with students and their parents and/or guardians.

**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 Minnesota, 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 Software 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 Software license to a single course assigned to a single, Named User. Within thirty days of the date in which a Consumable License is made available to a Named User, you may remove that Named User and reassign the Consumable License to a different Named User for future use although such reassignment shall not extend the original Subscription Period. The Subscription Period for a Consumable License begins upon the earlier of (i) when the course content is first accessed by any Named User or (ii) sixty days following the date that access is first made available to a 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, your teacher data and supplemental instructional materials.
- **“Documentation”** means the technical specifications and/or functionality particulars regarding the Software that we provide you with the Order Form, if any.
- **“Materials”** means those materials that we provide you, if any, in connection with your Software license and/or Professional Services purchases that your Users can use solely for their internal educational purposes during the applicable Subscription Period.
- **“Named User”** means a specific Student User identified by name and designated as the sole Student User of the 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. To the extent that you fail to execute and return the applicable Order Form to us, you accept and acknowledge that by using the Software (or any of your Users using the Software), you agree to the terms and conditions of this Agreement.
- **“Reusable License”** means a Software 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 Student User at any time until reassigned to another Named User.
- **“Software”** means the online educational software that is identified on the Order Form that we make available to your Users via our Internet-based learning management system. The term “Software” includes both our Software and Third Party Software.
- **“Professional Services”** means the services identified on the Order Form that we agree to provide to you to assist in your implementation and/or on-going use of the Software.
- **“Students”** means those of your students that are provided access to the Software.
- **“Site License”** means a Software License that may be accessed during the Subscription Term by all authorized Users located in the specific physical site identified on the Order Form.
- **“Program License”** means a Software License that may be accessed during the Subscription Term by the authorized number of Users identified on the Order Form.
- **“Subscription Period”** means the period of time during which you will have access to the Software you license under the Agreement. This period will begin with the start date identified in the applicable Order Form or upon processing of your PO in the event that dates are not identified upon the Order Form, and (unless earlier terminated, suspended or revoked in accordance with the Agreement) will last for the duration of your Software license access identified on the Order Form.
- **“Third Party Software”** means software or content that we license from a third party for license to our customers under licensing terms and conditions specified by the producer.
- **“Third Party Services”** means the services that you purchase from us that are identified on the Order Form and that are performed by an entity or individual other than our employees and independent contractors.
- **“Users”** means those Students that you supply (or authorize us to supply) user identifications and passwords to and for which you’ve purchased an adequate quantity of the applicable Software licenses for. Users may include one or more Students.
- **“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., or Education City, Inc.).





Date: 9/20/2016  
Order Number: 10437637  
Revision: 4  
Order Form Expiration Date: 12/20/2016

## ORDER FORM

Please fax all pages to 1.877.519.9555 or email to [orders@edmentum.com](mailto:orders@edmentum.com)  
To Pay by Credit Card: Call 214.294.9901 or e-mail [creditcardprocessing@edmentum.com](mailto:creditcardprocessing@edmentum.com)

### Customer and Billing Address

Customer No.: 124047  
Customer Name: BLACK HAWK COLLEGE  
Billing Address: 301 42nd Avenue  
East Moline, IL 61244

### Products and Services

Products	Quantity	License Start Date	License End Date	License Term (In Months)
Edmentum Higher Ed Post Sec Academic Library	30	4/13/2017	4/12/2018	12
Edmentum Adaptive Intervention Solution - Program License 100 Students	1	4/13/2017	4/12/2018	12
Edmentum Assessments Accucess	1	4/13/2017	4/12/2018	12
Edmentum Test Pack for the GED® Test	1	4/13/2017	4/12/2018	12
Edmentum Assessments Test Pack National	1	4/13/2017	4/12/2018	12
Edmentum Test Pack - HISET	1	4/13/2017	4/12/2018	12
Edmentum Educator Advantage Virtual Session Up To 3 Hours - Services Delivery Year: Year 1	1	***	***	
Subtotal:				\$20,025.00

Subtotal:	\$20,025.00
Estimated Tax:	\$0.00
Total US Funds:	\$20,025.00

\*\* Unless otherwise specified in this Order Form, the Start Date for your license(s) will be (a) for a renewal, the day following expiration of the prior license term and (b) with respect to all other licenses, promptly after we have accepted your signed Order Form, we will confirm to you the applicable Start Date for your software license(s).

\*\*\* Services are purchases with an annual term expiration. Any service offering that is not used during the applicable year, may not be carried over or used in subsequent years.

GED® is a registered trademark of the American Council on Education (ACE) and administered exclusively by GED Testing Service LLC under license. This material [or content] is not endorsed or approved by ACE or GED Testing Service.

### Order Notes

This purchase includes any state specific courses where applicable.

Edmentum | N.W. 7504, P.O. Box 1450 | Minneapolis, MN 55485-7504 | [www.edmentum.com](http://www.edmentum.com)







Date: 9/20/2016  
Order Number: 10437637  
Revision: 4  
Order Form Expiration Date: 12/20/2016

## ORDER FORM

Please fax all pages to 1.877.519.9555 or email to [orders@edmentum.com](mailto:orders@edmentum.com)  
To Pay by Credit Card: Call 214.294.9901 or e-mail [creditcardprocessing@edmentum.com](mailto:creditcardprocessing@edmentum.com)

## Invoicing and Payment Terms

Payment Due Date	Amount
4/13/2017	\$5,268.75
7/1/2017	\$14,756.25
Total:	\$20,025.00

## Terms and Conditions

For the purposes of this Order Form, "you" and "your" refer to Customer, and "we", "us" and "our" refer to edmentum Inc. and affiliates. This Order Form and any documents it incorporates (including the Standard Purchase and License Terms located at <http://www.edmentum.com/standardterms> and the documents it references) form the entire agreement between you and us ("Agreement"). You acknowledge that any terms and conditions in your purchase order or any other documents you provide that enhance our obligations or restrictions or contradict the Agreement do not have force and effect.

## 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 Agreements 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 Agreements 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](mailto:orders@edmentum.com).

Customer Signature:

Name (Printed or Typed):

Title: PRESIDENT

Date: 11/28/16







The terms and conditions contained in this document (the "**Standard Terms**") apply to any transaction whereby we (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 Order Form ("**Order Form**") (1) license rights to use our software products for a fixed term, (2) hardware for use with the software products, or (3) professional services. These Standard Terms are an integral part of an agreement (the "**Agreement**") that consists of (in order of precedence) an Order Form, these Standard Terms, and any documents incorporated by reference into either the Order Form or Standard Terms (including those incorporated by hyperlink reference). ~~You acknowledge that the Order Form and the Standard Terms 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.~~ The Agreement will be effective as of the Order Date specified on the Order Form and will be binding when the Order Form has been executed by you. We reserve the right to require your submission of a purchase order in connection with your order. Capitalized terms used throughout the Agreement are defined in the Order Form, in section 5.0 (below), and elsewhere in these Standard Terms. These Standard Terms may ~~only~~ be superseded or amended by other terms and conditions you and we have specifically documented in a signed Order Form. *MUTUALLY AGREED UPON W WRITTEN MGMT 11/22/16*

**1.0 SOFTWARE.** The following terms and conditions will apply to your transaction with us as described in more detail on the Order Form:

**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 either own or have licensed from third parties all rights necessary to grant the licenses being granted to the Software and Documentation. We or our licensors own and retain all rights, title and interest in and to the Software and all ideas, concepts, methodologies, formats, specifications, and other know-how furnished by us or our licensors in connection with this Agreement, as well as all related intellectual property rights.

**1.1.3** All access and use of Software under this Agreement will be subject to our Privacy Policy, which can be found at <http://www.edmentum.com/Privacy> which is 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 Order Form. We reserve the right to suspend or revoke any license granted under this Agreement if you breach this Agreement.

**1.1.5** We reserve the right to terminate the access to any Software to the extent we end of life or similar the Software. If we exercise this right we will transition you to an appropriate alternative Software product that we own or license.

**1.2 Restrictions.** You and your Users will use the Software and Documentation solely for the purposes stated in the applicable license grants and will not: (i) modify, copy or create derivative works based on the Software or Documentation; (ii) frame or mirror any content forming part of the Software or Documentation, other than for your own internal educational or training purposes and not in violation of an use or User restrictions; (iii) reverse engineer, decompile or disassemble the Software; (iv) access or allow others to access the Software or Documentation 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 Software; (v) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Software available to any third party, other than to Users as contemplated by this Agreement; (vi) send spam or otherwise unsolicited messages 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; (viii) intentionally send or store any viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents or programs; (ix) interfere with

or disrupt the integrity or performance of the Software or the data contained therein; (x) attempt to gain unauthorized access to the Software or its related systems or networks; or (xi) publicly display or publicly perform the Software or Documentation without our prior written permission.

### 1.3 Subscription Software Operability:

**1.3.1 Maintenance and Access.** During the Subscription Period, we will use commercially reasonable efforts to make the Subscription Software available (subject to routine maintenance windows and unavailability not caused by us) to you and your Users via the Internet 24 hours a day, 7 days a week. 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).

**1.3.2 Outage Periods.** The term "**Outage Period**" applies to Subscription Software and means a period of more than 48 consecutive hours in which your Users are prevented from accessing the Subscription Software due to factors completely within our control during a period that you are not in breach of this Agreement. Outage Periods exclude (a) planned downtime; or (b) any Force Majeure event. If you experience an Outage Period, then upon your written request we will issue you a credit for the pro-rated share of fees you have paid for usage during the month during which the Outage Period occurs. Your request for this credit must be made within 30 days after the end of the Outage Period. Your sole and exclusive remedy for an Outage Period will be the above credit.

**1.4 System Requirements.** Our System Requirements document (found at <http://www.edmentum.com/support>) ("System Requirements") details the necessary hardware, software, system configuration, network infrastructure, bandwidth and other operational requirements necessary for you to successfully operate and use the Software. 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 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 Software, 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.

### 1.6 Intellectual Property

**1.6.1 Reservation of Rights.** The Software 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 Software and Documentation, including all related intellectual property rights (except for those owned by our third party vendors and licensors, which are reserved to them). No other rights are granted to you or your Users.

**1.6.2 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 to the extent that we do so in compliance with applicable law and our Online Learning Programs Privacy Policy.

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

**1.6.4 Custom Learning Paths**

**a. Rights to Custom Learning Paths.** Certain Software allows you to customize the sequencing of instructional content to suit your instructional needs. “Your Learning Paths” refers to the custom learning paths you create using this feature of the Software. We make no warranties or commitments related to your ability to access or use Your Learning Paths during the term of your licenses or at the expiration or termination of your licenses.

**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 and will provide, at the Discloser's request and cost, reasonable assistance to contest the disclosure.

**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.

**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 Minnesota, 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 of 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.).





# Course Catalog

## Customer Privacy Policy

Effective Date: July 31, 2015

Edmentum is committed to protecting students' privacy. This Edmentum Online Customer Privacy Policy ("Policy") explains what personally identifiable information we collect from or about students through their use of our Online Learning Programs that our Customers (as defined below) have licensed from us and how we use, disclose, and otherwise process that information. This Policy does not apply to our general purpose website at <http://www.edmentum.com> or to anything other than our Online Learning Programs.

### Students' Access to Our Online Learning Programs

Our Online Learning Programs are provided to students under the age of 18 (or through high school graduation to the extent that occurs at age 18 or later) solely through fixed-term subscriptions purchased by schools, school districts, and other educational entities (our "Customers"). Edmentum's Online Learning Programs are not available to students under age 18 except when they are enrolled for access as an authorized user by one of our Customers. Our Customers are required to obtain any and all legally required consents and authorizations from a student's parent/guardian prior to their enrolling for access a student under age 18. Our Customers also dictate which aspects of our Online Learning Programs students are able to access.

### Your Consent

By using (or allowing your child/student to use) Edmentum's Online Learning Programs you (on behalf of yourself and your child/student) accept, and agree to be bound by, the terms of this Policy. If you do not accept and agree to the terms of this Policy, neither you nor your child/student may use our Online Learning Programs.

### Information We Collect and How We Use It

We collect the following information about students who use our Online Learning Programs:

- Personally identifiable information provided by the Customer who enrolled the student for access, by the student's parent/guardian, or by the student. This information may include information such as the student's name, name of school, grade level, and e-mail address.
- Browser information, such as IP address, the name of a student's operating system, the name and version of a student's browser, the date and time of a student's visit, and the pages the student visits. This information is not personally identifiable, but it can be linked to information that identifies a student, and we reserve the right to do so.
- Tracking information, including information collected by cookies, such as which pages students visit, which links they use, and how long they stay on each page. The tracking information we collect is not personally identifiable but can be linked to information that identifies a student, and we reserve the right to do so. Please note that a student's browser must be set to accept cookies for our Online Learning Programs to be fully functional.

We use the information we collect through our Online Learning Programs for educational, efficacy, program and business enhancement purposes and also for other purposes that are authorized or required by the Customer who enrolled the student for access and/or the student's parent/guardian. For example, we use students' login information to verify their identities, and we track certain activities so that educators know when students have completed assigned tasks. We may use information collected through our Online Learning Programs to improve those tools—for example, we may use information on students' performance to improve the programs' efficacy, we may use browser information to make our tools more compatible with the technology used by students, and we may use cookies to personalize students' experience when using our tools. However, we do not build profiles of students for any purpose other than to support authorized educational purposes (or as authorized by the student's parent/guardian), and we do not use students' information for any marketing or promotional purpose. We reserve the right to use the information we collect for security purposes—for example, to detect intrusions into our network.

### **Entities With Whom We Share Student's Information**

We share students' personally identifiable information with the Customer who enrolled the student for access to our Online Learning Programs. We may also share such information with vendors, suppliers, licensors and/or subcontractors ("Contractors") that perform services on our behalf. Our agreements with these Contractors generally contain confidentiality and non-disclosure provisions requiring that such Contractors maintain the confidentiality of any personally identifiable information that may be disclosed or made available to them so that Edmentum can use Contractor's product or services. We reserve the right to share students' personally identifiable information when we, in good faith, believe disclosure is appropriate to comply with the law, a court order or a subpoena. We may also disclose such information to prevent or investigate a possible crime, such as fraud or identity theft; to protect the security of our Online Learning Programs; or to protect our own rights or property or the rights, property or safety of our users or others. Finally, we reserve the right to transfer students' personally identifiable information to a successor organization if, for example, we transfer the ownership or operation of our Online Learning Programs to another organization, if we liquidate and sell our assets, or if we merge with or are acquired by another organization. If such a transfer occurs, the successor organization's use of students' personally identifiable information will still be subject to this Policy.

### **Children Under the Age of 13**

Our Customers determine which of their students will be enrolled for access to our Online Learning Programs, and our Customers determine what information about those students they will provide to Edmentum. For students under the age of 13, we require our Customers to obtain parental consent before enrolling the student. Even then, we do not knowingly collect personally identifiable information directly from children under the age of 13 through our Online Learning Programs. If you have knowledge that a child under the age of 13 has provided personally identifiable information to us, please contact us using the information provided below.

### **Security Measures and Data Retention**

Edmentum maintains a comprehensive security program that is reasonably designed to protect the security, privacy, confidentiality, and integrity of students' personally identifiable information against risks—such as unauthorized access or use or unintended or inappropriate disclosure—through the use of administrative, technological, and physical safeguards appropriate to the sensitivity of the information. However, we cannot guarantee the security of information provided over the Internet or stored in our databases and will not be responsible for breaches of security beyond our reasonable control.

Unless students and their parents/guardians separately authorize us to do so, we will not knowingly retain students' personally identifiable information beyond the time period required to support the educational and

other purposes authorized by the Customer, except that we reserve the right to retain data on backed-up, electronically stored records, the destruction of which would be unreasonably burdensome.

### **Requests for Access and Deletion of Student's Personally Identifiable Information**

Any student or parent/guardian who is interested in accessing the information Edmentum stores about the student should request such information from their student's school (Edmentum's Customer). Likewise, requests to have a student's information modified or deleted should be directed to the student's school. Edmentum will work with its Customers to respond to all reasonable requests for access, modification, or deletion that the Customers receive and will comply with all applicable laws regarding data retention/destruction. However, there are various circumstances when Edmentum may deny a request for access, modification, or deletion, including (but not limited to) when Edmentum believes that applicable law or a court order requires it to retain information, when Edmentum believes that retention of the information is necessary to protect its rights, or when the request extends to backed-up, electronically stored records, the destruction of which would be unreasonably burdensome.

### **Links to Other Web Sites**

Our Online Learning Programs may contain links to third-party web sites. These web sites are independently owned, controlled, and/or managed web sites whose content we believe will be of possible interest and value to our Customers and their students. However, Edmentum does not control these sites or their data privacy and security practices. Once you leave our Online Learning Programs, the use of any information you provide is governed by the privacy policy of the operator of the site you're visiting. That policy may differ from ours. We specifically recommend that children check with their parents or teachers before clicking links to any third-party sites.

### **Edmentum Assurances Related to the Family Educational Rights Privacy Act**

Edmentum understands that many of its Customers are subject to the Family Educational Rights Privacy Act ("FERPA") and provides a list of FERPA-related assurance to our Customers. Students and their parents/guardians may obtain a copy of those assurances upon request, by contacting the student's school or by contacting Edmentum using the information provided below. Edmentum's FERPA assurance statement can also be accessed [here](#).

### **Student Privacy Pledge**

Edmentum is a current signatory to the Student Privacy Pledge. As a signatory, Edmentum uses commercially reasonable efforts to comply with the commitments made as a signatory. Specific details on the Pledge can be found at <http://www.studentprivacypledge.org>.

### **Changes to This Policy**

If this Policy changes, the revised policy will be posted on our website. We will not make material changes without first providing prominent notice to our Customers. When reasonably able to do so, we will also provide prominent notice to students who use our Online Learning Programs and their parents/guardians, but generally we rely on our Customers to alert students and their parents/guardians to changes. Before using students' information in a manner inconsistent with the privacy policy in effect at the time it was collected, we will first provide students a chance to opt-in or opt-out (depending on applicable law) of such use. This Policy was last updated on July 31, 2015.

### **Contact Information**

Please contact us at [privacy@edmentum.com](mailto:privacy@edmentum.com) if you have any questions or comments about this Policy. You can also contact us by general mail or phone listed below. General comments about our web site can be directed to [info@edmentum.com](mailto:info@edmentum.com).

**General Mail**

Edmentum

5600 W 83rd Street, Suite 300

8200 Tower

Bloomington, Minnesota, 55437

**Toll-Free Number**

800.447.5286