

This KnowledgePoint Agreement (this "Agreement") is made and entered into as of the __ day of _____, 20__ by and between **BAKER & TAYLOR, LLC**, a Delaware USA limited liability company ("**B&T**"), and the below-identified **Customer** ("Customer") in connection with certain other agreements involving **LightSail**.

CUSTOMER: Sylvan Union School District

CUSTOMER CONTACT INFORMATION:

PRIMARY CONTACT Laura Granger
TITLE Director of Professional Learning
E-MAIL ADDRESS lgranger@sylvan.k12.ca.us
TELEPHONE (209) 574-5000 ext. 251
FAX (209) 524-2672
STREET ADDRESS 605 Sylvan Avenue
CITY Modesto
STATE, ZIP CA, 95350

CUSTOMER BILLING INFORMATION (if different):

PRIMARY CONTACT Cheryl Phan
TITLE Director of Fiscal Services
E-MAIL ADDRESS cphan@sylvan.k12.ca.us
TELEPHONE (209) 574-5000 ext. 213
FAX (209) 524-2672
STREET ADDRESS 605 Sylvan Avenue
CITY Modesto
STATE, ZIP CA, 95350

PURCHASE OF KNOWLEDGEPOINT SERVICES AND ECONTENT:

SEE SCHEDULE 1 FEE SCHEDULE AND SCHEDULE 2 TERMS AND CONDITIONS ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE.

RETURN THIS AGREEMENT TO:

BAKER & TAYLOR, LLC.
2550 West Tyvola Road, Suite 300
Charlotte, North Carolina 28217 USA
Attention: Pricing Services

FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES SIGNING BELOW HEREBY CONFIRM THAT THEY EACH AGREE TO ALL OF THE TERMS AND CONDITIONS OF THIS KNOWLEDGEPOINT AGREEMENT, INCLUDING SCHEDULES 1 AND 2, WHICH ARE ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE.

Customer: Sylvan Union School District

By: _____

Name: Debra M. Hendricks

Title: Superintendent

BAKER & TAYLOR, LLC

By: _____

Name: Lee Ann Queen

Title: Director-Pricing Services

SCHEDULE 1

FEE SCHEDULE

KnowledgePoint Hosting Fee*

Annual Fee, per Participating Building

	Year One	Year Two	Year Three
Annual Fee, per Building	Waived, no charge	Waived, no charge	Waived, no charge

eContent License Fees

Fees invoiced per title selected are as shown in B&T's ordering system at the time of order fulfillment.

Required opening order for beginning collection (per building) \$ 250.00
(Opening Order Requirement applicable to Year One only)

Optional On-Site Training:

First Day	\$
Each Consecutive Day	\$

-Limit to 30 Attendees Per Session

-Topics: Collection Development, Utilization of Title Source, KnowledgePoint, Reservation System

****THIS FEE SCHEDULE MAY BE UPDATED BY BAKER & TAYLOR ON EACH ANNIVERSARY OF THE LAUNCH DATE UPON 60 DAYS NOTICE TO CUSTOMER.***

SCHEDULE 2

TERMS AND CONDITIONS

1.00 DEFINITIONS

As used herein, the following definitions shall apply:

1.01 **"Agreement"** means this KnowledgePoint Agreement, including the signature page, the schedules referenced on the signature page (including Schedule 1 Fee Schedule and Schedule 2 Terms and Conditions), and the orders for licensed eContent issued by Customer pursuant to this Agreement. No other terms and conditions contained in any purchase order issued by or for Customer, or otherwise communicated by or through any other ordering or transactional process utilized by or for Customer, shall apply to this Agreement.

1.02 **"Authorized eContent Term"** means, as to any Sale of eContent, the applicable license term shown in Title Source 360 which commences on the applicable Sale Date of eContent or, if shorter, the period commencing on the applicable Sale Date of eContent and ending on the date that the Term of this Agreement ends.

1.03 **"Authorized Users"** means those individuals that are enrolled students, faculty members or staff members of the Customer (as defined herein), and having a residential address in the Territory, who meet the Customer's criteria for a Check Out. This Agreement specifically excludes and prohibits any and all users other than Authorized Users.

1.04 **"B&T"** means Baker & Taylor, LLC., its successors, assigns and subsidiaries.

1.05 **"Check Out"** means the authorization and enablement of an Authorized User to access or download eContent from the KnowledgePoint System via LightSail, for display on the Authorized User's personal electronic reading device (or electronic reading device supplied by the Customer) for a period of time consistent with Customer's Check Out policies, but not beyond the Authorized eContent Term applicable to such eContent, provided such access or download shall be for personal, educational, non-commercial use only, with no right to re-sell, redistribute, share, e-mail, post, make publicly available, upload, print, or burn to a disk, and subject to applicable DRM (including, but not limited to, one Authorized User per licensed copy of eContent at any given time).

1.06 **"Common Core Standards"** means the standards referenced at <http://www.corestandards.org>.

1.07 **"Customer"** means a public or a private school teaching on a K-12 (kindergarten through twelfth grade) level or part of that level that has physical classrooms for teaching by faculty to students, with substantially all of the teaching conducted in physical classrooms and not in a virtual or on-line environment, as identified in this Agreement. Customer is not any of the following: a) higher education institutions (such as college, university, graduate and post-graduate level educational institutions), b) individuals, or c) any other businesses, entities and/or persons that are not primarily a K-12 school.

1.08 **"DRM"** means such digital rights management requirements as may be placed on eContent by the publishers and/or licensors supplying eContent to B&T.

1.09 **"eContent"** means such copyrighted books, audiobooks, video and other proprietary works in digital format that are licensed to Customer by B&T for inclusion in the KnowledgePoint System, including but not limited to fiction and nonfiction titles aligned with Common Core Standards in connection with LightSail.

1.10 **"eContent License Fees"** means the license fees in effect from time to time that are payable by Customer to B&T for the Sale of eContent under this Agreement in connection with LightSail.

1.11 **"EULA"** means the license agreement posted on LightSail or KnowledgePoint, as amended by B&T from time to time, that Authorized Users will accept in order to download and display eContent.

1.12 **"Fees"** means, collectively, KnowledgePoint Hosting Fee, the eContent License Fees, and any other fee referenced herein.

1.13 **"KnowledgePoint"** refers to the KnowledgePoint System and KnowledgePoint Services.

1.14 **"KnowledgePoint Hosting Fee"** means the fees in effect from time to time that are payable by Customer to B&T for hosting the KnowledgePoint System, including the creation, operation and use thereof in connection with LightSail.

1.15 **"KnowledgePoint Services"** means all services involved in supplying and hosting of eContent via the KnowledgePoint System in connection with LightSail under the terms of this Agreement.

1.16 **"KnowledgePoint System"** means the digital content management system established by B&T for Customer under this Agreement for the purpose of supplying and hosting eContent in connection with LightSail.

- 1.17 **“Launch Date”** means the date that LightSail or KnowledgePoint is launched for Customer, as determined by B&T.
- 1.18 **“LightSail”** means the adaptive literacy platform offered by LightSail Education that is integrated with KnowledgePoint.
- 1.19 **“Other Content”** means materials that may be added to the KnowledgePoint System by Customer or Authorized Users, such as User Reviews displayed in association with eContent, and/or by mutual agreement of Customer and B&T in connection with LightSail.
- 1.20 **“Privacy Policy”** means the privacy policy posted on LightSail or KnowledgePoint, as amended by B&T from time to time, that Authorized Users will accept in order to download and display eContent.
- 1.21 **“Sale of eContent”** or **“eContent Sold”** means the sale of a license of eContent to Customer for Check Out during the Authorized eContent Term under the terms and conditions of this Agreement, the EULA and the Privacy Policy.
- 1.22 **“Sale Date”** means for any Sale of eContent or any eContent Sold, the date that the applicable eContent ordered by Customer has first been made available for Check Out during the Authorized eContent Term.
- 1.23 **“Term”** means the period of time that this Agreement is in effect, as provided in Section 3.01 hereof.
- 1.24 **“Territory”** means the United States of America.
- 1.25 **“Title Source 360”** means B&T’s ordering system for eContent.
- 1.26 **“User Review(s)”** means star ratings and comments contributed by Authorized Users relating to eContent hosted on the KnowledgePoint System in connection with LightSail.

2.00 LICENSE

2.01 Subject to the terms and conditions of this Agreement and payment of the KnowledgePoint Hosting Fee and eContent License Fees by Customer, B&T hereby grants to Customer a nonexclusive, nontransferable and revocable license to access and use, via LightSail, KnowledgePoint and, for the Authorized eContent Term, such eContent as Customer may order through Title Source 360 under this Agreement. e-Content titles/collections ordered by Customer at any time during the Term of this Agreement will be made available after the Launch Date for Check Out upon the payment of applicable eContent License Fees by Customer. Except as otherwise expressly provided herein, all eContent Sold shall be non-returnable and all Fees paid by Customer shall be non-refundable.

2.02 Authorized Users shall access KnowledgePoint and eContent for Check Out, via LightSail, using Authorized User’s personal electronic reading device or the electronic reading device supplied by the Customer and Internet connections supplied by, and at the expense of, Customer and/or Authorized Users. All such access shall be controlled by valid IP address, referring URL, identification codes and passwords and/or other commercially reasonable methods as determined by B&T.

2.03 Use of KnowledgePoint and eContent via LightSail is limited to Authorized Users. Customer shall be responsible for determining which Authorized Users shall have access to KnowledgePoint and eContent via LightSail. Customer shall not allow any access to KnowledgePoint or eContent via LightSail by other schools or libraries through consortia or similar arrangement without B&T’s prior written consent. Inter-school or inter-library loan for the access and use of KnowledgePoint or eContent via LightSail or otherwise is expressly prohibited.

2.04 All access to KnowledgePoint and eContent via LightSail by Customer and Authorized Users shall be subject to and governed by this Agreement, the EULA and the Privacy Policy. B&T reserves the right to suspend or terminate access via LightSail to KnowledgePoint or eContent by Customer in the event of any violation thereof by Customer or any Authorized Users. B&T may withdraw any specific eContent title if required by the applicable supplier of such eContent to B&T. Repeated violations of the EULA by Authorized Users may be cause for suspension or termination of this Agreement, as determined by B&T. Customer and Authorized Users do not have any public performance or promotional use rights in eContent.

2.05 Customer agrees to comply, and require Authorized Users to comply, with all copyright, patent and other intellectual property laws and all DRM applicable to KnowledgePoint and/or eContent. Notwithstanding any provision herein to the contrary, in the event that the DRM applicable to any given eContent imposes license requirements other than, or different from, those expressed herein, such DRM shall control with respect thereto and the license granted hereby shall be deemed automatically amended by such DRM.

2.06 Customer will enforce the proper and intended access to KnowledgePoint and eContent via LightSail by Authorized Users by properly maintaining its student database or other presentation of credentials for Authorized Users. The number of simultaneous users of eContent at any given time shall be limited to a single Authorized User per licensed copy of eContent, except to the extent that multi-user simultaneous access is authorized for specific eContent as shown in Title Source 360. Access to eContent by Authorized Users, including but not limited to any applicable ability to view, print and download, will automatically terminate upon expiration of the applicable Check Out. Customer shall not, and shall not authorize, enable or encourage Authorized Users to: (a) use eContent other than as authorized by the EULA and within the Check Out limits, or (b) disable or circumvent DRM or security for eContent. Customer will immediately notify B&T of any breach or suspected breach of security (including without limitation any unauthorized use, disclosure or acquisition of or access to eContent, or disabling or circumvention of DRM with respect to eContent, of which Customer becomes aware.

2.07 All rights not expressly granted or licensed to Customer or Authorized Users in writing by B&T are reserved by B&T or B&T's licensors.

3.00 TERM AND TERMINATION

3.01 Except where earlier termination is required under the provisions hereof or by any DRM applicable to LightSail, KnowledgePoint and/or eContent, this Agreement will be effective for a period beginning on the Launch Date and ending at 11:59:59 P.M. (Eastern U.S. Time) on the day preceding the third (3rd) anniversary of the Launch Date (the "Initial Term"). Customer may cause this Agreement to automatically renew for successive terms of one year each (a "Renewal Term") (the Initial Term and any Renewal Term being collectively referred to herein as the "Term") by payment of an annual Hosting Fee promptly following the Initial Term or a Renewal Term, as applicable. Either party shall have the right to prevent renewal by giving written notice of termination to the other party at least 60 days' prior to expiration of the then current term. In addition, in the event that (i) necessary funds will not be available to Customer in the year following any anniversary of the Launch Date or (ii) Customer elects to decline changes made by B&T to the Fee Schedule on sixty (60) days prior notice to Customer, Customer may terminate this Agreement as of any anniversary of the Launch Date by providing a thirty (30) day written notice to B&T.

3.02 Subject to Section 3.03 hereof, upon termination of this Agreement, all rights and licenses granted pursuant to this Agreement for Customer's use of all or any portion of KnowledgePoint or eContent will automatically terminate. Similarly, upon termination of any applicable Authorized eContent Term by passage of time, operation of applicable DRM or any reason whatsoever, all rights and licenses of access to the eContent applicable thereto will automatically terminate and Customer will not attempt to access to, or permit any access or use of, such eContent.

3.03 Upon termination of this Agreement, B&T's sole responsibility to Customer will be to confirm the eContent titles under license by Customer as of the date immediately preceding such termination date by providing the inventory list of the eContent titles under license and related information to Customer. Customer may supply such inventory list and information to the third party vendor selected by Customer to provide digital content management system services to Customer after B&T (the "Next Vendor") and direct such Next Vendor to submit on Customer's behalf to the publishers of such eContent titles a request for replacement licenses to allow Customer to receive access to such eContent titles for the balance of any applicable Authorized eContent Term that would have continued but for the termination of this Agreement, at no additional charge. Such Next Vendor will be solely responsible for obtaining such replacement licenses at no additional charge, and if such replacement licenses are granted, Next Vendor will be solely responsible for supplying such eContent under the terms of such replacement licenses on the digital content management system of the third party vendor then selected by Customer to provide such services. **B&T MAKES NO REPRESENTATIONS OR WARRANTIES AS TO WHETHER PUBLISHERS WOULD ALLOW ANY SUCH REPLACEMENT LICENSE(S) FOLLOWING TERMINATION OF THIS AGREEMENT OR WHETHER NEXT VENDOR WOULD PROVIDE CUSTOMER WITH ACCESS TO ANY SUCH ECONTENT PREVIOUSLY UNDER LICENSE.**

4.00 DEFAULT AND REMEDIES

Either party's failure to perform any of its obligations hereunder in any material respect, which failure is not cured within 60 days after notice from the non-defaulting party (provided that a 10 day notice and cure period shall apply to any failure to pay any amounts due) shall be an "Event of Default" hereunder. The non-defaulting party will have all rights and remedies available to it under applicable law if an Event of Default occurs, except as otherwise expressly provided herein. Without limiting the generality of the foregoing, B&T's rights and remedies will include, without limitation, the right to disable the KnowledgePoint System to prevent access during the applicable cure period if reasonably needed to prevent further nonconformance. Customer acknowledges and agrees that the Agreement is for the benefit of B&T and B&T's licensors, and that B&T and any of B&T's licensors, jointly or severally, may avail themselves of any remedies available in this Agreement or by law, including without limitation the initiation of legal proceedings.

5.00 WARRANTY; LIMITATION OF LIABILITY

5.01 B&T warrants that publishers and/or licensors of eContent in the KnowledgePoint System have authorized the licenses granted hereunder. **EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 5.01, ALL ECONTENT AND ANY PORTIONS THEREOF ARE PROVIDED "AS IS" WITHOUT WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXPRESSLY EXCLUDED HEREBY ARE ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY B&T, ITS AGENTS OR EMPLOYEES, WILL CREATE A WARRANTY, AND CUSTOMER MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE.**

5.02 Neither B&T nor any other party that has been involved in the creation, production or delivery of all or any portion of the eContent through KnowledgePoint or otherwise will be liable for indirect, special, incidental, punitive, exemplary or consequential damages (including, without limitation, damages for claims by third parties, or loss of profits) arising out of the access to or use or inability to use all or any portion of KnowledgePoint or the eContent, even if B&T or such other party shall have been advised or otherwise have known of the possibility of such damages. In no case will any liability of B&T or any such other party hereunder exceed the amount of the KnowledgePoint Hosting Fees actually paid by Customer in the 12 month period preceding the claim giving rise to such liability.

6.00 INFRINGEMENT

6.01 All unauthorized use, copying, modification and/or distribution of all or any portion of KnowledgePoint or the eContent is expressly forbidden. Customer will be liable for any infringement that is caused, facilitated or encouraged by its failure to abide by the terms of this Agreement and/or any applicable DRM.

6.02 Customer will promptly notify B&T in writing if any infringement claim relating to all or any portion of KnowledgePoint or the eContent is made against Customer. If Customer provides B&T with sufficient notice of any such infringement claim, B&T at its option will make commercially reasonable effort to eliminate, or request that applicable publishers or licensors eliminate, the circumstances giving rise to such infringement. Alternatively, B&T may issue a refund to Customer on a prorated basis and terminate access. The foregoing is the only remedy available to Customer, and the only liability of B&T, in the event of a claim of infringement.

7.00 FORCE MAJEURE

Customer acknowledges that the Internet is an unregulated, unorganized, unreliable, unstable, insecure and ever-changing environment. The ability of each party to comply with this Agreement may be dependent on the Internet and equipment, software, systems, data, content and services provided by third parties, among other things. Neither party shall have any liability for any failure of performance due to events beyond its reasonable control. Lack of funds shall not be excused under this section.

8.00 MISCELLANEOUS

8.01 Except as otherwise required by law, B&T and Customer agree to maintain the confidentiality of any data relating to the usage of the eContent by specific Authorized Users.

8.02 Customer will be responsible for payment of any and all applicable sales, use, value-added, excise or similar taxes, if any, incurred in connection with any transactions under this Agreement.

8.03 Any failure by either party to exercise any right hereunder will not be deemed a continuing waiver of such right. If any of the terms or provisions of this Agreement are ruled to be invalid or unenforceable by a court or administrative tribunal of competent jurisdiction, the remainder of the Agreement will not be affected thereby.

8.04 Customer will not assign this Agreement, by operation of law or otherwise, without B&T's prior written consent. This Agreement will be binding upon, and will inure to the benefit of, the parties hereto and their respective successors and permitted assigns.

8.05 All notices required or permitted to be given by one party to the other under this Agreement will be sufficient if hand-delivered, sent by recognized overnight courier, receipt acknowledged, or sent by certified mail, return receipt requested, to the other party at the applicable address set forth in this Agreement or to such other applicable address as may be designated by notice from one party to the other pursuant to this paragraph.

8.06 Telecopied facsimiles or email transmissions of a signed counterpart of this Agreement from one party to the other will be deemed to be delivery of a signed counterpart by the party sending the telecopied facsimile or email of such signed counterpart. If the use of a digital signature is needed, each party shall adopt as its authorized signature a confidential digital identification consisting of symbols(s) or code(s) which are to be affixed to or contained in each digital transmission.

8.07 This Agreement and the Schedules, EULA and Privacy Policy referenced herein constitute the complete and exclusive statement of the terms and conditions between the parties regarding the subject matter hereof and supersede all prior proposals, understandings and agreements, oral and written, between the parties relating hereto, notwithstanding any order form submitted either before or after the date hereof. This Agreement may not be modified or altered except by written instrument duly executed by both parties. This Agreement may be executed in counterparts, all of which, when taken together, will constitute a single instrument.