

VIRTUAL INSTRUCTION PROVIDER AGREEMENT

This Agreement for services (“Agreement”) made and entered into by and between Edgenuity, Inc. (Hereafter referred to as “VIRTUAL INSTRUCTION PROVIDER,” or “Edgenuity”) having principal offices at 8860 E. Chaparral Road, Suite 100, Scottsdale, AZ, 85250; and The School Board of Sarasota County, Florida (hereinafter referred to as “CLIENT”), having principal offices at 1960 Landings Blvd., Sarasota FL 34231.

This Agreement supersedes and cancels any prior agreements and/or understandings between the parties concerning the subject matter. There are no provisions, representations, undertakings, agreements, or collateral agreements between the parties other than as set forth in this Agreement.

The parties by their authorized representatives have entered into this Agreement as of the 1<sup>st</sup> day of July, 2015 (the “Effective Date”).

CLIENT and VIRTUAL INSTRUCTION PROVIDER agree to the Description of Work contained in Attachment A (“Description”); Attachment B (Payment Terms and Conditions); Attachment C (Detailed Curriculum Plan); The Subscription Services Terms and Conditions available at <http://www.edgenuity.com/Edgenuity-standard-terms-and-conditions-of-sale.pdf> and all incorporated herein as part of the Agreement, as true and accurate. In the event of any conflict between this Agreement and the Subscription Services Terms and Conditions, the provisions of this Agreement shall control.

**TERM**

This Agreement shall be effective on the Effective Date for a period of one (1) year and shall be terminable in accordance with the requirements herein, with the option of one year renewal after written acceptance and approval from both parties.

**Edgenuity, Inc.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**CLIENT**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved for Legal Content  
June 4, 2015, by Matthews, Eastmoore,  
Hardy, Crauwels & Garcia, Attorneys for  
The School Board of Sarasota County, Florida  
Signed: ASH

## ATTACHMENT A

### Description of Work

As more fully set forth in Attachment B, the VIRTUAL INSTRUCTION PROVIDER is to assist in the operation of a K – 12 virtual school that provides a free-to-students, full-time 180-day online instructional program to eligible students during the 2015/16 school year. The VIRTUAL INSTRUCTION PROVIDER is to provide each student with all necessary online courseware and instructional support provided as set forth in Attachment B, and as further defined by the Virtual Instruction Provider's Subscription Services Terms and Conditions, and through any subsequent changes established by joint written agreement between CLIENT and VIRTUAL INSTRUCTION PROVIDER. Any instructional staff provided by VIRTUAL INSTRUCTION PROVIDER must be highly qualified as identified by NCLB standards and hold valid Florida teaching certificates under provisions of Chapter 1012, Florida Statutes. The VIRTUAL INSTRUCTION PROVIDER will ensure all employees and contracted personnel undergo background screening as required by s. 1012.32, Florida Statutes, using state and national criminal history records and will provide a list of instructional employees to the CLIENT for verification of compliance according to the VIRTUAL INSTRUCTION PROVIDER's standard procedures. If additional background checks are required by CLIENT, CLIENT will so state in writing to VIRTUAL INSTRUCTION PROVIDER. All curriculum and course content must align to Florida's Next Generation Sunshine State Standards. Upon receipt of a request from Client, the VIRTUAL INSTRUCTION PROVIDER will provide the CLIENT with a list of instructional employees assigned to students enrolled in the Virtual School; the course names/subject areas each employee will deliver instruction to students enrolled in the Virtual School, and the Department of Education Number and certification area for each instructional employee assigned to Virtual School students. The VIRTUAL INSTRUCTION PROVIDER agrees to comply with any student progression plan, student calendar and other standard policies to support a virtual program in compliance with applicable Florida Statutes except as described in the Virtual Instruction Provider's Subscription Services Terms and Conditions incorporated herein and available at <http://www.edgenuity.com/Edgenuity-standard-terms-and-conditions-of-sale.pdf>. As required in s. 1002.45, a detailed curriculum plan is provided in **Attachment C** that illustrates how students will be provided services and be measured for attainment of proficiency in the Next Generation Sunshine State Standards for each grade level and subject. For districts who select the provision of a full-time virtual instruction program to students in grade 9-12, the VIRTUAL INSTRUCTION PROVIDER will report the successful completion of courses to the CLIENT and it is the CLIENT's responsibility to confirm that a student has satisfied the requirements for graduation in s. 1003.428, s. 1003.429, or s. 1003.43. The VIRTUAL INSTRUCTION PROVIDER will establish a standard schedule for providing data for required state reporting that enables timely submission to the Department of Education. Preliminary survey data will be sent to the Virtual School upon request, approximately two weeks prior to a date certain as required by the State of Florida, for survey periods 2 and 3. A report showing only the changes will be sent to the Virtual School.

### **Role of the CLIENT**

1. Assign virtual school students at school number 7001 under the appropriate provider by code and other actions required by the Florida Department of Education.
2. Verify the enrolled students are eligible to participate in the virtual school.
3. Provide testing locations for all students for any required testing and to administer any required testing; to provide readiness screening for students entering grade K.
4. Provide any required services to support a student's IEP consistent with the legal requirements for serving students with special needs in a virtual school.
5. Submit request to Provider for an English Language Learner [ELL] certified teacher as needed for students meeting all ELL eligibility requirements and requiring an ELL education, unless otherwise agreed by both parties in writing. Provider may make recommendations for ELL accommodations within the Provider courses or offer other services and elective courses to meet this need.

6. Manage the student admissions process, consistent with school policies and applicable law. Such administration shall include the management of the student application and enrollment process and fielding all communications with students and their parents regarding the application and enrollment process.
7. Create and manage all marketing and promotional materials, collateral, advertisements or solicitations associated with recruiting, registering, and orienting students to the Virtual School.
8. Provide administrators and/or counselors to provide student and/or parent counseling/administrative support as needed.
9. Designate to the VIRTUAL INSTRUCTION PROVIDER, a CLIENT Liaison to act for the CLIENT in all matters pertaining to this contract and to accept and approve all deliverables and invoices.
10. Accept standard publications of the VIRTUAL INSTRUCTION PROVIDER for all compliance and documentation purposes (i.e., program guide for information and data about the curriculum, student handbook for school policies and procedures and hours of personnel availability, state reporting for certification status and physical location of personnel, monthly school report for student-teacher ratios, teacher load limits, state data submissions and state report cards for completion, promotion, and other accountability outcomes).
11. For payment, report to the state all students served under this Agreement as reported to the CLIENT by the VIRTUAL INSTRUCTION PROVIDER.
12. Pay the VIRTUAL INSTRUCTION PROVIDER in accordance with Attachment B.
13. Provide any required information to parents and students about their right to participate in CLIENT's virtual school.
14. Provide a diploma for graduating seniors.
15. Fulfill the requirements of a virtual school set forth in s. 1002.45, F.S., that are not specifically identified as responsibilities of the VIRTUAL INSTRUCTION PROVIDER under the terms of this Agreement.
16. Provide to the students any software or equipment necessary for students to view, perform or receive Provider's content, including but not limited to laptop computers or personal computers. Virtual Instruction Provider will, if requested by CLIENT, install local media devices at CLIENT's cost.

**ATTACHMENT B**  
**Payment Terms and Conditions**

<b>Edgenuity Curriculum and Instructional Services FLORIDA VIRTUAL INSTRUCTION PROVIDER Pricing</b>	
Edgenuity Instructional Services is a FLORIDA VIRTUAL INSTRUCTION PROVIDER approved provider and offers to schools and districts the flexibility to partner with Edgenuity to provide instructional teaching services and courseware to support their Florida VIRTUAL INSTRUCTION PROVIDER program needs. A comprehensive FL VIRTUAL INSTRUCTION PROVIDER course list is provided.	
<b>Instructional Services Program Options</b>	<b>Pricing</b>
<b>Course enrollment options - includes courseware and FL certified teacher</b>	
Teaching Services - full-time enrollment (per semester*)	<b>\$ 2,000.00</b>
<b>Teaching Services - full-time semester enrollment - per semester/monthly</b>	
<ul style="list-style-type: none"> <li>• This service provides full-time students with up to 6 Edgenuity semester courses for a 5 month enrollment period and an academic support team comprised of highly qualified and certified instructors, concept coaches, and success coaches.</li> <li>• Instructors augment course content via remediation, modification and enrichment through web meetings, virtual office hours, and email communication. Instructors also grade course assignments and projects.</li> <li>• Concept coaches perform on demand concept demonstration using interactive technology tools for core courses, ELA, Math, Social Studies, and Science</li> <li>• The academic support team monitors student progress and proactively communicates with students, parents, and school staff.</li> <li>• The full-time student will also receive a dedicated Success Coach. The Success Coach is a mentor who provides guidance for students enrolled full-time in online Edgenuity courses. They provide orientation services for students and parents, create individualized learning plans with students, monitor overall student progress and attendance, and partner with the entire academic support team and school to ensure students are on track and successful in their courses.</li> </ul>	
<b>Subscription Services Terms and Conditions – <a href="http://www.edgenuity.com/Edgenuity-standard-terms-and-conditions-of-sale.pdf">http://www.edgenuity.com/Edgenuity-standard-terms-and-conditions-of-sale.pdf</a></b> incorporated by reference into Agreement. <b>Payment Terms and Conditions:</b> Quarterly Billing: <ul style="list-style-type: none"> <li>• Edgenuity will provide enrollment rosters on October 5, December 5, February 5, and June 5 on all active enrollments to be invoiced.</li> <li>• The customer will have an opportunity to review and provide updated information to Edgenuity by the 15th of the billing month.</li> <li>• Invoices will be sent on the 16th of each billing month and the term is net 30. **Edgenuity will invoice customer for the cost of the stated course fee if a student does not complete the Teaching Service Only Course but has completed at least 20% of the course or has been enrolled for at least 30 days.</li> <li>• AP courses may have a non-refundable \$125 materials fee associated with the enrollment.</li> </ul>	

## Attachment B – Continued

- I. VIRTUAL INSTRUCTION PROVIDER shall provide the Curriculum and Instructional Services identified in the **“Payment Terms and Conditions”** pricing table (the “Deliverables”).
- II. To the best of the VIRTUAL INSTRUCTION PROVIDER’s knowledge, the VIRTUAL INSTRUCTION PROVIDER further warrants that as to each Deliverable produced pursuant to this Contract, VIRTUAL INSTRUCTION PROVIDER’s production of the Deliverable and the CLIENT’s use of the Deliverable, will not infringe on the copyrights of any third party. This provision applies to each work of authorship in which copyrights subsist pursuant to 17 U.S.C. Section 102-105 and to each exclusive right established in 17 U.S.C. Section 106. To the best of the VIRTUAL INSTRUCTION PROVIDER’s knowledge, in furtherance of this provision, the VIRTUAL INSTRUCTION PROVIDER warrants that:
  - a. As to each work of software or other “information technology” as identified in s. 287.012(15), Florida Statutes, in which copyrights subsist, the VIRTUAL INSTRUCTION PROVIDER has acquired the rights by conveyance or license to any third party software or other information technology, which was used to produce the Deliverables.
  - b. As to each image and sound recording incorporated into a Deliverable, the VIRTUAL INSTRUCTION PROVIDER has acquired the necessary rights, releases and waivers from the person whose image or sound is included, or from the holder of the copyrights subsisting in the literary, musical, dramatic, pantomime, choreographic, pictorial, graphic, sculptural, motion pictures, audiovisual, work or sound recording from which the included image or sound was taken.
- III. INDEMNIFICATION AND LIMITATION OF LIABILITY- To the extent permitted by law, Virtual Instruction Provider agrees to indemnify and hold CLIENT, its Board Members, officers, employees and agents harmless from all third-party liability, claims and demands arising from any suit, claim, charge or proceeding brought in connection with or related to Virtual Instruction Provider's negligent operation or conduct of any of Virtual Instruction Provider's employees, agents or representatives except to the extent such Claims arose out of the actions or omissions of the CLIENT and subject to the conditions precedent that a) the CLIENT provides written notice to Provider within thirty (30) days of its receipt of the Claim and b) the CLIENT permits Provider to assume the control and defense of the Claim with counsel selected by Provider. This provision will not be deemed a relinquishment or waiver of any applicable limitation of liability and sovereign immunity available to Virtual Instruction Provider or CLIENT under law. This paragraph shall survive termination of the contract. IN NO EVENT SHALL PROVIDER'S LIABILITY TO THE CLIENT AND ITS EMPLOYEES, CONTRACTORS, OFFICERS AND BOARD MEMBERS UNDER THIS AGREEMENT OR FOR ANY MATTER OR CAUSE OF ACTION ARISING IN CONNECTION HERewith EXCEED THE AMOUNT PAID BY THE CLIENT TO PROVIDER HEREUNDER, IN NO EVENT SHALL PROVIDER BE LIABLE TO THE CLIENT, WHETHER UNDER THEORY OF CONTRACT, TORT OR OTHERWISE, FOR ANY INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES (INCLUDING ANY DAMAGE TO BUSINESS REPUTATION, LOST PROFITS OR LOST DATA), WHETHER FORESEEABLE OR NOT AND WHETHER PROVIDER IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

To the extent permitted by law, the CLIENT agrees to defend, indemnify, and hold harmless Provider and its affiliates and all of their employees, contractors, officers and board members from and against any and all third party liability, claims, damages, injuries, judgments, demands and expenses, including but not limited to court costs and attorneys’ fees, that arise out of or in

connection with any negligent acts or omissions of the CLIENT related to or arising from this Agreement (collectively "Claims") except to the extent that such Claims arise out of acts or omissions of Provider subject to the conditions precedent that a) Provider provides written notice to the Board within thirty (30) days of its receipt of the Claim and b) Provider permits the CLIENT to assume the control and defense of the Claim with counsel selected by the CLIENT. This provision will not be deemed a relinquishment or waiver of any applicable limitation of liability and sovereign immunity available to Virtual Instruction Provider or CLIENT under law. This paragraph shall survive termination of the contract. IN NO EVENT SHALL CLIENT'S LIABILITY TO THE PROVIDER AND ITS EMPLOYEES, CONTRACTORS, OFFICERS AND BOARD MEMBERS UNDER THIS AGREEMENT OR FOR ANY MATTER OR CAUSE OF ACTION ARISING IN CONNECTION HEREWITH EXCEED THE AMOUNT PAID BY THE CLIENT TO PROVIDER HEREUNDER, IN NO EVENT SHALL CLIENT BE LIABLE TO THE PROVIDER, WHETHER UNDER THEORY OF CONTRACT, TORT OR OTHERWISE, FOR ANY INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES (INCLUDING ANY DAMAGE TO BUSINESS REPUTATION, LOST PROFITS OR LOST DATA), WHETHER FORESEEABLE OR NOT AND WHETHER BOARD IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

This paragraph supersedes any provision in the Standard Terms and Conditions related to indemnity, specifically including paragraph 9.

- IV. If there is a modification to the rules and regulations approved by the Florida Board of Education in contradiction to the terms outlined in this contract, the Parties will amend the contract as necessary to bring the contract into accord with the rules and regulations so long as such change does not materially change the Deliverables as currently defined.
- V. VIRTUAL INSTRUCTION PROVIDER will implement, maintain, and use appropriate administrative, technical, or physical security measures to the full extent required by Title 20, Section 1232g, United State Code, The Family Educational Right and Privacy Act (FERPA), in order to maintain the confidentiality of student/education records.
- VI. VIRTUAL INSTRUCTION PROVIDER has filed for or is the owner of various trademarks and logos. The CLIENT will be granted the use of such logos and trademarks in connection with its virtual school offering but use of such trademark and logos shall be used only in connection with those services provided under this contract.
- VII. VIRTUAL INSTRUCTION PROVIDER will maintain and keep in force Worker's Compensation, Liability and Property Damage Insurance to protect it from claims under worker's compensation claims for personal injury, including death, and claims for damages to any property of the CLIENT, or of the public, which may arise from operations under this Agreement, whether such operations be by VIRTUAL INSTRUCTION PROVIDER, or by any subcontractor or anyone directly or indirectly employed by VIRTUAL INSTRUCTION PROVIDER.
- VIII. In no event will the CLIENT, CLIENT members, CLIENT officers, employees, or agents be responsible or liable for the debts, acts or omissions of the VIRTUAL INSTRUCTION PROVIDER, its officers, employees, or agents. This does not excuse the CLIENT from paying any obligations incurred resulting from this contract, or from the payment of any debts incurred under this contract for lawful termination.
- IX. Method for Conflict Resolution – Any dispute concerning performance of the contract shall be decided by the CLIENT's designated contract manger, who shall reduce the decision to writing and serve a copy to the VIRTUAL INSTRUCTION PROVIDER. The decision shall be CLIENT's final decision unless within ten (10) days from the date of receipt, the VIRTUAL INSTRUCTION PROVIDER files a petition with the CLIENT for administrative hearing pursuant to Chapter 120 of

the Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to the VIRTUAL INSTRUCTION PROVIDER's ability to pursue any other form of dispute resolution; provided, however, that the parties may employ the alternative dispute resolution procedures outlined in Chapter 120.

- X. After exhaustion of administrative remedies or for any claim not cognizable under Chapter 120, Florida Statutes, the exclusive venue of any legal or equitable action that arises out of or relates to the Agreement shall be the appropriate state court with jurisdiction over Sarasota County, Florida; in any such action, Florida law shall apply and the parties waive any right to jury trial.
- XI. Termination – This contract may only be terminated before its expiration as follows: a) both Parties agree in writing to the termination; or b) if either Party materially breaches the contract and fail to cure such breach within ninety (90) days following written notification of such breach from the other Party, the non-breaching Party may elect to terminate.
- XII. Debt Responsibility – As required by Florida Statute, the Virtual Instruction Program is responsible for all debts for CLIENT's virtual instruction program that arise out of the VIRTUAL INSTRUCTION PROVIDER's performance of this contract if the contract is not renewed or is terminated. This does not excuse the CLIENT from paying any obligations incurred resulting from this contract, or from the payment of any debts incurred under this contract for lawful termination.
- XIII. **VIRTUAL INSTRUCTION PROVIDER is required to comply with all requirements of Section 1002.45, Florida Statutes** and will comply with disclosure requirements adopted in rule by the Florida Board of Education.
- XIV. Public Record – Client agrees that all of Edgenuity's Confidential Information, as defined below, is a trade secret, as defined in Section 812.081, Fla. Stat., and is therefore exempt from disclosure as public records under Chapter 119, Florida Statutes. Client agrees to take all commercially-reasonable steps necessary to prevent unauthorized disclosure of Edgenuity's Confidential Information and Confidential Materials, as defined below. Such steps shall include without limitation, Client's agreement to promptly notify Edgenuity of any public records request that, if fulfilled, would result in disclosure of any of Edgenuity's Confidential Information. Client's notification will occur before releasing such Confidential Information and in sufficient time to allow Edgenuity to assert any pertinent public records exemption before any necessary agency, court, forum, or tribunal. Edgenuity will be solely responsible for the legal defense and cost of asserting the exemption(s) in any proceeding in which the exemption(s) is contested. Client agrees that Edgenuity has taken all necessary measures to prevent disclosure to unauthorized persons of Edgenuity's Confidential Information in Client's possession and that no further warning or labeling is necessary.
- XV. "Confidential Information" means any information relative to Edgenuity, its business, or its operations, that is clearly marked "confidential" or "proprietary", or that ought to be treated as confidential under the circumstances surrounding the disclosure, provided that Confidential Information shall not include information that: (i) at the time of disclosure, or thereafter, becomes publicly known through means other than a party's breach of this Agreement; (ii) was known to the CLIENT as of the time of its disclosure without any obligation of confidentiality, the proof of such knowledge to be the burden of the CLIENT; (iii) was independently developed by the CLIENT without the use of any of the Edgenuity's Confidential Information; (iv) was subsequently learned from a third party not under a confidentiality obligation to Edgenuity or any other party; or (v) is public record pursuant to applicable state law. "Confidential Materials" means all tangible materials containing Confidential Information, including written or printed documents and computer disks or tapes, whether machine or use readable. Edgenuity's

Confidential Information includes the contents of any Edgenuity Licensed Content, the Software, the Documentation, the Deliverables, Copyright Materials, and other Trade Secret Materials.

- XVI. Jessica Lunsford Act – Edgenuity and its employees are non-instructional contractors as defined in Sections 1012.467(1)(a), Fla. Stat., and 1012.468(1), Fla. Stat. Edgenuity and its employees will comply with Sections 1012.465, Fla. Stat., and 1012.467, Fla. Stat., and in accordance with Section 3. A. Compliance Warranty of the Subscription Services Standard Terms and Conditions <http://www.edgenuity.com/Edgenuity-standard-terms-and-conditions-of-sale.pdf>.
- XVII. Sovereign Immunity – The parties acknowledge and agree that Client is an agency of the State of Florida for purposes of sovereign immunity and immune from suit except to the extent such immunity has been waived by the state.
- XVIII. Equal Opportunity – Edgenuity shall comply with all federal and state laws prohibiting discrimination, including the Florida Civil Rights Act of 1992 and the Florida Educational Equity Act. Client acknowledges that Client and not Edgenuity decide which students are allowed use of Edgenuity’s Licensed Content.
- XIX. Florida Ethics Laws – Edgenuity will comply with all applicable provisions contained in Chapter 112, F.S. None of Client’s employees or board members has a material interest (as defined in Section 112.312(15), Fla. Stat.) in Edgenuity.
- XX. Sales Tax Exemption – Except to the extent Client provides Edgenuity with a valid Form DR-14, Consumer’s Certificate of Exemption pursuant to Section 212.08, Fla. Stat., Edgenuity will invoice Client for, and Client agrees to promptly pay, sales tax levied by the State of Florida in connection with this Agreement.
- XXI. Firearms – Edgenuity’s employees will not bring a firearm or prohibited weapon onto Client’s property.



**Attachment C**  
**Detailed Curriculum Plan**

The Provider will provide courses and instructional services for the District's programs under the Virtual School:

- Full-time Student Program
- Supplemental Course Program

The following is the current Edgenuity FL VIP approved course list which meets FL VIP requirements; alignments to Next Generation Sunshine State Standards for each grade level and subject and courses that meet requirements for the District's Students Progression Plan for Middle School and High School. Additionally, the District may choose to collaborate with the Provider to create district specific courses for the Supplemental Program. The courses may be Honors, Advanced, and/or courses that are aligned to the District's curriculum pacing guides. Below is a sample of course offerings. Edgenuity updates courses regularly due to changing standards and customer requests. Your account rep will provide an up to date course list to be delivered with the contract