

CLEVELAND PUBLIC LIBRARY

Finance Committee

November 15, 2016

**RESOLUTION TO PURCHASE EXTENDED WARRANTIES AND UPGRADES FOR
EARLY LEARNING STATIONS**

WHEREAS, One of Cleveland Public Library's guiding principles is to provide equal access to a vast range of information and resources for learning; and

WHEREAS, The Early Literacy Station from AWE Learning is designed specifically for our youngest patrons, ages 2-8, and features over 4,000 localized learning activities with fun, interactive and engaging content that spans all seven curricular areas: math, science & nature, social studies & geography, reading, art & music, writing & computer skills, and reference; and

WHEREAS, CPL has purchased 63 Early Literacy Stations to date for use by children throughout the system, reinforcing the role of our neighborhood branch libraries as centers for community learning; and

WHEREAS, To protect and upgrade the investment, it is time to extend the warranty and maintenance agreement for 58 of the stations; now therefore be it

RESOLVED, That the Board of Trustees approves the purchase of 2 Year Extended Warranty and Upgrades for 58 Early Learning Stations at a total cost of \$61,050.00, from AWE Acquisition, Inc., with the expenditure being charged to General Fund Account 13010053-53360 (Computer Maintenance).

Terms and Conditions

General: These Terms and Conditions are incorporated by reference into each Quotation or Purchase Agreement with an invoice to Customer, and form part of a legally binding agreement between Customer and AWE Acquisition, Inc. ("AWE"), which are referred to herein as either "Terms and Conditions" or this "Agreement." Customer agrees to these Terms and Conditions by 1) entering into a Purchase Agreement with AWE; 2) accepting delivery of and/or using the material or service provided by AWE to Customer; or 3) downloading, installing or using any software or content provided to you by AWE. These Terms and Conditions are subject to change without prior notice.

Invoicing and Payment: AWE will invoice Customer for all AWE learning products and related accessories when they are shipped to the Customer. AWE will invoice Customer for subscription and renewal products including all ELF™ products when activated. All invoices are sent via e-mail unless Customer provides a written request for a hardcopy. Emailed invoices are binding as a paper invoice even if a paper invoice is requested. Customer agrees to make payment for the full invoice amount due to AWE according to the invoice to Customer within 15 days of the invoice date ("Due Date"). Any payment received after the Due Date is considered past due ("Past Due").

Returns and Exchanges: Customer has thirty (30) calendar days to return or exchange an item from the date it was received. Only items that have been purchased directly from AWE can be returned or exchanged. To return or exchange an item to AWE, Customer must first email support@awelearning.com to request a return merchandise authorization (RMA) number. All returned items must be repackaged in their original packaging with all cords, adaptors, and documentation that were included with the original shipment. Partial returns will not be accepted. All returns must be received by AWE within twenty (20) calendar days from the RMA issuance date. A restocking fee of 15% (of the non-discounted item price) will be charged to Customer for all returns and exchanges. Customer will also be charged for all applicable return shipping and packaging costs. No returns or exchanges are accepted on ELF Child-Safe Browser™ or ELF Reading & Reference™ subscription licenses.

Delinquent Payment: The Customer agrees to pay interest on all Past Due amounts at the lesser of 1.5% per month or the highest rate allowed by law. In the event legal action is required to collect any amount due, Customer also agrees to pay collection costs and attorney's fees incurred by AWE in a successful collection effort. AWE may suspend services, suspend further shipment of product(s) and/or terminate the Agreement in the event that Customer fails to make full payment within thirty (30) days after receiving notice of delinquency. Notice of delinquency may be sent via email or hard copy. Termination of the Agreement shall not alter Customer's obligation to make full payment under this Agreement.

End User Rights Granted: Access to and use of ELF™ and other software, and all other information, administrative tools, and documentation that may be included in or with AWE products (the "Content") are non-exclusively licensed, and not sold, to Customer, without the right to grant sublicenses, re-sell, distribute or otherwise commercially exploit. During the term of this license and any subsequent license renewals (the "License Period"), AWE grants the Customer the right only to use the Content as an End User. Customer shall not copy in whole or in part (except for back-up purposes only), reproduce, modify, adapt, translate, auction, loan, lease, assign or transfer the Content, or create derivative works based upon the Content. The ELF Child-Safe Browser™ or ELF Reading & Reference™ is licensed for the number of building licenses granted by this Agreement. AWE defines a building or location license as a maximum of 500 active installations distributed from a discrete Customer location. Customer obtains no right, title or interest to any intellectual property owned by AWE or residing in the Content. Any unauthorized use by Customer of the Content shall immediately and automatically terminate the license granted herein.

Limited Warranty on Hardware: Hardware warranties are an extension of, and limited to, the OEM warranty. AWE warrants that hardware products and accessories sold by AWE will be free against defects in materials and workmanship when used normally during the warranty period. Warranty periods vary by product. The Warranty does not cover defects or problems resulting from: (i) External causes such as accident, abuse, misuse, or electrical power problems; (ii) Servicing not authorized by AWE; (iii) Usage not in accordance with product instructions; (iv) Improper or unauthorized maintenance or modification; or (v) Usage of accessories, parts, or components not supplied or supported by AWE. This Limited Warranty does not cover any Products for which AWE has not received payment.

Warranty, Upgrade and Services Period on Bundled Products: AWE bundled hardware and software desktop products ("AWE Learning Stations") include a three-year limited warranty period, up to two periodic software upgrades, and On-line Services from the date of shipment. AWE bundled hardware and software tablet products ("AWE Tablets") include a two-year limited warranty, no software upgrades, and On-Line services from the date of shipment. AWE's limited warranty on AWE Learning Stations and AWE Tablets is limited to the computer, software, keyboard, and mouse. Headphones include a 90-day limited warranty. Other optional accessories do not include a warranty.

Optional Extended Warranty, Upgrade and Services Period: Extended warranty, upgrade, and services are available for purchase for year four and five on eligible hardware and software products and accessories. Warranty, upgrade, and service periods must run consecutively (e.g., a year five extension may not be purchased without the purchase of a year four extension) and cannot exceed five years from the original date of shipment. Each one-year warranty, upgrade, and service extension will entitle Customer to all software updates during the extension period to the extent a software upgrade is released. AWE will notify Customer periodically of software upgrades as they become available. Customer is responsible for informing AWE of any changes to Customer's contact information and for scheduling and coordinating software upgrade installations.

Optional Accidental Damage Warranty: Optional accidental damage warranty is available for purchase on eligible AWE Tablets. Accidental damage warranty provides coverage for certain physical loss or damage not covered by the limited hardware warranty as specified herein. AWE agrees to repair or replace tablet products covered under the accidental damage warranty during the coverage period for any physical loss or damage caused by: i) Accidental liquid spill in or on the tablet; ii) Accidental damage to the tablet due to unintentional drop or collision; or iii) Physical damage caused by any power surge. Accidental damage warranty does not cover physical loss or damage caused by: i) Damage due to being submerged in liquid or due to fire, flood, or other acts of nature; ii) Intentional damage; iii) Normal wear and tear; iv) Cosmetic damage; or iv) Theft or loss. AWE's liability is limited in the aggregate to the total purchase price of the tablet as evidenced in a valid purchase invoice. AWE may at its discretion decide to repair or replace the damaged item with items similar or equivalent to the original purchased item. There is a limit of only one claim per registered serial number.

On-line Services: On-line services include Customer access to AWE's customer web portal, Customer account management, usage tracking, and all on-line reporting and dashboard facilities ("On-line Services"). AWE maintains the right to disable On-line Services for Customer products whose warranty, upgrade, and services period has expired and/or whose contractual subscription has ended or been terminated.

Terms and Conditions (cont'd)

Technical Support and FAQ: For a list of frequently asked questions (FAQs) or to make a technical support request please visit us online at <http://awelearning.com/support/> or email us at support@awelearning.com.

Limitation of Liability: AWE warrants that it will perform all services associated within this agreement in a professional and workman like manner. In no event will AWE's liability whether in contract or tort, exceed the total amount of the fees and expenses paid to it by the Customer under this Agreement. Access to the ELF Child-Safe Browser™ and ELF Reading & Reference™ software content is provided on an "as is" basis and AWE makes no representations or warranties, either express or implied, of any kind with respect to the content and disclaims all warranties, express or implied, including, but not limited to, the merchantability and fitness for a particular purpose or the continued availability for use of the content. In the event of termination of access to the Content, in the case of subscribers, AWE's liability shall be limited to the refund to a registered subscriber of any subscriber fees corresponding to a pre-paid subscription. Institutional subscribers such as schools, child care, and libraries should independently verify that all Content provided via ELF is appropriate for the intended audience or educational purpose. AWE's liability for warranty replacement or repair is as stated above, and shall be strictly construed. AWE has no liability whatsoever for indirect, consequential or incidental damages under contract or tort or claims of loss of data, revenue or profits.

Liability and Indemnification: AWE shall indemnify, defend and hold harmless Customer, its officers, employees and designated representatives from any and all claims, suits, actions, damages, liabilities, expenses and costs of any kind, including litigation costs and reasonable attorney's fees, arising out of an assertion that Customer's use of Content infringes on the intellectual property rights of a third party, or for bodily injury (including death) and/or damage to real or tangible personal property, provided that the injury or damage was proximately caused by the intentional or negligent acts of any of AWE's officers, employees, agents or authorized sub-contractors (including suppliers). Customer shall indemnify defend and hold harmless AWE, its officers, employees and designated representative from any and all claims, suits, actions, damages, liabilities, expenses and costs of any kind, including litigation costs and reasonable attorney's fees, arising out of bodily injury (including death) and/or damage to real or tangible personal property, provided that the injury or damage was caused by the intentional or negligent acts Customer's its officers, employees, agents or authorized sub-contractors (including suppliers).

Proprietary, Confidential and Non-Disclosure Agreement: Each party acknowledges that all information concerning the other party which is designated by the party as "Confidential and Proprietary" shall be deemed to be Confidential and Proprietary Information. Confidential and Proprietary Information is not meant to include any information, which, at the time of disclosure, is generally known by the public. Each party agrees that it will not permit the duplication, use, or disclosure of any such Confidential and Proprietary Information to any person (other than its own employees who must have such information for the performance of their obligation under this Agreement and as necessary to secure the performance of obligations hereunder by legal means), unless authorized in writing by the other party. Neither party shall use the name(s), trademark(s) or trade name(s), whether registered or not, of the other party in publicity releases or advertising without securing the prior written approval of the other party, such approval not to be unreasonably withheld; provided that AWE shall have the right, without Customer's approval to use Customer's name in its general list of customers. Each party agrees to hold in confidence any such Confidential and Proprietary information disclosed pursuant to this Agreement for a period of 3 years from the effective date of this Agreement. The parties shall have no obligation to maintain such information in confidence provided, they can show that such information (i) was in their possession prior to disclosure of such information, (ii) is or becomes publicly available through no fault of the party or (iii) was developed by the party independent of this Agreement.

Ownership Rights: AWE shall retain all right, title and interest in all technical information, inventions, patents, trade secrets, developments, discoveries, software, know-how, methods, techniques, formulae, data, processes and other proprietary ideas, whether or not patentable or copyrightable, that are developed pursuant to performance of the services hereunder, or are included in the Content.

Relationship and Right to Employ: AWE is an independent contractor and nothing in this Agreement shall be deemed to create a partnership or joint venture between Customer and AWE. As an independent contractor, AWE shall be responsible for withholding and paying all employment taxes, unemployment insurance, workers' compensation insurance and benefits for its employees. During the term of this Agreement, and any extensions thereto, Customer and AWE agree not to engage in either solicitation or recruitment of each other's employees.

Term: This Agreement shall be effective when signed by both the Customer and AWE and thereafter remain in effect as hereinafter stated (unless otherwise stated in the Agreement). All AWE Learning Stations have an initial term of three years from the date of shipment, unless otherwise extended. AWE Tablets have an initial term of two years from the date of shipment, unless otherwise extended. All ELF Child-Safe Browser™ or ELF Reading & Reference™ and subscription licenses have an initial term of one year from the date of activation, unless otherwise extended.

Governing Law: This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania.

Final Agreement: This Agreement and exhibits contain the final and entire agreement between the parties and is intended to be an integration of all prior agreements between them regarding the services. This Agreement cannot be modified except in a writing signed by both parties.

Customer Loyalty Program

General: The Customer Loyalty Program provides eligible Customers with a discount off the purchase of a new AWE Learning Station or AWE Tablet in-return for exchanging, recycling, or repurposing a previously purchased AWE Learning Station or AWE Tablet. AWE requires that certain models be sent back to its return center. Your sales representative will identify models that need to be sent back. AWE will provide free shipping and packaging for return of those specific models. The Customer Loyalty Program is subject to change without prior notice.

Eligibility: Any Customer who has previously purchased an AWE Learning Station or Tablet, and desires to exchange, recycle, or repurpose it, in-return for a discount off the purchase of a new AWE Learning Station or Tablet is eligible to participate in the Customer Loyalty Program. Only one credit will be provided per exchanged, recycled, or repurposed computer. Customer acknowledges and agrees that by participating in the Customer Loyalty Program, that it owns the property free and clear of any lien or encumbrance and that it has full power and authority to transfer the ownership of said property. AWE maintains the right to determine whether a previously purchased AWE product must be exchanged or recycled in order to be eligible to participate in the Customer Loyalty Program.

Scheduling and Shipping: Participating customers who are exchanging a previous purchase (not recycling it) will receive shipping instructions and shipping labels as part of their replacement purchase. Customer is responsible for scheduling a shipping (pick-up) date and time no later than five business days after receipt of shipping materials and labels, unless mutually agreed otherwise by Customer and AWE. Equipment will be picked-up from a location accessible by the shipping company at Customer's site. Equipment will be transported to AWE's processing site within 10 business days from the date of the pick-up. Additional time required for shipments from Hawaii, Alaska and Puerto Rico is acceptable.

Packaging: Customer is responsible for packing the equipment using the packing materials received as part of the replacement purchase.

Software/Data Backup: Customer is responsible for the backup of any data Customer needs or wishes to retain and for the removal of any confidential or sensitive data, including data that may be subject to unique rules regarding disclosure, accountability, or disposal. AWE is not responsible for the restoration of any data or software removed from the system by AWE or the Customer. AWE does not accept liability for lost data or software resulting from Customer's backup activities (or failure to backup), any restoration of data or software, or for compliance with special rules that may apply to data on Customer's equipment.

Fees: There is no fee to the Customer for return scheduling and shipping services (within the continental United States) provided that the Customer meets all Terms and Conditions of the Customer Loyalty Program. However, additional fees may apply for cancelled or rescheduled shipments. Customer is responsible for any costs incurred if incorrect products are identified and sent for shipment.

Returns and Exchanges: The Customer Loyalty Program does not offer returns or exchanges. AWE will not be able to return equipment once it has been picked up. A Customer Loyalty Program order may be canceled before an equipment pick-up is performed. Cancellation requests can be made online using the support link on AWE's homepage (www.awelearning.com/support). Customer is responsible for canceling any shipping (pick-up) arrangements with such provider directly.

Not Transferable: These services are not transferable.

No Contaminated Products: The service is not intended for equipment that is or has become contaminated or suspected of being contaminated with chemicals, biological agents or other substances that are not integral to the original new equipment or otherwise associated with normal office environments.

Title and Risk of Loss: AWE will bear no risk of loss or damage to the equipment during shipment to AWE or its processing site(s). Title will be deemed to pass to AWE or its provider upon receipt and possession of the equipment by AWE or its provider.

Claims of Confidentiality of Proprietary Rights: Customer agrees that any information or data disclosed or sent to AWE, over the phone, telephonically, electronically or otherwise, is not confidential or proprietary to Customer.

Commercially Reasonable Limits to Scope of Service: In the course of providing the service, AWE may determine that the issue is beyond the scope of the service. AWE may use commercially reasonable efforts to refer Customer to the appropriate alternative resource.

Warranty: AWE warrants that it will perform the services with commercially reasonable care. AWE makes no other warranty and disclaims all other warranties, whether express or implied, including, but not limited to, any implied warranties of merchantability and fitness for a particular purpose.

Limitation of Liability: AWE will not be liable for lost profits, loss of business, lost data or software resulting from Customer's backup activities (or failure to backup), or other consequential, special, indirect, or punitive damages, even if advised of the possibility of such damages, or for any claim by any third party. Customer agrees that AWE is not liable or responsible for any amount of losses or damages above the aggregate dollar amount paid for the purchase of these services for the specific item or items of equipment which caused the losses or damages.