

SCHOOL BOARD OF BREVARD COUNTY, FLORIDA

BOARD AGENDA ITEM – May 11, 2021

DEPARTMENT/SCHOOL INITIATED AGREEMENT

21-497-A-WH - Whitebox Learning

<input type="checkbox"/> (BW) Bids Waived	<input checked="" type="checkbox"/> (A) Agreement
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REQUESTOR: Career and Technical Education

Legal Review Required: Yes No

Standard Template Used with No Changes: Yes No

Standard Template Type: Software Addendum Template

VENDOR NAME	AMOUNT AWARDED	REQUIRED PRODUCTS/SERVICES
WhiteBox Learning, A Flinn Scientific Company	\$129,939.45	Exploring Technology and Exploration of Engineering Technology Four Year Licenses
Total	\$129,939.45	

<input type="checkbox"/> Contract Renewal	New Contract Amount	\$129,939.45
<input type="checkbox"/> Recurring Contract	Previous Contract Amount	N/A
<input checked="" type="checkbox"/> New Contract	Variance	N/A

PRICE INCREASE / DECREASE EXPLANATION: N/A

DISCUSSION:

This recommendation from Career and Technical Education is for a 4-year renewal of instructional materials for all middle school *Exploring Technology* and *Exploration of Engineering Technology* courses in the district. The materials listed on the attachment align with Florida CTE Standards and Benchmarks and provides lessons through a digital platform. Whitebox Learning is the sole producer and publisher of whiteboxlearning.com which includes annual licenses for middle school Technical Education.

The standard software license addendum template has been used, which does not require legal review.

CONTRACT TERM:

The initial contract term shall commence July 1, 2021 and continue until June 30, 2025.

RECOMMENDATION:

It is the recommendation of Dr. Stephanie Soliven, Assistant Superintendent of Secondary Leading & Learning, and Rachel Rutledge, Director of Career & Technical Education to approve the attached agreement with WhiteBox Learning in the amount of \$129,939.45.

AUTHORITY FOR ACTION:

Florida Administrative Code 6A-1.012 (11) (b)

WHITEBOX LEARNING

A Flinn Scientific Company

P.O. Box 219 sales@whiteboxlearning.com
Batavia, IL 60510 www.whiteboxlearning.com
(800) 592-3460 FEIN No. 36-2926914

Quotation

WBL Quote Number: 234983

Quote Date: 03/04/2021

Freight Terms: FOB DESTINATION

Payment Terms: Net 30 Days

Expiration Date: 06/30/2021

Customer RFQ: Qt# 234976

Quote For:

SCHOOL BOARD OF BREVARD COUNTY
DENNIS SOBOLESKI
2700 JUDGE FRAN JAMIESON WAY
VIERA FL 32940-6601

Page: 1

Line #	Qty	Catalog Number	Description	Unit Price	Extended Price
1	A4000		4 YEAR WHITEBOX LICENSE VALID THROUGH JUNE 30, 2025	129,939.45	129,939.45

Thank you for the opportunity to quote on your education product needs. We appreciate the opportunity to earn your business.

Subtotal	129,939.45
Quoted Freight	.00
Hazard Fee	.00
Sales Tax	.00

Total	129,939.45

Please reference the WBL Quote Number on your order and send to emailorders@flinnsci.com.



SOFTWARE LICENSE ADDENDUM

THIS SOFTWARE LICENSE ADDENDUM (“Software Addendum”) is entered into by and between The School Board of Brevard County, Florida, a political subdivision of the State of Florida, located at 2700 Judge Fran Jamieson Way, Viera, Florida 32940, more commonly known as Brevard Public Schools (hereinafter referred to as “BPS”) and Flinn Scientific Inc., WhiteBox Learning whose business address is PO Box 219, Batavia, Illinois 60510, (hereinafter referred to as “Contractor”), and is intended to supplement the agreement entered into between the parties effective upon issuance of Purchase Order under Agreement #21-497-A-WH regarding software and/or services to be provided by Contractor to BPS.

1. **TERM** – The term of this Software Addendum will coincide with the term of the agreement between the parties and may be renewed at the end of the term on the same or substantial similar terms by mutual written agreement of the parties.
2. **DEFINITION OF “AGREEMENT” AND CONFLICT** - As used herein, the term “agreement” shall mean Contractor’s standard form contracts and/or terms and conditions, any and all exhibits and attachments thereto, and any additional terms and conditions incorporated or referenced therein. Contractor’s standard terms and conditions in the agreement, and any additional terms and conditions incorporated or referenced therein, are, with the exceptions noted herein, acceptable to BPS. Nonetheless, because certain standard clauses that may appear in, or be incorporated by reference into, Contractor’s agreement cannot be accepted by BPS, and in consideration of the convenience of using those standard agreements without the necessity of specifically negotiating a separate contract document, the parties hereto specifically agree that, notwithstanding any provisions appearing in the attached Contractor’s agreement, the following provisions as set forth in this Software Addendum shall control in the event of a conflict and they are specific to The School Board of Brevard County, Florida as a local educational agency.
3. **DISPUTES** - Any references in the agreement to arbitration are hereby deleted. Jurisdiction resides in the Circuit Court in Brevard County, Florida, the local educational agency’s county. Agreements to engage in nonbinding mediation are permissible.
4. **HOLD HARMLESS** - Any clause requiring the BPS to indemnify or hold harmless any party is hereby deleted in its entirety. In addition, nothing in the agreement shall be deemed to be a waiver of the BPS’s rights, privileges, and immunities as set forth in Section 768.28, F.S.
5. **GOVERNING LAW** - The agreement shall be governed by the laws of the State of Florida. This provision replaces any references to any other State’s governing law.
6. **TAXES** - Provisions in the agreement requiring BPS to pay taxes are deleted. As a political subdivision of the State of Florida, BPS is generally exempt from Federal, State, and local taxes and will not pay taxes for any Contractor including individuals, nor will BPS file any tax returns or reports on behalf of Contractor or any other party.
7. **PAYMENT** - Annual licensing and maintenance costs are payable at the beginning of each renewal period. Payment for services will be in arrears. Any references to prepayment are deleted. In accordance with the Local Government Prompt Payment Act, found in Section 218.70, F.S., payment by BPS shall be made within forty-five (45) days of receipt of an invoice from Contractor.
8. **INTEREST** – Any provision for interest or charges on late payments is deleted. BPS has no statutory authority to pay interest or late fees.
9. **NO WAIVER** - Any language in the agreement requiring BPS to waive any rights, claims, or defenses is hereby deleted.

10. **FISCAL YEAR FUNDING** - Services performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Florida Legislature or otherwise being available for these Services. In the event funds are not appropriated or otherwise available for these Services, the agreement shall terminate without penalty at the end of BPS's fiscal year on June 30. After that date, the agreement becomes of no effect and is null and void. However, BPS agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.

11. **STATUTE OF LIMITATION** - Any clauses in the agreement limiting the time in which BPS may bring suit against Contractor, lessor, individual, or any other party are deleted.

12. **SIMILAR SERVICES** - Any provisions in the agreement limiting BPS's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.

13. **ATTORNEY FEES** - BPS recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision regarding attorney fees in the agreement is invalid and considered null and void.

14. **ASSIGNMENT** - Notwithstanding any clause to the contrary in the agreement, Contractor shall obtain the written consent of BPS prior to assigning the agreement.

15. **LIMITATION OF LIABILITY** -BPS, as a political subdivision of the State of Florida, cannot agree to assume the potential liability of a Contractor. Accordingly, any provision in the agreement limiting the Contractor's liability for direct damages is hereby deleted. Limitations on special, incidental, or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.

16. **RIGHT TO TERMINATE** -BPS shall have the right to terminate the agreement upon thirty (30) days' written notice to Contractor. BPS agrees to pay Contractor for services received prior to the effective date of termination.

17. **TERMINATION CHARGES** - Any provision requiring BPS to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. BPS may only agree to reimburse Contractor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by BPS prior to the end of any current agreement term.

18. **RENEWAL** - Any reference to automatic renewals are hereby deleted. The agreement may be renewed only upon mutual written agreement of the parties.

19. **INSURANCE** - Any provision requiring BPS to purchase insurance for Contractor's property is deleted. BPS is self-insured and will provide a certificate of property insurance upon request. Contractor, if coming onto property owned or operated by BPS, shall maintain the following types of insurance at its sole expense:

a. Workers' Compensation insurance in statutory amounts and Employer's Liability in an amount not less than One Million Dollars (\$1,000,000) each accident/disease. This insurance shall apply to all Contractor's employees who will be engaged in the performance of the Services under the agreement.

b. Commercial General Liability insurance, including products and completed operations and contractual liability, arising from any and all claims for property damage and bodily injury, including death, in an amount not less than One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) aggregate. This policy must include The School Board of Brevard County, Florida, its board members, employees, and representatives as additional insured.

c. Automobile Liability insurance, including all owned, non-owned, and hired vehicles used in conjunction with providing Services outlined in the agreement, for property damage and bodily injury, including death, in an amount not less than One Million Dollars (\$1,000,000) each accident. This policy must include The School Board of Brevard County, Florida, its board members, employees, and representatives as additional insured.

d. Professional Liability insurance for any and all claims as a result of an action, lack of action, error or omission by Contractor, its employees, or subcontractors in an amount not less than One Million Dollars (\$1,000,000) each claim.

If such policy is written on a “claims-made” basis, coverage shall remain in effect for three (3) years after the expiration or termination of the agreement and any of its extensions.

20. **RIGHT TO NOTICE** - Any provision in the agreement for repossession of equipment without notice is hereby deleted. However, the BPS does recognize a right of repossession with notice.

21. **ACCELERATION** – Any reference in the agreement to acceleration of payments in the event of default or non-funding is hereby deleted.

22. **CONFIDENTIALITY** – Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. BPS contracts are public records under the Florida Public Records Laws and subject to disclosure upon request unless otherwise made confidential or exempt under the F.S..

23. **FERPA** – To the extent Services provided hereunder pertain to the access to student information, Contractor shall adhere to all standards included in the Family Educational Rights and Privacy Act (FERPA) and Sections 1001.41 and 1002.22, F.S. (the Protection of Pupil Privacy Acts), and other applicable laws and regulations as they relate to the release of student information.

24. **INDEMNIFICATION**

a. To the fullest extent permitted by law, CONTRACTOR shall indemnify and hold harmless SCHOOL BOARD, and its employees (“Indemnitees”) from and against all claims, liabilities, damages, losses, and costs including, but not limited to, reasonable costs, and attorneys’ fees at the pre-trial, trial, and appellate levels, arising out of, resulting from, or incidental to CONTRACTOR’s performance under this Agreement or to the extent caused by negligence, recklessness, or intentional wrongful conduct of CONTRACTOR or other persons employed or utilized by CONTRACTOR in the performance of this Agreement. The remedy provided to the Indemnitees by this indemnification is in addition to and not in lieu of any other remedy available under this Agreement or otherwise. CONTRACTOR’s available insurance under this Agreement, or otherwise, will not diminish or limit this indemnification obligation in any way. The remedy provided to the Indemnitees by this indemnification survives this Agreement. The provisions of this Section specifically survive the termination of this Agreement. The provisions of this Section are intended to require the CONTRACTOR to furnish the greatest amount of indemnification allowed under Florida law. If any indemnification requirement in this Agreement violates any law, the Parties agree the provision requires the greatest level of indemnification by the CONTRACTOR to the Indemnitees allowable under Florida law. CONTRACTOR acknowledges that indemnification by the SCHOOL BOARD may be unenforceable under Florida law and that the SCHOOL BOARD does not waive any legal defense based on the unenforceability of such indemnification position. This indemnification shall not apply to any claims, suits, actions, damages, losses, expenses, and/or a cause of action, arising from BPS’s sole gross negligence or intentional misconduct. The agreement to indemnify, as outlined in this section, includes an obligation for Contractor to indemnify BPS for liability for any negligence on the part of BPS until/unless both Contractor and BPS agree that BPS was solely negligent. If the question of “solely negligent” should arise, a court agreeable to both Parties may be engaged to settle this dispute.

b. Nothing in this Agreement shall be deemed to affect the rights, privileges, or be deemed a waiver of, or limitation of, BPS’s sovereign immunity protection and limitations of liability pursuant to Section 768.28, F.S. Any indemnity or assumption of liability by BPS hereunder shall be subject to BPS’s rights to sovereign immunity and any other limitations of liability provided BPS pursuant to Florida law.

25. **PUBLIC RECORDS** – **EFFECTIVE JULY 1, 2016 IF THE BIDDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE BIDDER’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 321-633-1000 ext. 11453. RECORDSREQUEST@BREVARDSCHOOLS.ORG. THE SCHOOL BOARD OF BREVARD COUNTY, FLORIDA, 2700 JUDGE FRAN JAMIESON WAY, VIERA, FL 32940.**

a. The agreement and this Software Addendum are subject to and governed by the laws of the State of Florida, including without limitation Chapter 119, F.S., which generally makes public all records or other writings made by or received by the Parties. Contractor acknowledges its legal obligation to comply with Section 119.0701, F.S. Contractor shall keep and maintain public records, as that phrase is defined in the Florida Public Records Act, which would be required to be kept and maintained by BPS in order to perform the scope of services. Contractor shall comply with all requirements for retaining public records and shall transfer, at no cost to BPS, all public records in the possession of Contractor upon a request for such public records. See Section 119.0701(2)(b)4, F.S., for additional record keeping requirements.

b. A request to inspect or copy public records relating to BPS's contract for services must be made directly to BPS's Custodian of Public Records. If BPS does not possess the requested records, BPS's Custodian of Public Records shall immediately notify Contractor of the request. Contractor must provide a copy of the records to BPS or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S. If Contractor does not timely comply with BPS's request for records, BPS shall be able to sue for breach of contract and the prevailing party shall be entitled to attorney's fees.

c. Should Contractor fail to provide the requested public records to BPS within a reasonable time, Contractor understands and acknowledges that it may be subject to penalties under Sections 119.0701(3)(c) and 119.10, F.S.

d. Contractor shall not disclose public records that are exempt, or confidential and exempt, from public records disclosure unless specifically authorized by law for the duration of the agreement term and following the completion, expiration, or termination of same if Contractor does not transfer the records to BPS. Upon completion, expiration, or termination of the agreement, Contractor shall transfer, at no cost to BPS, all public records in its possession or keep and maintain public records required by BPS to perform the services. If Contractor transfers all public records to BPS, Contractor shall destroy any duplicate public records that are exempt, or confidential and exempt, from public records disclosure requirements. If Contractor keeps and maintains public records upon completion, expiration, or termination of the agreement, Contractor shall meet all applicable requirements for retaining public records and provide requested records to BPS pursuant to the requirements of this section. All public records stored electronically must be provided to BPS in a format that is compatible with the information technology systems of BPS.

26. **AMENDMENTS** - All amendments, modifications, alterations, or changes to the agreement or this Software Addendum shall be in writing and signed by both parties. No future amendment, modification, alteration, or change may be made to the agreement or this Software Addendum without the express written consent of the parties.

27. **INCORPORATION BY REFERENCE** – In addition to Contractor's agreement, a copy of Contractor's standard terms and conditions as they appear on the date of execution of this Software Addendum are attached hereto and incorporated herein as Exhibit "A."

28. **E-Verify**. Under Executive Order 11-116, and Section 448.095, Fla. Stat., effective July 1, 2020, Contractor shall use the U.S. Agency of Homeland Security's E-Verify system, <https://e-verify.uscis.gov/emp>, to verify the employment eligibility of all employees hired during the term of this Agreement. Contractor shall also require all subcontractors performing work under this Agreement to use the E-Verify system for any employees they may hire during the term of this Agreement. Contractor must provide evidence of compliance with 448.095, Fla. Stat by January 1, 2021. Evidence may consist of, but is not limited to, providing notice of Contractor's E-Verify number. Failure to comply with this provision is a material breach of the Agreement, and BPS may choose to terminate the Agreement at its sole discretion. Contractor may be liable for all costs associated with BPS securing the same services, inclusive, but not limited to, higher costs for the same services and rebidding costs (if necessary).

IN WITNESS WHEREOF, BPS has made and executed this Software License Addendum and Contractor has made and executed this Software License Addendum on the day and year below written.

SIGNATURE PAGE TO FOLLOW

FLINN SCIENTIFIC INC., WHITEBOX LEARNING

By: **Jessica Chanthi**  Digitally signed by Jessica Chanthi
Date: 2021.04.16 15:45:27 -05'00' Date: 4/16/2021
Authorized Representative Signature

Print Name: Jessica Chanthi

Title: Contracts Coordinator

THE SCHOOL BOARD OF BREVARD COUNTY, FLORIDA

By: _____ Date: _____
Misty Belford, Board Chairperson

EXHIBIT "A"
CONTRACTOR'S STANDARD TERMS AND CONDITIONS ATTACHED

Terms of Service

Please read these Terms of Service (the “Agreement”) carefully. Your use of the Site (as defined below) constitutes your consent to this Agreement. This Agreement is between you and Flinn Scientific Inc. (“Company” or “we” or “us”) concerning your use of (including any access to) the Flinn Scientific site currently located at <https://www.flinnsci.com/>; <https://www.whiteboxlearning.com/>; (together with any materials and services available therein, and successor site(s) thereto, the “Site”). This Agreement hereby incorporates by this reference any additional terms and conditions posted by Company through the Site, or otherwise made available to you by Company.

By using the Site, you affirm that you are of legal age to enter into this Agreement. If you are an individual accessing or using the Site on behalf of, or for the benefit of, any corporation, partnership or other entity with which you are associated (an “Organization”), then you are agreeing to this Agreement on behalf of yourself and such Organization, and you represent and warrant that you have the legal authority to bind such Organization to this Agreement. References to “you” and “your” in this Agreement will refer to both the individual using the Site and to any such Organization. This Agreement contains a mandatory arbitration provision that, as further set forth in Section 19 below, requires the use of arbitration on an individual basis to resolve disputes, rather than jury trials or any other court proceedings, or class actions of any kind.

Changes. We may change this Agreement from time to time by notifying you of such changes by any reasonable means, including by posting a revised Agreement through the Site. Any such changes will not apply to any dispute between you and us arising prior to the date on which we posted the revised Agreement incorporating such changes, or otherwise notified you of such changes.

Your use of the Site following any changes to this Agreement will constitute your acceptance of such changes. The “Last Updated” legend above indicates when this Agreement was last changed. We may, at any time and without liability, modify or discontinue all or part of the Site (including access to the Site via any third-party links); charge, modify or waive any fees required to use the Site; or offer opportunities to some or all Site users.

Information Submitted Through the Site. Your submission of information through the Site is governed by Company’s Privacy Policy, located at <https://www.whiteboxlearning.com/c/media/pdf/privacy-policy.pdf> (the “Privacy Policy”). You represent and warrant that any information you provide in connection with the Site is and will remain accurate and complete, and that you will maintain and update such information as needed.

directory, Company grants to the operators of public search engines permission to use spiders to copy materials from the Site for the sole purpose of (and solely to the extent necessary for) creating publicly available, searchable indices of such materials, but not caches or archives of such materials. Company reserves the right to revoke such permission either generally or in specific cases, at any time and without notice. You are responsible for obtaining, maintaining and paying for all hardware and all telecommunications and other services needed to use the Site.

Jurisdictional Issues. The Site is controlled or operated (or both) from the United States, and is not intended to subject Company to any non-U.S. jurisdiction or law. The Site may not be appropriate or available for use in some non-U.S. jurisdictions. Any use of the Site is at your own risk, and you must comply with all applicable laws, rules and regulations in doing so. We may limit the Site’s availability at any time, in whole or in part, to any person, geographic area or jurisdiction that we choose.

Rules of Conduct. In connection with the Site, you must not:

Post, transmit or otherwise make available through or in connection with the Site any materials that are or may be: (a) threatening, harassing, degrading, hateful or intimidating, or otherwise fail to respect the rights and dignity of others; (b) defamatory, libelous, fraudulent or otherwise tortious; (c) obscene, indecent, pornographic or otherwise objectionable; or (d) protected by copyright, trademark, trade secret, right of publicity or privacy or any other proprietary right, without the express prior written consent of the applicable owner.

Post, transmit or otherwise make available through or in connection with the Site any virus, worm, Trojan horse, Easter egg, time bomb, spyware or other computer code, file or program that is or is potentially harmful or invasive or intended to damage or hijack the operation of, or to monitor the use of, any hardware, software or equipment (each, a "Virus").

Use the Site for any commercial purpose, or for any purpose that is fraudulent or otherwise tortious or unlawful.

Harvest or collect information about users of the Site.

Interfere with or disrupt the operation of the Site or the servers or networks used to make the Site available, including by hacking or defacing any portion of the Site; or violate any requirement, procedure or policy of such servers or networks.

Restrict or inhibit any other person from using the Site.

Reproduce, modify, adapt, translate, create derivative works of, sell, rent, lease, loan, timeshare, distribute or otherwise exploit any portion of (or any use of) the Site except as expressly authorized herein, without Company's express prior written consent.

Reverse engineer, decompile or disassemble any portion of the Site, except where such restriction is expressly prohibited by applicable law.

Remove any copyright, trademark or other proprietary rights notice from the Site.

Frame or mirror any portion of the Site, or otherwise incorporate any portion of the Site into any product or service, without Company's express prior written consent.

Systematically download and store Site content.

Use any robot, spider, site search/retrieval application or other manual or automatic device to retrieve, index, "scrape," "data mine" or otherwise gather Site content, or reproduce or circumvent the navigational structure or presentation of the Site, without Company's express prior written consent. Notwithstanding the foregoing, and subject to compliance with any instructions posted in the robots.txt file located in the Site's root directory, Company grants to the operators of public search engines permission to use spiders to copy materials from the Site for the sole purpose of (and solely to the extent necessary for) creating publicly available, searchable indices of such materials, but not caches or archives of such materials. Company reserves the right to revoke such permission either generally or in specific cases, at any time and without notice. You are responsible for obtaining, maintaining and paying for all hardware and all telecommunications and other services needed to use the Site.

Products. The Site may make available listings, descriptions and images of goods or services or related coupons or discounts (collectively, "Products"), as well as references and links to Products. Such Products may be made available by Company or by third parties, and may be made available for any purpose, including general information purposes. The availability through the Site of any listing, description or image of a Product does not imply our endorsement of such Product or affiliation with the provider of such Product. We make no representations as to the completeness, accuracy, reliability,

validity or timeliness of such listings, descriptions or images (including any features, specifications and prices contained therein). Such information and the availability of any Product (including the validity of any coupon or discount) are subject to change at any time without notice. Certain weights, measures and similar descriptions are approximate and are for convenience only. We make reasonable efforts to accurately display the attributes of Products, including the applicable colors, however the actual colors you see will depend on your computer system, and we cannot guarantee that your computer will accurately display such colors. It is your responsibility to ascertain and obey all applicable local, state, federal and foreign laws (including minimum age requirements) regarding the purchase, possession and use of any Product.

Transactions. We may make available the ability to purchase or otherwise obtain certain Products through the Site (a "Transaction"). If you wish to make a Transaction, you may be asked to supply certain relevant information, such as your credit card number and its expiration date, your billing address and your shipping information. You represent and warrant that you have the right to use any credit card that you submit in connection with a Transaction. By submitting such information, you grant to us the right to provide such information to third parties for purposes of facilitating Transactions. Verification of information may be required prior to the acknowledgment or completion of any Transaction. By making a Transaction, you represent that the applicable Products will be used only in a lawful manner.

Company reserves the right, including without prior notice, to limit the available quantity of or discontinue making available any Product; to impose conditions on the honoring of any coupon, discount or similar promotion; to bar any user from making any Transaction; and to refuse to provide any user with any Product. Refunds and exchanges will be subject to Company's applicable refund and exchange policies. You agree to pay all charges incurred by you or on your behalf through the Site, at the prices in effect when such charges are incurred, including all shipping and handling charges. In addition, you are responsible for any taxes applicable to your Transactions. While it is our practice to confirm orders by e-mail, the receipt of an e-mail order confirmation does not constitute our acceptance of an order or our confirmation of an offer to sell a product or service.

Products will be shipped to an address designated by you, if applicable, so long as such address is complete and complies with the shipping restrictions contained on the Site. All Transactions are made pursuant to a shipment contract and, as a result, risk of loss and title for Products pass to you upon delivery of the Products to the carrier. You are responsible for filing any claims with carriers for damaged and/or lost shipments.

Registration; User Names and Passwords. You may need to register to use all or part of the Site. We may reject, or require that you change, any user name, password or other information that you provide to us in registering. Your user name and password are for your personal use only and should be kept confidential; you, and not Company, are responsible for any use or misuse of your user name or password, and you must promptly notify us of any confidentiality breach or unauthorized use of your user name or password, or your Site account.

Profiles and Forums. Site visitors may make available certain materials (each, a "Submission") through or in connection with the Site, including on profile pages or on the Site's interactive services, such as message boards and other forums, and chatting, commenting and other messaging functionality. Company has no control over and is not responsible for any use or misuse (including any distribution) by any third party of Submissions. If you choose to make any of your personally identifiable or other information publicly available through the Site, you do so at your own risk.

License. For purposes of clarity, you retain ownership of your Submissions.

If you provide to us any ideas, proposals, suggestions or other materials (“Feedback”), whether related to the Site or otherwise, you hereby acknowledge and agree that such Feedback is not confidential, and that your provision of such Feedback is gratuitous, unsolicited and without restriction, and does not place Company under any fiduciary or other obligation. For each Feedback Submission, you hereby grant to us a worldwide, royalty-free, fully paid-up, non-exclusive, perpetual, irrevocable, transferable and fully sublicensable (through multiple tiers) license, without additional consideration to you or any third party, to reproduce, distribute, perform and display (publicly or otherwise), create derivative works of, adapt, modify and otherwise use, analyze and exploit such Submission, in any format or media now known or hereafter developed, and for any purpose (including promotional purposes, such as testimonials).

You represent and warrant that you have all rights necessary to grant the licenses granted in this section, and that your Submissions, and your provision thereof through and in connection with the Site, are complete and accurate, and are not fraudulent, tortious or otherwise in violation of any applicable law or any right of any third party. You further irrevocably waive any “moral rights” or other rights with respect to attribution of authorship or integrity of materials regarding each Submission that you may have under any applicable law under any legal theory.

Monitoring. We may (but have no obligation to) monitor, evaluate, alter or remove Submissions before or after they appear on the Site, or analyze your access to or use of the Site. We may disclose information regarding your access to and use of the Site, and the circumstances surrounding such access and use, to anyone for any reason or purpose.

Your Limited Rights. Subject to your compliance with this Agreement, and solely for so long as you are permitted by Company to use the Site, you may view one (1) copy of any portion of the Site to which we provide you access under this Agreement, on any single device, solely for your personal, non-commercial use.

Company’s Proprietary Rights. We and our suppliers own the Site, which is protected by proprietary rights and laws. Our trade names, trademarks and service marks include Flinn Scientific, WhiteBox Learning, SciMatCo, and any associated logos. All trade names, trademarks, service marks and logos on the Site not owned by us are the property of their respective owners. You may not use our trade names, trademarks, service marks or logos in connection with any product or service that is not ours, or in any manner that is likely to cause confusion. Nothing contained on the Site should be construed as granting any right to use any trade names, trademarks, service marks or logos without the express prior written consent of the owner.

Third Party Materials; Links. Certain Site functionality may make available access to information, products, services and other materials made available by third parties, including Submissions (“Third Party Materials”), or allow for the routing or transmission of such Third Party Materials, including via links. By using such functionality, you are directing us to access, route and transmit to you the applicable Third Party Materials.

We neither control nor endorse, nor are we responsible for, any Third Party Materials, including the accuracy, validity, timeliness, completeness, reliability, integrity, quality, legality, usefulness or safety of Third Party Materials, or any intellectual property rights therein. Certain Third Party Materials may, among other things, be inaccurate, misleading or deceptive. Nothing in this Agreement shall be deemed to be a representation or warranty by Company with respect to any Third Party Materials. We have no obligation to monitor Third Party Materials, and we may block or disable access to any Third Party Materials (in whole or part) through the Site at any time. In addition, the availability of any Third Party Materials through the Site does not imply our endorsement of, or our affiliation with, any provider of such Third Party Materials, nor does such availability create any legal relationship between you and any

such provider. Your use of Third Party Materials is at your own risk and is subject to any additional terms, conditions and policies applicable to such Third Party Materials (such as terms of service or privacy policies of the providers of such Third Party Materials).

Promotions. Any sweepstakes, contests, raffles, surveys, games or similar promotions (collectively, "Promotions") made available through the Site may be governed by rules that are separate from this Agreement. If you participate in any Promotions, please review the applicable rules as well as our Privacy Policy. If the rules for a Promotion conflict with this Agreement, the Promotion rules will govern.

Disclaimer of Warranties. To the fullest extent permitted under applicable law: (a) the Site and any Products and Third Party Materials are made available to you on an "As Is," "Where Is" and "Where Available" basis, without any warranties of any kind, whether express, implied or statutory; and (b) Company disclaims all warranties with respect to the Site and any Products and Third Party Materials, including the warranties of merchantability, fitness for a particular purpose, non-infringement and title. All disclaimers of any kind (including in this section and elsewhere in this Agreement) are made for the benefit of both Company and its affiliates and their respective shareholders, directors, officers, employees, affiliates, agents, representatives, licensors, suppliers and service providers (collectively, the "Affiliated Entities"), and their respective successors and assigns.

While we try to maintain the timeliness, integrity and security of the Site, we do not guarantee that the Site is or will remain updated, complete, correct or secure, or that access to the Site will be uninterrupted. The Site may include inaccuracies, errors and materials that violate or conflict with this Agreement. Additionally, third parties may make unauthorized alterations to the Site. If you become aware of any such alteration, contact us at flinn@flinnsci.com with a description of such alteration and its location on the Site.

Limitation of Liability. To the fullest extent permitted under applicable law: (a) Company will not be liable for any indirect, incidental, consequential, special, exemplary or punitive damages of any kind, under any contract, tort (including negligence), strict liability or other theory, including damages for loss of profits, use or data, loss of other intangibles, loss of security of Submissions (including unauthorized interception by third parties of any Submissions), even if advised in advance of the possibility of such damages or losses; (b) without limiting the foregoing, Company will not be liable for damages of any kind resulting from your use of or inability to use the Site or from any Products or Third Party Materials, including from any Virus that may be transmitted in connection therewith; (c) your sole and exclusive remedy for dissatisfaction with the Site or any Products or Third Party Materials is to stop using the Site; and (d) the maximum aggregate liability of Company for all damages, losses and causes of action, whether in contract, tort (including negligence) or otherwise, shall be the greater of the total amount, if any, paid by you to Company to use the Site or ten (\$10) dollars. All limitations of liability of any kind (including in this section and elsewhere in this Agreement) are made for the benefit of both Company and the Affiliated Entities, and their respective successors and assigns.

Indemnity. To the fullest extent permitted under applicable law, you agree to defend, indemnify and hold harmless Company and the Affiliated Entities, and their respective successors and assigns, from and against all claims, liabilities, damages, judgments, awards, losses, costs, expenses and fees (including attorneys' fees) arising out of or relating to (a) your use of, or activities in connection with, the Site (including all Submissions); and (b) any violation or alleged violation of this Agreement by you.

Termination. This Agreement is effective until terminated. Company may terminate or suspend your use of the Site at any time and without prior notice, for any or no reason, including if Company believes that you have violated or acted inconsistently with the letter or spirit of this Agreement. Upon any such termination or suspension, your right to use the Site will immediately cease, and Company may, without liability to you or any third party, immediately deactivate or delete your user name, password and

account, and all associated materials, without any obligation to provide any further access to such materials. Sections 2–5, 7–10 and 12–25 shall survive any expiration or termination of this Agreement.

Governing Law; Arbitration. The terms of this Agreement are governed by the laws of the United States (including federal arbitration law) and the State of [California], U.S.A., without regard to its principles of conflicts of law, and regardless of your location. Except for disputes that qualify for small claims court, all disputes arising out of or related to this Agreement or any aspect of the relationship between you and Company, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory, will be resolved through final and binding arbitration before a neutral arbitrator instead of in a court by a judge or jury and you agree that Company and you are each waiving the right to trial by a jury. Except as provided below regarding the class action waiver, such disputes include, without limitation, disputes arising out of or relating to interpretation or application of this arbitration provision, including the enforceability, revocability or validity of the arbitration provision or any portion of the arbitration provision. All such matters shall be decided by an arbitrator and not by a court or judge. However, as set forth below, the preceding arbitration requirement shall not apply to disputes to the extent relating to the interpretation or application of the class action waiver below, including its enforceability, revocability or validity.

You agree that any arbitration under this Agreement will take place on an individual basis; class arbitrations and class actions are not permitted and you are agreeing to give up the ability to participate in a class action. Notwithstanding anything to the contrary in this Section or any other provision of this Agreement or in the American Arbitration Association’s Consumer Arbitration Rules, disputes regarding the enforceability, revocability or validity of the foregoing class action waiver may be resolved only by a civil court of competent jurisdiction and not by an arbitrator. In any case in which (1) the dispute is filed as a class, collective, or representative action, and (2) there is a final judicial determination that all or part of such class action waiver is unenforceable, then the class, collective, and/or representative action, to that extent, must be litigated in a civil court of competent jurisdiction, but the portion of such class action waiver that is enforceable shall be enforced in arbitration.

The arbitration will be administered by the American Arbitration Association under its Consumer Arbitration Rules, as amended by this Agreement. The Consumer Arbitration Rules are available online at <https://www.adr.org/aaa/ShowProperty?nodeId=/UCM/ADRSTAGE2021425&revision=latestreleased>. The arbitrator will conduct hearings, if any, by teleconference or videoconference, rather than by personal appearances, unless the arbitrator determines upon request by you or by us that an in-person hearing is appropriate. Any in-person appearances will be held at a location which is reasonably convenient to both parties with due consideration of their ability to travel and other pertinent circumstances. If the parties are unable to agree on a location, such determination should be made by the AAA or by the arbitrator. The arbitrator’s decision will follow the terms of this Agreement and will be final and binding. The arbitrator will have authority to award temporary, interim or permanent injunctive relief or relief providing for specific performance of this Agreement, but only to the extent necessary to provide relief warranted by the individual claim before the arbitrator. The award rendered by the arbitrator may be confirmed and enforced in any court having jurisdiction thereof. Notwithstanding any of the foregoing, nothing in this Agreement will preclude you from bringing issues to the attention of federal, state or local agencies and, if the law allows, they can seek relief against us for you.

Filtering. We hereby notify you that parental control protections (such as computer hardware, software or filtering services) are commercially available that may assist you in limiting access to material that is harmful to minors. Information identifying current providers of such protections is available from https://en.wikipedia.org/wiki/Comparison_of_content-control_software_and_providers Please note that Company does not endorse any of the products or services listed on such site.

Information or Complaints. If you have a question or complaint regarding the Site, please send an e-mail to flinn@flinnsci.com. You may also contact us by writing to PO Box 219, Batavia, IL 60510, or by calling us at 800-452-1261. Please note that e-mail communications will not necessarily be secure; accordingly, you should not include credit card information or other sensitive information in your email correspondence with us. California residents may reach the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by mail at 1625 North Market Blvd., Sacramento, CA 95834, or by telephone at (916) 445-1254 or (800) 952-5210.

Copyright Infringement Claims. The Digital Millennium Copyright Act of 1998 (the "DMCA") provides recourse for copyright owners who believe that material appearing on the Internet infringes their rights under U.S. copyright law. If you believe in good faith that materials available on the Site infringe your copyright, you (or your agent) may send to Company a written notice by mail or email, requesting that Company remove such material or block access to it. If you believe in good faith that someone has wrongly filed a notice of copyright infringement against you, the DMCA permits you to send to Company a counter-notice. Notices and counter-notices must meet the then-current statutory requirements imposed by the DMCA. See <http://www.copyright.gov/> for details. Notices and counter-notices must be sent in writing to PO Box 219, Batavia, IL 60510 or emailed to flinn@flinnsci.com.

We suggest that you consult your legal advisor before filing a DMCA notice or counter-notice.

Export Controls. You are responsible for complying with United States export controls and for any violation of such controls, including any United States embargoes or other federal rules and regulations restricting exports. You represent, warrant and covenant that you are not (a) located in, or a resident or a national of, any country subject to a U.S. government embargo or other restriction, or that has been designated by the U.S. government as a "terrorist supporting" country; or (b) on any of the U.S. government lists of restricted end users.

Miscellaneous. This Agreement does not, and shall not be construed to, create any partnership, joint venture, employer-employee, agency or franchisor-franchisee relationship between you and Company. If any provision of this Agreement is found to be unlawful, void or for any reason unenforceable, that provision will be deemed severable from this Agreement and will not affect the validity and enforceability of any remaining provision. You may not assign, transfer or sublicense any or all of your rights or obligations under this Agreement without our express prior written consent. We may assign, transfer or sublicense any or all of our rights or obligations under this Agreement without restriction. No waiver by either party of any breach or default under this Agreement will be deemed to be a waiver of any preceding or subsequent breach or default. Any heading, caption or section title contained herein is for convenience only, and in no way defines or explains any section or provision. All terms defined in the singular shall have the same meanings when used in the plural, where appropriate and unless otherwise specified. Any use of the term "including" or variations thereof in this Agreement shall be construed as if followed by the phrase "without limitation." This Agreement, including any terms and conditions incorporated herein, is the entire agreement between you and Company relating to the subject matter hereof, and supersedes any and all prior or contemporaneous written or oral agreements or understandings between you and Company relating to such subject matter. Notices to you (including notices of changes to this Agreement) may be made via posting to the Site or by e-mail (including in each case via links), or by regular mail. Without limitation, a printed version of this Agreement and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. Company will not be responsible for any failure to fulfill any obligation due to any cause beyond its control.

Privacy Policy

WhiteBox Learning holds the privacy and security of our site visitors, subscribers, and students as one of its highest priorities. This Privacy Policy explains what information is gathered and what happens with that information.

What Information is collected?

Visitors:

IP Addresses, Operating System, Browser Type, and Referring URLs are tracked with our Website logs. This information is collected for security purposes and is no way used to detect the user's identification.

Free Trial Visitors:

Free trial visitors must provide us with an email address and name (optional). This information will be used to 1) send emails to reply to any questions you may have, or 2) send you information about new products or promotions. We do not sell or share our email listings to outside companies for any reason.

Subscribers (Teachers):

Subscribers are required to provide email, name, billing address, phone, and organization (school name). This information is necessary so that we may 1) set up an account for you which will allow you to access the Teacher Control Center and all purchased applications, 2) send emails to reply to any questions you may have, 3) send you information about new products or promotions, or 4) in some cases, we may need to send you information about scheduled application server maintenance or other support matters. We do not sell or share any of this information to outside companies for any reason.

Students:

Students gain access to secure application servers using a password protected ID provided to them by the instructor.

We collect information about the student's session such as time on task, quiz scores, and other engineering performance data. This information is collected and organized to help the instructor make observations to improve the learning process. To that end, the instructor may optionally enter student names on the servers. These procedures and technologies are to improve the student learning process and are in compliance with the Family Educational

Rights and Privacy Act (FERPA).

Additional Information:

Teacher and student data is the only information gathered. Once a subscription expires, this data is archived on WhiteBox Learning's secure servers in the event the teacher re-subscribes in the future, and wants access to the stored data. If the teacher or school desires this information to be permanently deleted, the school or teacher can email support@whiteboxlearning.com and type "delete stored data" in the subject area, and include your Group ID that was issued by WhiteBox Learning. If a teacher, parent or eligible student desires to challenge the accuracy of the student or teacher data being gathered, the school or teacher can email support@whiteboxlearning.com and formally inquire.

How do I Unsubscribe?

If you are a free trial user and wish to stop receiving emails from us, please email support@whiteboxlearning.com and type "unsubscribe" in the subject area.

Security

WhiteBox Learning uses Secure Sockets Layer (SSL) to protect our web sites and user data. SSL is a protocol for enabling encryption on the internet and for helping web site users confirm the owner of the web site.

Updates

WhiteBox Learning reserves the right to change or update this Privacy Policy at any time with reasonable notice to users of the site. Any changes or updates will be effective immediately upon posting to the site.

3rd Party Information Dissemination

WhiteBox Learning does not share or sell customer, visitor, subscriber, or student information to 3rd parties.