



*As a community, we prepare lifelong learners to achieve their full potential in a complex and interconnected world.*

**Reynolds School District  
Board of Education Working**

August 11, 2021

7:00 PM

Virtual Meeting

I.	<b>6:00p - Executive Session</b>	<b>2</b>
	The Reynolds School Board and the Superintendent will recess into Executive Session at 6:00p, under ORS 192.660(2)(b) Personnel and ORS 192.660(2)(d) Negotiations. Executive Session is closed to the public.	
II.	<b>7:00p - Call to Order and Land Acknowledgement</b>	<b>3</b>
III.	<b>7:05p - Public to be Heard</b>	<b>5</b>
IV.	<b>7:20p - Reopening in Fall 2021</b>	<b>6</b>
V.	<b>7:40p - Proposed Changes to Financial Reports</b>	<b>18</b>
VI.	<b>8:00p - Action Items</b>	
	A. Authorization to Spend over \$150,000 on Student Devices	21
	B. Authorization to Spend over \$150,000 on Edgenuity for Online Learning	66
VII.	<b>8:30p - Board Endorsement of Educational Propositions, Bills, or Ballot Measures</b>	<b>74</b>
VIII.	<b>8:40p - Adjourn</b>	<b>75</b>



*As a community, we prepare lifelong learners to achieve their full potential in a complex and interconnected world.*

To: Board of Directors  
From: Dr. Danna Diaz, Superintendent of Schools  
Prepared by: Kaylie Jeffries, Executive Assistant to the Superintendent  
**Subject: Executive Session**  
Policy: [Executive Session - BDC](#)  
Date: August 11, 2021

<b>Action</b>	<input type="checkbox"/>
<b>Report</b>	<input checked="" type="checkbox"/>

**Connection to School Board Core Beliefs and Commitments**

Safety     Equity     Instructional Practice     Organizational Culture

**Strategic Plan Goal Topic 3: Student and Staff Wellness**

We will promote a healthy learning and working environment which provides students and staff with the skills, social support, and environmental reinforcement they need to adopt long-term, healthy behaviors.

**Summary:**

The Reynolds School Board and the Superintendent will recess into Executive Session under ORS 192.660(2)(a) Personnel and ORS 192.660(2)(h) Negotiations.

Executive Session is closed to the public.



*As a community, we prepare lifelong learners to achieve their full potential in a complex and interconnected world.*

To: Board of Directors  
From: Dr. Danna Diaz, Superintendent of Schools  
Prepared by: Kaylie Jeffries, Executive Assistant to the Superintendent  
**Subject: Call to Order**

Policy: [Board Meetings BD/BDA, Conduct of Board Meetings BDDF](#)

Date: August 11, 2021

<b>Action</b>	<input checked="" type="checkbox"/>
<b>Report</b>	<input type="checkbox"/>

**Connection to School Board Core Beliefs and Commitments**

- Safety    
 Equity    
 Instructional Practice    
 Organizational Culture

**Strategic Plan Goal Topic 3: Student and Staff Wellness**

We will promote a healthy learning and working environment which provides students and staff with the skills, social support, and environmental reinforcement they need to adopt long-term, healthy behaviors.

**Summary:**

- a. Call to Order
- b. Land Use Acknowledgement

On March 17, Governor Kate Brown temporarily suspended public gatherings in response to the COVID-19 pandemic. Because of this order, Reynolds School District Board Meetings will be virtual until further notice.

Although members of the Board are not gathered in a central, physical location, we do have a quorum present at this meeting by video-conferencing.

**Land Acknowledgement:**

We will open tonight’s meeting by acknowledging the traditional Indigenous inhabitants of this land. The purpose of these statements is to show respect for indigenous peoples and recognize their enduring relationship to the land. Practicing acknowledgment can also raise awareness about histories that are often suppressed or forgotten.

# Land Use Acknowledgment & Guidelines



*Approved and Adopted on May 27, 2020*

Reynolds School District expresses our gratitude and appreciation to traditional village sites of the Multnomah, Kathlamet, Clackamas, bands of Chinook, Tualatin, Kalapuya, Molalla and many other Tribes who made their homes along the Columbia River, and which is now home to a vibrant native community representing over 400 different tribal nations.

We believe that it is our responsibility as a school district to educate our students, staff and families about the true history of colonialism and the continued need to address colonialism today. This land acknowledgement will encourage our community to reflect upon the land we are standing on and engage in conversations centered in honoring the land.

Land acknowledgments will take place in conjunction with the Pledge of Allegiance, which will be recited after the Land Use Acknowledgement, during the following times:

- School Board meetings
- District-wide community meetings
- School assemblies
- Athletic Competitions
- Parent and community school evening events

## Land Use Acknowledgment

We respectfully acknowledge that the land on which we are gathering today is the traditional homeland of a diverse array of indigenous tribes and bands. Multnomah County rests on traditional village sites of the Multnomah, Wasco, Cowlitz, Kathlamet, Clackamas, Bands of Chinook, Tualatin, Kalapuya, Molalla, and many other tribes who made their homes along the Columbia River, creating communities and summer encampments to harvest and use the plentiful natural resources of the area. Multnomah County is now home to a vibrant indigenous community representing over 400 different tribal nations.

We recognize Indigenous peoples as the traditional stewards of this land and acknowledge the enduring relationship between the land and the people since time immemorial. We make this acknowledgement to open a space of recognition, inclusion, and respect for our sovereign tribal partners and all indigenous students, families, and staff in our community.



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To: Board of Directors

From: Dr. Danna Diaz, Superintendent of Schools

Prepared by: Kaylie Jeffries, Executive Assistant to the Superintendent

**Subject: Public to be Heard**

Policy: [Public to be Heard - BDDH, Public Comment at Board Meetings - BDDH-AR](#)

Date: August 11, 2021

<b>Action</b>	<input type="checkbox"/>
<b>Report</b>	<input checked="" type="checkbox"/>

**Connection to School Board Core Beliefs and Commitments**

Safety     Equity     Instructional Practice     Organizational Culture

**Strategic Plan Goal Topic 1: Marginalized Students**

In order to give voice to our marginalized populations, we will remove barriers, hold high academic expectations, and elicit and honor all voices.

**Summary:**

Members of the public will address the Board with comments and the Board will listen only. The Board may choose not to address a request if it does not fall within the scope of Board Governance. Oregon law prohibits the Board from discussing specific employees or their job performance.

Those wishing to speak must complete a Public Comment Form on the RSD website before the meeting.

Those providing spoken comment will be moved from attendee to panelists during the Public Comment portion of the agenda. Each speaker will have three minutes.



*As a community, we prepare lifelong learners to achieve their full potential in a complex and interconnected world.*

To: Board of Directors  
From: Dr. Danna Diaz, Superintendent of Schools  
Prepared by: Dr. Koreen Barreras-Brown, Chief Academic Officer; Dr. Christopher Ortiz, Assistant Superintendent of Student & Family Services and District Operations; and Dr. Sara Hahn-Huston, Executive Director of Schools

**Subject: Reopening Fall 2021-22 - Presentation**

Date: August 11, 2021

Action	<input type="checkbox"/>
Report	<input checked="" type="checkbox"/>

**Connection to School Board Core Beliefs and Commitments**

Safety     Equity     Instructional Practice     Organizational Culture

**Strategic Plan Goal Topic 3: Student and Staff Wellness**

We will promote a health learning environment which provides students and staff with the skills, social support and environmental reinforcement they need to adopt long-term, health behaviors.

**Summary:**

Cabinet members will present a 2021-2022 school year reopening plan to the Board: Dr. Christopher Ortiz will present on the Ready Schools Safe Learners (RSSL) Resiliency Framework; Dr. Koreen Barreras-Brown will review the virtual learning option being offered in the upcoming school year; and Dr. Sara Hahn-Huston will present on school efforts to prioritize social-emotional support in the coming school year.

**Previous Board Action:**

Not Applicable

**Background:**

Not Applicable

**Financial Implications:**

Not Applicable

**Alternatives:**

Not Applicable

**Staff Recommendation:**

Not Applicable

**Motion:**  
Not Applicable



# Reopening Fall 2021-22

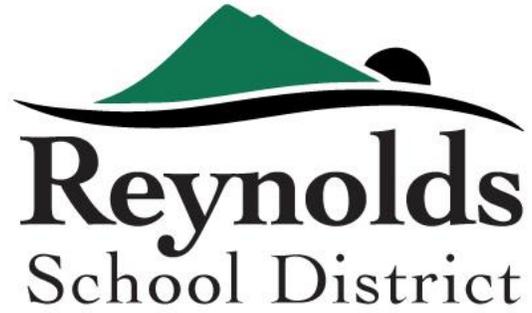
Dr. Ortiz, Dr. Barreras-Brown, and Dr. Hahn-Huston

*As a community, we prepare lifelong learners to achieve their full potential in a complex and interconnected world.*



## MISSION

We lead with equity to educate and support all students to graduate with the skills and confidence to thrive.



## VISION

As a community, we prepare lifelong learners to achieve their full potential in a complex and interconnected world.

## CORE BELIEFS & COMMITMENTS



### SAFETY

We believe that all students, families, and staff deserve a safe and secure learning environment.  
We commit to providing physical and emotional safety across the Reynolds community.



### EQUITY

We believe that equitable practices allow everyone within the Reynolds community to thrive.  
We commit to using equity as a foundation in all decision-making processes in order to eliminate inequities.



### INSTRUCTIONAL PRACTICES

We believe that high-quality, first-time instruction will eliminate the opportunity gap.  
We commit to setting high expectations and providing intentional professional development for instructional leaders.



### ORGANIZATIONAL CULTURE

We believe that the heart of a high-performing organization is its people.  
We commit to becoming an inclusive and positive organizational culture.

# Ready Schools Safe Learners (RSSL) Resiliency Framework

- Effective August 2, 2021: Masks required for all staff and students in schools, grades K-12
- Reynolds follows the requirements/guidance from the Oregon Department of Education (ODE) & Oregon Health Authority (OHA) outlined in [RSSL](#)
- As requirements/guidelines change, Reynolds School District will make adjustments, as necessary
- RSSL asks districts to use an equity lense when deciding to implement recommendations; access to full time instruction is the main goal, while working to implement mitigation strategies.
- Student & Family Services will continue to partner with other agencies to encourage and make available vaccination for eligible students; vaccine clinics planned by Multnomah County Health Department in November and December; SFS will seek out partnerships with other agencies such as Immunize Oregon

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# Ready Schools Safe Learners (RSSL) Resiliency Framework

- Per the guidelines listed in RSSL, the following procedures will continue in School Year 21-22:
  - Recommended physical distancing of 3 feet will be practiced, when possible
  - Additional masks will be provided to all schools
  - Custodial staff will ensure high touch points and school buildings are well sanitized according to a weekly schedule
  - Extra hand sanitizer will be available for students and staff
  - Portable HEPA filters will continue to be available for use in classrooms.
- Reynolds will continue to partner and consult with Multnomah Education Service District (MESD) and Multnomah County Health Department when a COVID-19 case occurs among students and/or staff; current reporting and quarantine procedures will be followed until advised by MESD Nursing Services

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# Virtual Learning 2021-2022

- June VL Interest Survey to RSD families
  - 1,055 Families Responded
  - 78 students showed interest in online option
- [Edgenuity](#) and RSD have been partnering since 2019 for online curriculum options for students.
- Staff seek to expand our current contract with Edgenuity to provide VL options for next year. Edgenuity has also offered us a huge discount.
- Due to limited funds, we have capped enrollment at 265.
- Students will be selected by random lottery.

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# Virtual Learning – Student Experience

- To stay connected, students will enroll in their neighborhood schools.
- Students have access to SEL curriculum, standards-based curriculum, licensed educators, 6 courses (6-12), and 4 core course with 2 electives (K-5).
- All students will have access to athletics, school activities, extracurriculars, etc. through their neighborhood school.
- RSD points of contact for students and families will be the virtual learning coordinator and media specialists.
- Students will have access to our student services department and school counselors.

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# Schools

**First and foremost, we will focus on providing social-emotional support for our students, families and staff.**

- **What can we anticipate and why is a focus on social-emotional support our priority?** For students, families, and staff, returning to in-person, full-time learning and teaching this Fall may bring up a mix of emotions that can include: excitement, anticipation, anxiety, nervousness, worry, insecurity about the unknown and much more.
- **Challenges** returning to in-person school will be heightened for students, families and staff in communities disproportionately impacted by COVID-19, or those who have personally been impacted by illness or loss.

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# Schools

## How will we make this a visible priority in our school communities?

- First full week of school – Care and Connection Week
  - This week is an opportunity for school leaders, staff and families to foster care, connection and community, and to create a healthy foundation for the school year.

Examples of activities that our school communities will see at RSD:

- ✓ Connect to equity and mental health/health promotion and prevention that is strengths-based, equity-centered, and trauma and social emotional learning informed.
- ✓ Bring people together to renew relationships, cultivate care, connection and community that includes our community-based partners.
- ✓ Build excitement for the school year that aligns with safety messaging.
- ✓ Promote a strong sense of community and togetherness through a variety of ways that may include traditional events at schools.
- ✓ Visible, welcoming presence BEFORE students and families return, not just on the first day or week of school.

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# Schools

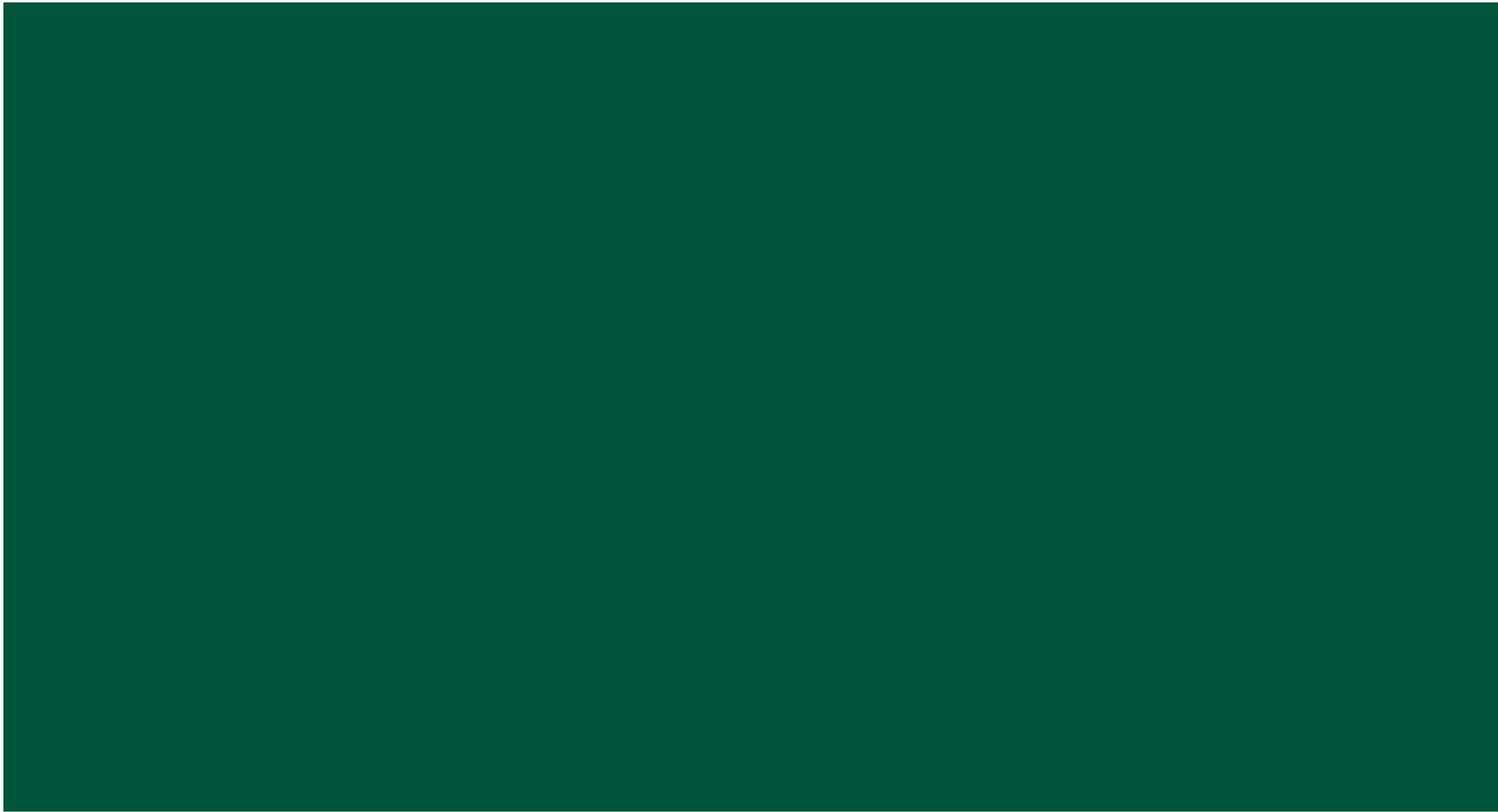
## Moving from the First Week to the Last Day of School

- Throughout this year our school teams will be centered on continuing to provide the social-emotional support needed for our students, families and staff. This will not end with the first week back to school.
- Our RSD Strategic Plan outlines some very specific ways we will focus on Wellness as a district community supporting those we lead, work with and most importantly care for . . .
- Frequent check in's to see what people need, how they are feeling and what we can do to best support them will be a priority this year.
- Meeting the basic needs of those we serve must take place in order for learning and engagement to happen. **TOGETHER #WeAreReynolds**

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# Reynolds

School District



*As a community, we prepare lifelong learners to achieve their full potential in a complex and interconnected world.*

To: Board of Directors

From: Dr. Danna Diaz, Superintendent of Schools

Prepared by: Mary Knigge, Interim Chief Financial Officer

**Subject: Draft General Fund Monthly Financial Board Report**

Policy: [Financial Reports and Statements – DIC](#)

Date: August 11, 2021

Action	<input type="checkbox"/>
Report	<input checked="" type="checkbox"/>

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**Connection to School Board Core Beliefs and Commitments**

Safety     Equity     Instructional Practice     Organizational Culture

**Strategic Plan Goal Topic 1: Marginalized Students**

In order to give voice to our marginalized populations, we will remove barriers, hold high academic expectations, and elicit and honor all voices.

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**Summary:**

The Board receives a monthly financial report at each Business Meeting. Included in the report are attachments with details of the District’s financial condition. The current reports are numerous and can consist of up to six separate reports per fund. The current reports are repetitive, redundant, and can be confusing to those not accustomed to reading financial statements. A new report structure is being proposed, which includes all the information required by Board Policy DIC Financial Reports and Statements.

**Previous Board Action:**

Not Applicable

**Background:**

Board policy DIC Financial Reports and Statements states that the Board will receive a monthly financial report that includes estimates of expenditures for the general fund in comparison to budget appropriations, actual receipts in comparison to budget estimates, and the district’s overall cash condition.

Please refer to the following attachment(s): Attachment A Draft

**Financial Implications:**

Not Applicable

**Alternatives:**

Board will continue to receive the Monthly Financial Reports as previously presented.

**Staff Recommendation:**

Staff recommends the Board consider changing the monthly financial report format as represented in Attachment A Draft.

**Motion:**

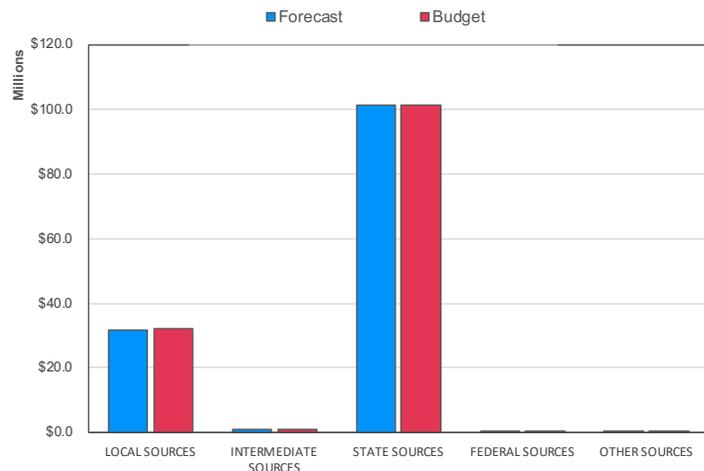
Not Applicable

## 100 General Fund | Financial Projection by Object

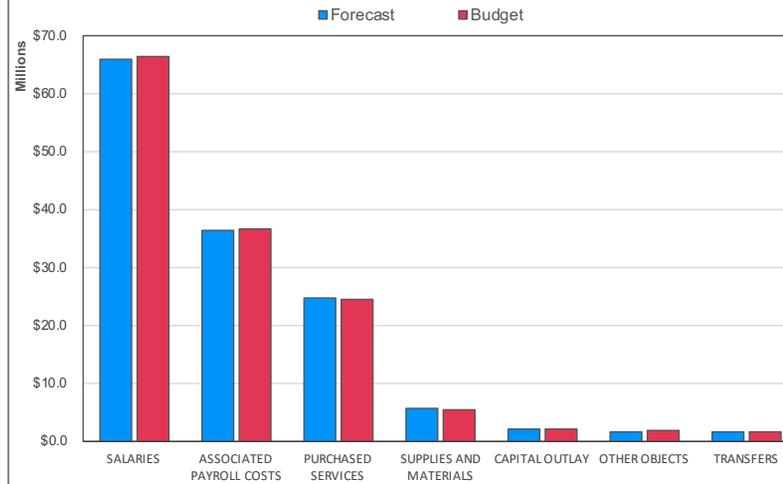
For the Period Ending July 31, 2021

	Prior YTD	Current Year Budget	Current YTD	% of Budget	Add: Projections	Annual Forecast
<b>RESOURCES</b>						
<b>Operating Revenues</b>						
Local Sources	\$ 18,683	\$ 31,991,483	\$ 16,313	0.05%	\$ 31,916,083	\$ 31,932,396
Intermediate Sources	-	798,329	-	0.00%	798,329	798,329
State Sources	17,057,141	101,567,300	16,579,729	16.32%	101,567,300	101,525,006
Federal Sources	3,162	85,000	3,244	3.82%	83,561	86,805
Other Sources	-	215,987	-	0.00%	197,988	197,988
<b>Total Operating Revenues</b>	<b>\$ 17,078,986</b>	<b>\$ 134,658,099</b>	<b>\$ 16,599,286</b>	<b>12.33%</b>	<b>\$ 134,563,261</b>	<b>\$ 134,540,524</b>
Beginning Fund Balance	-	11,099,637	-	0.00%	22,451,318	22,451,318
<b>TOTAL RESOURCES</b>	<b>\$ 17,078,986</b>	<b>\$ 145,757,736</b>	<b>\$ 16,599,286</b>	<b>11.39%</b>	<b>\$ 157,014,579</b>	<b>\$ 156,991,842</b>
<b>REQUIREMENTS</b>						
<b>Operating Expenditures</b>						
Salaries	\$ 903,210	\$ 66,349,651	\$ 1,029,651	1.55%	\$ 64,980,968	\$ 66,010,619
Associated Payroll Costs	528,676	36,773,398	377,856	1.03%	36,118,174	36,496,030
Purchased Services	1,670,790	24,603,985	1,649,755	6.71%	23,194,298	24,844,053
Supplies and Materials	426,341	5,502,428	468,365	8.51%	5,326,107	5,794,472
Capital Outlay	-	2,221,018	-	0.00%	2,221,006	2,221,006
Other Objects	552,314	1,800,352	1,363,744	75.75%	307,225	1,670,970
Transfers	-	1,773,000	-	0.00%	1,773,000	1,773,000
<b>Total Operating Expenditures</b>	<b>\$ 4,081,332</b>	<b>\$ 139,023,832</b>	<b>\$ 4,889,371</b>	<b>3.52%</b>	<b>\$ 133,920,778</b>	<b>\$ 138,810,149</b>
Contingencies	-	1,683,476	-	0.00%	-	-
Unappropriated Ending Fund Balance	-	5,050,428	-	0.00%	-	-
<b>TOTAL REQUIREMENTS</b>	<b>\$ 4,081,332</b>	<b>\$ 140,707,308</b>	<b>\$ 4,889,371</b>	<b>3.47%</b>	<b>\$ 133,920,778</b>	<b>\$ 138,810,149</b>
Ending Fund Balance	-	-	-	-	\$	\$ 18,181,693
<b>OPERATING SURPLUS / (DEFICIT)</b> (Operating Revenue less Operating Expenses)	<b>\$ 12,997,654</b>	<b>\$ (4,365,733)</b>	<b>\$ 11,709,915</b>		<b>\$ 642,483</b>	<b>\$ (4,269,625)</b>

**Revenues by Source | Forecast vs. Budget**



**Expenditures by Object | Forecast vs. Budget**



To: Board of Directors

From: Dr. Christopher Ortiz, Assistant Superintendent of Student & Family Services and District Operations

Prepared by: Joel Rendon, Director of Technology Services

**Subject: Authorize to Spend Over \$150,000 on Additional Technology Devices**

Policy: [Personal Electronic Devices and Social Media – JFCEB](#)

Date: August 11, 2021

Action	<input checked="" type="checkbox"/>
Report	<input type="checkbox"/>

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**Connection to School Board Core Beliefs and Commitments**

Safety     Equity     Instructional Practice     Organizational Culture

**Strategic Plan Goal Topic 1: Marginalized Students**

In order to give voice to our marginalized populations, we will remove barriers, hold high academic expectations, and elicit and honor all voices.

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**Summary:**

Staff requests that the Board authorize an expenditure of more than \$150,000 to purchase additional Dell and Apple devices. The Technology Services Department needs to replace lost and broken technology devices prior to the beginning of the 2021-2022 school year.

**Previous Board Action:**

The Board authorized an expenditure of more than \$150,000 to purchase student Chromebook devices during the April 8, 2020 Work Session.

**Background:**

The COVID-19 pandemic has greatly increased the need for students to have personal technology devices to stay connected with their classrooms and for teachers to continue to utilize technology in their classroom curriculum. In order to better support in-person instruction beginning in the 2021-2022 school year, students need to have the appropriate equipment ready to learn and thrive.

**Financial Implications:**

There are currently two requisitions that are over \$150,000. One for Dell devices is \$293,000 and one for Apple is \$412,000.

**Alternatives:**

There will be a shortage of devices for students starting the school year 2021-2022 due to previous lost and broken devices.

**Staff Recommendation:**

Staff recommends that the Board authorize the expenditure of more than \$150,000 to replace lost and broken devices for a total amount not to exceed \$705,000.

**Motion:**

I move that the Board authorize the expenditure of more than \$150,000 to replace lost and broken devices for a total amount not to exceed \$705,000.



## Education/State & Local Government Purchase Agreement

This Education/State & Local Government Purchase Agreement is made between Apple Inc., a California corporation located at 1 Infinite Loop, Cupertino, CA 95014 ("Apple") and:

Institution Legal Name ("Purchaser"): Organization for Educational Technology & Curriculum

Institution DBA (if different from Legal Name): OETC

Address: 14145 SW Galbreath Drive

City, ST, Zip: Sheerwood, OR 97140

### 1. Definitions

A. "Agreement" means, collectively, this Education/State & Local Government Purchase Agreement, any addenda or amendments hereto that reference this Education Purchase Agreement and that are mutually executed by the parties, and any terms that are incorporated herein by specific reference, excluding the terms of any purchase orders.

B. "Apple Products" mean Services, hardware and software products manufactured, distributed or licensed under the Apple brand name that Purchaser has paid to acquire or has properly licensed from Apple for its own use, but excluding third party software and all other third party products. Apple Product consisting of software is referred to as "Apple Software".

C. "Limited Warranty" means and is limited to Apple's standard limited warranty that is set forth in the documentation that accompanies an Apple Product purchased under this Agreement.

D. "Products" mean, collectively, Services, Apple Products and other products that are sold or licensed by Apple to Purchaser for Purchaser's own use.

E. "Services" mean, collectively, the standard, price-listed service, support and/or training products sold under the Apple Inc. brand name that Purchaser has paid to acquire.

### 2. Purchases from Apple

A. **Limited Billing Service Account.** Apple will provide Purchaser a limited billing service account to use when placing service orders such as Customer Installable Parts (CIPs) and mail-in or on-site repairs. Purchaser may be asked to submit a purchase order when placing a service order. Purchaser acknowledges that Apple does not provide service CIP or repair pricing on an Apple price list; Apple will quote current pricing to Purchaser prior to processing any purchase order, and Purchaser will have the option to either accept or decline the quoted prices. In the event Purchaser accepts the quoted pricing, Apple will process the purchase order under the terms of this Agreement; should Purchaser decline the quoted prices, Apple will not process the purchase order.

B. **Price.** Prices shall be as set forth on the applicable Apple price list in effect on the date Purchaser's order is accepted by Apple. Apple reserves the right to accept or decline any order, in whole or in part. Apple may cancel any accepted order prior to shipment. Unless Purchaser notifies Apple otherwise, Apple may make partial shipments of Purchaser's orders. Apple will not be liable for any failure to ship complete orders. Purchaser will be invoiced separately for each partial shipment and will pay each invoice when due, without regard to subsequent deliveries. Apple will allocate its available inventory and make deliveries (including partial shipments) in its sole discretion and without liability to Purchaser. Prices include standard freight and insurance

using an Apple-selected carrier. All applicable local sales or use taxes, duties and other imposts, if any, due on account of purchases hereunder shall be paid by Purchaser. Proof of tax exempt status must be on file at Apple's Support Center for any order to be treated as a tax-exempt transaction.

C. **Delivery.** Title and risk of loss to all Products will pass to Purchaser upon shipment from Apple's shipping location. For Products shipped pursuant to Apple's standard practices in all but the last week of every Apple fiscal quarter during the term of this Agreement, Apple will issue credits or replace Products returned due to damage in transit or that are lost in transit. For Products shipped pursuant to Apple's standard practices in the last week of every Apple fiscal quarter during the term of the Agreement, Apple will not issue credits or replace Products returned due to damage in transit or that are lost in transit. Instead, Apple will provide third-party insurance for damaged or lost Products with Purchaser named as the loss payee. When not shipping Products pursuant to Apple's standard practices but instead shipping via a carrier selected by Purchaser, Apple will not issue credits or replace Products returned due to damage in transit or that are lost in transit. Shipping charges for orders that are shipped under Purchaser's instructions will be added to Apple's invoice, or shipped freight collect, at Apple's option.

D. **Payment.** Purchaser shall be invoiced upon shipment of Products and, provided Purchaser is qualified for credit with Apple, payment of such invoice will be due no later than thirty (30) days from date of invoice. Apple will also charge for any fees due from Purchaser by regulation or statute, including, if applicable, fees due under the California Electronic Waste Recycling Act or similar statutes in other states. Apple reserves the right to change the Authorized Apple Price Lists and Purchaser's credit terms at any time. In addition to Apple's other rights in this Agreement, Apple reserves the right, without liability or obligation to Purchaser, to suspend deliveries in the event of a payment default.

### 3. Limited Warranty

A. The sole warranty for and Apple Product purchased hereunder shall be the Limited Warranty. Except for the Limited Warranty, all Apple Products are sold "as is" and without additional warranty or support from Apple.

B. All Products, other than Apple Products, are sold "as is" and without warranty or support from Apple, but may be accompanied by a manufacturer's warranty, as more particularly provided in the warranty documentation that accompanies such Products. Upon Purchaser's request, Apple will provide a copy of any manufacturer's warranty accompanying Products offered by Apple under this Agreement. Nothing in this Agreement shall be construed as obligating Apple to provide any warranty-related fulfillment or support for any Products, other than Apple Products.



C. EXCEPT FOR THE LIMITED WARRANTY, APPLE MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS OR SERVICES, AND TO THE MAXIMUM EXTENT PROVIDED BY LAW, APPLE HEREBY DISCLAIMS SUCH WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

APPLE PRODUCTS ARE NOT INTENDED OR SUITABLE FOR USE IN SITUATIONS OR ENVIRONMENTS WHERE THE FAILURE OR TIME DELAYS OF, OR ERRORS OR INACCURACIES IN, THE CONTENT, DATA OR INFORMATION PROVIDED BY APPLE PRODUCTS COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE, INCLUDING WITHOUT LIMITATION THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATIONS SYSTEMS, AIR TRAFFIC CONTROL, LIFE SUPPORT OR WEAPONS SYSTEMS.

4. **Proprietary Rights.** Purchaser acknowledges that Products often contain not only hardware but also software, including but not limited to, operating systems and applications. Such software may be included in ROMs or other semiconductor chips embedded in hardware, or it may be contained separately on disks or on other media. Such software is proprietary, is copyrighted, and may also contain valuable trade secrets and is protected by patents. Purchaser, as an end user, is licensed to use any software contained in such Products, subject to the terms of the license accompanying the Products, if any, and the applicable patent, trademark, copyright, and other intellectual property, federal and state laws of the United States. Unless Purchaser has obtained Apple's prior written consent, Purchaser, in addition to any obligations or restrictions set forth in any license, which may accompany a Product, shall not copy the software. Purchaser shall not disassemble, decompile, reverse engineer, copy, modify, create derivative works thereof or otherwise change any of the software or its form.

5. **Right of Defense.**

A. Subject to the exceptions set forth below and Purchaser's compliance with the notice and defense conditions in Section 5.B below, Apple will defend any proceeding or action brought by a third party against Purchaser to the extent based on a claim that: (1) an Apple Product sold by Apple that Purchaser has paid to acquire infringes a U.S. patent, copyright, trademark or trade secret; or (2) personal injury or tangible property damage suffered by such third party was caused by Apple's gross negligence or willful misconduct during the course of Apple's performance of Services. Notwithstanding anything to the contrary, Apple is not liable for any claims or damages arising out of or related to: (a) any modification of any Apple Product(s), (b) any combination, operation or use of any Apple Product(s) with non-Apple branded Products or other non-Apple-provided programs, data or documentation, (c) Purchaser's violation of any import or export control requirements, regulations, and laws, (d) Purchaser's use or exportation of any Apple Product(s) into any countries identified on any U.S. Government embargoed countries list, (e) use of any Apple Software in a manner not authorized under the applicable Apple end user license agreement (the "EULA"), or (f) Purchaser's, its employees or subcontractors' negligence, acts or omissions. Subject to the foregoing exceptions, Apple's obligation to defend Purchaser against claims covered by 5.A(1) or 5.A(2) above is contingent on Purchaser's compliance with Section 5.B below. THE

FOREGOING CONSTITUTES PURCHASER'S SOLE AND EXCLUSIVE REMEDY AND APPLE'S ENTIRE LIABILITY FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT.

B. **Notice and Defense Conditions.** Purchaser shall promptly notify Apple, in writing, of any claim, demand, proceeding or suit of which Purchaser becomes aware which may give rise to a right of defense pursuant to this section 5 ("Claim"). Notice of any Claim that is a legal proceeding, by suit or otherwise, must be provided to Apple within thirty (30) days of Purchaser's first learning of such proceeding. Notice must be in writing and include an offer to tender the defense of the Claim to Apple. Apple, if it accepts such tender, may take over sole control of the defense of the Claim. That control includes the right to take any and all actions deemed appropriate by Apple to completely and finally resolve the Claim by settlement or compromise. Upon Apple's acceptance of tender, Purchaser will cooperate with Apple with respect to such defense and settlement. If a Claim is settled and to the extent permitted by law, both parties will not publicize the settlement and will make every effort to ensure the settlement agreement contains a non-disclosure provision.

C. In the event of any actual or potential Claim, Apple will be entitled (but not obligated), at its sole option, to: (1) procure for Purchaser the right to continue use of the applicable Apple Product(s), (2) replace the applicable Apple Product(s), (3) modify the applicable Apple Product(s), or (4) refund the amount paid by Purchaser to Apple for the applicable Apple Product, less depreciation.

6. **Limitation of Liabilities and Remedies.** Notwithstanding anything to the contrary, except to the extent prohibited by applicable law, the maximum aggregate liability of Apple for any and all claims and damages arising out of or related to this Agreement, whether arising in contract, warranty, tort, strict liability, statute or otherwise, shall be limited to three hundred thousand U.S. dollars (\$300,000). IN NO EVENT SHALL APPLE BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT DAMAGES (INCLUDING, WITHOUT LIMITATION, CLAIMS FOR LOST BUSINESS PROFITS OR REVENUE, LOSS OF DATA, INTERRUPTION IN USE, UNAVAILABILITY OF DATA, OR THE COST OF THE PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES) OR FOR PUNITIVE OR EXEMPLARY DAMAGES, WHETHER AS A RESULT OR BREACH OF CONTRACT, WARRANTY, TORT, STRICT LIABILITY, STATUTE OR OTHERWISE. The remedies set forth in this Agreement shall be Purchaser's sole and exclusive remedies for any and all claims against Apple, its agents and subcontractors in connection with or related to this Agreement. The parties further agree that the liability cap set forth herein shall not be applied cumulatively or on a per claim basis and nothing shall be construed so as to enlarge that aggregate limit. THE PARTIES AGREE THAT THE ABOVE TERMS REPRESENT A FAIR ALLOCATION OF RISK BETWEEN THE PARTIES

WITHOUT WHICH THEY WOULD NOT HAVE ENTERED INTO THE AGREEMENT.

7. **Term and Termination**

A. **Term; Termination.** Unless terminated earlier as provided in this Agreement, the initial term of this Agreement shall be from the date Apple signs it until the following March 31; and unless either party provides written notice of non-renewal to the other party not less than thirty (30) days before the expiration of any then-current term, this Agreement shall automatically renew for additional one (1) year periods. Either party may terminate this Agreement



without cause upon thirty (30) days prior written notice. Either party may terminate this Agreement upon thirty (30) days prior written notice if the other party is in material breach of this Agreement and has failed to cure such breach within thirty (30) days of the date of such notice.

**B. Effect of Termination.** The parties agree that upon any notice of termination of this Agreement: (i) the due date of all Apple invoices shall be accelerated so that they become immediately due and payable; (ii) Apple may refuse all or part of any purchase orders received by Apple pursuant to this Agreement after the date of notice of termination; and (iii) Purchaser will cease placing new orders.

**C. Survival.** All defined terms and the following provisions shall survive any termination of this Agreement: Sections 1, 2.D, 3-4, 5.C, 6, 7.B, 7.C and 8.

**8. General**

**A. Governing Law.** If Purchaser is a public institution or agency, this Agreement will be governed and interpreted under the laws of the state in which Purchaser is located. If Purchaser is a private institution, this Agreement will be governed and interpreted under the laws of the State of California, without regard to its conflict of laws provisions (in the event that litigation commences, the parties agree that the venue shall be Santa Clara County, California).

**B. Severability.** If a court of competent jurisdiction holds that any provision of this Agreement is invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect, and the parties will replace the invalid or unenforceable provision with a valid and enforceable provision that achieves the original intent of the parties and economic effect of the Agreement.

**C. Waivers.** A party's waiver of any breach by the other party or failure to enforce a remedy will not be considered a waiver of subsequent breaches of the same or a different kind.

**D. Export Compliance.** This Agreement is subject to all laws, regulations, order or other limitations on the export and re-export of commodities, technical data and software. Purchaser agrees that it will not export, re-export, resell or transfer any export controlled commodity, technical data or software (1) in violation of such limitations imposed by the United States or any other appropriate nation government authority, or (2) to any country for which an export license

or other governmental approval is required at the time of export, without first obtaining all necessary licenses or other approvals, at Purchaser's sole cost and expense.

**E. Entire Agreement; Modifications.** This Agreement supersedes all previous agreements and representations of, between or on behalf of the parties concerning the subject matter. This Agreement contains all of Apple's and Purchaser's agreements, warranties, understandings, conditions, covenants, and representations concerning the subject matter. In the event of any conflict or inconsistency between the terms of this Agreement and any EULA, the terms of the EULA shall control solely as to the Apple Software covered by that EULA. Neither Apple nor Purchaser will be liable for any agreements, warranties, understandings, conditions, covenants, or representations not expressly set forth or referenced in this Agreement. Any different or additional provisions in purchase orders, invoices or similar documents issued by Purchaser at any time are hereby deemed refused by Apple and such refused provisions will be unenforceable. Except as otherwise provided in this Agreement, no modification to this Agreement will be binding unless in writing and signed by an authorized representative of each party.

**F. Counterparts.** This Agreement may be executed in one or more counterparts (including by facsimile), each of which when so executed shall be deemed to be an original and shall have the same force and effect as an original but such counterparts together shall constitute one and the same instrument.

**G. Force Majeure.** Neither party shall be liable for any delay or failure to meet its obligations (except for Purchaser's payment obligations) under this Agreement due to circumstances beyond its reasonable control, including but not limited to war, riot, insurrection, civil commotion, epidemics, labor strikes or lockouts, shortages, factory or other labor conditions, fire, flood, earthquake or storm. Notwithstanding, this provision shall not be construed to relieve Purchaser of its obligations to make payments to Apple pursuant to this Agreement.

**H. Authority.** Purchaser represents and warrants that it has all right, power and authority under applicable law to enter into and perform this Agreement and that the person signing below has the requisite legal authority to bind Purchaser to the terms of this Agreement.

The duly authorized representatives of the parties execute this Agreement as of the Effective Date.

Purchaser

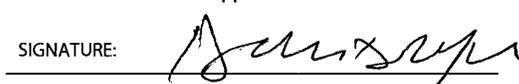
SIGNATURE: 

PRINT NAME: Thomas Richards

TITLE: Executive Director

DATE: April 10, 2014

Apple Inc.

SIGNATURE: 

PRINT NAME: DAVID RYAN

TITLE: IN CONTRACT MANAGER

DEPT: WW CONTRACT

EFFECTIVE DATE: 4/10/14



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## Amendment to the Education/State & Local Government Purchase Agreement

This Amendment to the State & Local Government Purchase Agreement (the "Amendment") modifies the State & Local Government Purchase Agreement (the "Agreement") between Apple Inc., a California corporation located at 1 Infinite Loop, Cupertino, CA 95014 ("Apple") and:

Institution Legal Name ("Purchaser"): Organization for Educational Technology & Curriculum

Institution DBA (if different from Legal Name): OETC

Address: 14145 SW Galbreath Drive

City, ST, Zip: Sherwood, OR 97140

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This Amendment entered into by the above-named parties amends and modifies the Agreement as follows:

1. **Section 1. Definitions** is amended to add "1.F. Eligible Purchasers":

"1.F. 'Eligible Purchasers' mean Purchaser and Purchaser's members who are education institutions located in Oregon, Idaho and Washington."

2. **Section 2. Purchases from Apple** is amended to add "2.F. Administrative Fee":

"2.F. **Administrative Fee.** Apple shall pay to Purchaser an administrative fee of one percent (1%) based on the actual invoiced aggregate dollar amount of purchases under this Agreement. Purchaser shall ensure that all purchase orders submitted to Apple shall contain Purchaser's Contract Number 4064, in order to calculate the actual invoiced dollar amounts under this Agreement. Apple shall not be held liable for purchase orders that do not reference Purchaser's Contract Number 4064. Apple shall remit the administrative fee to Purchaser as well as a report on a quarterly basis within thirty (30) days after the close of Apple's fiscal quarters in March, June, September, and December. Each standard quarterly report provided by Apple will be formatted in Microsoft Excel and will contain the following information:

1. Entity Name
2. Entity Apple Sold-to Customer Number
3. Purchase Order Number
4. Apple Sales Order Number
5. Order Date
6. Invoice Number
7. Invoice Date
8. Quantity
9. Unit Price
10. Extended Price
11. Part Number
12. Description
13. Ship to Name, Address, City, State, Zip"

3. **Section 7.A. Term; Termination** is deleted in its entirety and replaced with the following:

"7.A. **Term; Termination.** Unless terminated earlier as provided in this Agreement, the initial term of this Agreement shall be from the date Apple signs it until March 31, 2017. Upon mutual written consent of the parties, this Agreement may be extended for an additional three-year period until March 31, 2020. Either party may terminate this Agreement without cause upon thirty (30) days prior written notice. Either party may terminate this Agreement upon thirty (30) days prior written notice if the other party is in material breach of this Agreement and has failed to cure such breach within thirty (30) days of the date of such notice."

4. **Section 8. General** is amended to add: "8.I. Order of Precedence":

"8.I. **Order of Precedence.** In the event of any conflict among the following documents, the order of precedence shall be:

1. The Education/State and Local Government Purchase Agreement and Professional Services Addendum, and their amendments and addenda
2. Apple's Proposal dated March 5, 2014
3. OETC's RFP Number: Computers-Tablets-RFP-2014"

Capitalized terms used but not defined in this Amendment shall have the meanings set forth in the Agreement.



Unless specifically changed by this Amendment, the terms and conditions of the Agreement remain in full force and effect and apply to all transactions contemplated by this Amendment. In the event of a conflict between the provisions of the Agreement and the provisions of this Amendment, the provisions of this Amendment will prevail. Except as otherwise provided in this Amendment, no modification to this Amendment will be binding unless in writing and signed by an authorized representative of each party.

The duly authorized representatives of the parties execute this Amendment as of the dates set forth below.

Purchaser

Apple

SIGNATURE: *Thomas Richards*

SIGNATURE: *David Ryan*

PRINT NAME: Thomas Richards

PRINT NAME: DAVID RYAN

TITLE: Executive Director

TITLE: SR. CONTRACTS MANAGER

DATE: April 10, 2014

DEPT: Sales Contracts Management

EFFECTIVE DATE: 4/10/14



## Professional Services Addendum to the Education/State & Local Government Purchase Agreement

This Professional Services Addendum to the Education/State & Location Government Purchase Agreement ("Addendum") is made between Apple Inc. ("Apple"), a California corporation located at 1 Infinite Loop, Cupertino, CA 95014, and:

Customer Name ("Purchaser"): Organization for Educational Technology & Curriculum

Address: 14145 SW Galbreath Drive

City, ST, Zip: Sheehwood, OR 97140

### 1. Services

**A. Statement of Work.** This Addendum shall serve as an agreement for the acquisition of information technology consulting services ("Services") from Apple to Purchaser. It is agreed that when Services are to be performed, the parties shall prepare and execute a statement of work ("SOW"). All Services to be performed by Apple shall be documented in a SOW, which shall be uniquely numbered and signed by an authorized representative of both parties. Each SOW shall set forth, at a minimum, a description of the Services, the number of personnel assigned to the Services, the duration of the Services, and the fees for the Services. Each SOW shall be substantially in the format attached hereto as Exhibit A, and by referencing this Addendum, incorporate all terms contained herein. Apple shall have the right to accept or decline any proposed SOW.

**B. Delivery and Acceptance.** Apple shall make reasonable efforts to provide Services on a timely basis, subject to availability of qualified personnel and the difficulty and scope of the Services. However, Apple shall not be liable for its failure to do so nor will it be in breach of this Addendum solely by reason of such failure. Apple may reassign and substitute personnel at anytime and may provide the same or similar Services to other Purchasers. Services supplied by Apple under this Addendum are provided to assist Purchaser. Purchaser, not Apple, will be responsible for determining objectives. Purchaser may inspect the Services when received to determine if they substantially conform to the requirements of the SOW. Any Services not rejected within five (5) business days of receipt or such other period as may be agreed upon by the parties in the SOW ("Inspection Period") shall be deemed accepted. If any Services are rejected within the Inspection Period, Purchaser shall give Apple notice of the rejection and the reasons for the rejection. Apple may request that Purchaser confirm in writing acceptance of the Services within the Inspection Period.

### 2. Compensation.

**A. Fees and Expenses.** In consideration of Services performed, Purchaser agrees to pay Apple the fees and expenses specified in the applicable SOW. If no fee is specified, Purchaser agrees to pay Apple's then current fee rate for each hour of Service performed. Purchaser may specify in each SOW an authorized limit of fees and/or expenses for which it shall pay for Services performed, and Apple agrees not to incur additional fees and/or expenses beyond the limits specified without prior written approval from Purchaser.

**B. Invoicing.** Provided Purchaser is eligible for Apple's credit terms, fees and expenses shall be invoiced after Services are performed on a monthly basis unless otherwise specified in the SOW. Fees due for fraction of hours shall be rounded up to the nearest whole number. Any overdue amounts shall be subject to a finance charge at the rate of 1.5% per month commencing on the date such amount becomes overdue, or the highest rate permitted by applicable law, whichever is lower. Purchaser will pay any tax Apple becomes obligated to pay by virtue of this Addendum exclusive of taxes based on the net income of Apple. Payment for fees and expenses shall be due thirty (30) days from date of Apple's invoice.

**3. Confidentiality.** Both parties agree to preserve the confidentiality of data and information relating to the other's business, including data and information belonging to third parties, that is either in writing marked as confidential or, if disclosed orally, communicated as confidential at time of disclosure and confirmed as such in

writing within thirty (30) days of disclosure ("Confidential Information"). Neither party will have any obligation to maintain the confidentiality of any data or information which (a) was in the receiving party's lawful possession prior to the submission thereof by the owning party (b) is lawfully obtained by the receiving party from a third party under no obligation of confidentiality, (c) is or becomes generally known or available other than by unauthorized disclosure, or (d) is independently developed by either party. Both parties will keep all Confidential Information in confidence and will not disclose any item of Confidential Information to any person other than employees, agents, or contractors who need to know the same in the performance of their duties to the parties, or as required by law. The receiving party will protect and maintain the confidentiality of all Confidential Information with the same degree of care as it employs to protect its own Confidential Information, but in no event less than a reasonable degree of care. The receiving party may disclose Confidential Information if required by any judicial or governmental request, requirement or order; provided that receiving party will take reasonable steps to give disclosing party sufficient prior notice in order to contest such request, requirement or order by notifying disclosing party of such request. Apple is not precluded from developing and marketing products, which provide the same or similar functionality as the Services, provided that such products do not use Purchaser's Confidential Information or incorporate work originally created by or owned by Purchaser. Neither party may export the other's Confidential Information without the other party's written consent. The obligations created under this Section shall survive termination of the Agreement associated with this Addendum for a period of five (5) years.

**4. Ownership.** Any ideas, concepts, inventions, know-how, data-processing techniques, software or documentation developed by Apple personnel (alone or jointly with Purchaser) in connection with Services provided to Purchaser ("Apple Information") will be the exclusive property of Apple, except to the extent that such items are a derivative of Purchaser's property. Apple grants Purchaser a nonexclusive, royalty-free, non-transferable (without right to sublicense) license to use the software or other proprietary rights in Services developed under this Addendum. Apple may provide Purchaser with specific, customized or unique suggestions or information as part of the Services developed by Apple, which suggestions or information do not have application to other Purchasers of Apple ("Purchaser-Owned Information"). Apple will identify all Purchaser-Owned Information and furnish that information to Purchaser subject to the qualifications set forth in this Addendum, and Purchaser will own all of Apple's right, title and interest in the Purchaser-Owned Information.

**5. Warranty.** Except as expressly represented otherwise in this Addendum, and to the extent not prohibited by law, all Services, including any documentation, publications, software programs or code, and other information provided by or on behalf of Apple to Purchaser under this Addendum are furnished on an "AS-IS" basis, without warranty of any kind, whether express, implied, statutory or otherwise especially as to quality, reliability, timeliness, usefulness, sufficiency and accuracy. ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF CONDITION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE DISCLAIMED BY APPLE. NO ORAL OR WRITTEN INFORMATION PROVIDED BY APPLE SHALL CREATE A WARRANTY UNLESS



INCORPORATED INTO THIS ADDENDUM.

**6. Term and Termination.**

**A. Term and Termination of Amendment.** Unless terminated sooner in accordance with these terms, this Addendum shall commence on the Effective Date and terminate upon the termination of the Agreement, or upon the completion of Services under an existing SOW, whichever is later.

**B. Termination for Convenience.** Either party may terminate this Addendum without cause by giving thirty (30) days prior written notice to the other party of its intention to do so. As it pertains to Apple, such termination shall not occur until the successful completion of any outstanding SOW. The Purchaser may terminate a SOW in whole or in part by giving Apple thirty (30) days prior written notice of its intention to do so. In the event of such termination, Apple shall be entitled to recover for all Services performed prior to the effective date of termination, together with its reasonable extra costs incurred by reason of the termination.

**C. Termination for Cause.** Either party may terminate this Addendum or a SOW immediately if the other party has (i) failed to cure any breach of this Addendum or the SOW within thirty (30) days of written notice from the non-breaching party, (ii) breached the terms of Section 3 "Confidentiality", or (iii) become insolvent, makes a general assignment for the benefit of creditors or becomes subject to any proceeding under any bankruptcy or insolvency law. Additionally, if Apple is not in default of any of its obligations under a SOW, and the performance of Services is stopped through any wrongful act or neglect of Purchaser, or Purchaser fails to make payment to Apple when due, Apple may give written notice to Purchaser of its intent to terminate performance, specifying the grounds thereof. If the Purchaser fails within thirty (30) days to cure the act or neglect specified or to make the payment identified therein as past due, Apple may then terminate performance of Services and recover payment from the Purchaser for all Services performed prior to the termination date.

**D. Survival.** The terms and conditions contained in this Addendum that by their sense and context are intended to survive the performance by either party shall so survive termination or completion of performance of this Addendum.

**7. General**

The duly authorized representatives of the parties execute this Addendum as of the dates set forth below.

Purchaser

SIGNATURE: 

PRINT NAME: Thomas Richards

TITLE: Executive Director

DATE: April 11, 2014

Apple Inc.

SIGNATURE: 

PRINT NAME: David R. Jones

TITLE: Senior Contract Manager

DEPT: Sales Contracts Management

EFFECTIVE DATE: 4/12/14

**A. Independent Contractor.** During performance of the Addendum, Apple shall be an independent contractor and not an agent of the Purchaser. Apple shall supervise the performance of its own personnel and resources and shall have control of the manner and means by which the Services are performed, subject to compliance with this Addendum and any plans, specifications, schedules, or other items agreed to in a SOW.

**B. Non-Solicitation of Employees.** During the term of this Addendum, and for one (1) year thereafter, the Purchaser shall not offer employment to, or employ, an employee or contractor of Apple directly involved in Services, or induce such employee or contractor of Apple to breach any employment agreement or services contract with Apple.

**C. Publicity.** In connection with Apple's promotion of its professional services, including but not limited to, referential listings of Purchasers on its web site, Purchaser grants to Apple a worldwide non-exclusive royalty free license to publicly use Purchaser's name and trademark(s) in connection with informing others of Purchaser's utilization of such services. Apple agrees to make reasonable efforts to adhere to any trademark guidelines that Purchaser may wish Apple to adopt, as delivered in writing to Apple from time to time.

**D. Insurance.** Apple shall maintain Commercial General Liability insurance coverage during the term of this Addendum. Evidence of insurance shall be provided upon request.

**E. Force Majeure.** Neither party shall be liable for any delay or failure to meet its obligations under this Addendum due to circumstances beyond its reasonable control, including but not limited to war, riot, insurrection, civil commotion, labor strikes or lockouts, shortages, factory or other labor conditions, fire, flood, earthquake or storm.

**F. Purchaser's Responsibilities and Representations.** Purchaser shall provide Apple equipment, information, and facilities necessary to perform Services described in the SOW, unless agreed otherwise by the parties.



Apple  
Confidential Information



(v8Jun2016)

**Amendment to the Education/State & Local Government Purchase Agreement**

This amendment ("**Amendment**") amends the Education/State & Local Government Purchase Agreement ("**Agreement**") entered into by and between Apple Inc., located at 1 Infinite Loop, MS: 318-6OPS, Cupertino, CA, 95015, USA ("**Apple**") and:

Company Legal Name ("**Purchaser**"): ORGANIZATION FOR EDUCATIONAL TECHNOLOGY AND CURRICULUM

DBA Name: OETC

Address: 14145 SW GALBREATH DR, SHERWOOD, OR, 97140-9170, United States of America

Capitalized terms used but not defined in this Amendment have the meanings set forth in the Agreement.

In the event of any conflict between the terms of this Amendment and the Agreement, the terms of this Amendment will prevail.

The Parties hereby agree to amend the Agreement as follows:

**1. Extension of Agreement Term**

The Term is hereby extended to March 31, 2020, unless otherwise terminated in accordance with the terms of the Agreement.

**2. Effect of Amendment to Agreement**

Except as set forth in this Amendment, the Agreement shall continue in full force and effect in accordance with its terms.

The duly authorized representatives of the Parties execute this Amendment as of the Effective Date stated below.



Purchaser

SIGNATURE: Thomas Richards

PRINT NAME: Thomas Richards

PRINT TITLE: Executive Director

DATE: January 06, 2017

Apple Inc.

SIGNATURE: Vanessa Boenig

PRINT NAME: Vanessa Boenig

PRINT TITLE: Bids & Direct Operations Contracts Manager

EFFECTIVE DATE: 1-9-2017



# Apple

Confidential Information



(v8Jun2016)

## Amendment to the Education/State & Local Government Purchase Agreement

This amendment ("**Amendment**") amends the Education/State & Local Government Purchase Agreement ("**Agreement**") entered into by and between Apple Inc., located at One Apple Park Way, Cupertino, California 95014 ("**Apple**") and:

Company Legal Name ("**Purchaser**"): ORGANIZATION FOR EDUCATIONAL TECHNOLOGY AND CURRICULUM

---

DBA Name: OETC

---

Address: 14145 SW GALBREATH DR, SHERWOOD, OR, 97140-9170, United States of America

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Capitalized terms used but not defined in this Amendment have the meanings set forth in the Agreement.

In the event of any conflict between the terms of this Amendment and the Agreement, the terms of this Amendment will prevail.

The Parties hereby agree to amend the Agreement as follows:

### **1. Extension of Agreement Term**

The Term is hereby extended to March 31, 2021, unless otherwise terminated in accordance with the terms of the Agreement.

### **2. Effect of Amendment to Agreement**

Except as set forth in this Amendment, the Agreement shall continue in full force and effect in accordance with its terms.

The duly authorized representatives of the Parties execute this Amendment as of the Effective Date stated below.



**Purchaser**

SIGNATURE:

*Zach Jensen*

PRINT NAME: **Zach Jensen**

PRINT TITLE: **Contracts Manager**

DATE: **February 18, 2020**

**Apple Inc.**

SIGNATURE:

*Johnny Mendoza*

PRINT NAME: **Johnny Mendoza**

PRINT TITLE: **Project Coordinator**

EFFECTIVE DATE: **02/18/2020**



# Apple

Confidential Information



(v8Jun2016)

### Amendment to the Education/State & Local Government Purchase Agreement

This amendment ("**Amendment**") amends the Education/State & Local Government Purchase Agreement ("**Agreement**") entered into by and between Apple Inc., located at One Apple Park Way, Cupertino, California 95014 ("**Apple**") and:

Company Legal Name ("**Purchaser**"): ORGANIZATION FOR EDUCATIONAL TECHNOLOGY AND CURRICULUM

DBA Name: OETC

Address: 14145 SW GALBREATH DR, SHERWOOD, OR, 97140-9170, United States of America

Capitalized terms used but not defined in this Amendment have the meanings set forth in the Agreement.

In the event of any conflict between the terms of this Amendment and the Agreement, the terms of this Amendment will prevail.

The Parties hereby agree to amend the Agreement as follows:

#### 1. Extension of Agreement Term

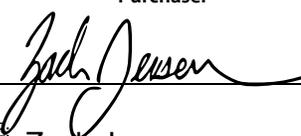
The Term is hereby extended to March 31, 2022, unless otherwise terminated in accordance with the terms of the Agreement.

#### 2. Effect of Amendment to Agreement

Except as set forth in this Amendment, the Agreement shall continue in full force and effect in accordance with its terms.

The duly authorized representatives of the Parties execute this Amendment as of the Effective Date stated below.

**Purchaser**

SIGNATURE: 

PRINT NAME: Zach Jensen

PRINT TITLE: Contracts Manager

DATE: 03/01/2021

**Apple Inc.**

SIGNATURE: 

PRINT NAME: Johnny Mendoza

PRINT TITLE: Project Coordinator

EFFECTIVE DATE: 02/18/2021



471 High Street SE  
Suite 10  
Salem, Oregon 97301

oetc.org  
(800) 650-8250  
Fax: (503) 625-0504

# OETC Volume Price Agreement

## Section I. OETC-16R-Computers

*This agreement is made and entered into by the Organization for Educational Technology and Curriculum (OETC), 471 High Street SE, Suite 10-Creekside, Salem, OR 97301 and Dell Marketing L.P.*

### A. Contractor Information

Dell Marketing L.P.  
**Company Name**

One Dell Way  
**Street Address**

74-2616805  
**Tax Identifier**

Round Rock, TX 78682  
**City, State ZIP**

### B. Contract Details

<b>Solicitation #</b>	OETC-16R-Computers
<b>Effective Date:</b>	June 15, 2016
<b>Termination Date:</b>	June 15, 2019
<b>Renewal Options:</b>	Up to three (3) additional years
<b>Products Awarded:</b>	Dell
<b>Payment Terms:</b>	Net 30
<b>Days Required for Delivery:</b>	30 Days
<b>Minimum Order:</b>	None
<b>Freight Terms:</b>	Freight on Board Destination (FOB)
<b>Administrative Fee:</b>	One Percent (1%)

## Section II. Intent and Purpose

The intent and purpose of this agreement is to establish a contractual relationship with technology equipment manufacturers, software and service providers to provide, warrant, and offer maintenance services on all products proposed in their response to the RFP issued by OETC on behalf of its public K-20 membership.

The Contractor, or its designated Fulfillment Agents, shall provide delivery, support, warranty and maintenance for all products and services covered in this agreement.

The Contractor agrees to take responsibility for the product and pricing updates, warranty and maintenance of all products furnished under this agreement.

The Contractor is responsible for the timeliness and quality of all services provided by individual Fulfillment Agents.

## Section III. Order of Precedence

1. Terms and Conditions of this agreement.
2. Exhibits and amendments to this agreement.
3. Any terms and conditions on OETC's or an OETC member's purchase order.

## Section IV. Terms and Conditions

### A . General Terms and Conditions.

1. **Contract Coordinator.** The Contract Coordinator identified in Attachment B is to be the sole point of contact with regard to contractual matters, disputes, concerns or other issues arising from this Contract. Contractor may update the Contract Coordinator by submitting a new Attachment B to the OETC Contract Administrator.
2. **Contract Period.** The term for the contract awarded pursuant to this solicitation will be for a three (3) year period effective from the date of contract execution.
3. **Contract Renewal.** At OETC's discretion, OETC may renew this contract up to three (3) additional years. OETC will provide notice to the Contractor in the event OETC elects to renew or not renew the contract.
4. **Administrative Fee.** The OETC Administrative Fee is set in §1B.  
For OETC Member orders placed directly with Contractor or its Fulfillment Agents, the OETC Administrative Fee shall be submitted quarterly by the Contractor and is based on sales of products and services (less any charges for taxes or shipping) resulting from this Contract. The quarterly submission must include the OETC Member name, date of purchase and amount purchased. This fee is to be included as part of the pricing submitted with Respondent's proposal.

For OETC Member orders placed directly by OETC the OETC Administrative Fee will be collected by at the time of sale.

Contract Awardee and/or its Fulfillment Agents may apply to the OETC Contract Administrator for a one-time OETC Administrative Fee reduction for large orders with a dollar value over \$1,000,000.

**5. Notice.**

- a. **Form of Notice.** All notices, requests, claims, demands and other communications between the parties shall be in writing.
- b. **Method of Notice.** All notices shall be given (i) by delivery in person (ii) by a nationally recognized next day courier service, (iii) by first class, registered or certified mail, postage prepaid, (iv) by facsimile, or (v) by electronic mail to the address of the OETC Contract Administrator or Contractor's Contract Coordinator or such other address as either party may specify in writing.
- c. **Receipt of Notice.** All notices shall be effective upon
  - i. Receipt by the party to which notice is given, or
  - ii. On the fifth (5th) day following mailing, whichever occurs first.
- d. **Receipt of Notice for Email.** If notice is delivered by email, notice shall be effective when the recipient, by an email sent to the email address for the sender stated in this section or by a notice delivered by another method in accordance with this section, acknowledges having received that email, with an automatic "read receipt" not constituting acknowledgment of an email for purposes of this section.

## **B. Pricing and Products.**

- 1. **Administrative Fee Calculation.** Pricing submitted in Attachment A shall include OETC's administrative fee. The Administrative Fee must be included in all pricing to OETC's membership.
- 2. **Lowest Possible Price.** OETC or an OETC Member shall pay the lower of the prices contained in the Attachment A, and any subsequent pricing updates. Any pricing promotions, General Price Reduction, or Per Transaction Multiple Unit Discount offered by Contractor may be offered to OETC Members on the OETC Contract. Only General Price Reduction price decreases will apply to all subsequent OETC Member orders. The prices charged for Products purchased under this Agreement shall be the fixed price as quoted by Contractor. Additional charges will apply if OETC requests Hardware Services that are performed outside of contracted hours or are beyond the normal coverage for the particular Hardware Service.

**Maintaining Attachment A - Price Schedule.** All pricing changes and product additions, deletions or updates must be submitted on the OETC Pricing Template. This is an Excel template. No other format will be accepted.

It is the responsibility of the Contractor to maintain an accurate price list for the lifetime of the contract including marking existing products as discontinued and submitting a complete and accurate price list every six months, or more frequently if needed.

All changes to the price list must be submitted 30 days prior to taking effect.

- 3. **Price Increases.** Pricing may be reviewed annually. Should pricing be modified, such modification will only take effect upon mutual agreement of both parties.
- 4. **Discontinued Items.** Discontinued items must be marked on the OETC Pricing Template and submitted to [help@oetc.org](mailto:help@oetc.org) to be removed from the contract. If an OETC member purchases a product that is no longer available, but was not designated so by the Contractor, it will be the responsibility of the Contractor to ship an equivalent or better product.
- 6. **Adding New Products.** Contractor may make model changes, add new products, and product upgrades or services using the Pricing Template. The pricing for these changes shall incorporate comparable pricing

discount levels as mutually agreed upon by the OETC Contract Administrator and Contractor for similar Products and Services.

7. **Travel Costs.** Unless otherwise stated in a statement of work, OETC shall reimburse Contractor for actual, reasonable travel-related and other out-of-pocket expenses incurred in connection with any Services.

## C. Fulfillment Agents

1. **Fulfillment Agents Allowed.** Contractor may assign its fulfillment rights and obligations of this Agreement to one or more Fulfillment Agents.
2. **Adding or Removing Fulfillment Agents.** Contractor may propose adding or removing fulfillment agents throughout the lifetime of this Agreement by submitting a revised Attachment B to OETC's Contract Administrator.
3. **OETC Approval Required.** Proposed additions must be approved by OETC's Contract Administrator before taking effect.

## D. Payment Terms and Options

1. **Payment Terms.** Invoices are due and payable within 30 days of the invoice date unless the invoice states payment terms greater than 30 days. Payment must be made in the currency identified by Contractor. Contractor may charge interest at the rate of 1.5% per month on undisputed overdue amounts, or the maximum rate permitted by law, whichever is less. Interest will be recalculated every 30 days based on OETC's current outstanding balance. Contractor, without waiving any other rights or remedies and without liability to OETC, may suspend any or all Services until all overdue amounts are paid in full. OETC will pay all reasonable legal fees (including reasonable attorney's fees) and costs associated with collection of overdue amount.
2. **Invoice with shipment.** Vendors may not submit an invoice for payment until the order is fulfilled either electronically or F.O.B Origin.
3. **Quotes and Orders.** OETC must identify Contractor's quotation (if any), the Contractor Contract Code assigned to this Agreement (if any), the Products and Services ordered, the requested shipment dates, and shipping and invoice addresses on all Orders. Each Order is subject to acceptance by Contractor. Quoted prices are effective until the expiration date of the quote, but may change due to shortages in materials or resources. Orders for Third-Party Products are subject to availability and are cancellable only by Contractor. Contractor may, prior to shipment, cancel and refund Orders affected by typographical errors. OETC shall place all Orders in the country where the Products and Software are to be shipped and for Services, where the Services benefit is received.
4. **Leasing.** Individual OETC Members may enter into lease agreements for the products covered in this Contract.

## E. Delivery and Returns

1. **Shipping Charges; Title; Risk of Loss.** Shipping and handling charges are not included in Product prices unless expressly indicated at the time of sale. Title to Hardware passes from Contractor to OETC

upon shipment. Delivery of Software is FOB Origin. Loss or damage that occurs during shipping (including returns) is the responsibility of the party that selected the carrier. Shipping and delivery dates are estimates only. OETC must notify Contractor within five (5) days of the invoice date if OETC believes any part of its order is missing, wrong, or damaged.

2. **Hardware Returns, Exchanges and Repairs.** OETC agrees to Contractor's return policy at [dell.com/returnspolicy](http://dell.com/returnspolicy). Before returning or exchanging Hardware, OETC must contact Contractor to obtain an authorization number for the return. OETC must return Hardware in its original or equivalent packaging, and OETC is responsible for risk of loss and shipping and handling fees. Additional fees may apply. If OETC fails to follow the return or exchange instructions, Contractor will not be responsible for any loss, damage, or modification of Hardware, or processing of Hardware for disposal or resale. Credit for partial returns may be less than invoice or individual component prices due to bundled or promotional pricing associated with OETC's purchase. Parts used in repairing or servicing Products may be new, equivalent-to-new, or reconditioned. Title to returned or exchanged Hardware shall pass to Contractor upon receipt at the specified Contractor facility.
3. **Failure to Fulfill.** If a product is purchased by an OETC member from a valid price list and cannot be fulfilled for any reason by the Contractor or its designated Fulfillment Agents, an equivalent or better product will be substituted.

## F. Amendments, Scope and Termination

1. **Indemnification.** Either party shall fully indemnify, hold harmless and defend (collectively "indemnify" and "indemnification") OETC and its directors, officers, employees, agents, and Members (collectively, "Indemnified Parties") from any third party claims, for personal bodily injury, including death, where the injury has been exclusively caused by the indemnifying party's gross negligence or willful misconduct in connection with this Agreement.
  - a. Contractor shall defend and indemnify OETC against any third-party claim that Contractor-branded Products, Services or any tangible items provided as part of the Services (excluding Third-Party Products and open source software) infringe or misappropriate that third party's U.S. patent, copyright, trade secret, or other intellectual property rights ("Claims"). In addition, if Contractor receives prompt notice of a Claim that Contractor believes is likely to result in an adverse ruling, then Contractor shall at its option, (1) obtain a right for OETC to continue using such Products or Service-related deliverables, if any, or for Contractor to continue performing the Services; (2) modify such Products or Services to make them non-infringing; (3) replace such Products or Services with a non-infringing substitute; or (4) refund any pre-paid fees for the allegedly infringing Services that have not been performed or provide a reasonable depreciated or pro rata refund for the allegedly infringing Product or Service-related deliverables, if any. Contractor shall have no obligation for any claim arising from (a) modifications of the Products or Services that were not performed by or on behalf of Contractor; (b) misuse, or the combination or use with Third-Party Products; (c) Contractor's compliance with OETC's written specifications or directions, including the incorporation of any software or other materials or processes OETC provides or requests or (d) OETC's failure to incorporate free Software updates or upgrades that would have avoided the alleged infringement. Contractor's duty to indemnify and defend under this Indemnification Section is contingent upon: (i) OETC's prompt written notice of the Claim (ii) Contractor's right to solely control the defense and resolution of the Claim, and (iii) OETC's cooperation in defending and resolving the Claim. These are the

exclusive remedies for any third-party intellectual property claim, and nothing in this AGREEMENT or elsewhere will obligate Contractor to provide any greater indemnity.

b. OETC shall defend and indemnify Contractor against any third-party claim resulting or arising from (1) OETC's failure to obtain any appropriate license, intellectual property rights, or other permissions, regulatory certifications, or approvals associated with technology or data provided by OETC, or associated with non-Contractor software or other components directed or requested by OETC to be used with, installed or integrated as part of the Products or Services; (2) OETC's violation of Contractor's proprietary rights; (3) any inaccurate representation regarding the existence of an export license or any allegation made against Contractor due to OETC's violation or alleged violation of applicable export laws; or (4) OETC transferring or providing access to Excluded Data to Contractor.

2. **Cancellation.** Either party may terminate this Agreement for convenience by providing at least thirty (30) days prior written notice to the other or by providing timely written notice of non-renewal. Either party may terminate this Agreement, a Statement of Work, or a Software Agreement (a) for a material breach of the Agreement, SOW, or Software Agreement by the other party which, if capable of being cured, is not cured within thirty days of the breaching party's receipt of written notice of the breach, or (b) if a party declares bankruptcy or is adjudicated bankrupt or a receiver or trustee is appointed for substantially all of its assets.

Notwithstanding the foregoing, Contractor may terminate this Agreement, a SOW, or a Software Agreement with 10 days' written notice if (a) OETC does not make payment as required by this Agreement or the applicable SOW or Software Agreement (where such payment is not subject to a good faith dispute) and (b) OETC fails to make the payment within 10 days after receiving written notice of the past due amount.

If this Agreement is terminated for convenience (or not renewed), all then-existing SOWs and Software Agreements shall remain in force for their stated term and shall continue to be governed by this Agreement. If this Agreement or an SOW or Software Agreement is otherwise terminated, all rights and obligations of the parties under this Agreement or the terminated SOW or Software Agreement shall automatically terminate, except for rights of action accruing prior to termination, payment obligations, and any obligations that expressly or by implication are intended to survive termination.. Additionally OETC may cancel a contract if the consortium's cumulative annual sales are less than \$100,000 per calendar year.

3. **Amendments.** Contract amendments shall be negotiated by both parties whenever necessary to address changes in the terms and conditions, costs, timetable, or increased or decreased scope of work. This Agreement shall be amended only by written instrument executed by both parties. An approved Contract amendment means one approved by the authorized signatories of the Contractor and OETC as required by law.
4. **Entire Agreement.** This agreement contains all the terms agreed to by the parties relating to its subject matter. It replaces all previous discussions, understandings, and agreements.
5. **Force Majeure.** Neither party shall be liable to the other for any failure to perform any of its obligations (except payment obligations) under this Agreement during any period in which such performance is delayed by circumstances beyond its reasonable control, such as fire, flood, failure of the Internet, war, embargo, strike, riot, or governmental intervention (an "Excused Event"). The delayed party's time for performance will be excused for the duration of the Excused Event, but if the Excused Event lasts longer than thirty (30) days, then the other party may immediately terminate, in whole or in part, this Agreement or the applicable Schedule or SOW by giving written notice to the delayed party.

## G. Additional Terms

### 1. SERVICES

a. The following shall apply to all purchases of Services under this Agreement:

b. SOW. Services shall be subject to the additional terms contained in any SOW executed or otherwise provided by Contractor in connection with the Service.

c. Third Party Products. If OETC provides or makes available Third Party Products for Contractor to use in connection with the Services, OETC (a) authorizes Contractor to use such Third Party Products as needed to provide the Services, (b) warrants that it has all consents, licenses, and sublicense rights as may be necessary to make the Third Party Products available to Contractor, and (c) agrees that Contractor shall not be liable to OETC if Contractor's authorized use causes warranties or other services contracts for the Third Party Products to become void.

d. Services Software. "Services Software" is Software that Contractor may make available to OETC as necessary to enable OETC to receive and use the Services. Services Software may be hosted by Contractor or installed on OETC's computers. OETC agrees that it shall (i) only use the Services Software as necessary to receive and/or use the Services during the term thereof, (ii) use any Services Software hosted by Contractor in a lawful manner, without interfering with other Contractor OETCs' use of the Services Software, and without attempting to disrupt the security or operation of the network or systems used to provide the Services Software; and (iii) not misappropriate, disclose, or otherwise violate Contractor's or its suppliers' intellectual property rights in the Services Software.

e. OETC Obligations. Except as may be expressly agreed by the parties in writing, OETC shall be solely responsible to back up all data on its systems and to install all equipment or technology upgrades, refreshes, and replacements. OETC shall provide timely access to OETC personnel, systems and information as may be needed for Contractor to perform the Services. If the Services are provided on OETC's premises, OETC shall provide, without charge to Contractor, a reasonable work environment for Contractor personnel that is in compliance with all applicable laws and regulations and that includes work space, reproduction, computer, and other equipment, supplies, and services all as may be needed to perform the Services.

f. Data. In connection with Contractor's performance of or OETC's use of the Services or Services Software, Contractor may obtain, receive, and/or collect data or information, including system-specific data (collectively, the "Data"). OETC grants Contractor (i) a non-exclusive, worldwide, royalty-free, perpetual, irrevocable license to use, compile, distribute, display, store, process, reproduce, or create derivative works of the Data solely to provide the Services or the Services Software; (ii) a license to aggregate and use the Data in an anonymous manner in support of Contractor's internal, marketing and sales activities; and (iii) the right to copy and maintain the Data on Contractor's or its suppliers' servers as necessary to provide the Services. OETC represents and warrants that it has obtained all rights, permissions, and consents necessary to use and transfer the Data within and outside of the country in which OETC is located in order for Contractor to provide Services hereunder.

g. Updates. It may be necessary for Contractor to perform scheduled or unscheduled repairs or maintenance, or remotely patch or upgrade the Services Software, which may temporarily degrade the quality of the Services or result in a temporary outage of the Services Software.

## 2. SOFTWARE

a. OETC may purchase Software licenses under this AGREEMENT for Software licensed to OETC by Contractor or a Contractor Affiliate (“Contractor Licensed Software”) and for Software licensed to OETC by a third party (“Third Party Software”).

b. “Software” means any software, library, utility, tool, or other computer or program code, each in object (binary) code form, and the printed materials, online and electronic documentation provided by Contractor with the Software and any copies thereof.

c. “Software Agreement” means either (i) the software license agreements included with the software media packaging or presented to OETC during the installation or use of the Software, or (ii) if no license terms accompany Contractor Licensed Software or are not otherwise made available to OETC by Contractor, the End User License Agreement—A Version, found at [dell.com/aeula](http://dell.com/aeula); or (iii) for Software listed at [software.dell.com](http://software.dell.com) (the “DSG Software”), the applicable local Software Transaction Agreement located at [software.dell.com/legal/sta](http://software.dell.com/legal/sta).

d. “Software Terms” means the terms in a Software Agreement for Contractor Licensed Software that state (a) the Contractor Affiliate that is the licensor of the Software (the “Licensor”) (b) Software title, license definitions, rights, and restrictions; (c) Software warranties and remedies; (d) maintenance and support services for the Software; (e) the Licensor’s rights in connection with a change of control of Licensor or a sale of its assets; (f) OETC’s compliance obligations with respect to the Software; (g) the parties’ rights and obligations with respect to a termination of the Software Agreement or a license granted thereunder, and (h) the parties’ liability in the event of a misappropriation, misuse, or disclosure of the other party’s intellectual property, including, but not limited to the Software.

e. Governing Terms. Contractor Licensed Software shall be governed by this AGREEMENT, the Software Terms, and the applicable Order provided to OETC by Contractor (if any). Third Party Software shall be governed by the Software Agreement that is provided with such Software and, as between Contractor and OETC, the sections of this AGREEMENT regarding payment, taxes, warranty, and liability.

3. Warranties. The limited warranties for Contractor-branded hardware shall be as stated in the documentation provided with the hardware. If there is no such documentation, then the warranties shall be as stated at [dell.com/warrantyterms](http://dell.com/warrantyterms). Contractor warrants that Hardware Services shall be performed in a good and workmanlike manner. OETC’s exclusive remedy and Contractor’s sole obligation for any breach of any Hardware Services warranty shall be for Contractor to re-perform the non-conforming Hardware Services. EXCEPT AS EXPRESSLY STATED BY CONTRACTOR IN THIS AGREEMENT, ANY APPLICABLE SOW, AMENDMENT OR EXHIBIT HERETO, ANY DELL WEBSITE OR DELIVERED WITH ANY PRODUCT, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, CONTRACTOR (INCLUDING CONTRACTOR AFFILIATES, CONTRACTORS, AND AGENTS, AND EACH OF THEIR RESPECTIVE EMPLOYEES, DIRECTORS, AND OFFICERS), ON BEHALF OF ITSELF AND ITS SUPPLIERS AND LICENSORS MAKES NO EXPRESS OR IMPLIED WARRANTY WITH RESPECT TO ANY OF THE PRODUCTS OR SERVICES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY (a) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY, OR NON-INFRINGEMENT; (b) FOR ANY THIRD-PARTY PRODUCTS OR SERVICES; (c) FOR THE PERFORMANCE OF OR RESULTS TO BE OBTAINED FROM ANY PRODUCTS OR SERVICES; OR (d) THAT THE PRODUCTS OR SERVICES WILL OPERATE OR BE PROVIDED WITHOUT INTERRUPTION OR ERROR. PRODUCTS AND SERVICES ARE NOT FAULT-TOLERANT AND ARE NOT DESIGNED OR INTENDED FOR USE IN HAZARDOUS

ENVIRONMENTS, REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS ANY APPLICATION IN WHICH THE FAILURE OF THE PRODUCTS OR SERVICES COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR PROPERTY DAMAGE (COLLECTIVELY, “**HIGH-RISK ACTIVITIES**”).

WARRANTIES DO NOT COVER DAMAGE DUE TO EXTERNAL CAUSES, SUCH AS ACCIDENT, ABUSE, MISUSE, PROBLEMS WITH ELECTRICAL POWER, SERVICES NOT PERFORMED OR AUTHORIZED BY CONTRACTOR (INCLUDING INSTALLATION OR DE-INSTALLATION), USAGE NOT IN ACCORDANCE WITH THE DOCUMENTATION, NORMAL WEAR AND TEAR, OR USE OF PARTS AND COMPONENTS NOT SUPPLIED OR INTENDED FOR USE WITH THE PRODUCTS OR HARDWARE SERVICES. ANY WARRANTY ON A THIRD-PARTY PRODUCT IS PROVIDED BY THE PUBLISHER, PROVIDER, OR ORIGINAL MANUFACTURER. ALL THIRD-PARTY PRODUCTS ARE PROVIDED BY CONTRACTOR “AS IS.”

#### 4. Compliance with Laws.

a. OETC’s purchase of Contractor’s Products or Services is for its own use, not for resale, export, re-export, or transfer. OETC is subject to and solely responsible for compliance with the export control and economic sanctions laws of the United States and other applicable jurisdictions. OETC’s purchase may not be used, sold, leased, exported, re-exported, or transferred except in compliance with such laws, including, without limitation, export licensing requirements, end-user, end-use, and end-destination restrictions, and prohibitions on dealings with sanctioned individuals and entities, including but not limited to persons on the Office of Foreign Assets Control’s Specially Designated Nationals and Blocked Persons List or the U.S. Department of Commerce Denied Persons List. OETC represents and warrants that it is not the subject or target of, and that OETC is not located in a country or territory that is the subject or target of, economic sanctions of the United States and other applicable jurisdictions.

b. OETC certifies that all items (including hardware, software, technology and other materials) it provides to Contractor for any reason that contain or enable encryption functions either (i) satisfy the criteria in the Cryptography Note (Note 3) of Category 5, Part 2 of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies or (ii) employ key length of 56-bit or less symmetric, 512-bit asymmetric or less, and 112-bit or less elliptic curve. Contractor is not responsible for determining whether any Third-Party Product to be used in the Products and Services satisfies regulatory requirements of the country to which such Products or Services are to be delivered or performed, and Contractor shall not be obligated to provide any Product or Service where the resulting Product or Service is prohibited by law or does not satisfy the local regulatory requirements.

c. Contractor’s privacy policies explain how Contractor treats personal information and protects its OETCs’ privacy and can be found at [dell.com/privacy](http://dell.com/privacy).

#### 5. Limitation of Liability

a. EXCEPT FOR A VIOLATION OF A PARTY’S INTELLECTUAL PROPERTY RIGHTS OR AS OTHERWISE SET FORTH IN THE APPLICABLE SCHEDULES, NEITHER PARTY WILL BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PRODUCTS OR SERVICES, OR FOR ANY OF THE FOLLOWING: (a) LOSS OF REVENUE, INCOME, PROFIT (IN EACH CASE, EXCEPT FOR OETC’S PAYMENT OBLIGATIONS), SAVINGS OR SHARE VALUE; (b) LOST OR CORRUPTED

DATA OR SOFTWARE, LOSS OF USE OF A SYSTEM OR NETWORK, OR THE RECOVERY OF SUCH; (c) LOSS OF BUSINESS OPPORTUNITY; (d) BUSINESS INTERRUPTION OR DOWNTIME; (e) LOSS OF GOODWILL OR REPUTATION; OR (f) THE PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES.

b. EXCEPT FOR OETC'S BREACH OF ITS PAYMENT OBLIGATIONS, A VIOLATION OF A PARTY'S INTELLECTUAL PROPERTY RIGHTS OR OTHER RESTRICTIONS ON USE IN AN ORDER OR SOFTWARE AGREEMENT, OR AS OTHERWISE SET FORTH IN THE APPLICABLE SCHEDULES, EACH PARTY'S TOTAL LIABILITY FOR ANY AND ALL CLAIMS, ACTIONS AND CAUSES OF ACTION RELATED TO ANY DISPUTE (AS DEFINED BELOW) SHALL BE LIMITED TO (i) THE AMOUNTS PAID DURING THE TWELVE MONTH PERIOD PRECEDING THE DATE THAT THE DISPUTE FIRST AROSE, FOR (ii) THE PRODUCT THAT IS THE SUBJECT OF THE DISPUTE OR (iii) THE SERVICES THAT ARE THE SUBJECT OF THE DISPUTE, IN EACH CASE EXCLUDING AMOUNTS RECEIVED AS REIMBURSEMENT OF EXPENSES OR PAYMENT OF TAXES.

c. THESE LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS APPLY TO ALL DISPUTES AND CLAIMS FOR DAMAGES, WHETHER BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, TORT, STATUTE, EQUITY OR OTHERWISE. THESE LIMITATIONS OF LIABILITY ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR CONTRACTOR'S SALE OF PRODUCTS OR SERVICES TO OETC, AND WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES.

6. Intellectual Property. During the course of providing Professional Services, Contractor may create and provide to OETC items including, but not limited to documents, designs, computer code, know-how, and methodologies which are protected by the intellectual property law of the United States, Canada, or the location in which the Professional Services are being provided ("IP"). Subject to payment in full, OETC is hereby granted a perpetual, irrevocable (except for non-payment), non-transferable, non-sublicenseable license to use the IP and any pre-existing Contractor intellectual property that may be provided to OETC as part of the Professional Services ("**Pre-existing Contractor IP**") for non-commercial purposes to manage its and its Affiliates' internal business operations. Except as may otherwise be expressly stated in an SOW, Contractor shall have sole and exclusive ownership of all IP, except (a) OETC shall retain all its rights in any OETC information or pre-existing intellectual property that may be contained in the IP and (b) Contractor may not disclose or distribute the IP to any third party unless it first removes any such OETC information or intellectual property. Other than the license granted to OETC in this Section, Contractor shall retain all rights and ownership in all Pre-existing Contractor IP.

**Severability.** If any provision of this Contract, including items incorporated by reference, is found to be illegal, unenforceable, or void, by a court of competent jurisdiction then both OETC and the Contractor shall be relieved of all obligations arising under such provision. If the remainder of this Contract is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed.

## Section VI. Definitions

**Administrative Fee.** The fee paid by Contractor with awarded contracts to OETC to fund the total cost of the OETC consortium.

**Contract.** This Agreement, including its Schedules, attachments, Orders, and statement(s) of work, each of which is incorporated in this Agreement for all purposes, constitutes the entire agreement between the Parties concerning the subject matter of this Agreement.

**Contractor.** The organization or entity who wins a Request for Proposal and signs a contract with OETC. Contractor is responsible for all terms and conditions set forth in this agreement.

**FOB Destination.** Shipping charges are included in the price of the item and the shipped item becomes the legal property and responsibility of the receiver when it reaches its destination unless there is acceptance testing required.

**FOB Inside Delivery.** Special Shipping arrangements, such as inside delivery, may include additional fees payable by the OETC Member. Any FOB inside delivery must be annotated on the OETC Member's Purchase Order.

**Force Majeure.** Acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, orders of any kind of government of the United States or the OETC's Member states or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquake; fires; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty.

**Fulfillment Agent(s).** A designee by the Contractor to take orders on behalf of the Contract Holder. Often if the contract holder is a manufacturer, the manufacturer names channel partners as its fulfillment agents. These can be modified throughout the life of the contract.

**General Price Reduction.** General price reductions are submitted on OETC's Price Template and apply to all OETC members for any and all quantities.

**Manufacturer.** A company that, as one of its primary business function, designs, assembles owns the trademark/patent and markets branded technology equipment, software or services.

**MSRP.** Manufacturer Suggested Retail Price. If Manufacturer has a MSRP for Education that is lower than standard MSRP, than OETC presumes all reference to MSRP refer to Education MSRP.

**OETC Contract Administrator.** The point of contact at OETC for all questions and changes related to the terms and conditions of this Agreement, including cancellation and extensions. Unless otherwise specified OETC's Executive Director is the Contract Administrator.

**Per Transaction Multiple Unit Discount.** A contractual volume discount based on dollars in a single purchase order or combination of purchase orders submitted at one time by an OETC Member.

**Premium Savings SKU.** Deeply discounted standard configurations available to Purchasing Entities using the OETC Contract. This specification includes a commitment to maintain and upgrade (keep pace with the advance of technology) the standard configurations for a stated period of time or intervals. OETC reserves the right to expand and modify the PSP throughout the life of the contract.

**Services.** Broadly classed as installation/de-installation, maintenance, support, training, migration, and optimization of products offered or supplied under the Master Agreement. These types of services may include, but are not limited to: warranty services, maintenance, installation, de-installation, factory integration (software or equipment components), asset management, recycling/disposal, training and certification, pre-implementation design, disaster recovery planning and support, service desk/helpdesk, and any other directly related technical support service required for the effective operation of a product offered or supplied. Contract Vendors may offer, but OETC Members do not have to accept, limited professional services related ONLY to the equipment and configuration of the equipment purchased through the resulting contracts. Each oetc member determines restrictions and negotiates terms for services.

**Warranty.** The Manufacturers general warranty tied to the product at the time of purchase.

## **Section VII. Attachments**

Attachment A: Pricing Proposal

Attachment B: Contract Coordinator

Attachment C: Fulfillment Agents

Attachment D: Suspension and Debarment Certification

Attachment E: Contractor's Additional Terms and Conditions

# Section VIII. Contract Signature Page

The undersigned hereby agrees to the specifications, terms and conditions of this request for proposals.

The undersigned acknowledges their authority to submit this proposal on behalf of the firm listed below and bind it to comply with these specifications, terms and conditions if any contract is awarded through this RFP process.

Furthermore, the undersigned certifies conformity to applicable Federal laws, Oregon Revised Statutes, and Oregon Administrative Rules concerning public contracts, and that this proposal is made without connection with any person, firm or corporation making a proposal for the same goods or services, and is in all respects fair and without collusion or fraud.

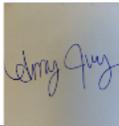
## Dell Marketing L.P.

Amy Ivy

Name

Contracts Manager

Title



Digitally signed by Amy Ivy  
DN: cn=Amy Ivy, o=Dell  
Marketing, L.P., ou=Legal  
Department - Contracts Manager,  
email=amy\_ivy@dell.com, c=US  
Date: 2016.08.12 10:49:09 -05'00'

Signature

8/12/16

Date

## Organization for Educational Technology and Curriculum

Thomas Richards

Name

Executive Director

Title



Signature

August 12, 2016

Date





## Attachment C - Fulfillment Agent



471 High Street SE  
Suite 10  
Salem, Oregon 97301

oetc.org  
(800) 650-8250  
Fax: (503) 625-0504

### Attachment C: Fulfillment Agent

#### A. Company Information

<b>Company Name:</b> Dell Marketing L.P.	<b>Street</b> One Dell Way
	<b>City, State Zip</b> Round Rock, TX 78682

#### B. Sales and Support Contact

<b>Name</b> Bill Ruddick	<b>Email</b> Bill_Ruddick@Dell.com
<b>Title</b> Account Executive	<b>Phone Number</b> 206-226-8110

#### C. Remit To / Payment Contact

<b>Name</b> Louis Bitonti	<b>Email</b> Louis_Bitonti@Dell.com
<b>Title</b> Inside Sales Account Manager	<b>Phone Number</b> 512.513.9698

#### D. Allowed Territories

--

#### E. Allowed Purchasers

Place an "X" for each allowed purchaser type.

<b>Public Members</b>	<input checked="" type="checkbox"/>	K-12	<input checked="" type="checkbox"/>	Higher Education	<input type="checkbox"/>	State Dept. / ESD
<b>Private Members</b>	<input type="checkbox"/>	K-12	<input type="checkbox"/>	Higher Education	<input type="checkbox"/>	Non-Profit



## Attachment D - Suspension and Debarment Certification

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471 High Street SE  
Suite 10  
Salem, Oregon 97301

oetc.org  
(800) 650-8250  
Fax: (503) 625-0504

### Attachment D: Suspension and Debarment Certification

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 13 CFR Part 145. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations are available from local offices of the U.S. Small Business Administration.

1. The proposer certifies to the best of its knowledge and believe that it and its principals:
  1. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  2. Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  3. Are not presently indicted of or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1. 1.2 of this certification; and
  4. Have not within a three-year period preceding this response had one or more public transactions (Federal, State or local) terminated for cause or default.
2. Where the proposer is unable to certify to any of the statements in this certification, proposers shall attach an explanation to this proposal.

Business Name: Dell Marketing L.P.

Date: May 3<sup>rd</sup> 2016

A handwritten signature in black ink, appearing to read "Michelle C Behringer", written over a faint circular stamp.

By: Michelle C Behringer

Name and Title of Authorized Representative

Signature of Authorized Representative



# Attachment E: Dell's Additional Terms and Conditions

## SERVICES

The following shall apply to all purchases of Services under this Agreement:

**Statement of Work.** Services shall be subject to the additional terms contained in any SOW executed or otherwise provided by Dell in connection with the Service.

**Third Party Products.** If Customer provides or makes available Third Party Products for Dell to use in connection with the Services, Customer (a) authorizes Dell to use such Third Party Products as needed to provide the Services, (b) warrants that it has all consents, licenses, and sublicense rights as may be necessary to make the Third Party Products available to Dell, and (c) agrees that Dell shall not be liable to Customer if Dell's authorized use causes warranties or other services contracts for the Third Party Products to become void.

**Services Software.** "Services Software" is Software that Dell may make available to Customer as necessary to enable Customer to receive and use the Services. Services Software may be hosted by Dell or installed on Customer's computers. Customer agrees that it shall (i) only use the Services Software as necessary to receive and/or use the Services during the term thereof, (ii) use any Services Software hosted by Dell in a lawful manner, without interfering with other Dell customers' use of the Services Software, and without attempting to disrupt the security or operation of the network or systems used to provide the Services Software; and (iii) not misappropriate, disclose, or otherwise violate Dell's or its suppliers' intellectual property rights in the Services Software.

**Customer Obligations.** Except as may be expressly agreed by the parties in writing, Customer shall be solely responsible to backup all data on its systems and to install all equipment or technology upgrades, refreshes, and replacements. Customer shall provide timely access to Customer personnel, systems and information as may be needed for Dell to perform the Services. If the Services are provided on Customer's premises, Customer shall provide, without charge to Dell, a reasonable work environment for Dell personnel that is in compliance with all applicable laws and regulations and that includes work space, reproduction, computer, and other equipment, supplies, and services all as may be needed to perform the Services.

**Data.** In connection with Dell's performance of or Customer's use of the Services or Services Software, Dell may obtain, receive, and/or collect data or information, including system-specific data (collectively, the "Data"). Customer grants Dell (i) a non-exclusive, worldwide, royalty-free, perpetual, irrevocable license to use, compile, distribute, display, store, process, reproduce, or create derivative works of the Data solely to provide the Services or the Services Software; (ii) a license to aggregate and use the Data in an anonymous manner in support of Dell's internal, marketing and sales activities; and (iii) the right to copy and maintain the Data on Dell's or its suppliers' servers as necessary to provide the Services. Customer represents and warrants that it has obtained all rights, permissions, and consents necessary to use and transfer the Data within and outside of the country in which Customer is located in order for Dell to provide Services hereunder.

**Updates.** It may be necessary for Dell to perform scheduled or unscheduled repairs or maintenance, or remotely patch or upgrade the Services Software, which may temporarily degrade the quality of the Services or result in a temporary outage of the Services Software.

## SOFTWARE

Customer may purchase Software licenses under this Agreement for Software licensed to Customer by Dell or a Dell Affiliate (“Dell Licensed Software”) and for Software licensed to Customer by a third party (“Third Party Software”).

“Software” means any software, library, utility, tool, or other computer or program code, each in object (binary) code form, and the printed materials, online and electronic documentation provided by Dell with the Software and any copies thereof.

“Software Agreement” means either (i) the software license agreements included with the software media packaging or presented to Customer during the installation or use of the Software, or (ii) if no license terms accompany Dell Licensed Software or are not otherwise made available to Customer by Dell, the End User License Agreement—A Version, found at [dell.com/aeula](http://dell.com/aeula); or (iii) for Software listed at [software.dell.com](http://software.dell.com) (the “DSG Software”), the applicable local Software Transaction Agreement located at [software.dell.com/legal/sta](http://software.dell.com/legal/sta).

“Software Terms” means the terms in a Software Agreement for Dell Licensed Software that state (a) the Dell Affiliate that is the licensor of the Software (the “Licensor”) (b) Software title, license definitions, rights, and restrictions; (c) Software warranties and remedies; (d) maintenance and support services for the Software; (e) the Licensor’s rights in connection with a change of control of Licensor or a sale of its assets; (f) Customer’s compliance obligations with respect to the Software; (g) the parties’ rights and obligations with respect to a termination of the Software Agreement or a license granted thereunder, and (h) the parties’ liability in the event of a misappropriation, misuse, or disclosure of the other party’s intellectual property, including, but not limited to the Software.

**Governing Terms.** Dell Licensed Software shall be governed by this CPA, the Software Terms, and the applicable Order provided to Customer by Dell (if any). Third Party Software shall be governed by the Software Agreement that is provided with such Software and, as between Dell and Customer, the sections of this CPA regarding payment, taxes, warranty, and liability.

## Limited Warranty

Dell’s warranty terms for products shall be provided as indicated in the product schedule or the software terms. Dell’s warranties for services shall be provided in the services schedule. Except as expressly stated by dell elsewhere, and to the maximum extent permitted by law, dell (including dell affiliates, contractors, and agents, and each of their respective employees, directors, and officers), on behalf of itself and its suppliers and licensors makes no express or implied warranty with respect to any of the products or services, including but not limited to any warranty (a) of merchantability, fitness for a particular purpose, performance, suitability, or non- infringement; (b) for any third-party products or services; (c) for the performance of or results to be obtained from any products or services; or (d) that the products or services will operate or be provided without interruption or error. Products and services are not fault-tolerant and are not designed or intended for use in hazardous environments, requiring fail-safe performance, such as any application in which the failure of

the products or services could lead directly to death, personal injury, or severe physical or property damage (collectively, “high-risk activities”).

Warranties do not cover damage due to external causes, such as accident, abuse, misuse, problems with electrical power, services not performed or authorized by dell (including installation or de- installation), usage not in accordance with the documentation, normal wear and tear, or use of parts and components not supplied or intended for use with the products or hardware services. Any warranty on a third-party product is provided by the publisher, provider, or original manufacturer. all third-party products are provided by dell “as is.”

## **Confidentiality**

“Confidential Information” means information that is designated as confidential or should reasonably be understood to be confidential. Confidential Information may only be disclosed to the receiving party’s personnel, professional advisors, agents, and subcontractors (“Representatives”), or governmental taxing authorities, on a “need-to-know” basis in connection with this Agreement. Representatives shall be bound to treat the Confidential Information under terms at least as restrictive as those herein, and the receiving party shall be liable for unauthorized disclosures by its Representatives. Each party will use at least the same degree of care as it employs with respect to its own Confidential Information, but not less than a commercially reasonable standard of care. The foregoing shall not apply to information that (i) is independently developed without use of the other party’s Confidential Information; (ii) has been obtained from a source which is not under a confidentiality obligation; or (iii) is or becomes publicly available without fault of the receiving party. If receiving party must disclose Confidential Information as required by law, it shall give reasonable prior notice to the disclosing party. These obligations shall continue for 3 years from the initial date of disclosure, except that obligations related to information about a party’s trade secrets and intellectual property shall never expire.

## **Indemnification**

Dell shall defend and indemnify Customer against any third-party claim that Dell-branded Products, Services or any tangible items provided as part of the Services (excluding Third- Party Products and open source software) infringe or misappropriate that third party’s U.S. patent, copyright, trade secret, or other intellectual property rights (“Claims”). In addition, if Dell receives prompt notice of a Claim that Dell believes is likely to result in an adverse ruling, then Dell shall at its option, (1) obtain a right for Customer to continue using such Products or Service-related deliverables, if any, or for Dell to continue performing the Services; (2) modify such Products or Services to make them non-infringing; (3) replace such Products or Services with a non-infringing substitute; or (4) refund any pre-paid fees for the allegedly infringing Services that have not been performed or provide a reasonable depreciated or pro rata refund for the allegedly infringing Product or Service-related deliverables, if any. Dell shall have no obligation for any claim arising from (a) modifications of the Products or Services that were not performed by or on behalf of Dell; (b) misuse, or the combination or use with Third- Party Products; (c) Dell’s compliance with Customer’s written specifications or directions, including the incorporation of any software or other materials or processes Customer provides or requests or (d) Customer’s failure to incorporate free Software updates or upgrades that would have avoided the alleged infringement. Dell’s duty to indemnify and defend under this Indemnification Section is contingent upon: (i) Customer’s prompt written notice of the Claim (ii) Dell’s right to solely control the defense and resolution of the Claim, and (iii) Customer’s cooperation in defending and resolving the Claim. These are the exclusive remedies for any third-party intellectual property claim, and nothing in this CPA or elsewhere will obligate Dell to provide any greater indemnity. Customer shall defend and indemnify Dell against any third-party claim

resulting or arising from (1) Customer's failure to obtain any appropriate license, intellectual property rights, or other permissions, regulatory certifications, or approvals associated with technology or data provided by Customer, or associated with non- Dell software or other components directed or requested by Customer to be used with, installed or integrated as part of the Products or Services; (2) Customer's violation of Dell's proprietary rights; (3) any inaccurate representation regarding the existence of an export license or any allegation made against Dell due to Customer's violation or alleged violation of applicable export laws; or (4) Customer transferring or providing access to Excluded Data to Dell.

Each party shall defend and indemnify the other against any third-party claim for personal bodily injury, including death, where the injury has been exclusively caused by the indemnifying party's gross negligence or willful misconduct in connection with this CPA.

## **Compliance with Laws**

Customer's purchase of Dell's Products or Services is for its own use, not for resale, export, re-export, or transfer. Customer is subject to and solely responsible for compliance with the export control and economic sanctions laws of the United States and other applicable jurisdictions. Customer's purchase may not be used, sold, leased, exported, re-exported, or transferred except in compliance with such laws, including, without limitation, export licensing requirements, end-user, end-use, and end- destination restrictions, and prohibitions on dealings with sanctioned individuals and entities, including but not limited to persons on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List or the U.S. Department of Commerce Denied Persons List. Customer represents and warrants that it is not the subject or target of, and that Customer is not located in a country or territory that is the subject or target of, economic sanctions of the United States and other applicable jurisdictions.

Customer certifies that all items (including hardware, software, technology and other materials) it provides to Dell for any reason that contain or enable encryption functions either (i) satisfy the criteria in the Cryptography Note (Note 3) of Category 5, Part 2 of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies or (ii) employ key length of 56-bit or less symmetric, 512-bit asymmetric or less, and 112-bit or less elliptic curve. Dell is not responsible for determining whether any Third-Party Product to be used in the Products and Services satisfies regulatory requirements of the country to which such Products or Services are to be delivered or performed, and Dell shall not be obligated to provide any Product or Service where the resulting Product or Service is prohibited by law or does not satisfy the local regulatory requirements.

Dell's privacy policies explain how Dell treats personal information and protects its customers' privacy and can be found at [dell.com/privacy](http://dell.com/privacy).

## **Limitation of Liability**

Except for a violation of a party's intellectual property rights or as otherwise set forth in the applicable schedules, neither party will be liable for any incidental, indirect, punitive, special, or consequential damages arising out of or in connection with this cpa or the products or services, or for any of the following: (a) loss of revenue, income, profit (in each case, except for customer's payment obligations), savings or share value; (b) lost or corrupted data or software, loss of use of a system or network, or the recovery of such; (c) loss of business opportunity; (d) business interruption or downtime; (e) loss of goodwill or reputation; or (f) the procurement of substitute products or services.

Except for customer's breach of its payment obligations, a violation of a party's intellectual property rights or other restrictions on use in an order or software agreement, or as otherwise set forth in the applicable schedules, each party's total liability for any and all claims, actions and causes of action related to any dispute (as defined below) shall be limited to (i) the amounts paid during the twelve month period preceding the date that the dispute first arose, for (ii) the product that is the subject of the dispute or (iii) the services that are the subject of the dispute, in each case excluding amounts received as reimbursement of expenses or payment of taxes.

These limitations, exclusions, and disclaimers apply to all disputes and claims for damages, whether based in contract, warranty, strict liability, negligence, tort, statute, equity or otherwise. These limitations of liability are agreed allocations of risk constituting in part the consideration for Dell's sale of products or services to customer, and will apply notwithstanding the failure of essential purpose of any limited remedy and even if a party has been advised of the possibility of such liabilities.

**Independent Contractor Relationship; Assignment; Subcontracting.** The parties are independent contractors. Neither party will have any rights, power or authority to act or create an express or implied obligation on behalf of the other party except as specified in this Agreement. Neither party's employees, agents, nor consultants shall be considered under any circumstances to be employees of the other party. Dell has the right to assign, transfer, subcontract, or delegate in whole or in part this Agreement, or any of its rights, duties, obligations or liabilities provided that if it delegates or subcontracts its duties in providing Services, Dell shall remain responsible for the performance of such Services under this Agreement. Customer may not assign or transfer this Agreement without Dell's permission, which shall not be unreasonably withheld.

**Excused Performance.** Neither party shall be liable to the other for any failure or delay in performing its obligations due to circumstances beyond its reasonable control, provided that the other party is promptly notified in writing, and such party uses reasonable commercial efforts to resume performance. The failure of Dell, its affiliates or their subcontractors to perform their obligations under this CPA will be excused to the extent such non-performance is caused by the acts or omissions of Customer, its Affiliates, agents, contractors or other third parties. This Section shall not relieve either party of its obligations under this Agreement (including payment), but rather will only excuse a delay in performance.

**Excluded Data.** Customer acknowledges that Products and Services provided under this Agreement are not designed to process, store or be used in connection with any of the following categories of data: (i) data that is classified and/or used on the U.S. Munitions list, including software and technical data; (ii) articles, services and related technical data designated as defense articles and defense services; (iii) ITAR (International Traffic in Arms Regulations) related data; and (iv) except for certain DSG Software, other personally identifiable information that is subject to heightened security requirements as a result of Customer's internal policies or practices or by law (collectively referred to as "Excluded Data"). Customer is solely responsible for reviewing data that will be provided to or accessed by Dell to ensure that it does not contain Excluded Data.

**U.S. Government Restricted Rights.** The software and documentation provided with the Products and Services are "commercial items" as that term is defined at 48 C.F.R. 12.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end-users acquire the software and documentation with only those rights set forth herein. Contractor/manufacturer of Dell-branded Products is Dell, One Dell Way, Round Rock, Texas 78682.

**Dispute Resolution.** Customer and Dell will attempt to resolve any Dispute through negotiation or by utilizing a mediator agreed to by the parties, rather than through litigation. Negotiations and mediations will be treated as confidential. If the parties are unable to reach a resolution within 30 days of notice of the Dispute to the other party, the parties may pursue all other courses of action available at law or in equity.

**Cancellation of Order.** Customer may change or cancel an order for Dell-branded Products only up until the time Dell begins manufacturing the Products. Otherwise, Customer may change or cancel an order as set forth in the applicable Dell quote or as expressly agreed by both parties.

**Suspension of Hardware Services.** Dell may suspend Hardware Services if Customer purchased the Hardware Services through a reseller and the agreement between Customer and such reseller expires or is terminated, or Customer's reseller is delinquent on its payment obligations to Dell due to nonpayment by Customer.

**Limited Warranty.** The limited warranties for Dell-branded hardware shall be as stated in the documentation provided with the hardware. If there is no such documentation, then the warranties shall be as stated at [dell.com/warrantyterms](http://dell.com/warrantyterms). Dell warrants that Hardware Services shall be performed in a good and workmanlike manner. Customer's exclusive remedy and Dell's sole obligation for any breach of any Hardware Services warranty shall be for Dell to re-perform the non-conforming Hardware Services.

**Services Billing.** Professional Services shall be billed at the rates stated in the SOW, which shall either be (a) per-hour or per-eight hour day ("Time and Materials") or (b) a fixed price for the tasks to be performed and deliverables to be provided ("Fixed Price"). The hours or days stated in a Time and Materials Services SOW are a good faith estimate of the time required to perform the Professional Services described in the SOW, but not a commitment to complete them in that amount of time. However, Dell will only perform Professional Services beyond the contracted hours on the written authorization of Customer. Additional charges will apply if Customer requests Services that are performed outside of contracted hours or are beyond the normal coverage for the particular Service.

**Services Warranty.** Dell warrants that the Professional Services shall be performed by qualified personnel in a workmanlike manner consistent with or superior to good practice in the US information technology services industry. Customer's exclusive remedy and Dell's sole obligation for any breach of foregoing warranty shall be for Dell to re-perform the non-conforming Professional Services at no charge or cancel the fees applicable to the nonconforming Services. All breaches of the warranty stated in this Section must be reported within thirty (30) days of the performance of the Services.

**Suspension of Professional Services.** Dell may suspend Professional Services if Customer purchased the Professional Services through a reseller and the reseller is delinquent on its payment obligations to Dell due to nonpayment by Customer. If Professional Services is purchased through a reseller and the agreement between Customer and such reseller expires or is terminated prior to the end of a SOW, the terms between Customer and the reseller to which Dell is a third party beneficiary shall remain in force as between Dell and Customer.

**Intellectual Property.** During the course of providing Professional Services, Dell may create and provide to Customer items including, but not limited to documents, designs, computer code, know-how, and methodologies which are protected by the intellectual property law of the United States, Canada, or the location in which the Professional Services are being provided ("IP"). Subject to payment in full, Customer is hereby granted a perpetual, irrevocable (except for non-payment), non-transferable, non-sublicensable license to use the IP and any pre-existing Dell intellectual property that may be provided to Customer as part

of the Professional Services (“Pre-existing Dell IP”) for non- commercial purposes to manage its and its Affiliates’ internal business operations. Except as may otherwise be expressly stated in an SOW, Dell shall have sole and exclusive ownership of all IP, except (a) Customer shall retain all its rights in any Customer information or pre-existing intellectual property that may be contained in the IP and (b) Dell may not disclose or distribute the IP to any third party unless it first removes any such Customer information or intellectual property. Other than the license granted to Customer in this Section, Dell shall retain all rights and ownership in all Pre-existing Dell IP.



## Contract Renewal

<b>Contract Number:</b>	OETC-16R-Computers-Dell
<b>Effective Date:</b>	June 16, 2019
<b>Term:</b>	One (1) Year

This Contract Extension Agreement ("Extension") is between Organization for Educational Technology and Curriculum ("OETC") located at 471 High Street SE, Suite 10, Salem, Oregon 97301 and

Dell Marketing L.P., located at One Dell Way Round Rock, TX 78682 (collectively, the "Parties").

OETC entered into a contract with Dell for three (3) years, from June 15, 2016 to June 15, 2019, with an option to renew the contract for up to three (3) additional years.

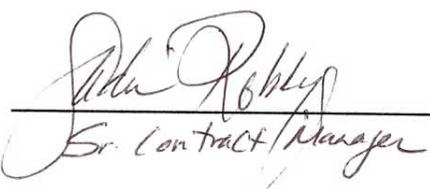
Pursuant to the contract, OETC hereby exercises its option to renew the contract for one (1) year from June 15, 2019 to June 14, 2020.

**OETC**

  
\_\_\_\_\_  
Zach Jensen, Contracts Manager

May 30, 2019  
\_\_\_\_\_  
Date

**Dell Marketing L.P.**

  
\_\_\_\_\_  
Sr. Contract Manager

6/5/19  
\_\_\_\_\_  
Date



## Contract Renewal

<b>Contract Number:</b>	OETC-16R-Computers
<b>Effective Date:</b>	June 15, 2020
<b>Term:</b>	One (1) Year

This Contract Extension Agreement ("Extension") is between Organization for Educational Technology and Curriculum ("OETC") located at 471 High Street SE, Suite 10, Salem, Oregon 97301 and Dell Marketing L.P., located at One Dell Way, Round Rock, TX, 78682 (collectively, the "Parties").

OETC entered into a contract with Dell for three (3) years, from June 15, 2016 to June 14, 2018 with an option to renew the contract for three (3) additional years.

Pursuant to the terms in contract OETC-16R-Computers-Dell, OETC hereby exercises its option to renew the contract for one (1) year from June 15, 2020 to June 14, 2021

**OETC**

  
Zach Jensen, Contracts Manager

6/15/2020  
Date

**Dell**

  
Sarah Robbins, Contracts Manager

6-15-20  
Date



471 High Street SE  
 Suite 10  
 Salem, Oregon 97301

oetc.org  
 (800) 650-8250  
 Fax: (503) 625-0504

## Amendment to Contract OETC-16R-Computers-Dell

This amendment ("Amendment") amends the contract number OETC-16R-Computers-Dell ("Contract") entered into by and between Organization for Educational Technology and Curriculum, located at 471 High Street, Salem, OR 97301 ("OETC") and:

<b>Company Legal Name:</b>	Dell Marketing L.P.
<b>DBA Name:</b>	Dell
<b>Address:</b>	One Dell Way, Round Rock, TX 78682

In the event of any conflict between the terms of this Amendment and the Contract, the terms of this Amendment will prevail.

The Parties hereby agree to amend the contract to add the language to the following section:

### D. Payment Terms and Options

**4. Leasing.** Individual OETC Members may enter into lease agreements for the products covered in this Contract. This specifically includes Dell Financial Services, which was submitted in the bid response and awarded.

**Dell**

**OETC**

Charyne Greenup

Zach Jensen

**Name**

**Name**

Contract Administrator

Contracts Manager

**Title**

**Title**

*Charyne Greenup*  
Charyne Greenup [Dec 15, 2020 9:28 CST]

*Zach Jensen*

**Signature**

**Signature**

Dec 15, 2020

December 15, 2020

**Date**

**Date**

*SR*  
 SR



## Contract Renewal

<b>Contract Number:</b>	OETC-16R-Computers
<b>Effective Date:</b>	June 15, 2021
<b>Expiration Date:</b>	June 14, 2022
<b>Term:</b>	One (1) Year

This Contract Extension Agreement (“Extension”) is between Organization for Educational Technology and Curriculum (“OETC”) located at 471 High Street SE, Suite 10, Salem, Oregon 97301 and Dell Marketing L.P., located at One Dell Way, Round Rock, TX 78682.

OETC entered into a contract with Dell Marketing L.P. for three (3) years, from June 15, 2016 to June 14, 2019, with an option to renew the contract for up to three (3) additional years.

Pursuant to the contract OETC hereby exercises its option to renew the contract for one (1) year from June 15, 2021 to June 14, 2022.

**Dell Marketing L.P.**

**Organization for Educational Technology and Curriculum**

Charyne Greenup

Thomas Richards

**Name**

**Name**

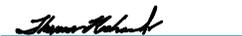
Contract Administrator

Executive Director

**Title**

**Title**

*Charyne Greenup*

  
Thomas Richards (Jun 11, 2021 09:43 PDT)

**Signature**

**Signature**

Jun 11, 2021

Jun 11, 2021

**Date**

**Date**

To: Board of Directors

From: Dr. Danna Diaz, Superintendent of Schools

Prepared by: Dr. Koreen Barreras-Brown, Chief Academic Officer

**Subject: Authorization to Spend Over \$150,000 on Virtual Learning**

Policy: [District Purchasing – DJ](#)

Date: August 11, 2021

<b>Action</b>	<input checked="" type="checkbox"/>
<b>Report</b>	<input type="checkbox"/>

---

**Connection to School Board Core Beliefs and Commitments**

Safety     Equity     Instructional Practice     Organizational Culture

**Strategic Plan Goal Topic 1: Marginalized Students**

In order to give voice to our marginalized populations, we will remove barriers, hold high academic expectations, and elicit and honor all voices.

---

**Summary:**

Staff is requesting the Board authorize an expenditure of more than \$150,000 and extend our current contract with Edgenuity to provide 265 Reynolds students with a virtual learning option for the 2021-22 school year.

**Previous Board Action:**

Not Applicable

**Background:**

In June we asked Reynolds families if they would be interested in a virtual/online learning option for the 2021-22 school year or if they would prefer in-person learning come fall. While a vast majority of those who responded are excited for their student(s) to return to in-person learning, some indicated they would like an online learning option. In response, Reynolds would like to partner with Edgenuity, a leading provider of K–12 online curriculum and blended learning solutions, to offer a virtual learning option for Reynolds K-12 students in the coming school year. There will be a limited number of available seats for virtual learning. Enrollment will be chosen by random lottery, with each grade assigned a percentage of virtual learning seats based on their enrollment numbers from spring 2021.

**Financial Implications:**

Edgenuity is providing us a discounted rate of \$3000 per student, for 265 students, for the 2021-22 school year. The total cost is \$800,000: \$417,000 for 139 secondary school students,

\$378,000 for 126 elementary-level students, and an additional \$5000 for professional learning and parent/student orientation sessions.

**Alternatives:**

The Board could determine that we will not offer a virtual learning option for the 2021-22 school year.

**Staff Recommendation:**

Staff recommends the Board authorize the expenditure of more than \$150,000 to provide a virtual learning option for 265 Reynolds students for the 2021-22 school year, for a total cost not to exceed \$800,000.

**Motion:**

I move that the Board authorize the expenditure of more than \$150,000 to provide a virtual learning option for 265 Reynolds students for the 2021-22 school year, for a total cost not to exceed \$800,000.



Edgenuity Inc.  
 8860 E. Chaparral Road  
 Suite 100  
 Scottsdale AZ 85250  
 877-725-4257

Price Quote for Services  
 Reynolds School District  
 Fairview OR  
 Account Number 40056  
 Quote Number 183455  
 Total \$800,000.00  
 Date 9/1/2021

Payment Schedule		Contract Start	Contract End
		9/1/2021	8/31/2022

Site	Description	Comment	End Date	Qty
	IS 10 Month Reusable Enrollment Full time Student Seat Up to Six Courses per Semester per Student (overages to be invoiced at \$3,000.00 per license)		08/31/2022	139
	IS Professional Development Essentials - Access to asynchronous training video library, Virtual School Resources, live and asynchronous options. Up to 6 ISPD Webinars OR 2 onsite days		08/31/2022	1
	IS Teaching for Full-time Elementary Student- One Semester (18 week), up to 6 courses. Includes all Workbooks (non-refundable, 4 core courses, 14 day drop/ add grace period, overages to be invoiced at \$1,500.00 per semester license)		08/31/2022	252
1. Reynolds School District				
			<b>Subtotal</b>	\$800,000.00
			<b>Total</b>	\$800,000.00

Edgenuity will audit enrollment count throughout the year. If more enrollments are found to be in use than purchased, Edgenuity will invoice the customer for the additional usage.

This quote is subject to Edgenuity Inc. Standard Terms and Conditions ("Terms and Conditions"). These Terms and Conditions are available at <http://www.edgenuity.com/edgenuity-standard-terms-and-conditions-of-sale.pdf>, may change without notice and are incorporated by this reference. By signing this quote or by submitting a purchase order or form purchasing document, Customer explicitly agrees to these Terms and Conditions resulting in a legally binding agreement. To the fullest extent permitted under applicable law, all pricing information contained in this quote is confidential, and may not be shared with third parties without Edgenuity's written consent.

**Reynolds School District**

Signature: \_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

**Edgenuity Inc. Representative**

Daniel Dill  
 Oregon Account Executive  
 TEL 602-370-8951  
 EMAIL [daniel.dill@edgenuity.com](mailto:daniel.dill@edgenuity.com)

Not valid unless accompanied by a purchase order. Please specify a shipping address if applicable. All order documentation can be submitted electronically at <https://edgenuity.formstack.com/forms/ar>. Alternatively you can e-mail this quote, the purchase order and order documentation to [AR@edgenuity.com](mailto:AR@edgenuity.com) or fax to 480-423-0213.



## STANDARD TERMS AND CONDITIONS

These Terms and Conditions govern the provision of products and services as set forth in the applicable Edgenuity quote, customer-accepted proposal, or purchase order (collectively the “Quote,” and with these Terms and Conditions, the “Agreement”). Edgenuity updates these Standard Terms from time-to-time, and posts the current version on its website at <http://www.edgenuity.com/edgenuity-standard-terms-and-conditions.pdf>.

### 1. DEFINITIONS.

- a. **Subscription** refers to Edgenuity’s internet based learning management software as a service. The Subscription includes access to the **Licensed Material** (defined below) and **Third Party Services** found at <https://www.edgenuity.com/third-party-terms.pdf>.
- b. **Licensed Material** refers to the Edgenuity products and services specified in the Quote or other agreement, which may include Edgenuity Courseware, audio, video and other content, curriculum, documentation and software including applets and animations.
- c. **Professional Development** refers to all implementation planning, program design, administrative and instructional training, consulting and coaching for education professionals provided by Edgenuity as described in the applicable Quote. Professional Development services are also subject to the additional terms contained in the attached Addendum.
- d. **Instructional Services** refers to services provided by Edgenuity including student access to teachers and coaches, the development and implementation of policies and procedures for purposes of improving student outcomes, and other services as stated in the applicable Quote. Instructional Services are also subject to the additional terms contained in the attached Addendum.

### 2. LICENSE and SERVICES.

- a. **License.** Edgenuity grants Customer a non-exclusive, non-transferable license to access and use Licensed Material for internal educational and training purposes solely for the Subscription as set forth in the Quote. This Agreement provides only Customer and Customer’s specifically authorized instructors, administrators, students and parents (“End Users”) access to and use of the Subscription solely for internal education- and training-related purposes. License and Service types are listed below:
  - i. **Concurrent License** - provides access to software throughout the Term by all authorized Users based on the number of simultaneous licenses purchased. Total number of users accessing program simultaneous cannot exceed total quantity of licenses purchased.
  - ii. **Reusable License** - provides access to software throughout the Term by all authorized users based on the number of semester course enrollments purchased. Once a course enrollment is disabled or completed, the enrollment license can be reused for that student or another student throughout the contract period.
  - iii. **Single User** - available to a single User identified by name and designated as the sole Student User of the specific license throughout the Term. Licenses cannot be transferred to another User.
  - iv. **Site License** - provides access to software throughout the Term by all authorized Users located in the specific physical site identified on the Price Quote. Must be a traditional brick and mortar educational institution that provides educational services to students at a common physical location. Not available for virtual schools.
  - v. **Virtual School** - a Customer that is (a) a private school licensed by the applicable state where students do not meet physically regularly for learning but where there is a teacher of record available to students enrolled at the institution and much of the learning takes place over the Internet with regular assistance or guidance from the teacher of record or (b) a private tutoring provider that makes available personal attention to each student clients enrolled in a program by faculty of tutoring provider and such services are the primary purpose of enrollment by students Clients; or (c) a public program implemented by School District where students do not meet physically regularly for learning but where there is a teacher of record available to students enrolled at the institution and much of the learning takes place over the Internet with regular assistance or guidance from the teacher of record regularly for learning; and (d) with respect to (a), (b), and (c) a Virtual School is not school that sells licenses or access to Software on a standalone bases or sells license or access to Software to students not actively enrolled in and participating in learning services provided by the private school or tutoring provider.

Licenses are available to access software throughout the Term by authorized Users not to exceed specific quantities stated on Price Quote.

- b. **Services.** If set forth in the Quote, Edgenuity will also provide Professional Development and/or Instructional Services, subject to the additional terms and conditions attached hereto as the Addendum for Instructional Services and Professional Development. Customer’s access to any Professional Development or Instructional Services will expire at the end of the Term set forth in the applicable Quote, or if the Subscription is terminated for any reason.
- c. **Edgenuity Technical and Customer Support.** Edgenuity will provide technical and customer support for the Service. Technical support includes system updates and enhancements when generally made available and pushed per Edgenuity’s regularly scheduled maintenance. Information on customer support and technical requirements is found at <https://www.edgenuity.com/support/customer-support/>.

### 3. USE OF SUBSCRIPTION.

- a. **Customer Data and Student Data.** All data and materials uploaded or entered during use of the Subscription by Customer, including student information and student records, remain the property of Customer (“**Customer Data**”). All student-generated content and personally identifiable information about any students (“**Student Data**”) shall remain the property of the student, or of the parent or legal guardian of the student. Customer represents and warrants that it has appropriate rights to any Customer Data and Student Data. Customer grants Edgenuity the right to use the Customer Data and Student Data solely for purposes of performing under this Agreement. Students (or Parents or legal

guardians of the Student), retain ownership and control of all Student Data that is provided or accessed through Edgenuity's course, and ownership of such Student Data never passes to Edgenuity. During the term of this Agreement, Customer may export Customer Data and Student Data to the extent allowed by the functionality within the Subscription. For training and demonstration purposes, Edgenuity may use and share Customer Data and Student Data, but will share only with supervisors, instructors and other Customer employees who have appropriate authorization.

- b. **Customer Responsibilities.** Customer must (i) keep its passwords secure and confidential; (ii) be solely responsible for Customer Data and all activity in its account; (iii) use commercially reasonable efforts to prevent unauthorized access to its account and notify Edgenuity promptly of any such unauthorized access; and (iv) use the Subscription as described in Edgenuity's written technical guides. Customer authorizes its integrators or other third party vendors and Edgenuity to conduct initial setup and to allow continued access to the Subscription for the sole benefit of Customer. Customer may provide Edgenuity the name and contact information for all third parties authorized by Customer, or necessary for Customer to use the Subscription. Customer is solely responsible for ensuring compliance by its authorized integrators or other third party vendor(s) with all federal, state and local privacy laws and regulations. **EDGENUITY HEREBY DISCLAIMS FOR ALL PURPOSES AND CIRCUMSTANCES ANY RESPONSIBILITY OR LIABILITY FOR USE OF THE PRODUCTS INCLUDING THE CUSTOMIZATION THEREOF.**

#### 4. WARRANTIES and DISCLAIMERS.

- a. **Compliance Warranty & Privacy Policy.** Edgenuity will comply with, and will cause each of its employees, agents, and contractors to comply with, all state, federal and municipal laws and regulations applicable to its performance under this Agreement ("Applicable Laws"), including without limitation the Family Educational Rights and Privacy Act ("**FERPA**"), and the Children's Online Privacy Protection Act ("**COPPA**"). Edgenuity's Privacy Policy, which is incorporated by reference into these terms and conditions, contains additional terms regarding Edgenuity's use of and commitment to safeguarding Student Data, and compliance with other student privacy laws. Customers and End Users can find Edgenuity's privacy policy at <http://www.edgenuity.com/Information/Privacy/>. Customer is responsible for providing notice of its own privacy policy to parents of its student and for obtaining any necessary parental consents for students to use the Subscription as may be required by Applicable Law.
- b. **Professional Development and Instructional Services Warranty.** Edgenuity warrants that it will provide Professional Development and/or Instructional Services in a professional and competent manner consistent with the terms of this Agreement and under generally accepted industry standards.
- c. **Edgenuity Service Warranty.** Edgenuity warrants that it will make commercially reasonable efforts to maintain the online availability of the Subscription. CUSTOMER'S EXCLUSIVE REMEDY AND EDGENUITY'S ENTIRE LIABILITY UNDER THIS WARRANTY WILL BE FOR EDGENUITY TO REPAIR THE NON-CONFORMING SERVICE, OR IF EDGENUITY CANNOT MAKE SUCH REPAIR WITHIN A REASONABLE PERIOD OF TIME, THEN EDGENUITY MAY TERMINATE ACCESS TO THE SUBSCRIPTION AND REFUND A PORTION OF THE FEE.
- d. **DISCLAIMERS.** THE SUBSCRIPTION IS PROVIDED "AS IS" AND WITH ALL FAULTS. EXCEPT FOR THE ABOVE WARRANTIES, THE SUBSCRIPTION AND ANY PROFESSIONAL DEVELOPMENT AND INSTRUCTIONAL SERVICES ARE PROVIDED ON AN "AS-IS" AND "WHEN AVAILABLE" BASIS. EDGENUITY EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES CONCERNING THE SUBSCRIPTION AND SERVICES TO THE EXTENT ALLOWED BY LAW, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THERE IS NO WARRANTY THAT THE OPERATION OR CONNECTIVITY OF THE SUBSCRIPTION WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT THE SUBSCRIPTION WILL BE FREE OF ALL POSSIBLE METHODS OF UNAUTHORIZED ACCESS, ATTACK, OR INTRUSION.

5. **PAYMENT, INVOICING AND TAXES.** Unless otherwise provided in the Quote, Customer will pay the amount of each invoice net 30 days after the invoice date. Except to the extent that Customer provides Edgenuity with a valid tax exemption certificate authorized by the appropriate taxing authority, Customer must pay any taxes, impositions, or other charges imposed or levied by any governmental authority, including any sales, use, value-added, or withholding taxes, in connection with the Quote, excluding Edgenuity income and payroll taxes.

#### 6. MUTUAL CONFIDENTIALITY.

- a. **Definition of Confidential Information.** Confidential Information means all non-public information including Personally Identifiable Information ("**PII**") as defined by Applicable Law, disclosed by a party ("**Discloser**") to the other party ("**Recipient**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure ("**Confidential Information**"). Edgenuity's Confidential Information includes without limitation the Service, its user interface design and layout, pricing information, and the Licensed Material.
- b. **Protection of Confidential Information.** The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this Agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this Agreement.
- c. **Exclusions.** Confidential Information excludes information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser; (ii) was known to the Recipient before its disclosure by the Discloser without breach of any obligation owed to the Discloser; (iii) is received from a third party without breach of any obligation owed to Discloser; or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order, but will provide Discloser with advance written notice to seek a protective order.

## 7. EDGENUITY PROPERTY.

- a. **Reservation of Rights.** The content, documentation, software, workflow processes, user interface, designs, know-how and other items provided by Edgenuity as part of the Subscription, any Instructional Services or Professional Development, or in response to Customer requests for customized content are the proprietary property of Edgenuity and its licensors, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with Edgenuity and its licensors. Customer may not remove or modify any proprietary marking or restrictive legends in the Edgenuity Courseware. Edgenuity reserves all rights unless expressly granted in this Agreement.
- b. **Restrictions.** Customer may not (i) sell, resell, rent or lease the access to the Subscription or use it in a service provider capacity; (ii) use the Subscription to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise objectionable, unlawful or tortious material, or to store or transmit material in violation of third-party rights; (iii) interfere with or disrupt the integrity or performance of the Subscription or attempt to gain unauthorized access to the Subscription or its related systems or networks; (iv) use the Subscription for other than internal Customer educational purposes; (v) reproduce, frame, mirror, modify, translate, enhance, decompile, disassemble, copy, download or reverse engineer the Subscription or modify, create derivative works based on the Subscription; or (vi) access the Subscription to build a competitive service or product, or copy any feature, function or graphic for competitive purposes.

## 8. TERM AND TERMINATION.

- a. **Term.** The Term of this Agreement and Customer's access to the Subscription, Services, and any instructional Services or Professional Development services will continue for the period indicated on the applicable Quote, unless terminated by Edgenuity for material breach. The term of the Agreement begins and ends on the effective dates stated in the Price Quote for Services ("Term") and Customer only has the right to use the Products and/or Service during the Term. The Term may be extended for an additional one (1) year renewal term (or other duration stated in the invoice) upon Edgenuity's issuance of an invoice for extension and either: (a) payment for such invoice by Customer or (b) Customer's continued accessing and use of the Products and/or Service.
- b. **Funding-Out Clause.** If Customer is a governmental entity receiving federal funds, Customer's payment obligation may be conditioned upon the availability of funds that are appropriated or allocated by the applicable government agency. If funds are not allocated, Customer may terminate this Agreement at the end of the period for which funds are available. Customer must notify Edgenuity in writing within thirty (30) calendar days before termination. Upon termination, Edgenuity will be entitled to a pro-rata portion of the fees for Service performed up to the date of termination.
- c. **Non-payment of Fees.** Edgenuity may terminate the Agreement and access to the Subscription in a Quote within ten (10) days after Customer receipt of a notice of non-payment of amounts owed under that Quote.
- d. **Mutual Termination for Material Breach.** Except for 7(b), if either party is in material breach of this Agreement, the non-breaching party may terminate this Agreement at the end of a written thirty (30) calendar day notice and cure period, if the breach has not been cured.
- e. **Access to and Return of Customer Data and Student Data.** For a period of up to sixty (60) days after termination, upon request, Edgenuity will make the Subscription available for Customer to access and export Customer Data and Student Data. Alternately, Customer may submit a written request to Edgenuity up to sixty (60) days after termination, to request the deletion of Student Data (other than anonymized or de-identified data that may be retained pursuant to Edgenuity's Privacy Policy).
- f. **Suspension for Violations of Law.** Edgenuity may temporarily suspend the Subscription or remove the applicable Customer Data, or both, if it in good faith believes that, as part of using the Subscription, Customer has violated a law. Edgenuity will attempt to contact Customer in advance.
- g. **Return or Destroy Edgenuity Materials Upon Termination.** Within sixty (60) days after expiration or termination of this Agreement for any reason, upon request, Customer agrees to return, delete or destroy all proprietary Edgenuity materials provided by Edgenuity. Customer will confirm its compliance with this destruction or return requirement in writing upon request of Edgenuity.

## 9. LIABILITY LIMIT.

- a. **EXCLUSION OF INDIRECT DAMAGES.** EDGENUITY IS NOT LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, COSTS OF DELAY; LOSS OF DATA, RECORDS OR INFORMATION; AND LOST PROFITS), EVEN IF IT KNOWS OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS.
- b. **TOTAL LIMIT ON LIABILITY.** EDGENUITY'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT, TORT OR OTHERWISE) DOES NOT EXCEED THE AMOUNT PAID BY CUSTOMER WITHIN THE 12-MONTH PERIOD BEFORE THE EVENT THAT GAVE RISE TO THE LIABILITY.

## 10. INDEMNITY.

- a. Edgenuity will defend or settle any third party claim against Customer to the extent that such claim alleges that Edgenuity technology used to provide the Subscription violates a copyright, patent, trademark or other intellectual property right. Customer must promptly notify Edgenuity of any such claim in writing, cooperates with Edgenuity in the defense, and allow Edgenuity solely to control the defense or settlement of the claim. If such a claim appears likely, then Edgenuity may modify the Subscription, procure the necessary rights, or replace the infringing part of the Subscription with a functional equivalent. If Edgenuity determines that none of these are reasonably available, then Edgenuity may terminate the Subscription and refund any prepaid and unused fees. Edgenuity has no obligation for any claim, in whole or in part, arising from information, items or technology not provided by Edgenuity or for any third party services not owned by Edgenuity. THIS SECTION CONTAINS CUSTOMER'S EXCLUSIVE REMEDIES AND EDGENUITY'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.
- b. To the extent permitted under Applicable Law, each party will defend, indemnify and hold harmless the other party from and against any third party claims, injuries, losses, damages, settlements, penalties, fines, costs, or expenses (including reasonable attorneys' fees) that arise

from or relate to (i) the indemnifying party's negligence, misconduct or breach of this Agreement; and (ii) an indemnifying party's violation of Applicable Law.

## 11. OTHER TERMS.

- a. **Governing Law.** If Customer is a public school or district or other state or municipal governmental agency, this Agreement will be governed by the laws of the state where the Customer resides, excluding any conflict of law principles. Otherwise, this Agreement will be governed by the laws of the state of Arizona.
- b. **Entire Agreement and Changes.** These Terms and Conditions (and any Attachments) and the Quote constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. The Parties may modify this Agreement only by written agreement signed by both parties.
- c. **No Assignment.** Neither party may assign or transfer this Agreement or a Quote to a third party, except that this Agreement with all Quotes may be assigned, without the consent of the other party, as part of a merger or sale of all or substantially all the assets of a party.
- d. **Independent Contractors.** The parties to this Agreement are independent contractors, and this Agreement does not create any partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.
- e. **Feedback.** By submitting ideas, suggestions or feedback to Edgenuity regarding the Subscription, Customer agrees that items submitted do not contain confidential or proprietary information; and Customer grants Edgenuity an irrevocable, unlimited, royalty-free and fully-paid perpetual license to use such items for any business purpose.
- f. **Enforceability and Force Majeure.** If any term of this Agreement is invalid or unenforceable, the other terms remain in effect. Except for the payment of fees, neither party is liable for events beyond its reasonable control, including, without limitation force majeure events, failure of Internet services, any third party service and telecommunications services.
- g. **Money Damages Insufficient.** Any breach by a party of this Agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach.
- h. **No Additional Terms and Order of Precedence.** This Agreement supersedes any additional or conflicting terms of any Customer form-purchasing document. If there is an inconsistency between these Terms and Conditions and any Quote, the Quote will prevail only with respect to pricing, duration and service specific terms.
- i. **Survival of Terms.** Sections 5 through 10, 11(a) (e) (g) (h) and (i) shall survive termination of this Agreement.

## **Addendum for Instructional Services & Professional Development**

1. **APPLICABILITY.** These additional terms and conditions apply if the Quote includes the purchase of Instructional or Professional Development Services from Edgenuity. In the event of a conflict between these additional terms and the Edgenuity Standard Terms and Conditions, these additional terms shall control, but solely with respect to the provision of Instructional and/or Professional Development Services.
2. **CUSTOMER LIAISON.** Customer will designate an individual to serve as its primary liaison to Edgenuity for all communications related to the provision of Instructional and Professional Development Services, setting up access for End Users, and use of the Subscription.
3. **HOURS OF AVAILABILITY.** Edgenuity Instructional and Professional Development Services will be available during the business hours specified by Edgenuity, or if Customer requires Instructional Services for certain times or additional hours, such requirements must be specified in the Quote prior to the beginning of the Subscription. Requests for access to Instructional or Professional Development Services not already provided for in the Quote must be made or approved by the Customer Liaison, and may result in additional charges.
4. **NO GUARANTY OF OUTCOMES.** Edgenuity cannot make any guarantees, representations or warranties as to any student, teacher, or other End User outcomes or results from the Instructional or Professional Development Services.
5. **INSTRUCTIONAL SERVICES.** If specified in the Quote, Edgenuity will provide virtual access to teachers or coaches (or both) (“Edgenuity Instructors”) who are hired, trained, supervised, and paid by Edgenuity, and who will assist in the virtual delivery of the Licensed Material to students and their use of the Subscription (the “Virtual Programs”). Customer is responsible for (a) providing secure internet access for End Users to use the Virtual Programs; (b) all day-to-day management of the Virtual Programs, subject in all cases to compliance with Applicable Law and Customer policies; (c) obtaining all necessary consents for the provision of Instructional Services where they will involve direct contact between Edgenuity Instructors and students and parents; (d) determining appropriate student courses and verifying student schedules; (e) monitoring student attendance and ensuring compliance with applicable state requirements; and (f) assisting students not making adequate progress.
  - a. **Instructor Requirements.** Customer shall be responsible for advising Edgenuity of any special certification, training, background checks, insurance, fingerprinting or similar requirements for the Edgenuity Instructors as may be imposed by Applicable Law (“Instructor Requirements”). Edgenuity shall be solely responsible for all decisions regarding hiring, supervision, discipline, and dismissal of Edgenuity Instructors, and for ensuring that all Edgenuity Instructors meet and comply with Instructor Requirements.
  - b. **Exceptional Student Services.** If Customer is a public entity receiving federal funds, Customer is considered the “Local Educational Agency,” or LEA, as that term is defined by Applicable Law, and Customer is solely responsible for the provision of any special education services. Edgenuity’s services do not include (i) providing special education services; (ii) creating, implementing or providing Individualized Education Programs (**IEP**); (iii) providing reasonable accommodations or any services to insure compliance with the Individuals with Disabilities Education Act (IDEA), the Americans with Disabilities Act (ADA), section 504 of the Rehabilitation Act, or any other Applicable Law. Notwithstanding the foregoing, Edgenuity will discuss, formulate and make reasonable adjustments and accommodations in furtherance of student IEPs or reasonable accommodations established by Customer, provided that Customer provides necessary IEPs and section 504 documentation to Edgenuity. Customer shall be solely responsible for the costs of any required adjustments or accommodations.
  - c. **State Testing.** Customer is responsible for providing appropriate accommodations for the administration of any state-mandated standardized testing by End Users. Customer is also responsible for receiving, distributing, administering, proctoring and returning all state mandated standardized tests under applicable state law, policies and procedures.
  - d. **Reporting and Withdrawal of Students/End Users.** Where reporting of student results is required by Applicable Law, Customer shall be responsible for insuring the accuracy and completeness of student information used, relied upon, or reported by Edgenuity in providing the Instructional Services, and shall promptly notify Edgenuity if any student information needs to be corrected or updated. Upon notice to Customer, Edgenuity reserves the right to withdraw End User access for students who fail to take required tests or maintain adequate progress.
6. **PROFESSIONAL DEVELOPMENT SERVICES.** If included in the Quote, Edgenuity may also provide Professional Development Services, (“PD Services”) which may include training and instruction to Customer’s instructors and administrators on the implementation and use of the Subscription, curriculum workshops, use of student information to monitor progress, and other related topics as may be specified in the Quote. Customer shall be solely responsible for providing necessary equipment and secure internet access to facilitate the PD Services, and for scheduling the PD Services at least two (2) weeks in advance.
  - a. **Charges for PD Services.** Before delivering Professional Development Services, Edgenuity must receive a signed Quote specifying the number of hours included and the cost of the services provided, and all necessary setup and implementation services required to demonstrate and use the Subscription must be completed. PD Services will be available for use by Customer only during the Term of the Subscription. PD Services purchased but not scheduled and delivered within the first year of the Term may be forfeited without notice. If there are any changes or cancellations of PD services less than 72 hours prior to the scheduled delivery date, Customer agrees to reimburse Edgenuity for travel and other out-of-pocket expenses incurred. The Parties must document in writing and sign any grace periods or extension of time for delivery of PD Services.
  - b. **Use of Customer’s Facilities.** If Edgenuity will be providing any PD Services at Customer’s premises, Customer shall advise Edgenuity in advance of any Instructor Requirements for Edgenuity personnel, and Edgenuity will be responsible for insuring that all Professional Development personnel meet and comply with all such requirements.
7. **NO UNAUTHORIZED RECORDING OR REPRODUCTION.** All content delivered by Edgenuity as part of Instructional or PD Services are the property of Edgenuity, and customer may not record, reproduce or copy such content without Edgenuity’s express written authorization.

To: Board of Directors

From: Dr. Danna Diaz, Superintendent of Schools

Prepared by: Kaylie Jeffries, Executive Assistant to the Superintendent

**Subject: Board Announcements**

Policy: [Board Meetings BD/BDA, Conduct of Board Meetings BDDF](#)

Date: August 11, 2021

<b>Action</b>	<input type="checkbox"/>
<b>Report</b>	<input checked="" type="checkbox"/>

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**Connection to School Board Core Beliefs and Commitments**

Safety     Equity     Instructional Practice     Organizational Culture

**Strategic Plan Goal Topic 3: Student and Staff Wellness**

We will promote a healthy learning and working environment which provides students and staff with the skills, social support, and environmental reinforcement they need to adopt long-term, healthy behaviors.

---

**Summary:**

The Board will discuss the process for endorsing educational propositions, bills, or ballot measures that may affect our students and community.

**Previous Board Action:**

Not Applicable

**Background:**

Not Applicable

**Financial Implications:**

Not Applicable

**Alternatives:**

Not Applicable

**Staff Recommendation:**

Not Applicable

**Motion:**

Not Applicable

To: Board of Directors  
From: Dr. Danna Diaz, Superintendent of Schools  
Prepared by: Kaylie Jeffries, Executive Assistant to the Superintendent

**Subject: Adjourn**

Policy: [Board Meetings BD/BDA, Conduct of Board Meetings BDDF](#)

Date: August 11, 2021

Action	<input checked="" type="checkbox"/>
Report	<input type="checkbox"/>

---

**Connection to School Board Core Beliefs and Commitments**

Safety     Equity     Instructional Practice     Organizational Culture

**Strategic Plan Goal Topic 3: Student and Staff Wellness**

We will promote a healthy learning and working environment which provides students and staff with the skills, social support, and environmental reinforcement they need to adopt long-term, healthy behaviors.

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**Adjournment**

