



Date: 8/25/2020  
Order Number: Q-284541  
Revision: 1  
Order Form Expiration Date: 11/23/2020

## 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.: 433942  
Customer Name: City of Pembroke Pines Charter School System  
Billing Address: 17189 Sheridan St  
Pembroke Pines, FL 33331

### Products and Services

#### Pembroke Pines MS W

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island Silver Onboarding Package	1	**	**	12
Pembroke Pines MS W Subtotal:				\$2,500.00

#### Pembroke Pines MS C

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island Silver Onboarding Package	1	**	**	12
Pembroke Pines MS C Subtotal:				\$2,500.00

Subtotal:	\$5,000.00
Estimated Tax:	\$0.00
Total US Funds:	\$5,000.00

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

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

### Invoicing and Payment Terms

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

### 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.

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### Purchase Order

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

### Acceptance

This offer will expire on the Order Form Expiration Date noted above unless we earlier withdraw or extend the offer in writing. I represent that I have read the terms and conditions included in this Agreement, that I am authorized to accept this offer and the 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:

Date:

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Date: 8/25/2020  
Order Number: Q-284534  
Revision: 1  
Order Form Expiration Date: 11/23/2020

## ORDER FORM

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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.: 433942  
Customer Name: City of Pembroke Pines Charter School System  
Billing Address: 17189 Sheridan St  
Pembroke Pines, FL 33331

### Products and Services

#### Pembroke Pines MS W

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island: Math Library - Program License	665	9/1/2020	2/28/2021	6
Study Island: ELA Library - Program License	665	9/1/2020	2/28/2021	6
Pembroke Pines MS W Subtotal:				\$2,739.80

#### Pembroke Pines MS C

Products	Qty	License Start Date	License End Date	License Term (Months)
Study Island: Math Library - Program License	680	9/1/2020	2/28/2021	6
Study Island: ELA Library - Program License	680	9/1/2020	2/28/2021	6
Pembroke Pines MS C Subtotal:				\$2,801.60

Subtotal:	\$5,541.40
Estimated Tax:	\$0.00
Total US Funds:	\$5,541.40

\*\* 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.

### Invoicing and Payment Terms

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

### 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.

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### 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: \_\_\_\_\_

Date: \_\_\_\_\_

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## 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. 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 conditions you and we have specifically documented in a signed Order Form.

**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, 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.).

Florida

Change Location?

# Online Privacy Policy

## Edmentum Online Privacy Policy (hereinafter referred to as our “Privacy Notice” or “Notice”)

Effective Date: July 31, 2015

Edmentum Inc. (“Edmentum,” “we,” “us,” and “our”) owns and operates this website. This Notice describes our commitment to privacy and reflects the importance we place on earning and keeping your trust.

If you have any questions about this Notice or our privacy practices, please contact us by e-mail at [info@edmentum.com](mailto:info@edmentum.com), by phone at 800-447-5286, or by mail at Edmentum, 5600 West 83<sup>rd</sup> Street, Suite 300 8200 Tower, Bloomington, MN 55437.

## Scope of This Notice

This Notice applies to the information we collect from or about individuals through the publicly available portions of Edmentum.com (this “Site”). It does not apply to information we collect through other channels, such as over the phone or in person. It also does not apply to information we collect from or about students through our Online Learning Programs licensed by our customers, which can be accessed through this Site only with a login and password. To understand our data privacy/security practices with regard to our Online Learning programs licensed by our customers, click here (<https://www.edmentum.com/privacy>) to review Edmentum’s Online Customer Privacy Policy.

Some of the information we collect through this Site may be “personal

information”—information that identifies you personally, alone or in combination with other information available to us. Other information may be nonpersonally identifiable, such as your IP address.

We have provided this Notice so that you will know what information we collect, how we use this information, the types of third parties with whom we may share this information, and some of the choices that are available to you.

## Your Consent

Please take a few minutes to review this Notice before using this Site. By using this Site you are consenting to the collection, use, and disclosure of your information as set forth in this Notice. If you do not agree to be bound by this Notice, you may not access or use this Site.

## This Notice is Part of Our Terms of Use

This Notice is part of the Terms of Use (<https://www.edmentum.com/terms-of-use>) that govern your use of this Site. A link to our Terms of Use is also provided at the bottom of this Site.

## Your Choices

*In General.* We respect your right to make choices about the ways we collect, use, and disclose the information you provide on or through this Site. We strive to provide choices to you at a meaningful time and in a meaningful place. This Notice describes some of your other choices, such as your choice to opt out of receiving “cookies.”

*Do Not Track Mechanisms.* Your browser may deliver a “Do-Not-Track (‘DNT’) signal” to this Site. Because of the changing state of technology and indecision within the technology and marketing industries regarding the meaning of DNT signals, we currently do not make any guarantee that we will honor DNT signals.

*Previously Expressed Preferences.* You may change previously expressed preferences regarding how we use information you provide on or through this Site. For example, if you have provided your contact information and receive periodic emails from us, you may decide to stop receiving those emails by clicking the “unsubscribe” link in an email’s footer. You may be able to change

other preferences through an account you create on this Site to the extent that we provide that option to our visitors. Otherwise, please contact us using the information provided above.

## This Notice May Change

This Notice describes our current policies and practices with regard to the information we collect through this Site.

We are continually improving and adding to the features and functionality of this Site and the services we offer through this Site. As a result of these changes (or changes in the law), we may need to update or revise this Notice.

Accordingly, we reserve the right to update or modify this Notice at any time, without prior notice, by posting the revised version of this Notice behind the link marked "Online Privacy Policy" at the bottom of each page of this Site.

Your continued use of this Site after we have posted the revised Notice constitutes your agreement to be bound by the revised Notice. However, we will honor the terms that were in effect when we gathered information from you. You may access the current version of this Notice at any time by clicking the link marked "Online Privacy Policy" at the bottom of each page of this Site.

## Types of Information We Collect

*Information You Manually Provide.* We collect the information you manually provide (using your keyboard, mouse, or touchscreen) when you use this Site. For example, we collect the information you provide when you complete a contact form, reach out to us with questions, or otherwise interact with this Site. Some of the information you manually provide may be personal information, such as your name and contact information.

*Information from your browser or device.* We collect information that is sent to us automatically by your web browser and/or mobile device. This information typically includes your IP address, the name of your operating system, the name and version of your browser, the date and time of your visit, and the pages you visit. The information we receive may depend on your browser or device.

visit. The information we receive may depend on your browser or device settings.

The information we receive from your web browser and device is not, in and of itself, personally identifiable. Generally, we use this information in the aggregate to help us improve this Site and make it more compatible with the technology used by our visitors. However, we may combine it with other information in an attempt to identify you or we may combine it with information that does identify you.

*Information Collected by Cookies and Other Technologies.* We use “cookies,” web beacons, and other technologies to collect information. For example, we may use these technologies to collect information about the ways visitors use this Site—which pages they visit, which links they use, and how long they stay on each page. We also use these technologies to support certain features of this Site. For example, we use these technologies to personalize your experience when you use this Site and to save you the trouble of reentering information already in our database or to prompt the settings you established on previous visits.

The information we collect using cookies and similar technologies is not, in and of itself, personally identifiable, but we may link it to personal information that you provide. If you do not wish to receive cookies, you may set your browser to reject cookies or to alert you when a cookie is placed on your computer. Although you are not required to accept cookies when you visit this Site, you may be unable to use all of the functionality of this Site if your browser rejects our cookies.

## How We Use Personal Information Collected Through **This Site**

Generally, we use the information we collect through this Site:

- to provide the information, products and services you request;
- to provide you with effective customer service;
- to provide you with a personalized experience when you use this Site;
- to contact you with information and notices related to your use of this Site;
- to contact you with special offers and other information we believe will be of interest to you (in accordance with any privacy preferences you have expressed to us);
- to invite you to participate in surveys and provide Feedback to us (in accordance with any

- to invite you to participate in surveys and provide feedback to us (in accordance with any privacy preferences you have expressed to us);
- to improve the content, functionality and usability of this Site;
- to better understand your needs and interests;
- to improve our products and services;
- to improve our marketing and promotional efforts;
- for security, credit or fraud prevention purposes; and
- for any other purpose identified in any other applicable agreement between you and us.

## Information About Third-Party Cookies

In addition to the cookies we deliver to your computer or mobile device through this Site, certain third parties may deliver cookies to you for a variety of reasons. For example, we use Google Analytics, a web analytics tool that helps us understand how visitors engage with our Sites. To learn more about Google Analytics, click here.

(<http://www.google.com/intl/en/analytics/privacyoverview.html>)

Other third parties may deliver cookies to your computer or mobile device for the purpose of tracking your online behaviors over time and across nonaffiliated websites and/or delivering targeted advertisements either on this Site or on other websites.

You have choices about the collection of information by third parties on our Sites. For example, if you don't want information about your visit to this Site sent to Google Analytics, you may download an Opt-out Browser Add-on by clicking here. (<http://tools.google.com/dlpage/gaoptout?hl=en>) Please note that the Add-on does not prevent information from being sent to us.

In addition, if you would like to opt-out of having interest-based information collected by certain entities during your visits to this Site or other websites, please click here. (<http://www.aboutads.info/choices>) You will be directed to an industry-developed website that contains mechanisms for choosing whether each listed entity may collect and use data for online behavioral advertising purposes. It may be that some of the third parties that collect interest-based information on this Site do not participate in the industry-developed opt-out website, in which case the best way to avoid third-party tracking of your online behaviors may be through your browser settings and deletion of cookies.

## How to Access, Update or Correct Your

# How to Access, Update or Correct Your Information

If you have created an account on this Site, you may be able to access, update or correct your information through your account settings. Otherwise, you may need our help. Please contact us using the information provided above. We will respond to you within a reasonable time and, in any case, within the time limits established by applicable law. We may ask you for additional information to verify your identity. In most cases, we will provide access and correct or delete any inaccurate information you discover. In some cases, however, we may limit or deny your request if the law permits or requires us to do so or if we are unable to verify your identity.

## Steps We Take to Safeguard your Personal Information

We maintain reasonable administrative, physical and technological measures to protect the confidentiality and security of information you submit on or through this Site. Unfortunately, no website, server or database is completely secure or “hacker proof.” We therefore cannot guarantee that your information will not be disclosed, misused or lost by accident or by the unauthorized acts of others.

## How We Share Your Information

*With Third-Party Vendors.* We may share information collected through this Site with third-party vendors who act for us or on our behalf. For example, we use third-party vendors to design and operate this Site; to conduct surveys; and to help us with our promotional efforts. These third-party vendors may need information about you to perform their functions.

*With Our Affiliates.* We may share the information collected through this Site with our affiliate companies. These affiliate companies are permitted to use your information for their own marketing purposes and in a manner otherwise consistent with this Notice. However, before sharing your information in this fashion, we may offer you the opportunity to “opt out” or “opt in,” to the extent required by applicable law.

*With Other, Carefully Selected Business Partners.* From time to time, we may share your information with selected third parties for their own marketing purposes. For example, we may partner with third parties to sponsor contests or other promotions, and we may share with these third parties the information you submit to us to participate in the contest or take advantage of the promotion. Before doing so, however, we may offer you the opportunity to “opt out” or “opt in,” to the extent required by applicable law.

*In Aggregate or De-identified Form.* We use information collected through this Site to create a compiled, aggregate view of usage patterns. We may share aggregate information with third parties so they can better understand our user base. We may also share with third parties information about how particular individuals use this Site, but only when the data has been de-identified cannot reasonably be re-identified. (“Individualized Data”). Individualized Data is not personally identifiable, but it does reflect the usage patterns of a particular Site user, as opposed to Site users collectively. We may provide basic demographic information (gender and age) in conjunction with providing Individualized Data. Third parties typically use this information for analytical purposes and to market their own products and services.

*As Part of a Business Transfers.* Your information may be transferred to successor organization if, for example, we transfer the ownership or operation of this Site to another organization or if we merge with or are acquired by another organization, or if we liquidate our assets and sell them individually. If such a transfer occurs, the successor organization’s use of your information will still be subject to this Notice and the privacy preferences you have expressed to us.

*To Comply with Laws and Protect Our Rights and the Rights of Others.* We may disclose your 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 your information to prevent or investigate a possible crime, such as fraud or identity theft; to protect the security of this Site; to enforce or apply our online Terms of Use (<https://www.edmentum.com/terms-of-use>) or other agreements; or to protect our own rights or property or the rights, property or



safety of our users or others.

*As Described in any other Applicable Notice.* We reserve the right to disclose your information as described in any privacy notice posted on a page of this Site where you provide that information. By providing your information on that page you will be consenting to the disclosure of your information as described in that privacy notice.

*As Described in a Click-Through Agreement.* We reserve the right to disclose your information as described in any click-through agreement to which you have agreed.

## Children Under the Age of Thirteen

We are proud of this Site and we strive to ensure that it does not offend people of any age. However, this Site is not intended for children or minors under the age of thirteen years without the permission of a parent or guardian. If you believe that a child has submitted personal information on or through this Site without the consent and supervision of a parent or guardian, please contact us using the information provided above so that we can take appropriate action.

## Links to Other Sites

This Site may contain links to websites operated by other organizations, including websites operated by our third-party service providers and other third parties. This Notice does not apply to information collected on any of these third-party websites. When you access third-party websites through a link on this Site, please take a few minutes to review the privacy notice posted on that site.

## Governing Law

This Notice shall be governed under the laws of the State of Minnesota United States of America without regard to its conflicts of law provisions.

# Connect



(<https://www.facebook.com/Edmentum>)



(<https://www.linkedin.com/company/edmentum>)



(<https://www.youtube.com/user/edmentum>)



(<https://twitter.com/edmentum>)



(<https://www.pinterest.com/edmentum/>)



(<http://blog.edmentum.com/rss>)

**toll-free: 800.447.5286 (tel:+18004475286)**

**email: [info@edmentum.com](mailto:info@edmentum.com) (mailto:info@edmentum.com)**

2425 N Central Expressway

Suite 1000

Richardson, TX 75080

5600 West 83rd Street

Suite 300, 8200 Tower

Bloomington, MN 55437



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**Privacy Policy**  
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**Do Not Sell My Info.**  
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**Terms of Use** (/terms-of-use)

**Safety Protocols**  
(/2020safety)

**Site Map**  
(/sitemap)

**Media Kit**  
(/media-kit)

**Careers**  
(/about/careers)

**Blog**  
(<http://blog.edmentum.com>)

## **Addendum to Agreement with Edmentum, Inc.**

The following shall be included as part of the **Standard Service Purchase and Software License Agreement** ("Agreement") between the City of Pembroke Pines ("CITY") and **Edmentum, Inc.** ("EDMENTUM"). In the event of any conflict between the language in the Agreement document and this Addendum, the terms of this Addendum shall take precedence.

### **1. Payment Terms**

All payments shall be governed by the Local Government Prompt Payment Act, as set forth in Part VII, Chapter 218, Florida Statutes.

### **2. Assurances Related to the Family Educational Rights Privacy Act**

2.1 EDMENTUM understands that many of its agency and institutional clients are subject to the Family Educational Rights Privacy Act ("FERPA") and provides this statement of its data protection practices to provide assurance to those clients.

2.2 To the extent EDMENTUM receives from its clients education records (as that term is defined by FERPA), EDMENTUM notes that the client chooses what information to provide to EDMENTUM and also configures who---e.g., employees, students, parents---has access to that information via the EDMENTUM product/system. In addition, EDMENTUM offers the following assurances:

2.2.1 EDMENTUM provides reasonable security for the education records (and the personally identifiable information contained therein) and only those EDMENTUM employees and agents with a "need to know" have access to the education records.

2.2.2 EDMENTUM does not use education records for any purpose other than the purposes for which the information was provided to EDMENTUM or in attempting to enhance the usability or efficacy of our products, services and systems.

2.2.3 EDMENTUM does not disclose education records to third parties, other than its agents and service providers, except at the direction of the client who provided the education records to EDMENTUM. With limited exceptions, EDMENTUM's agents and service providers use the education records only to perform services on EDMENTUM's behalf.

2.2.4 EDMENTUM will consider destroying education records upon the written request of the client who provided the education records. There are various circumstances when EDMENTUM may deny the request, including (but not limited to) when EDMENTUM believes that applicable law or court order requires it to retain the education records, when EDMENTUM believes that retention of the education records is necessary to protect its rights, or when the request extends to backed-up, electronically stored education records, the destruction of which would be unreasonably burdensome.

2.3 If CITY has additional questions about EDMENTUM's data protection practices as they relate to education records received from its clients, CITY will contact its EDMENTUM account representative.

### **3. Insurance**

3.1 EDMENTUM shall indemnify and hold harmless the CITY and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the CITY or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by EDMENTUM or its employees, agents, servants, partners, principals or subcontractors. EDMENTUM shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the CITY, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may issue thereon. EDMENTUM expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by EDMENTUM shall in no way limit the responsibility to indemnify, keep and save harmless and defend the CITY or its officers, employees, agents and instrumentalities as herein provided.

3.2 EDMENTUM shall not commence work under this Agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the Risk Manager of the CITY nor shall EDMENTUM allow any subcontractor to commence work on any subcontract until all similar such insurance required of the subcontractor has been obtained and similarly approved.

3.3 Certificates of Insurance, reflecting evidence of the required insurance, shall be filed with the CITY's Risk Manager prior to the commencement of this Agreement. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. The insurance company shall be rated no less than "A" as to management, and no less than "Class VI" as to financial strength according to the latest edition of Best's Insurance Guide published by A.M. Best Company.

3.4 Certificates of Insurance shall provide for thirty (30) days' prior written notice to the CITY in case of cancellation or material changes in the policy limits or coverage states. If the carrier cannot provide thirty (30) days' notice of cancellation, either EDMENTUM or their Insurance Broker must agree to provide notice.

3.5 Insurance shall be in force until all obligations required to be fulfilled under the terms of the Agreement are satisfactorily completed as evidenced by the formal acceptance by the CITY. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, EDMENTUM shall furnish, at least forty-five (45) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect. EDMENTUM shall neither commence nor continue to provide any services pursuant to this Agreement unless all required insurance remains in full force and effect. EDMENTUM shall be liable to CITY for any lapses in service resulting from a gap in insurance coverage.

### 3.6 REQUIRED INSURANCE

EDMENTUM shall be required to obtain all applicable insurance coverage, as indicated below, prior to commencing any work pursuant to this Agreement:

Yes No

✓ ☐ 3.6.1 Comprehensive General Liability Insurance written on an occurrence basis including, but not limited to: coverage for bodily injury and property damage, personal & advertising injury, products &

completed operations, and contractual liability. Coverage must be written on an occurrence basis, with limits of liability no less than:

1. Each Occurrence Limit - \$1,000,000
2. Personal & Advertising Injury Limit - \$1,000,000
3. General Aggregate Limit - \$2,000,000
4. Products & Completed Operations Aggregate Limit - \$2,000,000

Products & Completed Operations Coverage shall be maintained for the later of three (3) years after the delivery of goods/services or final payment under the Agreement.

**The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.**

Yes No

- ✓ ☐ 3.6.2 Workers' Compensation and Employers' Liability Insurance covering all employees, and/or volunteers of EDMENTUM engaged in the performance of the scope of work associated with this Agreement. In the case any work is sublet, EDMENTUM shall require the subcontractors similarly to provide Workers' Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by EDMENTUM. Coverage for EDMENTUM and all subcontractors shall be in accordance with applicable state and/or federal laws that may apply to Workers' Compensation Insurance with limits of liability no less than:

1. Workers' Compensation: Coverage A – Statutory
2. Employers Liability: Coverage B \$500,000 Each Accident  
\$500,000 Disease – Policy Limit  
\$500,000 Disease – Each Employee

If EDMENTUM claims to be exempt from this requirement, EDMENTUM shall provide CITY proof of such exemption for CITY to exempt EDMENTUM.

### 3.7 REQUIRED ENDORSEMENTS

- 3.7.1 The City of Pembroke Pines shall be named as an Additional Insured on each of the Liability Policies required herein.
- 3.7.2 Waiver of all Rights of Subrogation against the CITY.
- 3.7.3 Thirty (30) Day Notice of Cancellation or Non-Renewal to the CITY.
- 3.7.4 EDMENTUM's policies shall be Primary & Non-Contributory.
- 3.7.5 All policies shall contain a "severability of interest" or "cross liability" clause without obligation for premium payment of the CITY.
- 3.7.6 The City of Pembroke Pines shall be named as a Loss Payee on all Property and/or Inland Marine Policies as their interest may appear.

- 3.8 Any and all insurance required of EDMENTUM pursuant to this Agreement must also be required by any subcontractor in the same limits and with all requirements as provided herein, including naming the

CITY as an additional insured, in any work that is subcontracted unless such subcontractor is covered by the protection afforded by EDMENTUM and provided proof of such coverage is provided to CITY. EDMENTUM and any subcontractors shall maintain such policies during the term of this Agreement.

3.9 The CITY reserves the right to require any other additional types of insurance coverage and/or higher limits of liability it deems necessary based on the nature of work being performed under this Agreement.

3.10 The insurance requirements specified in this Agreement are minimum requirements and in no way reduce any liability EDMENTUM has assumed in the indemnification/hold harmless section(s) of this Agreement.

#### **4. Sovereign Immunity**

Nothing contained herein is intended nor shall be construed to waive CITY's rights and immunities under the common law or Section 768.28, Florida Statutes, as may be amended from time to time.

#### **5. Non-Discrimination & Equal Opportunity Employment**

During the performance of the Agreement, neither EDMENTUM nor any subcontractors shall discriminate against any employee or applicant for employment because of race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. EDMENTUM will take affirmative action to ensure that employees are treated during employment, without regard to their race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. Such actions must include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. EDMENTUM shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. EDMENTUM further agrees that EDMENTUM will ensure that subcontractors, if any, will be made aware of and will comply with this nondiscrimination clause.

#### **6. Uncontrollable Forces**

6.1 Neither CITY nor EDMENTUM shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

6.2 Neither party shall, however, be excused from performance if nonperformance is due to forces, which are preventable, removable, or remediable, and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

7. **Public Records**

7.1 The City of Pembroke Pines is a public agency subject to Chapter 119, Florida Statutes. EDMENTUM shall comply with Florida's Public Records Law. Specifically, EDMENTUM shall:

7.1.1 Keep and maintain public records required by the CITY to perform the service;

7.1.2 Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

7.1.3 Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and, following completion of the Agreement, EDMENTUM shall destroy all copies of such confidential and exempt records remaining in its possession after EDMENTUM transfers the records in its possession to the CITY; and

7.1.4 Upon completion of the Agreement, EDMENTUM shall transfer to the CITY, at no cost to the CITY, all public records in EDMENTUM's possession. All records stored electronically by EDMENTUM must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.

7.2 The failure of EDMENTUM to comply with the provisions set forth in this Article shall constitute a default and breach of this Agreement, for which, the CITY may terminate the Agreement in accordance with the terms herein.

**IF EDMENTUM HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO EDMENTUM'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY CLERK  
601 CITY CENTER WAY, 4<sup>th</sup> FLOOR  
PEMBROKE PINES, FL 33025  
(954) 450-1050  
[mgraham@ppines.com](mailto:mgraham@ppines.com)**

8. **Scrutinized Companies**

EDMENTUM, its principals or owners, certify that they are not listed on the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are engaged in business operations with Syria. In accordance with Section 287.135, Florida Statutes, as amended, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with any agency or local governmental entity for goods or services if:

8.1 Any amount of, at the time bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel; or

8.2 One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company:

8.2.1 Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes; or

8.2.2 Is engaged in business operations in Syria.

9. **Notice**

Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, EDMENTUM and CITY designate the following as the respective places for giving of notice:

CITY                      Charles F. Dodge, City Manager  
City of Pembroke Pines  
601 City Center Way, 4<sup>th</sup> Floor  
Pembroke Pines, Florida 33025  
Telephone No.            (954) 450-1040

Copy To:                Samuel S. Goren, City Attorney  
Goren, Cherof, Doody & Ezrol, P.A.  
3099 East Commercial Boulevard, Suite 200  
Fort Lauderdale, Florida 33308  
Telephone No.            (954) 771-4500  
Facsimile No.            (954) 771-4923

EDMENTUM            **Ana Baez, Partnership Manager**  
**Edmentum, Inc.**  
**5600 W. 83 Street**  
**Bloomington, MN 55437**  
**E-mail:                    [ana.baez@edmentum.com](mailto:ana.baez@edmentum.com)**  
**Telephone No:            (772) 214-5400**

10. **Attorneys' Fees**

In the event that either party brings suit for enforcement of this Agreement, each party shall bear its own attorney's fees and court costs, except as otherwise provided under the indemnification provisions set forth herein above.



11. **Binding Authority**

Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

12. **Counterparts and Execution.** This Agreement may be executed by hand or electronically in multiple originals or counterparts, each of which shall be deemed to be an original and together shall constitute one and the same agreement. Execution and delivery of this Agreement by the Parties shall be legally binding, valid and effective upon delivery of the executed documents to the other party through facsimile transmission, email, or other electronic delivery.

**THE REMAINDER OF THIS PAGE**

**HAS BEEN INTENTIONALLY LEFT BLANK**

**IN WITNESS OF THE FOREGOING**, the Parties have set their hands and seals the day and year first written above.

**CITY:**

CITY OF PEMBROKE PINES, FLORIDA

ATTEST:

\_\_\_\_\_  
MARLENE GRAHAM,  
CITY CLERK

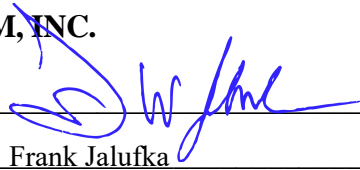
BY: \_\_\_\_\_  
CHARLES F. DODGE  
CITY MANAGER

APPROVED AS TO FORM.

\_\_\_\_\_  
Name: \_\_\_\_\_  
OFFICE OF THE CITY ATTORNEY

**EDMENTUM**

**EDMENTUM, INC.**

Signed By:  \_\_\_\_\_

Print Name: Frank Jalufka

Title: Chief Financial Officer