

Limited License Agreement for Use of the Virginia Department of Education's Economics and Personal Finance Course

This is a license agreement (the "License Agreement") between the Commonwealth of Virginia (the "Commonwealth"), through the Virginia Department of Education (VDOE), and _____, a Virginia school board with its main office at _____ ("Licensee"), relating to Licensee's limited use of VDOE's Economics and Personal Finance Course ("EPF Course"). The parties agree as follows:

1. Definition of "EPF Course": As used in this License Agreement, "EPF Course" means the series of modules on economics and personal finance developed by VDOE, which shall include the entire educational content of the modules and any related teacher resource materials whether embodied through text, graphics or other literary or visual works, and software in object code format enabling such content to be stored and offered electronically. The EPF Course consists of 160 modules.
2. Delivery of the EPF Course. As soon as practicable after execution of this License Agreement, the Commonwealth shall make the EPF Course available to Licensee to either download through an FTP website or from a DVD, or offer to students through Virtual Virginia, VDOE's program for web-based course delivery. The copy of the EPF Course available for download will be marked with the proprietary and sponsorship notices referred to in section 4 below. The copy of the EPF Course available through Virtual Virginia will also be subject to the standard terms and conditions governing access and use of Virtual Virginia.
3. License Grant. Provided that all other terms and conditions of this License Agreement are met, Licensee is hereby granted a non-exclusive, non-transferrable, royalty-free license to use the downloadable version of the EPF Course in perpetuity subject to the termination rights set forth in section 3 and only as expressly set forth below:
 - a. Reproductions: Licensee may reproduce the EPF Course in hardcopy or electronic format for the exclusive purposes outlined in subsections 3.b, 3.c and 3.d hereof.
 - b. Display in Classroom Settings: Licensee may distribute the EPF Course to Licensee's teachers for instructional use and display in classroom settings for Licensee's students. Licensee may elect to either use the EPF Course in its entirety or select and use one or more individual modules, but in no event shall Licensee separate or use any components of the EPF Course in units smaller than a module. Licensee may not use the tools, software or educational content of the EPF Course for any purpose other than to deliver modules to its students.
 - c. Display Online: Licensee may offer the EPF Course to Virginia students through Licensee's own learning management system or website provided that Licensee

takes all steps necessary to ensure that no users other than properly authorized Virginia students and teachers can obtain access to the EPF Course. Licensee may not charge any fees or royalties for use of its online offering of the EPF Course. Licensee may elect either to use the EPF Course in its entirety or select and use one or more individual modules, but in no event shall Licensee separate or use any components of the EPF Course in units smaller than a module. Licensee may not use the tools, software or educational content of the EPF Course for any purpose other than to deliver modules to Virginia students.

- d. Derivative Works: Licensee may modify or otherwise create derivative works of the EPF Course solely to enable compatibility with Licensee's learning management system or website.
 - e. Contractors: Licensee may disclose the EPF Course to its learning management system provider, but only if Licensee and the contractor sign the attached form agreement entitled "Attachment A - Contractor's Agreement" with no changes or additions to the form and all information correctly filled in. Licensee shall keep the signed Contractor's Agreement on file at all times and shall ensure that the contractor retains no copy of the EPF Course after the termination of the Contractor's Agreement. Licensee may not disclose the EPF Course to any third party other than as outlined above.
4. Proprietary Rights: The following terms shall govern all interest in and right and title to the EPF Course, as between the Commonwealth and Licensee:
- a. Copyright in the EPF Course: The EPF Course and any modifications to or derivative works thereof, including all intellectual property rights therein shall be owned solely and exclusively by the Commonwealth. Licensee acquires no intellectual property or other interest in the EPF Course.
 - b. Assignment of Title to Derivative Works: Licensee hereby assigns to the Commonwealth exclusively all right, title, and interest in and to all intellectual property rights in and to any derivative works of the EPF Course that it may have or later obtain without further consideration, free from any claim, lien for balance due, or rights of retention thereto on the part of Licensee. Licensee hereby acknowledges that neither Licensee nor the Commonwealth intends Licensee to be a joint author of such derivative works within the meaning of the Copyright Act of 1976, as amended, and that in no event shall Licensee be deemed a joint author of such derivative works.
 - c. Proprietary Notice: Licensee shall ensure that all copies and displays of the EPF Course in whole or in part and in whatever form, incorporate the following notice: "© 2012 Commonwealth of Virginia." The above notice shall be affixed to the copy or included in the display in a manner and location sufficient to give reasonable notice to all users.

- d. Sponsorship Notice: The development of the EPF Course was funded in part through contributions by the Virginia College Savings Plan ("VCSP") and the Virginia Bankers Association Education Foundation ("VBAEF"), which contributions are expressly recognized in the EPF Course materials. Licensee shall preserve unchanged any and all references to either sponsor and shall ensure that such references appear as in the original in all copies, displays or other uses of the EPF Course whether in whole or in part and in whatever form.
5. Reporting Errors to the Commonwealth. VDOE entered into a contract with a private sector firm to develop the EPF Course and package it to the standards for Shareable Content Object Reference Modules (SCORM). The Commonwealth requests that any errors Licensee may discover in any aspect of the EPF Course be promptly reported to VDOE to maximize the Commonwealth's opportunity to obtain correction of the errors. Nothing herein shall be construed as obligating the Commonwealth to correct or obtain correction of any errors, however.
6. No Liability for Errors; No Support. The Commonwealth cannot assume responsibility for any inaccuracies in the EPF Course, nor can the Commonwealth undertake to correct or notify Licensees of any errors that may be called to the Commonwealth's attention before or after the Commonwealth's delivery of the EPF Course to Licensee nor can the Commonwealth provide support or maintenance for the software component of the downloadable version of the EPF Course. **Accordingly, the EPF Course is provided hereunder "AS IS."** Without limiting the foregoing, any liability of the Commonwealth, its officers, agents and employees in connection with this License Agreement shall be limited to no more than the fees the Commonwealth received from Licensee in connection with this Agreement, and the Commonwealth, its officers, agents and employees shall have no liability for lost profits, consequential damages or for any lawsuits filed against Licensee or its personnel in connection with the EPF Course.
7. Security and Record Keeping. Licensee shall implement security measures sufficient to ensure, and shall maintain records sufficient to demonstrate, its compliance with all requirements of this License Agreement, particularly the requirements in sections 3 and 4 above. **Without limiting the foregoing obligation, the Commonwealth in its discretion may prescribe and amend security measures and record keeping formats to be followed by Licensees as part of their overall security and record-keeping program.** Licensee shall promptly make its records available to inspection if the Commonwealth requests such access.
8. Termination. The Commonwealth may terminate this license in writing: (a) **if the Commonwealth adopts a new standard license agreement to be used for licensing of the EPF Course and Licensee does not agree to the new version within 30 days after its adoption by the Commonwealth;** or (b) if the Commonwealth concludes in good faith that Licensee has failed to fully comply with the current License Agreement and the matter is not resolved to the Commonwealth's satisfaction within 30 days after the Commonwealth gives Licensee written notice of its intent to terminate. In the event of termination under this section, unless otherwise directed by VDOE in writing, Licensee

shall return all original media and destroy all copies of the EPF Course in its possession or control. If the Commonwealth elects not to terminate one or more licenses in circumstances (a) or (b) above, or terminates licenses but chooses to allow some continued use or otherwise allows exceptions from its standard license agreement, such action shall not be construed as negating the “standard” nature of its license agreement or as otherwise limiting its rights under clause (a) above.

9. Disputes: Contractual claims shall be processed in accordance with the procedure in the *Code of Virginia* § 2.2-4363. The public body receiving a contractual claim shall issue its final decision on the claim within ten days after it is submitted.
10. Payment: The contractual clauses required in the *Code of Virginia* § 2.2-4354 are incorporated herein by reference.
11. Miscellaneous. This is the complete and final expression of the parties’ License Agreement and can be modified only in a writing signed by both parties. Any waiver of a provision of this License Agreement shall be void unless in writing and signed by the waiving party. Any waiver shall be interpreted to apply only to the past unless it expressly states that it applies to the future. Any attempt by Licensee to assign this License Agreement without the Commonwealth’s prior written consent shall be void. If any provision of this License Agreement is unenforceable, this shall not affect the validity of the rest of this License Agreement, but the provision in question shall be limited or construed in a manner to accomplish as much of the intent of the provision as legally possible. This License Agreement shall be governed in all respects by Virginia law, and any dispute associated with this License Agreement or the EPF Course shall be heard only in Virginia courts.

THE UNDERSIGNED representative of each party hereby represents and warrants that he is duly authorized to sign this License Agreement on behalf of the party indicated, and that such party does hereby sign this License Agreement, intending to be bound:

_____ (Licensee)

COMMONWEALTH OF VIRGINIA

By: _____
Printed name: _____
Title: _____
Date: _____

By: _____
Printed name: _____
Title: _____
Date: _____

Attachment A – “Contractor’s Agreement” to
Limited License Agreement for VDOE's Economics and Personal Finance Course

This is an agreement between the Virginia school board specified below and _____ (the “Contractor”), a corporation organized under the laws of the state of _____, and having its office at _____. This agreement (“Contractor’s Agreement”) is made in connection with Contractor receiving the Economics and Personal Finance (“EPF”) Course belonging to the Commonwealth of Virginia. For good and valuable consideration, receipt of which is hereby acknowledged, the undersigned Contractor and governmental entity hereby agree as follows:

1. This Contractor’s Agreement is attached to a Limited License Agreement for VDOE's EPF Course dated _____ (the “License Agreement”) between the Commonwealth of Virginia (the “Commonwealth”), through the Virginia Department of Education (“VDOE”), and _____, a Virginia school board with its main office at _____ (“Licensee”). In this Contractor’s Agreement, all terms shall have the same meaning as they have in the attached License Agreement.
2. Contractor represents to the Commonwealth that Contractor has a contract with Licensee to provide services related to the development and operation of Licensee's learning management system or Web site. The contract requiring access to and use of the EPF Course is identified as follows (fill in the contract number, title of contract, parties and date signed): _____.
3. Licensee agrees to provide, and Contractor hereby acknowledges its receipt of, the EPF Course from Licensee. Contractor represents and warrants to the Commonwealth that the media on which Contractor is receiving the EPF Course contains the proprietary and sponsorship notices referenced under section 4 of the attached License Agreement.
4. Contractor acknowledges that the EPF Course is the property of the Commonwealth of Virginia and is provided to Contractor solely for the purpose of performing its contract work for Licensee. Subject to the direction of Licensee, Contractor may exercise the rights granted to Licensee in subsections 3.c and 3.d of the License Agreement. Contractor shall ensure that its employees use the EPF Course solely as provided herein.
5. Licensee agrees that any works that Contractor creates using the EPF Course, including all intellectual property rights therein, shall be owned solely and exclusively by the Commonwealth and that any such modifications or derivative works shall be considered part of the EPF Course subject to the terms and conditions of this Contractor’s Agreement and the attached Licensed Agreement. Contractor hereby assigns to the Commonwealth exclusively all right, title, and interest in and to all intellectual property rights in and to any such derivative works of the EPF Course that it may have or obtain, without further consideration, free from any claim, lien for balance due, or rights of retention thereto on the part of Contractor. Contractor hereby acknowledges that the parties do not intend Contractor to be a joint author of such derivative works within the meaning of the Copyright Act of 1976, as amended, and that in no event shall Contractor be deemed a joint author of such derivative works.
- 6. With respect to the EPF Course, Contractor agrees that Contractor is bound to all the restrictions, obligations, limitations of liability and all other provisions of the License Agreement to the same extent as they apply to the Licensee, and all such provisions are hereby incorporated into this Contractor’s Agreement by reference.**
7. Notwithstanding the preceding section, Contractor acknowledges it shall have none of Licensee’s rights under the Limited License Agreement. For example, Contractor has no right to make further disclosure of the EPF Course to any subcontractor.
8. Contractor’s right to possession of the EPF Course may be terminated by the Commonwealth at any time upon 30 days’ written notice, or upon the expiration of the contract specified in section 2 above, whichever

is earlier. Upon request by Licensee or the Commonwealth, Contractor shall follow the Commonwealth's instructions for documenting its compliance with this Contractor's Agreement and for documenting that it has not retained any copy of the EPF Course after its right to possession of the EPF Course has expired or been terminated.

9. Contractor acknowledges that **the EPF Course is provided "AS IS."** The Commonwealth, its agents, officers and employees make no warranty whatsoever regarding the accuracy, suitability or attributes of the EPF Course. Contractor shall indemnify and hold the Commonwealth, its officers, agents and employees harmless from any and all claims, liability, cost and expense arising from Contractor's use of the EPF Course. Contractor further acknowledges that, unless Licensee in a separate agreement has specifically agreed otherwise, the Licensee and Licensee's agents, officers and employees also provide the EPF Course "AS IS" and make no warranty whatsoever regarding the accuracy, suitability or attributes of the EPF Course, and Contractor shall indemnify and hold Licensee, its officers, agents and employees harmless from any and all claims, liability, cost and expense arising from Contractor's use of the EPF Course.

10. Contractor and Licensee agree that this Contractor's Agreement is for the benefit of the Commonwealth (and where applicable, its officers, agents and employees) and may be enforced directly by them. This Contractor's Agreement is also for the benefit of, and may be enforced by, the Licensee and Contractor.

11. No changes or additions to this form agreement are authorized.

12. This is the complete and final expression of the parties' agreement. This Contractor's Agreement shall be governed in all respects by Virginia law, and any dispute associated with this Contractor's Agreement or the EPF Course shall be heard only in Virginia courts.

THE UNDERSIGNED representatives of the parties each hereby sign and seal this Contractor's Agreement on behalf of their respective principals, intending to be bound:

_____ (Contractor)

By: _____

Printed name: _____

Title: _____

Date: _____

ACKNOWLEDGEMENT

COMMONWEALTH OF VIRGINIA, CITY/COUNTY OF _____, to-wit:

The foregoing Contractor's Agreement dated _____ was acknowledged before me this _____ day of _____, 200__, by _____ (name of officer), _____ (title of officer) of _____ (name of Contractor), on behalf of that Contractor.

(SEAL) _____ Notary Public

My commission expires _____

_____ (Virginia School Board)

By: _____

Printed name: _____

Title: _____

Date: _____