

Fuel Education Products and Services Agreement Terms

PERIOD:

The period of this Agreement is as specified in the Order ("Period"). Following the Subscription Period, this Agreement will automatically extend for successive additional Subscription Periods of one (1) year (each such period a "Renewal Period"), unless (a) either party provides the other with written notice of non-renewal at least six (6) months before the expiration of the then-current Subscription Period or Renewal Period (as applicable); (b) the Agreement is sooner terminated under the section labeled Termination; or (c) the Customer (as defined in the Order) provides Fuel Education LLC ("FuelEd") with written notice of nonrenewal as set forth under the section of these FuelEd Online Educational Products and Services Agreement Terms labeled Price And Payment.

DESCRIPTION OF SERVICES:

Customer will be provided with those products and services, including where applicable a limited, non-exclusive, nontransferable license, without sublicense rights, for access to FuelEd or its Affiliates online courses, curriculum, learning management system and applicable instructional tools and online services, for the Period and Renewal Period (if any).

INSTRUCTIONAL SUPPORT:

Customer understands that FuelEd courses may be taught by a teacher who is state-certified, but not by the State in which the Customer is located. The Customer hereby represents to FuelEd that State law authorizes such out-of-state licensed teaches for these online courses or that the Customer has received a waiver from the State to allow instruction by these FuelEd teachers. The Customer represents that FuelEd may rely on these statements.

PRICE AND PAYMENT:

The prices and billing terms for the products, services, and licenses will be as set forth on the Order, except as set forth herein. Invoices shall be submitted to Customer by FuelEd or its Affiliates and full payment of such invoices shall be due by Customer no more than thirty (30) days from Customer's receipt of an invoice. Notwithstanding anything contained in this Agreement, if full payment is not timely received, FuelEd, in its sole discretion, may cease the provision of any or all products, services, and

Fuel Education Products and Services Agreement Terms

licenses. Customer agrees to pay interest at one and one quarter percent (1.25%) per month on any unpaid balance from the due date. If Customer wishes to dispute any charge invoiced to Customer by FuelEd or its Affiliates, Customer must submit a good faith claim regarding the Disputed Amount, in a format clearly delineated to coincide with the format of the disputed invoice and with documentation as may reasonably be required by FuelEd and its Affiliates to support the claim no later than ninety (90) days after the date of the invoice. FuelEd reserves the right to change the prices set forth in any Order no more often than once per Renewal Period (if any). FuelEd will provide written notice of any price increase to Customer at least ninety (90) days' prior to the start of the Renewal Period (if any) for which it would be applicable. Customer may, in its sole discretion, terminate the Agreement within thirty (30) days of such notice. Such termination will be effective at the end of the then-current Period or Renewal Period (if any).

TAXES:

Customer represents that it is exempt from sales and use taxes imposed by the state and local governmental divisions in which it is located. Customer must provide FuelEd with Customer's exemption certificates or other proof of Customer tax-exempt status reasonably acceptable to FuelEd.

TERMINATION:

Either party may terminate this Agreement at any time with ninety (90) days' prior written notice to the other party for cause. Termination for cause may be used if a party breaches any material term or fails to fulfill any representation, warranty, or material condition, term, provision or obligation contained in this Agreement and fails to cure within thirty (30) days of such notice from the terminating party. Upon termination, the non-breaching party shall be entitled to seek any remedies to which it shall be entitled at law or in equity. If any change in applicable law that is enacted after the date hereof could reasonably be expected to have a material adverse effect on the ability of any party to carry out its obligations under this Agreement, such party, upon written notice to the other party may request renegotiation of this Agreement. Such renegotiation shall be undertaken in good faith. If the parties are unable to renegotiate and agree upon revised terms within 120 days of such notice of renegotiation, then this Agreement shall be terminated effective at the end of the school year in which such notice was given. Termination of this Agreement does not relieve Customer of any obligations for

Fuel Education Products and Services Agreement Terms

payments outstanding to FuelEd as of the date of termination and does not relieve either party of any obligations that continue upon termination.

INFORMATION REQUIREMENTS:

Customer will provide FuelEd with all information reasonably required by FuelEd to provide the products, services, and licenses.

FERPA AND CONFIDENTIALITY:

If Customer is a public entity receiving federal Title I funds, Customer represents that FuelEd is a "school official" with a "legitimate educational interest" under the definitions of those terms set forth in the Customer's Family Educational Rights and Privacy Act ("FERPA") notification(s) to students and parents during the Period and Renewal Periods (if any) of this Agreement. FuelEd agrees to develop, implement, maintain and use appropriate administrative, technical or physical security measures to the full extent required by FERPA in order to maintain the confidentiality of "education records" as that term is defined by FERPA. Customer recognizes and agrees that for purposes of all applicable laws, FuelEd has a legitimate educational interest for purposes of Customer disclosing to FuelEd students' education records. Regardless of whether Customer is a public entity receiving federal Title I funds, to the extent permitted by applicable law FuelEd or its affiliates may provide Customer with confidential information (as designated by FuelEd) required by Customer in writing for its internal use or reporting to regulatory authorities. Customer agrees to develop, implement, maintain and use appropriate administrative, technical or physical security measures to maintain the confidentiality of such confidential information.

ENGLISH LANGUAGE LEARNERS, SPECIAL EDUCATION, AND DISABILITIES:

If Customer is a public entity receiving federal Title III and/or Title I funds, Customer agrees that it is the Local Educational Agency responsible for the provision of English Language Learner education and special education. Although FuelEd or its Affiliates may provide products and services that may be used in furtherance of professional development programs and/or language instruction education programs for English Language Learners, Customer is responsible for the provision and/or implementation of any services of any nature as required by Title VI of the Civil Rights Act of 1964, the Equal Educational Opportunities Act, the English Language Acquisition, Language Enhancement, and Academic Achievement Act or any similar law, whether federal,

Fuel Education Products and Services Agreement Terms

state or local. The provision of special education, the creation, implementation or provision of Individualized Education Programs, the provision of reasonable accommodations or any services of any nature under the Individuals with Disabilities Education Act, the Americans with Disabilities Act, section 504 of the Rehabilitation Act or any similar law, whether federal, state or local are not services provided under this Agreement. Notwithstanding the forgoing, during the Period and Renewal Period (if any) of this Agreement, FuelEd will discuss, formulate and make adjustments and accommodations in furtherance of IEPs or reasonable accommodations established by Customer, but solely to the extent that FuelEd may do so without incurring direct or indirect costs.

PUBLICITY:

During the Period and Renewal Period (if any) of this Agreement, Customer hereby agrees that FuelEd and its Affiliates shall have the right, but not the obligation, to list Customer as a customer in other materials promoting the Content. FuelEd will remove Customer's name from any such list within thirty (30) days after any termination of this Agreement.

AUDIT RIGHTS:

This paragraph shall only be applicable if a Non-Hosted Solution is applicable to the order. Customer shall maintain books and records in connection with its use of the non-hosted courses for the Period of this Agreement and for at least three (3) years after the date this Agreement terminates or expires. FuelEd or its representatives may audit the relevant books and records of Customer during the Period of this Agreement, and for three (3) years after the expiration of this Agreement to ensure compliance with this Agreement. Any such audit shall be conducted during regular business hours at Customer's facilities and shall not unreasonably interfere with Customer's business activities. Audits shall be conducted no more than once annually. If an audit reveals that Customer has underpaid fees due to FuelEd or its Affiliates, all such fees shall be paid immediately, together with interest at the rate of prime plus one percent (1%); and in the event such underpayment is in excess of five percent (5%) of the total owed to FuelEd or its Affiliates for any given audit period, then Customer shall, in addition, reimburse to FuelEd or its Affiliates the reasonable costs of conducting the audit. In connection with the license grants set forth in these Terms, (i) FuelEd or its Affiliates may monitor actual usage of the courses and (ii) at periodic intervals designated by FuelEd or its Affiliates

Fuel Education Products and Services Agreement Terms

in accordance with its then current practices, may request that Customer deliver to FuelEd or its Affiliates in writing a summary of the actual number of students that are currently enrolled and using the courses. Unless otherwise set forth in the applicable Order, all license Fees shall be payable in accordance with the number of students determined pursuant to the Reporting Process.

WARRANTY:

FuelEd warrants that the services will be performed in a professional and workmanlike manner in accordance with commercially reasonable industry standards. THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND FuelEd MAKES NO GUARANTEES AS TO THE RESULTS OR ACHIEVEMENTS OF THE STUDENTS. WITHOUT LIMITING THE FOREGOING, FuelEd MAKES NO GUARANTEES AND SHALL NOT BE LIABLE FOR OUTAGES OR OTHER NON-ACCESSIBILITY TO THE FuelEd WEBSITE, END-USER CONNECTION SPEED OR CONNECTIVITY PROBLEMS REGARDLESS OF THE CAUSE. FuelEd OFFERS NO WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCTS OR SERVICES PROVIDED PURSUANT TO THIS AGREEMENT. FuelEd DOES NOT WARRANT THAT USE THE SITE OR CONTENT WILL BE UNINTERRUPTED OR ERROR-FREE, THAT ERRORS WILL BE CORRECTED OR THAT IT WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

INTELLECTUAL PROPERTY:

Customer acknowledges and agrees that all courses, content, software, graphics, pictures, documents, licenses, designs, and materials, and any and all derivatives thereof (collectively, Works) made available to Customer pursuant to this Agreement are protected by copyrights, trademarks, service marks, patents, trade secrets, or other proprietary rights and laws and FuelEd (or its Affiliates or licensors) own all right, title and interest in and to the Works. Customer acknowledges and agrees that it has no intellectual property interest or claims in the Works and has no rights to make any use of such Works except as expressly granted herein. Except as expressly authorized in writing by an officer of FuelEd, Customer agrees not to sell, license, sublicense, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit, or create derivative works from any of the Works. Customer will not act or

Fuel Education Products and Services Agreement Terms

permit any action that would impair any of FuelEd's (or its Affiliates' or licensors') rights in the Works. Customer agrees not to: (a) disassemble, reverse compile, reverse engineer or otherwise attempt to discover the source code of or trade secrets embodied in the Works (or any portion thereof); (b) distribute, lend, rent, sell, transfer, or grant sublicenses to, or otherwise make available the Works (or any portion thereof) to third parties, including, but not limited to, making such Works available (i) through resellers, OEMs, other distributors, or (ii) as an application service provider, service bureau, or rental source, unless expressly permitted in the Order; (c) embed or incorporate in any manner the Works (or any element thereof) into other applications of Customer or third parties; (d) use or transmit the Works in violation of any applicable law, rule or regulation, including any export/import laws, (e) in any way access, use, or copy any portion of the Works (including the logic and/or architecture thereof and any trade secrets included therein) to directly or indirectly develop, promote, distribute, sell or support any product or service that is competitive with the Works, (f) remove, obscure or alter any copyright notices or any name, logo, tagline or other designation of FuelEd or its Affiliates displayed on any portion of the Works. Customer shall not permit any third party to perform any of the foregoing actions and shall be responsible for all damages and liabilities incurred as a result of such actions. Customer acknowledges that in the event Customer breaches any provision contained in this paragraph, FuelEd's interests will be irreparably injured, the full extent of FuelEd's damages may be impossible to ascertain, and monetary damages will not be an adequate remedy. Customer agrees that FuelEd will be entitled to enforce this agreement by an injunction or other legal or equitable relief in any court of its choice without the necessity of posting bond or security, in addition to its right to seek monetary damages or any other remedy.

INDEMNIFICATION AND LIMITATION OF LIABILITY:

FuelEd agrees to defend, indemnify, and hold harmless Customer and its employees, contractors, officers, and board members from and against any and all liabilities, claims, damages, injuries, judgments, demands and expenses, including court costs and attorney's fees, that arise out of or in connection with any acts or omissions of FuelEd related to or arising from this Agreement (collectively "Claims") except to the extent that such Claims arise out of actions or omissions of Customer and subject to the conditions precedent that a) Customer provide written notice to FuelEd within thirty (30) days of its receipt of the Claim and b) Customer permits FuelEd to assume the control and defense of the Claim with counsel selected by FuelEd. IN NO EVENT SHALL FuelEd'S

Fuel Education Products and Services Agreement Terms

LIABILITY TO CUSTOMER AND ITS EMPLOYEES, CONTRACTORS, OFFICERS AND BOARD MEMBERS UNDER THIS AGREEMENT OR FOR ANY MATTER OR CAUSE OF ACTION ARISING IN CONNECTION HEREWITH EXCEED THE AMOUNT PAID BY CUSTOMER TO FuelEd HEREUNDER. IN NO EVENT SHALL FuelEd BE LIABLE TO CUSTOMER, WHETHER UNDER THEORY OF CONTRACT, TORT OR OTHERWISE, FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, OR SPECIAL DAMAGES (INCLUDING ANY DAMAGE TO BUSINESS REPUTATION, LOST PROFITS OR LOST DATA), WHETHER FORESEEABLE OR NOT AND WHETHER FuelEd IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. To the extent permitted by law, Customer agrees to defend, indemnify, and hold harmless FuelEd and its Affiliates and all of their employees, contractors, officers, and board members from and against any and all liabilities, claims, damages, injuries, judgments, demands and expenses, including court costs and attorney's fees, that arise out of or in connection with any acts or omissions of Customer related to or arising from this Agreement (collectively "Claims") except to the extent that such Claims arise out of actions or omissions of FuelEd and subject to the conditions precedent that a) FuelEd provide written notice to Customer within thirty (30) days of its receipt of the Claim and b) FuelEd permits Customer to assume the control and defense of the Claim with counsel selected by Customer.

NON-SOLICITATION/NON-HIRE:

To the extent permitted by law and during the Term of this Agreement and for a period of twelve (12) months after the latter of its termination or expiration, the parties agree not to directly or indirectly solicit for hire or hire any employee of the other party without the express written consent of the other party, and the payment to that party of a direct hiring conversion fee equal to fifty percent (50%) of that person's base starting salary as an employee of the hiring party. A party's general solicitation of employees (through, for example, employment websites or advertisements in newspapers, magazines or trade journals) will not be a violation of this provision.

DISPUTE RESOLUTION:

The parties agree that they will use their best efforts to settle any and all disputes arising out of, under or in connection with this Agreement, including without limitation the validity, interpretation, performance and breach hereof, prior to initiating any legal proceeding, whether judicial or administrative in nature. The efforts shall be primarily

Fuel Education Products and Services Agreement Terms

between the President of FuelEd and the Superintendent of the Customer or their respective designees. The laws of the Commonwealth of Virginia, without regard to its conflict of laws provisions, will govern all disputes arising out of or related to this Agreement, including the validity, enforceability or construction thereof. Each party submits to the jurisdiction of the state and federal courts located in the Commonwealth of Virginia for purposes of any action, suit or proceeding arising out of or related to this Agreement and agrees not to plead or claim that any action, suit or proceeding arising out of or related to this Agreement that is brought in such courts has been brought in an inconvenient forum.

ENTIRE AGREEMENT AND ADDITIONAL TERMS:

This Agreement and the documents to which it refers form the entire Agreement between the parties with respect to the subject matter herein. Customer may not rely on any other documents, proposals, statements, or representations by any sales or service representatives or other parties, unless expressly contained herein. By accepting this Agreement, Customer hereby agrees that any additional or different terms contained in Customer's purchase order or other related documents ("Purchase Order") shall be of no force or effect and shall not become part of this Agreement unless they are specifically accepted in signed writing by FuelEd. If Customer issues any Purchase Order, it shall be deemed solely for the administrative convenience of Customer and not binding on FuelEd, even if acknowledged or acted upon by FuelEd.

MISCELLANEOUS:

a) A waiver of any part of this Agreement in one instance is not a waiver of any other part or any other instance; b) If any part of this Agreement is held invalid or if the applicability of any part of this Agreement is held invalid to a particular set of circumstances for any reason, such holding or declaration shall not in any way affect or impair the remaining provisions or the application to a different set of circumstances; c) Except as otherwise provided in this Agreement, neither party may assign or delegate any rights or obligations under this Agreement without the prior written consent of the other party and any such assignments shall be void and of no effect, except that FuelEd may assign all of its rights and obligations under this Agreement to any person or entity that controls FuelEd, is controlled by FuelEd, or is under common control with FuelEd or to any successor in interest that acquires all or substantially all of the assets of FuelEd; d) This Agreement does not create any legal or equitable rights on the part of any third

Fuel Education Products and Services Agreement Terms

party, as a third party beneficiary or otherwise; e) FuelEd is not a division or any part of Customer. Customer is not a division or any part of FuelEd. Nothing herein is intended to be construed as or to create a partnership or joint venture by or between FuelEd and Customer; f) Notwithstanding any other section of this Agreement, no party will be liable for any delay in performance or, except with respect to payment hereunder, inability to perform due to acts of God or due to war (declared or undeclared), riot, terrorism, civil war, embargo, fire, flood, explosion, sabotage, labor strike, internet outage or other acts beyond its reasonable control and unrelated to its fault or negligence; g) Customer and all users of licensed products shall comply with the terms and conditions of the Terms of Use pertaining to the use of courseware, web sites and learning management systems, as such terms are set forth therein; h) All representations, warranties and indemnities made in this Agreement will survive termination of this agreement; i) Fuel Education LLC will provide all services, licenses and materials under this Agreement either directly or in conjunction with its Affiliates. An "Affiliate" of Fuel Education LLC is an entity that controls, is controlled by, or under common control with, Fuel Education LLC and "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of an entity, whether through the ownership of securities, by contract or otherwise. Fuel Education LLC and its Affiliates shall be referred to collectively as FuelEd; k) All written notices required by the terms of this Agreement will be sent to the Superintendent of the Customer at the address set forth above and to the General Counsel of K¹² at 2300 Corporate Park Drive, Herndon, VA 20171 (and such addresses may be changed upon proper notice to such addressees). Notice may be given by either certified or registered mail, postage prepaid, return receipt requested, or reputable overnight carrier, postage prepaid and is deemed to have been given three days after mailing or, as to overnight delivery, on the date of personal delivery to the address stated thereon.