

# Edline LLC

## Purchase Agreement

This Purchase Agreement is between Edline LLC (“Edline”) and **The School Board of Palm Beach County (“School/District”)**. Specific terms as to products and services being purchased with this agreement are referred to and incorporated herein through the *Edline Solution Provision Agreement*, provided to the School/District by Edline as attached.

### **Definitions**

As used in this Agreement, the following terms have the meaning set forth below:

- A. Agreement. This purchase Agreement and the Edline Solution Provision Agreement (“SPA”) shall be the only terms and conditions applicable to the purchase of the Edline Solutions.
- B. Edline Solution(s). The technology solutions (inclusive of all technology products, online services, technical support, and ASP services) set forth in the SPA that School/District shall acquire pursuant to this Agreement.

### **1. Purchase Authorizations**

School/District represents and warrants that it has complied with any and all requirements necessary to authorize the execution of all Purchase Agreements with Edline , and the signing party(ies) is/are authorized to sign on behalf of School/District.

### **2. Data**

#### **Data Ownership and Confidentiality**

School/District shall be, for all purposes hereof and as between Edline and the School/District, the sole and exclusive owner of any information or data it transfers to Edline’s computer servers, including, but not limited to, all proprietary data, information and educational records. Edline and its employees, agents and subcontractors shall not have any rights in or to the School/District data in any form or any information derived from or in connection with the School/District data.

#### **Regulatory Compliance**

Edline agrees to comply with all School/District obligations relating to compliance with student records confidentiality laws. By signing this Agreement, Edline acknowledges and agrees to comply with the Family Educational Rights and Privacy Act (FERPA) and all State and Federal Laws relating to the confidentiality of student records. Edline shall not disclose any student information to a third party without prior written consent from the student’s parent/guardian or the express instruction of the School/District.

#### **Data Recovery**

Edline agrees to back up all School/District data frequently. Edline shall restore any and all of School/District’s data from its backup archives in the event that Edline’s live systems or servers fail.

### **3. Purchase/Price/Delivery/Payment**

- a. This Agreement is entered into by and between School/District and Edline. School/District agrees to purchase Solutions identified on the attached SPA in the amounts specified in the SPA, based on the total District K-12 student enrollment as of January of each fiscal year.
  - b. The School/District hereunder shall pay all applicable local sales and use taxes and/or duties due on purchases. Proof of sales tax exempt status must be on file with Edline, for any order to be treated as a sales tax exempt transaction.
  - c. Payment terms under this Agreement are specified in the SPA, with annual fees due on May 1, 2007 (net 30) and subsequent annual fees due on August 1 of subsequent years.
  - d. Edline shall continue to provide Edline Solutions to those Palm Beach County School District schools which have currently paid for services from Edline until their subscriptions expire, at which time they will be covered by this Agreement for the duration of this Agreement, at no additional costs to those schools.
  - e. All standard enhancements and upgrades to Edline Solutions shall be provided to School/District at no additional charge.
4. **Express and Implied Warranties.** Edline makes the following sole express warranties with respect to Edline Solutions provided to School/District pursuant to this Agreement.
- a. **Uptime.** Edline warrants that it shall meet online service standards of a minimum of 99% operational functionality 24 hours a day, seven days a week. Any downtime from such operational functionality will be credited to School/District on a pro rata basis.
  - b. **Functionality.** Edline warrants that the functionality of Edline Solutions it shall provide to School/District pursuant to this Agreement shall meet or exceed the functionality Edline is currently providing to subscribing schools in Palm Beach County.
  - c. **Title.** Edline warrants that it is the owner of its intellectual property and the Edline Solutions it shall provide to School/District.
  - d. **Standard of Performance.** Edline warrants that it shall perform all other aspects of this agreement (e.g., technical support) in a professional and workmanlike manner in accordance with industry standards.
  - e. **No implied warranties.** School/District acknowledges that Edline makes no express warranties other than those listed above in this provision and School/District agrees that there are no implied warranties of merchantability, fitness for a particular purpose, or any other implied warranties in this Agreement.

#### 5. **Edline Solution Rights**

Edline Solutions may contain valuable trade secrets, and are protected by copyright and other intellectual property rights. Nothing in this Agreement shall restrict School Board's responsibility in complying with Chapter 119, Florida Statutes. School/District, as an end-user, is authorized to use Edline Solutions subject to the Edline SPA and the applicable trademark, copyright and other intellectual property, federal and state laws of the U.S.

#### 6. **Indemnification**

The School Board recognizes its respective liability for certain tortious acts of their agents, officers, employees and invitees to the extent and limits provided in Section 768.28, Florida Statutes, the State of Florida's partial waiver of Sovereign Immunity; provided, however, that this provision shall not be construed as a waiver of any right or defense that the School District has under said statute.

Edline shall protect, defend, indemnify and hold harmless the School District, their agents, officers, elected officials and employees from and against all claims, actions, liabilities, losses, and costs arising out of any actual or alleged bodily injury, sickness, disease or death, or injury to or destruction of tangible property including the loss of use resulting there from, or any other damage or loss arising out of, or claimed to have resulted in whole or in part from any actual or alleged intentionally wrongful or negligent act or omission of Edline, or in whole or in part from any alleged or actual intellectual property infringement of Edline Solutions, or from anyone for whose acts Edline may be liable in the performance of the work; or violation



of law, statute, ordinance, governmental administration order, rule or regulation in the performance of the work. The School/District agree as a condition to this indemnification provision to reasonably assist Edline in defending any such claim and reducing the potential exposure by (a) prompt notification of any such claim (b) cooperation in providing information to Edline to defend any such claim (c) allowing Edline to assume control of the legal defense of any such claim and (d) deferring to Edline the decision as to whether or not to settle any such claim. The limit of Edline's total liability to defend and indemnify the Palm Beach County School Board and/or the School District shall under no circumstances exceed \$1,000,000 (one million) US dollars, per occurrence.

Edline will indemnify and hold harmless, the District from liability of any nature or kind, including costs and expenses for or on account of any copyrighted, service marked, trademarked, patented or unpatented invention, process, article or work manufactured or used in the performance of the contract, including its use by the District. If Edline uses any design, device, materials or works covered by letters, service mark, trademark, patent, copyright or any other intellectual property right, it is mutually agreed and understood without exception that the proposal prices will include all royalties of costs arising from the use of such design, device, or materials in any way involved in the work.

Edline recognizes the broad nature of this indemnification and hold harmless article, and voluntarily makes this covenant for good and valuable consideration provided by the School Board in support of this indemnification in accordance with the laws of the State of Florida. This article will survive the termination of the Agreement.

**7. Non-assignment of Agreement**

Neither School/District nor Edline shall assign or otherwise transfer its right or delegate its obligations hereunder without the other party's prior written consent. Any attempted assignment, transfer, or delegation without such consent shall be void.

**8. Limitation of Liability**

In no event shall Edline be liable for incidental, consequential, indirect or special damages. Under no circumstances shall Edline's liability to School/District under this agreement exceed the dollar amount paid by one party to the other, with the specific exception of the indemnification provision in provision (6) above.

**9. Term of Agreement**

The Edline SPA will govern the term of this Agreement and the use of Edline Solutions.

**10. Entire Agreement**

This Agreement, including other agreements and documents incorporated herein by reference, constitute the entire understanding and agreement between Edline and School/District. Any modifications or amendments to this Agreement must be in writing signed by a duly authorized agent or representative of Edline and School/District. Specifically, any contrary, inconsistent, or additional terms incorporated in any other documents will be of no force or affect whatsoever.

**11. Termination of Agreement**

Either party may terminate the Agreement for material breach. To terminate the agreement, the non-breaching party shall provide written notice of breach to the breaching party. The breaching party shall have thirty (30) days from receipt of the notification to cure said breach. In the event the breach is not cured, the non-breaching party shall give the breaching party formal notification of termination of this

Agreement. Upon said notice the due date of all Edline invoices shall be accelerated such that they become due and payable as of the date of termination. The obligations of Sections 8, 9, 12 – 14 shall survive termination of this agreement.

Obligations of the School Board shall cease immediately without penalty or further payment being required if in any fiscal year covered by the Agreement term, School Board fails to appropriate, reappropriate or otherwise make available funds for this Agreement. School Board shall provide written notification to Edline of any impending change in the status of appropriations which may affect this Agreement of which it has notice.

**12. Governing Law**

This Agreement shall be construed and enforced in accordance with the laws of the state of Florida, excluding conflicts of law principles. Venue shall be in Palm Beach County, FL. Each party shall be responsible for its own attorney's fees. Edline and School/District each consent to the service of process and to the exclusive jurisdiction of the federal and state courts sitting in the state of Florida without regard to its conflicts of laws provisions. Any action or proceeding brought by either party against the other arising out of or relating to this Agreement shall be brought only in a State or Federal court of competent jurisdiction in Florida.

**13. Notices**

All notices and other communications required or permitted under this Agreement shall be served in person, by US Mail, or Federal Express or equivalent carrier at the following address:

If to Edline LLC

Edline LLC  
Attn: Margery Abrams  
162 North Franklin St.  
Chicago, IL 60606

If to School/District:

The School District of Palm Beach County  
Attn: Chief Counsel  
3344 Forest Hill Blvd., Suite C-302  
West Palm Beach, FL 33406

**14. Miscellaneous**

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining portions of this Agreement shall remain in force and in effect and be construed so as to be effectuate the intention of the parties upon execution. The paragraph headings contained herein are for reference only. The waiver of one default shall not waive subsequent defaults of the same or different kind.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be signed and intend to be legally bound thereby.

District Name: \_\_\_\_\_ Edline LLC  
School Name: \_\_\_\_\_ Signature: \_\_\_\_\_  
Signature: \_\_\_\_\_ Print Name: \_\_\_\_\_  
Print Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Title: \_\_\_\_\_ Date: \_\_\_\_\_  
Date: \_\_\_\_\_

*Kaethana* 2/16/07  
**Reviewed and Approved  
as to Legal Sufficiency**

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IN WITNESS WHEREOF, the parties hereto have caused this contract to be signed and intend to be legally bound thereby.

District Name: \_\_\_\_\_

Edline LLC

School Name: \_\_\_\_\_

Signature: Margery L Abrams

Signature: \_\_\_\_\_

Print Name: Margery L Abrams

Print Name: \_\_\_\_\_

Title: Vice President

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

Date: 3/16/07

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