



**SOFTWARE  
AS A SERVICE SUBSCRIPTION AGREEMENT**

This Software as a Service (SaaS) Agreement ("**SaaS Agreement**") is made and entered into this **18<sup>th</sup>** day of **August, 2015**, by and between Edify Learning, LLC, a California limited liability company (hereinafter, "**Vendor**"), with its principal address at 900 E. Hamilton Avenue, Suite 100, Campbell, CA 95008 and **Jerome School District #261** (hereinafter, "**Customer**") with its principal address at **125 4th Avenue West, Jerome, ID 83338**. Vendor and Customer are each sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties.**"

A. Vendor is in the business of providing on-line software services and associated consulting services for the education industry. The Parties desire that Vendor make such software and services available to Customer under the terms and conditions of this Agreement.

B. Each order defined in an Order Form (as defined below) will be performed under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1. Definitions**

As used in this SaaS Agreement and in any Order Forms, the following terms shall have the following meanings:

a. "**Agreement**" means this SaaS Agreement, any Order Forms, and any online terms of use and policies posted on the Vendor's website in conjunction with the delivery of the service defined below.

b. "**Content**" means the audio and visual information, documents, software, products, and services contained or made available to Customer in the course of using the Service. "**Customer Content**" is limited to test questions developed by Customer and uploaded onto Vendor's system for use with the Service. All other Content on the Vendor's websites and or otherwise made available by Vendor shall be deemed to be "**Vendor Content.**"

c. "**Confidential Information**" means all technological, financial, commercial or other information or data of a confidential nature and identified as such by an appropriate legend or marking.

d. "**Customer Data**" means any data, information, or material provided or submitted by Customer to the Service or Vendor in the course of using the Service.

e. "**Effective Date**" means the date first set forth above; or if an Order Form is subsequently accepted by Vendor, the Effective Date of the Order Form will be specified on the Order Form.

f. "**Initial Order Form**" means the first Order Form entered into by Customer and Vendor as of the Effective Date of this Agreement and attached hereto as **Exhibit A**, and incorporated by reference.

g. "**Intellectual Property Rights**" means any unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world.

h. "**License Administrator(s)**" means those Users designated by Customer who are authorized to administer Customer's use of the Service.

i. "**License Term(s)**" means the period(s) during which a specified number of Users are licensed to use the Service pursuant to the Order Form(s).

j. "**Order Form(s)**" means the form evidencing the SaaS subscription for the Service (the format of which shall conform to Exhibit A) and any subsequent order forms submitted in writing, specifying, among other things, the scope of licenses and other services contracted for, the applicable fees, the billing period, and other charges as agreed to between the Parties, each such Order Form to be incorporated into and to become a part of this Agreement. In the event of any conflict between the terms of this Agreement and the terms of any such Order Form, the terms of this Agreement shall prevail.



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k. **“Vendor Technology”** means all of Vendor’s proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs, and other tangible or intangible technical material or information) made available to Customer by Vendor in providing the Service.

l. **“Service(s)”** means the specific edition and modules of Vendor’s online edifyAssess™ software identified on the Initial Order Form, developed, operated, and maintained by Vendor, accessible via <http://www.edifylearning.com> or another designated website or IP address, or ancillary online or offline products and services provided to Customer by Vendor, to which Customer is being granted access under this Agreement (or as Vendor may grant to Customer in subsequent Order Forms), including the Vendor Technology and the Vendor Content.

m. **“Student”** means any student or other program participant enrolled or matriculated into Customer’s school, college, department or other educational institution whose information is being managed by the Service. Vendor will assign an individually identifiable Student ID number for each Student.

n. **“User(s)”** means a Student or Customer faculty, teachers, instructors, administrators, employees, representatives, consultants, contractors, or agents who are authorized to use the Service and have been supplied user identifications and passwords by Customer (or by Vendor at Customer’s request). For purposes of clarity, a Student may or may not use the on-line Service (for example, to take an online exam), however, each Student will be considered a User notwithstanding any non-use of the Service by that Student.

### **2. License Grant and Restrictions**

a. Vendor hereby grants Customer a nonexclusive, nontransferable right to use the Service, solely for Customer’s own educational operations (as defined in the Order Form(s)) and internal purposes, during the License Term and subject to the terms and conditions of this Agreement. All rights not expressly granted to Customer are reserved by Vendor and its licensors. Notwithstanding anything contained herein to the contrary, Vendor is free to enter into similar licenses and SaaS subscription agreements with others.

b. Customer shall not, without Vendor’s prior written consent, grant access to the Service: (i) to any User who is a direct competitor of Vendor; or (ii) for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

c. Customer shall not, without prior written consent of Vendor: (i) license, sublicense, sell, resell, transfer, assign, distribute, or otherwise commercially exploit or make available to any third party (other than Users and Students) the Service or the Vendor Content in any way; (ii) modify or make derivative works based upon the Service or the Vendor Content; (iii) create Internet “links” to the Service or “frame” or “mirror” any Vendor Content on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the Service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Service. User licenses cannot be shared or used by more than one individual User.

d. Customer may use the Service only for Customer’s educational operations and internal purposes and shall not use the Service to: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortuous material, including material harmful to children or violative of third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses, or other harmful computer code, files, scripts, agents, or programs; (iv) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (v) attempt to gain unauthorized access to the Service or its related systems or networks.

### **3. Customer Responsibilities**

Customer is responsible for all activity occurring under Customer’s User accounts and shall abide by all applicable local, state, national, and foreign, laws, treaties and regulations in connection with Customer’s use of the Service, including those related to data privacy, international communications, and the transmission of technical or personal data. Customer shall: (i) notify Vendor immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to Vendor immediately and use



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reasonable efforts to stop immediately any copying or distribution of Vendor Content that is known or suspected by Customer or Customer Users; and (iii) not impersonate another Service user or provide false identity information to gain access to or use the Service.

#### **4. Account Information and Data**

a. Customer Data. Vendor does not own any Customer Data. Customer, not Vendor, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data.

b. Effect of Termination. As part of the basic Service provided to Customer hereunder, Vendor makes available certain Data Extract protocols that allow Customer periodically during the License Term to copy, download and extract information from the Vendor's Service in standard formats previously developed by Vendor. In addition to the Data Extract protocols, if this Agreement is terminated (other than by reason of Customer's breach) and for an additional charge payable in advance; Vendor will make available to Customer a file of the Customer Data (in the standard format that Vendor generally makes available to its other customers) within 30 days of termination if Customer so requests at the time of termination. Vendor's additional charge will be based on Vendor's then-current hourly consulting rates and Vendor's estimate of the number of hours required to prepare the copy of Customer's Data. Vendor reserves the right to withhold, remove, and/or discard Customer Data without notice for any breach, including, without limitation, Customer's non-payment. Upon termination for cause, Customer's right to access or use Customer Data immediately ceases, and Vendor shall have no obligation to maintain or forward any Customer Data.

#### **5. Intellectual Property Ownership**

a. Vendor Technology. Vendor (and its licensors, where applicable) shall exclusively own all right, title, and interest, including all related Intellectual Property Rights, in and to the Vendor Technology, Vendor Content and the Service and any suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by Customer or any other party relating to the Service. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Service, the Vendor Technology or the Intellectual Property Rights owned by Vendor. Vendor's name, Vendor's logo, and the product names associated with the Service are trademarks of Vendor or third parties, and no right or license is granted to use them.

b. Customer Content. Vendor has designed the Service to accept Customer generated information (such as test questions) and other Customer Content and to integrate such Customer Content with Vendor Content on the Service. In consideration of the integration and Vendor's publishing of the Customer Content, Customer hereby grants to Vendor a non-exclusive, non-transferable, perpetual license to use and reproduce any Customer Content that is uploaded or transferred to the Vendor's Service or website. Such license to use Customer Content shall survive the termination of this Agreement, unless Customer terminates this Agreement due to Vendor's breach of Vendor's obligations.

c. Confidentiality.

i. The content of this Agreement shall be kept strictly confidential and not be disclosed to any third party without the prior written consent of the other Party (such consent not to be unreasonably withheld), except as reasonably necessary to enforce the terms of the Agreement.

ii. Neither Party shall disclose any of the other Party's Confidential Information to any third party without the other Party's prior written consent. Each Party shall protect Confidential Information received from the other Party with at least the same degree of care that it exercises with respect to its own Confidential Information (but always with no less than a reasonable standard of care), and shall disclose such Confidential Information only to those of its employees who have a "need to know" in connection with the performance of this Agreement.

iii. The duty of confidentiality does not apply to Confidential Information which the receiving Party can prove:



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- (1). is generally known to the public at the time of disclosure by the disclosing Party or later becomes so generally known without the fault of the receiving Party;
- (2). was already known to the receiving Party prior to disclosure by the disclosing Party;
- (3). is disclosed to the receiving Party by a third party who did not obtain such information from the disclosing Party subject to any confidentiality obligation;
- (4). is independently developed by the receiving Party; or
- (5). is approved for release or use by the other Party's prior authorization in writing.

**6. Charges and Payment of Fees**

- a. **Base Charges.** Unless otherwise specified on an Order Form accepted by Vendor:
  - i. Customer shall pay all fees or charges to Customer's account in accordance with the fees, charges, and billing terms set forth in the applicable Order Form in effect at the time a fee or charge is due and payable;
  - ii. The initial "Base Charge" will cover at a maximum the Number of Users listed on the Order Form at the license fee listed on the Order Form;
  - iii. Payments must be made in advance;
  - iv. All payment obligations are non-cancelable and all amounts paid are nonrefundable;
  - v. Customer is responsible for paying for all licenses ordered for the entire License Term, whether or not such licenses are actively used;
  - vi. Customer must provide Vendor with valid credit information and approved purchase order information as a condition to signing up for the Service; and
  - vii. An authorized License Administrator may add licenses by executing an additional written Order Form. Added licenses will be subject to the following, unless otherwise specified in the Order Form accepted by Vendor: (i) added licenses will be coterminous with the preexisting License Term (either Initial Term or renewal term); (ii) the license fee for the added licenses will be the then current, generally applicable license fee; and (iii) for monthly charges, licenses added in the middle of a billing month will be charged in full for that billing month.
- b. **Limited Customer and User Support.** Services shall only include those modules or collection of Services described in the applicable Order Form. Unless otherwise stated in the applicable Order Form, Vendor disclaims any responsibility to provide any additional Customer or User support except as may be mutually agreed in the Order Form or under a separate written agreement to render additional support services.
- c. **Change Order for Consulting or Development Services.** Unless otherwise specified in an Order Form accepted by Vendor, Services shall not include modifications to the Service. Upon request by Customer, Vendor may prepare a Change Order (the form of which is attached hereto as **Exhibit B**) for any (i) consulting services or (ii) development services for modifications or enhancements to features of the Service. Upon mutual agreement and signature of the Change Order, Vendor shall undertake the work described in the Change Order and bill Customer for the work per the terms specified in the Change Order.

**7. Excess Data Storage Fees**

The maximum data storage space provided to Customer at no additional charge is specified in the Order Form. If the amount of data storage required exceeds these limits, Customer will be charged the then-current storage fees. Vendor will use reasonable efforts to notify Customer when the storage used reaches approximately 90 percent of the maximum; however, any failure by Vendor to so notify Customer shall not affect Customer's responsibility for such additional storage charges. Vendor reserves the right to establish or modify its general practices and limits relating to storage of Customer Data.



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### **8. Billing and Renewal**

a. Unless otherwise specified in the Order Form, Vendor charges and collects in advance for use of the Service (all fees are deemed earned upon payment and Customer shall not be entitled to any credit or refund upon early termination prior to end of the License Term). Any extension or renewal shall be based on then current charges in effect after the License Term. Fees for other services will be charged on an as-quoted basis. Vendor's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and Customer shall be responsible for payment of all such taxes, levies, or duties, excluding only U.S. (federal or state) taxes based solely on Vendor's income.

b. Customer agrees to provide Vendor with complete and accurate billing and contact information. This information includes Customer's legal company name, street address, email address, and name and telephone number of an authorized billing contact and License Administrator. Customer agrees to update this information within 30 days of any change to it. If the contact information Customer has provided is incorrect or misrepresented, Vendor reserves the right to terminate Customer's access to the Service in addition to any other legal remedies.

c. If Customer believes its bill is incorrect, Customer must contact Vendor in writing within 15 days of the date of the invoice to be eligible to receive an adjustment or credit. In the absence of such contact, all invoices shall be deemed approved by Customer 15 days of the date of the invoice.

### **9. Nonpayment and Suspension**

a. In addition to any other rights granted to Vendor herein, Vendor reserves the right to suspend or terminate this Agreement and Customer's access to the Service if Customer's account becomes delinquent. Delinquent invoices and accounts are subject to interest of 1.0 percent per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection. Customer will continue to be charged for licenses during any period of suspension. If Customer or Vendor initiates termination of this Agreement, Customer will be obligated to pay the balance due on Customer's account computed in accordance with Sections 6 and 8 above.

b. Upon termination of this Agreement, all Customer payment obligations accrued hereunder through the date of termination will become due and payable and any installment plan payments will be deemed accelerated, due and payable.

c. Vendor reserves the right to impose a reconnection fee in the event Customer is suspended and thereafter requests access to the Service. Customer agrees and acknowledges that Vendor has no obligation to retain Customer Data and that such Customer Data may be irretrievably deleted if Customer's account is more than 30 days past due.

### **10. Termination for Cause**

Any breach of Customer's payment obligations or unauthorized use by Customer or Customer's Users of the Vendor Technology or Service will be deemed a material breach of this Agreement. Vendor, in its sole discretion, may terminate Customer's password(s), account, or use of the Service if Customer breaches or otherwise fails to comply with this Agreement. This Agreement shall not terminate due to lack of use or reduction in maximum number of Users specified on the applicable Order Form.

### **11. Representations and Warranties**

a. Each Party represents and warrants that it has the legal power and authority to enter into this Agreement.

b. Vendor represents and warrants that it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof, so long as the Service is used pursuant to the terms of this Agreement and Vendor's on-line terms of use.

c. Customer represents and warrants that:



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- i. Customer has not falsely identified any information it has provided to Vendor nor provided any false information to gain access to the Service and that Customer's billing information is correct.
- ii. Customer has obtained any consents or authorizations required for Customer to use the Service and to enter into this Agreement. Vendor will be relieved of its obligations to the extent that they are affected by Customer's failure to obtain any such required consent or authorization.
- iii. Customer acknowledges it is Customer's responsibility to determine whether the Service offered by Vendor, its hosting environment, and its use with Customer Data is appropriate for Customer and will meet Customer's needs. Customer is responsible for notifying Vendor in advance in order to request changes to its hosting environment, including any additional capacity required to support anticipated peaks in demand that may significantly increase website hits, transaction volumes, or otherwise increase system resource utilization.

**12. Mutual Indemnification**

a. Customer shall indemnify and hold Vendor, its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys, and agents harmless from and against any and all claims, costs, damages, losses, liabilities, and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that use of the Customer Data or Content infringes the rights of, or has caused harm to, a third party; (ii) a claim, which if true, would constitute a violation by Customer of Customer's representations and warranties; or (iii) a claim arising from the breach by Customer or Customer Users of this Agreement, provided in any such case that Vendor (1) gives written notice of the claim promptly to Customer; (2) gives Customer sole control of the defense and settlement of the claim (provided that Customer may not settle or defend any claim unless Customer unconditionally releases Vendor of all liability and such settlement does not affect Vendor's business or Service); (3) provides to Customer all available information and assistance; and (4) has not compromised or settled such claim.

b. Vendor shall indemnify and hold Customer and Customer's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys, and agents harmless from and against any and all claims, costs, damages, losses, liabilities, and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that the Service directly infringes a copyright, a U.S. patent issued as of the Effective Date, or a trademark of a third party; (ii) a claim, which if true, would constitute a violation by Vendor of its representations or warranties; or (iii) a claim arising from breach of this Agreement by Vendor; provided that Customer (1) promptly gives written notice of the claim to Vendor; (2) gives Vendor sole control of the defense and settlement of the claim (provided that Vendor may not settle or defend any claim unless it unconditionally releases Customer of all liability); (3) provides to Vendor all available information and assistance; and (4) has not compromised or settled such claim. Vendor shall have no indemnification obligation, and Customer shall indemnify Vendor pursuant to this Agreement, for claims arising from any infringement arising from the combination of the Service with any of Customer products, service, hardware or business process.

**13. Disclaimer of Warranties**

VENDOR AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY, OR COMPLETENESS OF THE SERVICE OR ANY CONTENT. VENDOR AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED, OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM, OR DATA; (B) THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS; (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE; (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY CUSTOMER THROUGH THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS; (E) ERRORS OR DEFECTS WILL BE CORRECTED; OR (F) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICE AND ALL VENDOR CONTENT IS PROVIDED TO CUSTOMER STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF





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MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY VENDOR AND ITS LICENSORS.

**14. Internet Delays**

VENDOR'S SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. VENDOR IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. CUSTOMER IS SOLELY RESPONSIBLE FOR MAINTAINING ITS CONNECTIVITY TO THE INTERNET AND OTHER MEANS OF ELECTRONIC COMMUNICATIONS.

**15. Limitation of Liability**

IN NO EVENT SHALL VENDOR'S AGGREGATE LIABILITY HEREUNDER EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM CUSTOMER IN THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL EITHER PARTY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE, OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THIS SERVICE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR, OR OMISSION, REGARDLESS OF CAUSE IN THE CONTENT, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**16. Local Laws and Export Control**

a. Vendor provides services and uses software and technology that may be subject to U.S. export controls administered by the U.S. Department of Commerce, the U.S. Department of Treasury Office of Foreign Assets Control, and other U.S. agencies and the export control regulations of Switzerland and the European Union. Customer acknowledges and agrees that the software and Services shall not be used, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to countries on which the United States, Switzerland, and/or the European Union maintains an embargo (collectively, "**Embargoed Countries**"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "**Designated Nationals**"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By using the Service, Customer represents and warrants that Customer is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. Customer agrees to comply strictly with all U.S., Swiss, and European Union export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required.

b. The software and Service may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 428/2009.

c. Vendor and its licensors make no representation that the Service is appropriate or available for use in other locations. Customer is solely responsible for compliance with all applicable laws, including without limitation export and import regulations of other countries. Any diversion of the Vendor Content contrary to U.S., Swiss, or European Union (including European Union Member States) law is prohibited. None of the Vendor Content, nor any information acquired through the use of the Service, is or will be used for nuclear activities, chemical, or biological weapons, or missile projects, unless specifically authorized by the U.S. government or appropriate European body for such purposes.

**17. Notice**

Vendor may give notice by means of a general notice on the Service, email to Customer address on record in Vendor's account information, by written communication sent by first class mail or pre-paid post to Customer address on record in Vendor's account information; or by letter delivered by nationally recognized overnight delivery service. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or



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posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email). Customer may give notice to Vendor (such notice shall be deemed given when received by Vendor) at any time by any of the following: letter sent by confirmed facsimile to Vendor at the following fax number: +1 (408) 654-7907; letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail to Vendor at the following address:

Contract Administration  
Edify Learning, LLC  
900 E. Hamilton Avenue  
Suite 100  
Campbell, CA 95008

**18. Modification to Terms**

This Agreement may not be amended or modified without written consent signed by the Parties. Provided, however, Vendor reserves the right to modify its on-line policies or terms of use relating to the Service at any time, effective upon posting of an updated version of the policies or terms of use on the Service. Customer is responsible for regularly reviewing Vendor's on-line policies and terms of use. Continued use of the Service after any such changes shall constitute Customer's consent to such changes. A waiver or amendment of any term or provision of this Agreement shall not be construed as a waiver or amendment of any other term or provision.

**19. Assignment; Change in Control**

a. This Agreement may not be assigned by Customer without the prior written approval of Vendor but may be assigned without Customer's consent by Vendor to (i) a parent or subsidiary or Vendor, (ii) an acquirer of Vendor's assets, or (iii) a successor by merger to Vendor.

b. Any purported assignment in violation of this section shall be void. Any actual or proposed change in control of Customer that results or would result in a direct competitor of Vendor directly or indirectly owning or controlling 50 percent or more of Customer shall entitle Vendor to terminate this Agreement for cause immediately upon written notice.

c. Notwithstanding the foregoing, in all permitted assignments, this Agreement shall be binding upon and inure to the benefit of the Parties to this Agreement and to their respective permitted assigns, successors, heirs and representatives.

d. This Agreement is for the sole benefit of the Parties hereto and their permitted assigns and nothing in this Agreement, express or implied, is intended or shall be construed to give any person other than the Parties to this Agreement or their respective successors or permitted assigns any legal or equitable right, remedy or claim under or in respect of any agreement or any provision contained herein.

**20. General**

a. Governing Law, Venue and Jurisdiction. This Agreement shall be governed by California law and controlling U.S. federal law, without regard to the choice or conflicts of law provisions of any jurisdiction, and, except as specified in Section 20(b) below, any disputes, actions, claims, or causes of action arising out of or in connection with this Agreement or the Service shall be subject to the exclusive jurisdiction of the state and federal courts located in Santa Clara County, California and venue in such courts shall be deemed proper.

b. Venue, and Jurisdiction for Customer Located in Europe, Africa or Middle East. If the Services will be performed for a Customer located in Europe, Africa or the Middle East, the following shall apply:

i. All disputes and differences between the Parties arising out of or under this Agreement shall be settled and finally determined by binding arbitration in accordance with the applicable rules of the International Chamber of Commerce ("ICC").





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- ii. The arbitration shall be conducted in London, England.
- iii. The arbitration court shall be composed of three (3) arbitrators, one of whom will be named by each Party. The third arbitrator, who shall act as chairman, shall be determined in accordance with the rules of the ICC. The arbitrators shall decide each issue presented to them by a majority vote, and their decisions shall be in writing and shall be final and conclusive.
- iv. The amount of the costs of any such arbitration and by whom they shall be paid will be determined as part of the arbitration.
- v. This Agreement shall be enforceable by (and judgment upon any award rendered by the arbitrators may be entered in) any court having jurisdiction.
- c. **Severability.** No text or information set forth on any other purchase order, preprinted form, or document (other than an Order Form or Change Order, if applicable) shall add to or vary the terms and conditions of this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect.
- d. **Relationship of Parties.** The Parties are independent contractors and will so represent themselves in all regards. Neither Party is the agent of the other and neither may bind the other in any way. No joint venture, partnership, employment, or agency relationship exists between Customer and Vendor as a result of this Agreement or use of the Service.
- e. **Entire Agreement.** This Agreement, together with any applicable Order Form or Change Order, comprises the entire agreement between Customer and Vendor and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the Parties regarding the subject matter contained herein.
- f. **Further Assurances.** Each of the Parties hereto shall perform such further acts and execute such documents as may reasonably be required to effectuate the transactions contemplated hereby.
- g. **No Rules of Construction; Joint Authorship.** No rules of construction based on authorship shall be invoked or used in interpreting this Agreement and for all purposes hereunder, both Parties to this Agreement shall be deemed to be joint authors.
- h. **Compliance with Laws.** Each Party represents and warrants that it will comply with all applicable securities and other laws, rules and regulations relating hereto and that it shall not circumvent or frustrate the intent of this Agreement.
- i. **Counterparts.** This Agreement may be executed by facsimile or electronic signatures and in multiple counterparts, each of which shall be deemed an original. It shall not be necessary that each Party executes each counterpart, or that any one counterpart be executed by more than one Party so long as each Party executes at least one counterpart. In the event this Agreement is executed in more than one language, the English language version of this Agreement shall be controlling in all cases.
- j. **Force Majeure.** Neither Party shall be responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, civil, or military authority, act of God, act or omission of carriers, or other similar causes beyond its control. If any such event of force majeure occurs and such event continues for ninety (90) days or more, the Party delayed or unable to perform shall give immediate notice to the other Party, and the Party affected by the other's delay or inability to perform may elect at its sole discretion to: (a) terminate this Agreement or the affected order solely upon mutual agreement of the Parties; (b) suspend such order for the duration of the condition and obtain or sell elsewhere software, comparable to the Software to have been obtained under the order; or (c) resume performance of such order once the condition ceases with the option of the affected Party to extend the period of this Agreement up to the length of time the condition endured. Unless



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written notice is given within thirty (30) days after the affected Party is notified of the condition, option (c) shall be deemed selected.

k. No Conflicting Agreements. Each Party represents and warrants that the execution and delivery of this Agreement by such Party does not, and compliance by it with the terms hereof and consummation by it of the transactions contemplated hereby will not (i) violate any existing term or provision of any law, regulation, statute, ordinance, rule, order, writ, judgment, injunction or decree, (ii) conflict with or result in a breach of any of the terms, conditions, or provisions of any agreement or instrument to which it is a Party or by which it or any of its assets or properties is bound or subject; or (iii) give to others any right of termination, cancellation, acceleration or modification in or with respect to any agreement or instrument to which it is a Party or by which its assets or properties may be bound, and as to which will adversely affect its ability to consummate the transactions contemplated hereby.

l. Legal Fees. In any arbitration or civil action between the Parties arising from or in connection with this Agreement, or its breach, the prevailing Party in such action shall be entitled, in addition to damages and injunctive or other relief, to its costs and expenses incurred pursuant to this Agreement, including reasonable attorneys' fees.

m. Publicity. The Parties hereby agree to use their best efforts to issue a mutually agreed press release or similar publicity statement within six (6) weeks of the date of this Agreement. Thereafter, neither Party shall issue a press release or other similar publicity of any nature regarding this Agreement without the other Party's prior written approval, which shall not be unreasonably withheld. Notwithstanding the foregoing, each Party hereby agrees the other Party may use its name, URL and logo on its website and in its customer and partner lists for marketing, corporate and financial presentations.

n. No Sale or Lease of Goods. As between Customer and Vendor, Vendor retains all right, title, and interest in the Service components. No goods are sold or leased by Vendor under this Agreement. If Customer desires to purchase or to lease goods from Vendor, such purchase or lease will be governed by a separate mutually acceptable written agreement between Customer and Vendor or a Vendor Affiliate.

o. Survival. Any of these terms and conditions which by their nature extend beyond the Agreement termination or expiration remain in effect until fulfilled, including, without limitation, Sections 4(b), 5, 9, 12, 13, 15, 17 and 20 ; and apply to both Customer's and Vendor's respective successors and assignees.

p. Personnel. Each Party is responsible for the supervision, direction, and control of its respective personnel. Vendor reserves the right to determine the assignment of its personnel. Vendor may subcontract portions of the Services to Subcontractors and Affiliates selected by Vendor.

q. Actions Period. Neither Party may bring a legal action related to this Agreement more than two years after the cause of action accrued.



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**AUTHORIZED SIGNATURE**

The undersigned hereby certifies that he/she has the authority to sign this Agreement.

**IN WITNESS WHEREOF**, the Parties have executed this SaaS Agreement on the day and in the year as set forth above.

**CUSTOMER:**

**VENDOR:**

<b>AUTHORIZED SIGNATURE</b>	AUTHORIZED SIGNATURE 
PRINT NAME <b>Janet Avery</b>	PRINT NAME <b>Sudhir Arora</b>
TITLE <b>Curriculum Director</b>	TITLE <b>Founder and CTO</b>
<b>DATE</b>	DATE <b>August 18, 2015</b>

Please return this signed SaaS Agreement along with completed purchase order to Edify Learning by fax, email, or postal mail.

**Fax:** (408) 654-7907  
Attn: Edify Learning Client Relations

**Email:** info@edifylearning.com

**Postal Mail:** Edify Learning, LLC  
Attn: Client Relations  
900 E. Hamilton Avenue  
Suite 100  
Campbell, CA 95008



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**EXHIBIT A: ORDER FORM**

This Order Form is being executed and delivered pursuant to the SaaS Agreement defined above, the terms and conditions of which are hereby incorporated by reference.

Date of SaaS Agreement	<b>August 18, 2015</b>
Customer	<b>Jerome School District #261</b>
Name of covered school(s)	<b>All In District</b>
Effective Date of Order Form	<b>September 1, 2015</b>
Licensed Administrator(s) (Sec. 1.i):	<b>Superintendent &amp; Staff</b>
License Term:	<b>1 Year</b>
Services:	<ol style="list-style-type: none"> <li><b>1) EdifyAssess™ Platform Installation with: Item/Test Creation, Test Scheduling and Distribution, Online Testing Application, Test Analysis Reporting Suite, EdifyStat™</b></li> <li><b>2) Edify Math, ELA, Science Item Banks</b></li> <li><b>3) Edify Learning Platform Support</b></li> <li><b>4) Progress Testing ReadBank®</b></li> <li><b>5) Five (5) sessions of online staff training</b></li> <li><b>6) One day of on-site training</b></li> </ol>
Maximum Number of Users	<b>1,900 students for full year (teachers and staff: no charge)</b>
Price for Student User Access:	<b>\$5.00 per student x 1900 students = \$9,500.00</b>
Price for Training:	<b>\$1,000.00 (5 online sessions)</b> <b>\$2,500 for on-site training</b>
Price for Installation, Initialization, and Canvas™ integration	

<b>Final SaaS Agreement Pricing:</b>	<b>\$13,000.00</b>
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**ORDER FORM ACCEPTED BY:**

PRIMARY CUSTOMER CONTACT <b>Janet Avery</b>	TITLE <b>Director of Curriculum</b>
PHONE <b>208-324-2392 x 1030</b>	EMAIL <b>janet.avery@jeromeschools.org</b>
BILLING ADDRESS <b>125 4th Avenue West</b>  <b>Jerome, ID 83338</b>	SHIPPING ADDRESS <b>Same</b>
<b>CUSTOMER AUTHORIZED SIGNATURE</b>	<b>TITLE</b>
EDIFY LEARNING, LLC AUTHORIZED SIGNATURE	TITLE <b>Founder and CTO</b>



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**EXHIBIT B  
FORM OF CHANGE ORDER**

#	Description	
1.	Date of SaaS Agreement	
2.	Customer	
3.	Name of covered school(s) or department(s)	
4.	Effective Date of Change Order	
5.	Scope of Services and Proposed Change	
6.	Schedule	
7.	Charges	
8.	Charges payable terms	

ORDER FORM ACCEPTED BY:

**CUSTOMER:**

\_\_\_\_\_

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

Print name: \_\_\_\_\_

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

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

**VENDOR:**

Edify Learning, LLC

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

Print name: \_\_\_\_\_

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

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