

**ORANGE COUNTY  
BOARD OF EDUCATION**

**AGENDA ITEM ABSTRACT**

**Meeting Date:** August 12, 2013

**AGENDA ITEM No.** 13-08-07

**ACTION: (Y/N)** Y

**SUBJECT:** Edmentum, Inc. Contract Approval

**INFO. CONTACT:** Dr. Denise Morton, Ryan Miller **PHONE:** (919)732-8126

**ATTACHMENTS:** 1. Attachment: Edmentum, Inc. Contract for Study Island Software

---

**PURPOSE:** To consider approving a contract with Edmentum, Inc. who will provide Study Island software to grades 3-12 for the 2013-2014 school year.

**BACKGROUND:** Edmentum, Inc. is a leading provider of online learning programs designed to drive student achievement for academic and career success. With more than 50 years of experience, Edmentum offers a wide variety of innovative learning programs to help support teaching and learning.

Edmentum provides a product called Study Island for grades 3-12. Study Island helps students master state-specific, grade-level academic standards in a fun and engaging manner. Based on a review of last year's usage of Study Island for grades 6-12, the software was widely and consistently used throughout the year.

The contract has been reviewed by the board attorney with recommended changes. Edmentum representatives have replied via email on August 7, 2013 requesting further clarification on Section 7.2 as it relates to legal terms and conditions and changes to the ending date of the contract. The board attorney and Edmentum representative will discuss these requests and make final edits.

**FINANCIAL IMPACT:** Funding is available in Program Code 69 – at-risk funds – to pay the annual usage fee of \$76,791.62 for the 2013-2014 school year.

**RECOMMENDATION:** The Superintendent recommends the Board of Education approve the contract subject to final acceptance of the terms by the superintendent and board attorney with the Edmentum, Inc. Company to provide Study Island software to grades 3-12 for the 2013-2014 school year.

## LICENSE AGREEMENT

**THIS LICENSE AGREEMENT** ("Agreement") is entered into as of August 15, 2013 by and between **Edmentum, Inc.**, a Delaware corporation ("Licensor"), with its principal office at 5600 West 83<sup>rd</sup> Street, Suite 300, Bloomington, MN 55437, and **Orange County Board of Education** ("Licensee"), the governing body of the Orange County Schools ("OCS"), a public school district in the State of North Carolina ("State"). Licensor and Licensee are each a "Party" and collectively the "Parties" for purposes of this Agreement.

### RECITALS

**WHEREAS** Licensor has certain Intellectual Property (as defined below) rights relating to certain software programs for web-based state assessment preparation and standards-based learning, including, without limitation, the Licensed Materials (as defined below); and

**WHEREAS** Licensee desires to receive, and Licensor desires to grant to Licensee, a non-exclusive license to access and use the Licensed Materials on the terms and subject to the conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Licensor and Licensee agree as follows:

### AGREEMENT

#### 1. DEFINITIONS.

1.1 "**Administrators/Staff**" means any individuals employed or otherwise retained by Licensee or any School to perform managerial or administrative functions at any School.

1.2 "**Adult Parent/Guardian**" means any adult who is either a parent of or a guardian with responsibility for the care and management of a Student.

1.3 "**Affiliate**" means, with respect to Licensor, any entity controlling, controlled by or under common control with such Licensor. For the purposes of this definition, "control" means the possession, directly or indirectly, of the power to direct the management and policies of an entity whether through the ownership of voting securities, contract or otherwise.

1.4 "**Authorized Users**" means Students, Teachers, Adult Parent/Guardian(s), Instructional Aides and Administrators/Staff.

1.5 "**Confidential Information**" of a Party means trade secrets of Licensor, confidential and proprietary designs, computer programs and code (including, without limitation, source code and object code), machines, devices, systems, products, sales, supplier lists, client lists, employee lists and information, and investor lists of Licensor; student and parent lists, student educational records and employee personnel records maintained by Licensee; and information and personnel and financial information of Licensor and confidential and proprietary information related to Licensor's past, present and future research, data, business, products, services, business strategies, marketing plans, development and business activities, work in process, product and service development, marketing plans and personnel, whether in oral, written, graphic or electronic form.

1.6 **"Instructional Aides"** means any individuals (other than Teachers and Administrators/Staff) employed or otherwise retained by Licensee or any School and involved in supporting, facilitating or assisting in the provision of instruction to, and/or assessment and/or other educational support of, Students.

1.7 **"Intellectual Property"** means any patents, patent rights, trademarks, service marks, trade names, trade dress, copyrights, works of authorship, trade secrets and other intellectual property and industrial property rights, and all registrations and applications for any of the foregoing.

1.8 **"Licensed Materials"** means (a) Licensor's web-based state assessment preparation programs and standards-based learning programs for the purposes of administering pre- and/or post-tests to students set forth in Exhibit A attached hereto and any additional programs of Licensor as the Parties may mutually agree in writing to add to Exhibit A during the Term and (b) any documentation or user guides for any of the foregoing provided or made available by Licensor to Licensee or any Authorized Users (including, without limitation, Usage Guidelines).

1.9 **"School"** means any educational institution that provides instruction and other educational services that is administered or controlled by Licensee.

1.10 **"Students"** means any individuals who are enrolled in a course or courses of study offered by Licensee or any School.

1.11 **"Teachers"** means any teachers and educators employed or otherwise retained by Licensee or any School and involved in providing instruction to, and/or assessment and/or other educational support of, Students.

1.12 **"Term"** means the term of the Agreement as defined in Section 4.1 below.

1.13 **"Usage Guidelines"** means any usage guidelines for the Licensed Materials provided or made available by Licensor to Licensee or any Authorized Users from time to time during the Term.

## 2. **LICENSE GRANT.**

2.1 **License.** Subject to the terms and conditions of this Agreement, Licensor grants to Licensee and each School, under Licensor's Intellectual Property rights in the Licensed Materials, a non-exclusive, non-transferable, non-sublicensable license during the Term for (a) Administrators/Staff, Teachers and Instructional Aides to incorporate any Licensed Materials into courses or curricula offered to any Students by Licensee or any School and (b) Authorized Users to access, use, display, perform and transmit the Licensed Materials for educational purposes in accordance with the Usage Guidelines. Licensee may, subject to the terms and conditions of this Agreement and the Usage Guidelines, provide temporary access to the Licensed Materials to any charter sponsors, state and federal administrators, government regulators and accrediting agencies that are evaluating and/or reviewing Licensee or any School for the limited purpose of evaluating or reviewing Licensee or any School or any of the Licensed Materials.

2.2 **Format and Distribution.** Licensee acknowledges and agrees that access to the Licensed Materials will require the input of authentication data (i.e. user name and password) by

Authorized Users. Licensee will comply with Licensor's policies and instructions with respect to the creation, provision, protection and unauthorized use or disclosure of such authentication data. Licensee will maintain a complete and accurate Student roster within Licensor's platform.

2.3 Restrictions. Licensee shall not, and shall use commercially reasonable efforts to ensure that none of the Authorized Users: (a) remove any product identification, copyright, proprietary or other notices from any of the Licensed Materials; (b) provide, sublicense, lease, lend or use for timesharing, outsourcing, hosting or service bureau purposes any of the Licensed Materials; (c) decompile, reverse engineer or otherwise attempt to access or discover the source code or algorithms for any of the Licensed Materials; (d) except as expressly provided in this Agreement or the then current Usage Guidelines, copy, alter, revise, modify or create any derivative works of any of the Licensed Materials; (e) take any action or fail to take any action that would reasonably be expected to adversely affect the performance or integrity of any of the Licensed Materials, Licensor's website or any information technology systems owned or used by Licensor or any of its Affiliates; or (f) gain or attempt to gain unauthorized access to any portion of Licensor's website.

2.4 Ownership; No Other Rights. As between the Parties, subject to the license granted in Section 2.1 above, Licensor owns all right, title and interest (including, without limitation, all Intellectual Property rights) in and to the Licensed Materials. All rights not expressly granted by Licensor under or pursuant to this Agreement are reserved by Licensor. Licensee expressly acknowledges and agrees that it does not own and shall not own any existing, and hereafter created, copyrights and other Intellectual Property rights with respect to the Licensed Materials. Licensee shall have no right to license any Licensed Materials to third parties, or use the Licensed Materials for a commercial purpose.

### 3. LICENSE FEE.

3.1 In consideration for the license granted in Section 2.1 above, Licensee agrees to pay Licensor a total amount of \$ 76,791.62.

3.2 Licensor shall invoice Licensee within 30 days following the Effective Date of this Agreement for the fee described in Section 3.1 above, with payment due within 45 days of Licensee's receipt of such invoice. Licensee shall pay all amounts payable under this Agreement by check made payable to Edmentum, Inc. and sent to the address for Licensor set forth in Section 9.5 of this Agreement. All fees shall be paid in United States dollars.

3.3 Licensee shall be responsible for payment of any and all federal, state and local sales, use and excise taxes and any other taxes or duties of any nature assessed upon or with respect to any amounts payable by Licensee under this Agreement, excluding any tax based on the income of Licensor. If tax exempt status is claimed by Licensee, Licensee shall provide Licensor a tax exemption certificate acceptable to the applicable taxing authorities.

3.4 Pursuant to N.C. General Statute 143C-6-8, it is understood and agreed between the parties that the Licensee's payment obligation under this Agreement is contingent upon the availability of appropriated funds from which payment for Agreement purposes can be made, and, if payment obligations are made with State funds, upon the availability of appropriated funds that are not State funds.

#### 4. TERM; TERMINATION.

4.1 Term. The term of this Agreement shall commence on the Effective Date and shall continue until June 30, 2014 ("Term") unless terminated earlier pursuant to Section 4.2 below

##### 4.2 Termination.

(a) For convenience. This Agreement may be terminated immediately upon the mutual written agreement of the Parties, or by Licensee with 30 days' written notice to Licensor.

(b) Breach. Either Party may terminate this Agreement in the case of a material or persistent breach by the other Party of any one (1) or more of the terms or provisions of this Agreement, which breach (i) is not remedied within thirty (30) days after the breaching Party's receipt of written notice from the non-breaching Party describing such breach ("Breach Notice"), or (ii) if such breach cannot reasonably be cured within such thirty (30) day period, is not the subject of diligent and ongoing efforts by such breaching Party to cure within a commercially reasonable time; provided, however, that in no event shall the period to so cure exceed sixty (60) days. In the event that this Agreement is terminated early by the Licensee for cause pursuant to this Section 4.2(b), Licensee shall be entitled to a pro-rata reimbursement for any funds pre-paid to Licensor.

(c) Unauthorized Assignment. Either Party may terminate this Agreement immediately upon written notice to the other Party in the event such other Party attempts to assign this Agreement without consent in contravention of Section 9.2 below.

(d) Cessation of Business. Licensee may immediately terminate this Agreement upon written notice to Licensor if Licensor ceases to do business (excluding any situation where all or substantially all of such Licensor's assets, equity or business to which this Agreement relates are acquired by a third party (whether by sale, acquisition, merger, operation of law or otherwise)).

4.3 Effect of Termination. In the event of the expiration or any termination of this Agreement, (a) all licenses and rights granted to Licensee under this Agreement shall immediately terminate, (b) Licensee shall immediately cease, and shall cause all Schools and Authorized Users to immediately cease, all use of and access to the Licensed Materials, (c) the Receiving Party shall return any of the other Disclosing Party's Confidential Information in their possession, and (d) Section 2.4, Section 4.3, Article 5, Section 6.3, Article 7, Article 8, and Article 9 shall survive and remain in full force and effect.

#### 5. CONFIDENTIALITY.

5.1 Confidentiality Obligations. Each Party (the "Receiving Party") agrees to maintain the confidentiality of any Confidential Information disclosed to or obtained by the Receiving Party by or from the other Party (the "Disclosing Party") and to use the Confidential Information of the Disclosing Party only as necessary to exercise its rights and perform its obligations under this Agreement. The Receiving Party shall not disclose, provide or make available the Confidential Information of the Disclosing Party, or any part thereof, in any form or medium, to any person or entity, except employees, contractors and consultants of the

Receiving Party who have a need to access or know such Confidential Information for purposes of this Agreement.

5.2 Exceptions. The provisions of Section 5.1 above shall not apply to any information that the Receiving Party can document: (a) was, at the time of disclosure by the Disclosing Party to the Receiving Party, in the public domain; (b) after disclosure by the Disclosing Party to the Receiving Party, becomes part of the public domain through no fault of the Receiving Party or any of the Receiving Party's employees, contractors or consultants (or, in the case Licensee is the Receiving Party, any School or Authorized User); (c) was rightfully in the possession of the Receiving Party prior to its disclosure by the Disclosing Party to the Receiving Party without any obligation of confidence or any breach of confidence; or (d) was, after disclosure by the Disclosing Party to the Receiving Party, received by the Receiving Party from a third party who had a lawful right to disclose such information to the Receiving Party without restriction on disclosure.

5.3 Disclosure Required by Law. This Agreement, the attachments hereto, and any instructional content of the educational services provided under this Agreement will be subject to the North Carolina Public Records Laws ("NCPRL" see N.C.G.S. Chapter 132). Nothing in this Agreement, however, shall be construed to override any trademark or copyright protection or other intellectual property rights, including but not limited to trade secrets, that Licensors may have in the Licensed Materials. In accordance with N.C.G.S. 132-1.2(1), however, such documents may not be subject to disclosure under the NCPRL if they meet all of the following conditions: (1) constitutes a "trade secret" as defined by G.S. 66-152(3); (2) are the property of a private "person" as defined in G.S. 66-152(2); (3) are disclosed or furnished to the public agency in connection with Licensors' performance of a public contract or in connection with a bid, application, proposal, industrial development project, or in compliance with laws, regulations, rules, or ordinances of the United States, the State, or political subdivisions of the State; and (4) are designated or indicated as "confidential" or as a "trade secret" at the time of its initial disclosure to the public agency. In order for Licensors to exclude confidential proprietary information from public release in response to a public records request, Licensors must (i) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought; (ii) identify the data or other materials for which protection is sought, and (iii) state the reasons why protection is necessary; (iv) mark each page of information for which protections is sought with the legend "Confidential Proprietary Information-Exemption from NCPRL Release"; and (v) provide an Opinion of Counsel letter, signed by an attorney representing Licensors, certifying that the attorney has reviewed the information designated as "Confidential Proprietary Information" and that in his or her professional opinion, the information so designated meets the statutory standards set out in N.C.G.S. 132-1.2(1). Licensors agree to fully indemnify the Licensee for direct damages suffered by Licensee in the event a lawsuit is filed against Licensee seeking disclosure under the NCPRL of any information designated as "Confidential Proprietary Information" by Licensors and to reimburse Licensee for the costs of defending any such lawsuit to the extent such damages are caused by the actions or inactions of Licensors.

5.4 Student Records. With respect to any access by Licensors to any "education records" (as such term is defined in the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232 et seq. ("FERPA"), its implementing regulations at 34 CFR part 99, and N.C. Gen. Stat. §§ 115C-401.1 and 115C-402) held by Licensee under or in connection with this Agreement, Licensors shall be acting as a legal agent ("school official") of Licensee. As between the Parties, any information protected by FERPA submitted to Licensors by Licensee in connection with this Agreement shall be deemed the Confidential Information of Licensee subject to this Article 5.

Licensor agrees to comply with FERPA and agrees not to share or disclose any FERPA protected information with any third party except as permitted by FERPA or as authorized, directed or permitted by Licensee.

5.5 Return of Confidential Information. The Receiving Party agrees, at the written request and option of the Disclosing Party, to promptly return to the Disclosing Party, or to destroy and certify such destruction in writing to the Disclosing Party, all Confidential Information of the Disclosing Party and any copies of or materials containing any of the Disclosing Party's Confidential Information within thirty (30) days after the expiration or any termination of this Agreement.

## **6. REPRESENTATIONS AND WARRANTIES; DISCLAIMER.**

6.1 By Licensor. Licensor represents and warrants that (a) it has full power and authority to enter into this Agreement, (b) it has the right to grant to Licensee the license set forth in Section 2.1 of this Agreement, and (c) the Licensed Materials will substantially conform to any and all specifications established by Licensor and will be free from mechanical defects and service interruptions within the control of Licensor, subject to the limitation in Section 6.3 below.

6.2 By Licensee. Licensee represents and warrants that (a) it has full power and authority to enter into this Agreement and (b) it has the authority to cause all Schools to comply with the terms and conditions of this Agreement.

6.3 EXCEPT AS EXPRESSLY SET FORTH IN THIS ARTICLE 6, LICENSOR EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT WITH RESPECT TO THE LICENSED MATERIALS. LICENSEE ACKNOWLEDGES THAT THE INTERNET IS INHERENTLY INSECURE, AND LICENSEE SHALL BE RESPONSIBLE FOR PROVIDING ITS OWN FIREWALL AND OTHER PROTECTIONS AGAINST UNAUTHORIZED INCURSIONS TO ITS SYSTEM, VIRUSES, WORMS, TROJAN HORSES, OR OTHER HARMFUL SOFTWARE COMPONENTS THAT MAY INTERFERE WITH THE LICENSEE'S ACCESS OR USE OF THE LICENSED MATERIALS.

## **7. INDEMNIFICATION.**

7.1 By Licensor. Licensor agrees to indemnify, defend and hold harmless Licensee, the Schools and Licensee's officers, directors, employees and agents (collectively, the "Licensee Indemnified Parties") from and against any claims, actions, costs, losses, liabilities, expenses, damages and settlements (including, without limitation, reasonable legal fees and expenses) resulting or arising from any third party claim asserted against any of the Licensee Indemnified Parties to the extent arising from or based upon (a) any breach or alleged breach of this Agreement by Licensor, (b) any allegation that use of the Licensed Materials by Licensee, any School or any Authorized User as provided or made available by Licensor to Licensee and as authorized by Licensor pursuant to this Agreement infringes any third party Intellectual Property rights and/or (c) any act or omission to act by Licensor with respect to any of the Licensed Materials. Licensee shall provide reasonably prompt written notice to Licensor of any claim for which any of the Licensee Indemnified Parties seeks indemnification under this Section 7.1; provided, however, that failure to give such reasonably prompt written notice will not limit or otherwise affect the rights of any of the Licensee Indemnified Parties under this Section 7.1 except to the extent that the defense and/or settlement of such claim is materially and adversely

prejudiced by such failure. Licensors shall have control of the defense and/or settlement of any claim for which any of the Licensee Indemnified Parties seeks indemnification under this Section 7.1; provided, however, that Licensors shall not settle any such claim without Licensee's prior written consent if any such settlement (i) requires that any of the Licensee Indemnified Parties makes any payment or bears any other obligations, (ii) includes any admission of wrongdoing or liability on the part of any of the Licensee Indemnified Parties, (iii) does not include a full release of all of the Licensee Indemnified Parties and/or (iv) includes any manner of injunctive or other equitable relief. Licensee agrees to reasonably cooperate with Licensors, at Licensors's expense, in connection with the defense and/or settlement of any such claim.

## **8. LIMITATION OF LIABILITY.**

8.1 NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE, EXCEPT WITH RESPECT TO A PARTY'S BREACH OF ARTICLE 5 ABOVE OR LICENSEE'S BREACH OF ARTICLE 2 ABOVE, IN NO EVENT SHALL EITHER PARTY BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY (a) CONSEQUENTIAL, INDIRECT, INCIDENTAL OR SPECIAL DAMAGES, (b) LOST PROFITS, LOST BUSINESS OR LOST OR CORRUPTED DATA OR (c) COST OF PROCUREMENT OF SUBSTITUTE SOFTWARE, TECHNOLOGY, GOODS OR SERVICES, IN THE CASE OF EACH OF THE FOREGOING SUBCLAUSES (a), (b) AND (c), EVEN IF THE REMEDIES PROVIDED FOR IN THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE AND EVEN IF EITHER PARTY IS ADVISED OF THE POSSIBILITY OR PROBABILITY OF SUCH DAMAGES AND IN NO EVENT SHALL EITHER PARTY'S CUMULATIVE LIABILITY UNDER THIS AGREEMENT EXCEED THE FEES ACTUALLY PAID BY LICENSEE HEREUNDER.

## **9. GENERAL PROVISIONS.**

9.1 Independent Contractors. The Parties to this Agreement are independent contractors, and no agency, partnership, joint venture, franchise or employee-employer relationship is intended or created by this Agreement. Neither Party has any right, power or authority to make any statements, representations or commitments of any kind, or to take any action, which shall be binding on the other Party.

9.2 Successors and Assigns, Assignment. This Agreement is binding upon and inures to the benefit of the Parties and their respective successors and permitted assigns. Neither Party may assign this Agreement (by operation of law or otherwise) without the prior written consent of the other Party; provided, however, that either Party may assign this Agreement (by operation of law or otherwise) to any successor of such Party as a result of or in connection with any merger, acquisition or corporate reorganization of such Party or any sale of all or substantially all of the equity or assets of such Party or the business of such Party to which this Agreement relates.

9.3 No Third Party Rights. Except as expressly provided in this Agreement (including, without limitation, Section 2.1 above and Article 8 above), nothing in this Agreement confers, or is intended to confer any rights or remedies upon any person or entity not a party to this Agreement.

9.4 Severability. If any provision of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, such provision shall be limited or eliminated

to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable, provided that the intent of the Parties when entering into this Agreement with respect to the economic terms, protection of Intellectual Property and allocation of risk is maintained.

9.5 Notices. All notices, consents, requests and other communications under this Agreement shall be in writing and shall be effective: (a) upon delivery by hand; (b) one (1) business day after being deposited with a recognized overnight delivery service with tracking capabilities, delivery charges prepaid; (c) three (3) business days after being deposited in the United States mail, first-class, postage prepaid, registered or certified, return receipt requested; or (d) if sent by facsimile, upon receipt of a successful transmission report, in the case of each of the foregoing subclauses (a), (b), (c) and (d), addressed to the applicable Party as follows (or to such other address or representative as such Party may hereafter designate in a written notice to the other Party in accordance with this Section 9.5).

***If to LICENSOR:***

Edmentum, Inc.  
5600 W 83<sup>rd</sup> St, Suite 300  
Bloomington, MN 55437  
Attn: Mitchell Wacker, Sr. Director, Sales Ops  
Fax: 877-519-9555

***If to LICENSEE:***

Orange County Schools  
200 East King Street  
Hillsborough, NC 27278  
Attn: Superintendent  
Fax: 919-732-8120

9.6 Waiver. No waiver by either Party of any default or breach of any provision of this Agreement shall constitute a waiver of any other provision of this Agreement or of any subsequent default or breach of the same or a different provision of this Agreement. The failure of either Party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights. Any waiver of this Agreement shall be effective only if set forth in a written agreement that specifically references this Agreement, is clearly understood by both Parties to be a waiver of a provision or provisions of this Agreement and is signed by both Parties.

9.7 Amendment. This Agreement may be amended only by a writing signed by both Parties. However, it is the intention of the Parties that this Agreement and all Exhibits attached hereto be controlling over any additional or different terms of any purchase order, confirmation, invoice or similar document, even if accepted in writing by both Parties, and that any amendment to this Agreement shall be effective only if set forth in a written agreement that specifically references this Agreement, is clearly understood by both Parties to be an amendment to this Agreement and is signed by both Parties.

9.8 Entire Agreement. This Agreement (including all Exhibits hereto) constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements, negotiations and understandings (whether written or oral) between the Parties with respect to the subject matter of this Agreement.

9.9 Governing Law; Venue. This Agreement shall be governed, construed, and interpreted in accordance with the laws of the State of North Carolina (without regard to principles of conflicts of law thereof). Each of the Parties hereby submits to the jurisdiction of and venue in the State of North Carolina in any legal proceeding necessary to interpret or enforce this Agreement and hereby waives any defense of lack of personal jurisdiction or inconvenient forum with respect to any such legal proceeding.

9.10 Force Majeure. Licensor shall not be liable for its failure to perform any of its obligations under this Agreement or any inability to access or use any of Licensor's websites or any of the Licensed Materials if caused by any event beyond Licensor's reasonable control, including, without limitation, acts of God, acts of any government or governmental agency, compliance with applicable laws or regulations, acts of any civil or military authority, fires, strikes, floods, war, terrorism, riot, civil commotion, difficulty in obtaining necessary labor, materials or equipment, power outages or disruption, interruption or failure of telecommunication or digital transmission links, hostile network attacks, network congestion or Internet or network disruption, outage or failures.

9.11 Joint Drafting and Neutral Construction. This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties and shall be construed and interpreted in a neutral manner, and no rule of construction or interpretation shall apply against any particular Party based on a contention that this Agreement was drafted by such Party.

9.12 Headings. All captions and headings in this Agreement are for purposes of convenience only and shall not affect the construction or interpretation of any of the provisions of this Agreement.

9.13 Counterparts. This Agreement may be executed in one or more separate counterparts, each of which, when so executed, shall, together, constitute and be one and the same instrument. A signed counterpart by facsimile or in pdf format shall be deemed an original.

9.14 Exhibits. The following exhibits are attached to this Agreement and incorporated herein:

Exhibit A: Price Quote for Licensed Materials

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Parties agree to the terms and have caused this Agreement to be duly executed by their authorized representatives as of the Effective Date.

**ORANGE COUNTY BOARD OF EDUCATION**

by: Donna Coffey, Board Chair

\_\_\_\_\_  
(signature)

Attest: Dr. Del Burns, Interim Superintendent

\_\_\_\_\_  
(signature)

This instrument has been preaudited in the manner required by the School Budget and Fiscal Control Act.

Donna Brinkley, Chief Financial Officer

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(date)

**EDMENTUM, INC.**

by: Mitchell Wacker, Sr. Director, Sales Operations

\_\_\_\_\_  
(signature)

State of Minnesota  
Hennepin County

I, \_\_\_\_\_, a Notary Public for Hennepin County, State of MN, do hereby certify that Mitchell Wacker, Sr. personally appeared before me this day and acknowledged that he is the Sr. Director, Sales Operations of Edmentum, Inc., a corporation, and that he, as Senior Director, Sales Operations, being authorized to execute contracts on behalf of and to otherwise bind Edmentum, Inc. to the obligations and responsibilities in the foregoing instrument, executed the foregoing on behalf of the corporation.

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

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

(Official Seal)

**EXHIBIT A**

See Attached Quote # 10127008

DRAFT



Date: 7/31/2013  
Order Number: 10127008  
Revision: 1  
Order Form Expiration Date: 8/30/2013

ORDER FORM

Please fax all pages to 1 877 519.9555 or email to [orders@edmentum.com](mailto:orders@edmentum.com)

Customer and Billing Address

Customer No.: 22055/  
Customer Name: ORANGE COUNTY SCHOOL DISTRICT  
Billing Address: 200 E KING ST  
HILLSBOROUGH, NC 27278-2023

Products and Services

A L STANBACK MIDDLE SCHOOL

Products	Quantity	License Start Date	License End Date	License Term (In Months)	List Price for Term	Discount Applied	Extended Price
North Carolina 6th Grade Comprehensive Package (Math, Reading, Science, Social Studies)	201 - 400 Students	6/7/2013	7/1/2014	13	\$4,942.17	(\$0.00)	\$4,942.17
North Carolina 7th Grade Comprehensive Package (Math, Reading, Science, Social Studies)	201 - 400 Students	6/7/2013	7/1/2014	13	\$4,942.17	(\$0.00)	\$4,942.17
North Carolina 8th Grade Comprehensive Package (Math, Reading, Science, Computer Skills, Social Stud	201 - 400 Students	6/7/2013	7/1/2014	13	\$6,144.67	(\$0.00)	\$6,144.67
North Carolina Core 5 End-of-Course Algebra I	76 - 125 Students	7/2/2013	7/1/2014	12	\$539.00	(\$0.00)	\$539.00
North Carolina Math End-of-Course Geometry	31 - 50 Students	7/2/2013	7/1/2014	12	\$277.00	(\$0.00)	\$277.00
Study Island Remediation Acceleration Bundle For Building Wide Purchases		7/2/2013	7/1/2014	12	\$0.00	(\$0.00)	\$0.00
Customer Loyalty Discount	1	**	**	12	\$0.00	(\$8,845.01)	-\$8,845.01
A L STANBACK MIDDLE SCHOOL Subtotal:							\$8,000.00

CAMERON PARK ELEM SCHOOL

Products	Quantity	License Start Date	License End Date	License Term (In Months)	List Price for Term	Discount Applied	Extended Price
----------	----------	--------------------	------------------	--------------------------	---------------------	------------------	----------------

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





Date: 7/31/2013  
 Order Number 10127008  
 Revision 1  
 Order Form Expiration Date 8/30/2013

ORDER FORM

Please fax all pages to 1.877.519.9555 or email to orders@edmentum.com

North Carolina 3rd Grade Comprehensive Package (Math, Reading, Science, Social Studies)	76 - 125 Students	7/2/2013	7/1/2014	12	\$1,994.00	(\$398.80)	\$1,595.20
North Carolina 4th Grade Comprehensive Package (Math, Reading, Science, Social Studies)	76 - 125 Students	7/2/2013	7/1/2014	12	\$1,994.00	(\$398.80)	\$1,595.20
North Carolina 5th Grade Comprehensive Package (Math, Reading, Science, Social Studies)	76 - 125 Students	7/2/2013	7/1/2014	12	\$1,994.00	(\$398.80)	\$1,595.20
CAMERON PARK ELEM SCHOOL Subtotal:							\$4,785.60

CEDAR RIDGE H S

Products	Quantity	License Start Date	License End Date	License Term (In Months)	List Price for Term	Discount Applied	Extended Price
North Carolina College and Career Readiness Bundle	1141	6/7/2013	7/1/2014	13	\$10.83	(\$1,236.08)	\$11,124.75
Study Island Remediation Acceleration Bundle For Building Wide Purchases		7/2/2013	7/1/2014	12	\$0.00	(\$0.00)	\$0.00
CEDAR RIDGE H S Subtotal:							\$11,124.75

CENTRAL ELEMENTARY SCHOOL

Products	Quantity	License Start Date	License End Date	License Term (In Months)	List Price for Term	Discount Applied	Extended Price
North Carolina 3rd Grade Comprehensive Package (Math, Reading, Science, Social Studies)	51 - 75 Students	9/5/2013	7/1/2014	10	\$1,140.83	(\$228.17)	\$912.67
North Carolina 4th Grade Comprehensive Package (Math, Reading, Science, Social Studies)	51 - 75 Students	9/5/2013	7/1/2014	10	\$1,140.83	(\$228.17)	\$912.67
North Carolina 5th Grade Comprehensive Package (Math, Reading, Science, Social Studies)	51 - 75 Students	9/5/2013	7/1/2014	10	\$1,140.83	(\$228.17)	\$912.67





Date: 7/31/2013  
Order Number: 10127008  
Revision: 1  
Order Form Expiration Date: 8/30/2013

ORDER FORM

Please fax all pages to 1.877.519.9555 or email to [orders@edmentum.com](mailto:orders@edmentum.com)

CENTRAL ELEMENTARY SCHOOL Subtotal:	\$2,738.01
-------------------------------------	------------

C W STANFORD MID SCHOOL

Products	Quantity	License Start Date	License End Date	License Term (In Months)	List Price for Term	Discount Applied	Extended Price
North Carolina 6th Grade Comprehensive Package (Math, Reading, Science, Social Studies)	201 - 400 Students	6/7/2013	7/1/2014	13	\$4,942.17	(\$0.00)	\$4,942.17
North Carolina 7th Grade Comprehensive Package (Math, Reading, Science, Social Studies)	201 - 400 Students	6/7/2013	7/1/2014	13	\$4,942.17	(\$0.00)	\$4,942.17
North Carolina 8th Grade Comprehensive Package (Math, Reading, Science, Computer Skills, Social Stud	201 - 400 Students	6/7/2013	7/1/2014	13	\$6,144.67	(\$0.00)	\$6,144.67
North Carolina Core 5 End-of-Course Algebra I	76 - 125 Students	7/2/2013	7/1/2014	12	\$539.00	(\$0.00)	\$539.00
North Carolina Core 5 End-of-Course English I	51 - 75 Students	7/2/2013	7/1/2014	12	\$370.00	(\$0.00)	\$370.00
North Carolina Math End-of-Course Geometry	11 - 30 Students	7/2/2013	7/1/2014	12	\$185.00	(\$0.00)	\$185.00
Study Island Remediation Acceleration Bundle For Building Wide Purchases		7/2/2013	7/1/2014	12	\$0.00	(\$0.00)	\$0.00
Customer Loyalty Discount	1	**	**	12	\$0.00	(\$9,123.01)	-\$9,123.01
C W STANFORD MID SCHOOL Subtotal:							\$8,000.00

BRADY BROWN E S

Products	Quantity	License Start Date	License End Date	License Term (In Months)	List Price for Term	Discount Applied	Extended Price
North Carolina 3rd Grade Comprehensive Package (Math, Reading, Science, Social Studies)	51 - 75 Students	7/2/2013	7/1/2014	12	\$1,369.00	(\$273.80)	\$1,095.20

Edmentum | NW 7504, P.O. Box 1450 | Minneapolis, MN 55405-7504 | [www.edmentum.com](http://www.edmentum.com)



PLATO





Date: 7/31/2013  
Order Number 10127008  
Revision 1  
Order Form Expiration Date 8/30/2013

ORDER FORM

Please fax all pages to 1.877.519.9555 or email to [orders@edmentum.com](mailto:orders@edmentum.com)

North Carolina 4th Grade Comprehensive Package (Math, Reading, Science, Social Studies)	51 - 75 Students	7/2/2013	7/1/2014	12	\$1,369.00	(\$273.80)	\$1,095.20
---	------------------	----------	----------	----	------------	------------	------------

North Carolina 5th Grade Comprehensive Package (Math, Reading, Science, Social Studies)	51 - 75 Students	7/2/2013	7/1/2014	12	\$1,369.00	(\$273.80)	\$1,095.20
---	------------------	----------	----------	----	------------	------------	------------

GRADY BROWN E S Subtotal: \$3,285.60

GRAVELLY HILL MIDDLE SCHOOL

Products	Quantity	License Start Date	License End Date	License Term (In Months)	List Price for Term	Discount Applied	Extended Price
North Carolina 6th Grade Comprehensive Package (Math, Reading, Science, Social Studies)	126 - 200 Students	6/7/2013	7/1/2014	13	\$2,966.17	(\$0.00)	\$2,966.17
North Carolina 7th Grade Comprehensive Package (Math, Reading, Science, Social Studies)	126 - 200 Students	6/7/2013	7/1/2014	13	\$2,966.17	(\$0.00)	\$2,966.17
North Carolina 8th Grade Comprehensive Package (Math, Reading, Science, Computer Skills, Social Stud	126 - 200 Students	6/7/2013	7/1/2014	13	\$3,687.67	(\$0.00)	\$3,687.67
North Carolina Core 5 End-of-Course Algebra I	76 - 125 Students	7/2/2013	7/1/2014	12	\$539.00	(\$0.00)	\$539.00
North Carolina Math End-of-Course Algebra II	1	7/2/2013	7/1/2014	12	\$25.00	(\$0.00)	\$25.00
North Carolina Core 5 End-of-Course English I	31 - 50 Students	7/2/2013	7/1/2014	12	\$277.00	(\$0.00)	\$277.00
North Carolina Math End-of-Course Geometry	11 - 30 Students	7/2/2013	7/1/2014	12	\$185.00	(\$0.00)	\$185.00





Date: 7/31/2013  
 Order Number: 10127008  
 Revision: 1  
 Order Form Expiration Date: 8/30/2013

ORDER FORM

Please fax all pages to 1.877.519.9555 or email to orders@edmentum.com

Study Island Remediation Acceleration Bundle For Building Wide Purchases	7/2/2013	7/1/2014	12	\$0.00	(\$0.00)	\$0.00
Customer Loyalty Discount	1	**	**	12	\$0.00	(\$2,646.01) - \$2,646.01
GRAVELLY HILL MIDDLE SCHOOL Subtotal:						\$8,000.00

HILLSBOROUGH ELEMENTARY SCHOOL

Products	Quantity	License Start Date	License End Date	License Term (In Months)	List Price for Term	Discount Applied	Extended Price
North Carolina 3rd Grade Comprehensive Package (Math, Reading, Science, Social Studies)	51 - 75 Students	7/2/2013	7/1/2014	12	\$1,369.00	(\$273.80)	\$1,095.20
North Carolina 4th Grade Comprehensive Package (Math, Reading, Science, Social Studies)	51 - 75 Students	7/2/2013	7/1/2014	12	\$1,369.00	(\$273.80)	\$1,095.20
North Carolina 5th Grade Comprehensive Package (Math, Reading, Science, Social Studies)	51 - 75 Students	7/2/2013	7/1/2014	12	\$1,369.00	(\$273.80)	\$1,095.20
HILLSBOROUGH ELEMENTARY SCHOOL Subtotal:							\$3,285.60

NEW HOPE ELEM SCHOOL

Products	Quantity	License Start Date	License End Date	License Term (In Months)	List Price for Term	Discount Applied	Extended Price
North Carolina 3rd Grade Comprehensive Package (Math, Reading, Science, Social Studies)	76 - 125 Students	8/8/2013	7/1/2014	11	\$1,827.83	(\$365.57)	\$1,462.27
North Carolina 4th Grade Comprehensive Package (Math, Reading, Science, Social Studies)	76 - 125 Students	8/8/2013	7/1/2014	11	\$1,827.83	(\$365.57)	\$1,462.27
North Carolina 5th Grade Comprehensive Package (Math, Reading, Science, Social Studies)	76 - 125 Students	8/8/2013	7/1/2014	11	\$1,827.83	(\$365.57)	\$1,462.27

Edmentum | NW 7304, P.O. Box 1450 | Minneapolis, MN 55485-7304 | www.edmentum.com





Date: 7/31/2013  
Order Number: 10127008  
Revision: 1  
Order Form Expiration Date: 8/30/2013

ORDER FORM

Please fax all pages to 1.877.519.9555 or email to [orders@edmentum.com](mailto:orders@edmentum.com)

							NEW HOPE ELEM SCHOOL Subtotal:	\$4,386.81
--	--	--	--	--	--	--	--------------------------------	------------

ORANGE HIGH SCHOOL

Products	Quantity	License Start Date	License End Date	License Term (In Months)	List Price for Term	Discount Applied	Extended Price
North Carolina College and Career Readiness Bundle	1273	6/7/2013	7/1/2014	13	\$10.83	(\$1,379.08)	\$12,411.75
Study Island Remediation Acceleration Bundle For Building Wide Purchases		7/2/2013	7/1/2014	12	\$0.00	(\$0.00)	\$0.00
ORANGE HIGH SCHOOL Subtotal:							\$12,411.75

PATHWAYS ELEMENTARY SCHOOL

Products	Quantity	License Start Date	License End Date	License Term (In Months)	List Price for Term	Discount Applied	Extended Price
North Carolina 3rd Grade Comprehensive Package (Math, Reading, Science, Social Studies)	51 - 75 Students	9/18/2013	7/1/2014	9	\$1,026.75	(\$205.35)	\$821.40
North Carolina 4th Grade Comprehensive Package (Math, Reading, Science, Social Studies)	51 - 75 Students	9/18/2013	7/1/2014	9	\$1,026.75	(\$205.35)	\$821.40
North Carolina 5th Grade Comprehensive Package (Math, Reading, Science, Social Studies)	51 - 75 Students	9/18/2013	7/1/2014	9	\$1,026.75	(\$205.35)	\$821.40
PATHWAYS ELEMENTARY SCHOOL Subtotal:							\$2,464.20

FLAND-CHEEKS ELEM SCHOOL

Products	Quantity	License Start Date	License End Date	License Term (In Months)	List Price for Term	Discount Applied	Extended Price
Study Island North Carolina 3rd Grade Comprehensive Package (Math, Reading, Science, Social Studies)	51 - 75 Students	7/2/2013	7/1/2014	12	\$1,369.00	(\$273.80)	\$1,095.20
Study Island North Carolina 4th Grade Comprehensive Package (Math, Reading, Science, Social Studies)	51 - 75 Students	7/2/2013	7/1/2014	12	\$1,369.00	(\$273.80)	\$1,095.20

6

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





Date: 7/31/2013  
Order Number 10127008  
Revision 1  
Order Form Expiration Date: 8/30/2013

ORDER FORM

Please fax all pages to 1.877.519.9555 or email to [orders@edmentum.com](mailto:orders@edmentum.com)

Study Island North Carolina 5th Grade Comprehensive Package (Math, Reading, Science, Social Studies)	51 - 75 Students	7/2/2013	7/1/2014	12	\$1,369.00	(\$273.80)	\$1,095.20
--	------------------	----------	----------	----	------------	------------	------------

EFLAND-CHEEKS ELEM SCHOOL Subtotal: \$3,285.60

Partnership Academy Alt School

Products	Quantity	License Start Date	License End Date	License Term (In Months)	List Price for Term	Discount Applied	Extended Price
Study Island North Carolina College and Career Readiness Bundle	20	**	**	12	\$25.00	(\$500.00)	\$0.00
Study Island Study Island Remediation Acceleration Bundle For Building Wide Purchases		**	**	12	\$0.00	(\$0.00)	\$0.00
Partnership Academy Alt School Subtotal:							\$0.00

Subtotal: \$71,767.87

Estimated Tax: \$5,023.75

Total US Funds: \$76,791.62

\* 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).

**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.

**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 am authorized to accept this offer on behalf of the Customer identified above and I do accept this offer and agree to adhere to the terms and conditions identified and referenced within. 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):

Edmentum | NW 7501 P.O. Box 1454 | Minneapolis, MN 55435-7501 | [www.edmentum.com](http://www.edmentum.com)





Date: 7/31/2013  
Order Number 10127008  
Revision 1  
Order Form Expiration Date 8/30/2013

ORDER FORM

Please fax all pages to 1.877.519.9555 or email to [orders@edmentum.com](mailto:orders@edmentum.com)

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

