UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: SCHOOL SPECIALTY, INC., *et al.*,[1] Reorganized Debtors.	Chapter 11 Case No. 13-10125 (KJC) Jointly Administered **Re: Dkt. Nos. 902, 1158, 1421 & 1443** 1509

ORDER APPROVING STIPULATION BETWEEN THE REORGANIZED DEBTORS AND SAN DIEGO STATE UNIVERSITY RESEARCH FOUNDATION RESOLVING OBJECTION TO ASSUMPTION OF LICENSE AGREEMENT AND ESTABLISHING CURE AMOUNT

Upon consideration of *San Diego State University Research Foundation's Objection to School Specialty, Inc.'s Proposed Assumption of Executory Contract* [Dkt. No. 1421] (the "Objection") and the Reorganized Debtors' reply thereto [Dkt. No. 1443] (the "Reply"); and it appearing that the Court has jurisdiction to consider this matter in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware* dated as of February 29, 2012; and it appearing that venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and upon consideration of the *Stipulation Resolving Objection of San Diego State University Research Foundation to Assumption of License Agreement and Establishing Cure Amount* (the "Stipulation")[2]; and it appearing that the Stipulation is in the best interests of the Reorganized Debtors, their estates and creditors; and good and sufficient cause appearing therefor,

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[1] The Reorganized Debtors in these cases, along with the last four digits of each Reorganized Debtor's federal tax identification number and state of incorporation, are: School Specialty, Inc. (Del..; 1239), Bird-In-Hand Woodworks, Inc. (N.J.; 8811), Califone International, Inc. (Del.; 3578), Childcraft Education Corp. (N.Y.; 9818), ClassroomDirect.com, LLC (Del.; 2425), Delta Education, LLC (Del.; 8764), Frey Scientific, Inc. (Del.; 3771), Premier Agendas, Inc. (Wash.; 1380), Sax Arts & Crafts, Inc. (Del.; 6436), and Sportime, LLC (Del.; 6939). The address of the Reorganized Debtors' corporate headquarters is W6316 Design Drive, Greenville, Wisconsin 54942.

[2] Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Stipulation.

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IT IS HEREBY ORDERED THAT:

1. The Stipulation attached hereto as Exhibit A is hereby approved and incorporated herein as if set forth in full.

2. The Filed Claim shall be modified on the official claims register in accordance with the Stipulation by the Debtors' official claims agent, Kurtzman Carson Consultants, LLC.

3. This Court shall retain jurisdiction with respect to any and all matters arising from or related to the interpretation or implementation of this Order.

Dated: NOV 4, 2013
Wilmington, Delaware

THE HONORABLE KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE

Exhibit A

Stipulation

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: SCHOOL SPECIALTY, INC., *et al.*,[1] Reorganized Debtors.	Chapter 11 Case No. 13-10125 (KJC) Jointly Administered **Re: Dkt. Nos. 902, 1158, 1421 & 1443**

STIPULATION RESOLVING OBJECTION OF SAN DIEGO STATE UNIVERSITY RESEARCH FOUNDATION TO ASSUMPTION OF LICENSE AGREEMENT AND ESTABLISHING CURE AMOUNT

This Stipulation ("Stipulation") is entered into this 29th day of October, 2013, by and between the above-captioned reorganized debtors (the "Debtors" or "Reorganized Debtors," as applicable) and San Diego State University Research Foundation ("SDSURF") to resolve *San Diego State University Research Foundation's Objection to School Specialty, Inc.'s Proposed Assumption of Executory Contract* [Dkt. No. 1421] (the "Objection") and, except as otherwise provided herein, all other claims filed or asserted by SDSUF, regardless of whether such claims are known at this point in time (collectively and inclusive of the Filed Claim, as defined below, the "SDSURF Claims"), as follows:

RECITALS

WHEREAS, on January 28, 2013 ("Petition Date"), School Specialty, Inc. and certain of its affiliates filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Chapter 11 Cases").

[1] The Reorganized Debtors in these cases, along with the last four digits of each Reorganized Debtor's federal tax identification number and state of incorporation, are: School Specialty, Inc. (Del.; 1239), Bird-In-Hand Woodworks, Inc. (N.J.; 8811), Califone International, Inc. (Del.; 3578), Childcraft Education Corp. (N.Y.; 9818), ClassroomDirect.com, LLC (Del.; 2425), Delta Education, LLC (Del.; 8764), Frey Scientific, Inc. (Del.; 3771), Premier Agendas, Inc. (Wash.; 1380), Sax Arts & Crafts, Inc. (Del.; 6436), and Sportime, LLC (Del.; 6939). The address of the Reorganized Debtors' corporate headquarters is W6316 Design Drive, Greenville, Wisconsin 54942.

WHEREAS, on April 23, 2013, the Debtors filed the *Debtors' Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Dkt. No. 862] (the "Initial Plan") and the *Disclosure Statement for the Debtors' Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Dkt. No. 864] (the "Disclosure Statement"). Conditional approval of the Disclosure Statement was granted by the Court on April 24, 2013 [Dkt. No. 902] (the "Disclosure Statement Order").

WHEREAS, the Debtors subsequently filed the *Debtors' Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Dkt. No. 1158] (the "Plan"). A corrected order approving the Disclosure Statement on a final basis and confirming the Plan was entered on June 3, 2013 [Dkt. No. 1186] (the "Confirmation Order"). The Plan became effective on June 11, 2013 [Dkt. No. 1258] (the "Effective Date").

WHEREAS, on February 25, 2013, the Court entered that certain *Order Establishing Bar Dates for Filing Proofs of Claim, Including Section 503(b)(9) Claims and Approving the Form and Manner of Notice Thereof* [Dkt. No. 287] (the "Bar Date Order"). Pursuant to the Bar Date Order, all persons or entities who wished to assert claims against the Debtors' estates were required to file a proof of claim against the Debtors in these Chapter 11 Cases by no later than April 1, 2013 at 5:00 p.m. (prevailing Pacific Time) (the "Bar Date").

WHEREAS, as of the Petition Date, SDSURF and Sportime, LLC ("Sportime"), a Reorganized Debtor in these cases, were parties to that certain Exclusive Copyright License Agreement dated as of September 30, 2002 (the "License Agreement").

WHEREAS, on or about April 1, 2013, SDSURF timely filed a Proof of Claim asserting unpaid royalties of $150,000.00 due under the License Agreement [Claim No. 1549] ("Filed Claim").

WHEREAS, on May 15, 2013, the Debtors filed the First Amended Supplement to the Plan [Dkt. No. 1044], in which they identified the License Agreement, among others, as an executory contract to be assumed under the Plan.

WHEREAS, by agreement between the parties, the Debtors extended SDSURF's deadline to object to the Plan, including the assumption of the License Agreement, to May 31, 2013 or such later date as the parties might agree.

WHEREAS, on August 21, 2013, SDSURF filed an objection to Sportime's assumption of the License Agreement under the Plan (the "Objection") [Dkt. No. 1421] (their objection deadline having been extended by agreement between the parties).

WHEREAS, on September 5, 2013, the Reorganized Debtors filed a reply to the Objection [Dkt. No. 1443].

WHEREAS, on September 10, 2013, a hearing was held concerning the Objection, at which counsel agreed to adjourn the matter to give the parties additional time to resolve the Objection consensually.

WHEREAS, the Reorganized Debtors and SDSURF wish to resolve and settle the Objection to permit Sportime to assume the License Agreement, as amended and restated by the parties (the "Amended License Agreement"), and avoid further litigation.

NOW, THEREFORE, to resolve and settle the Objection and the SDSURF Claims, and to avoid further litigation of issues related thereto, in consideration of the mutual covenants and obligations herein, and other good and valuable consideration, the adequacy of which is hereby acknowledged, SDSURF and the Reorganized Debtors stipulate and agree as follows:

1. Reorganized Debtor Sportime is authorized to assume the Amended License Agreement in the form attached hereto as Exhibit 1. Effective as of the date of this Stipulation,

the Amended License Agreement attached hereto as Exhibit 1 shall replace and supersede the License Agreement that was in effect on the Petition Date.

2. As a condition to assumption, the Reorganized Debtors shall pay SDSURF a cure amount of $702,000.00 (the "Agreed Cure Amount"), in full and final satisfaction of all unpaid royalties due under the License Agreement as of the Petition Date and the related claims, including tort claims, asserted in the Objection. Payment of the Agreed Cure Amount shall further resolve the Objection.

3. The Reorganized Debtors shall pay the Agreed Cure Amount to SDSURF within ten (10) calendar days of the Court's approval of this Stipulation.

4. The Filed Claim is hereby expunged and the Debtors' official claims agent, Kurtzman Carson Consultants, LLC, shall modify the official claims register accordingly.

5. Except for the obligations set forth herein and in the Amended License Agreement, SDSURF, on behalf of itself and its present, former and future principals, agents, successors, assigns, attorneys, insurers, affiliates and subsidiaries, hereby waives, releases and discharges the Debtors, the Reorganized Debtors, the Debtors' estates, and each of their present, former and future principals, agents, successors, assigns, attorneys, insurers, affiliates and subsidiaries, from any and all claims, liabilities, damages, actions, causes of action, costs and fees, whether now known or unknown, arising from, related to, or in any manner concerning any aspect of the License Agreement and performance thereof, including without limitation royalties due to SDSURF under the License Agreement prior to the Petition Date or during the Chapter 11 Cases, and specifically including any and all matters and claims identified in the Objection. For the avoidance of doubt, SDSURF does not release the Reorganized Debtors from their obligation to make any and all post-Effective Date royalty payments due under the License Agreement

and/or the Amended License Agreement, including without limitation royalty payments due on account of sales that occur on or after October 1, 2013. SDSURF acknowledges that the Reorganized Debtors have made either directly or by way of compromise all royalty payments due up to and including the quarter ending September, 2013.

6. Except for the obligations set forth herein and in the Amended License Agreement, the Reorganized Debtors, on behalf of themselves, the Debtors, the Debtors' estates, and their present, former and future principals, agents, successors, assigns, attorneys, insurers, affiliates and subsidiaries, hereby waive, release and discharge SDSURF and each of its present, former and future principals, agents, successors, assigns, attorneys, insurers, affiliates and subsidiaries, from any and all claims, liabilities, damages, actions, causes of action, costs and fees, whether now known or unknown, arising from, related to, or in any manner concerning any aspect of the License Agreement and performance thereof, including without limitation royalties due to SDSURF under the License Agreement prior to the Petition Date or during the Chapter 11 Cases, and specifically including any and all matters and claims identified in the Objection.

7. Except as otherwise stated herein, SDSURF and the Reorganized Debtors further acknowledge section 1542 of the Civil Code of the State of California and hereby waive and relinquish all rights and benefits that they may have thereunder with respect to the matters addressed herein.

8. For the avoidance of doubt, nothing herein shall affect or impair the respective rights and obligations of SDSURF and the Reorganized Debtors under the Amended License Agreement, attached hereto as Exhibit 1.

9. The signatories hereto represent and warrant that, subject to this Court's approval of this Stipulation, he/she has the right, power and authority to execute this Stipulation on behalf of their respective clients.

10. This Stipulation may be executed in counterparts which, when taken together, shall constitute one and the same instrument.

11. This Stipulation constitutes the entire agreement among the parties hereto with respect to the matters addressed herein.

12. This Stipulation and the parties' rights and obligations contemplated hereby are subject to this Court's approval and the entry of an order approving this Stipulation.

13. This Court shall retain jurisdiction over any and all issues arising from or related to the implementation and interpretation of this Stipulation.

Dated: October 29, 2013

YOUNG CONAWAY STARGATT & TAYLOR LLP

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Counsel for San Diego State University Research Foundation

Exhibit 1

Amended License Agreement

AMENDED AND RESTATED

EXCLUSIVE PUBLISHING, MARKETING, AND LICENSE AGREEMENT

BETWEEN

SAN DIEGO STATE UNIVERSITY RESEARCH FOUNDATION

AND

SPORTIME, LLC

This Exclusive Publishing, Marketing, and License Agreement ("License Agreement") is entered into as of this 28th day of October, 2013 ("Commencement Date"), by and between San Diego State University Research Foundation f/k/a San Diego State University Foundation ("SDSURF"), a non-profit corporation duly organized and existing under the laws of California and having a principal place of business at 5250 Campanile Drive, San Diego, CA 92182-1998, United States of America (hereinafter "SDSURF"), and Sportime, LLC having its principal place of business at W6316 Design Drive, Greenville, WI 54942 (hereinafter "LICENSEE") as an amendment and restatement of the "EXCLUSIVE COPYRIGHT AGREEMENT Between San Diego State University Foundation and Sportime, LLC" made effective September 30th, 2002. The parties to this License Agreement shall sometimes be referred to collectively as the "Parties" or individually as a "Party."

1. Definitions

1.1 **"Licensed Material"** presently includes those materials identified on Exhibit A, which LICENSEE warrants are the only Licensed Material currently marketed and sold by LICENSEE. The term "Licensed Material" also means (1) the SPARK Works; (2) all Derivative Works of any SPARK Works; (3) any SPARK Works, present or future, created with any assistance from SDSURF, San Diego State University ("SDSU"), their faculty, staff, research and/or consultants; and (4) any materials and products, present or future, bearing the SPARK Trademark. All Intellectual Property Rights in all Licensed Material are the exclusive property of SDSURF. For avoidance of doubt, the term Licensed Material expressly incorporates and encompasses the terms SPARK Works, SPARK Trademark, and Derivative Works. Except as provided in Section 4.1 hereof, the term Licensed Material expressly excludes any training services offered by LICENSEE under any trademark whether or not it includes the word SPARK.

1.2 **"SPARK Works"** consists of those materials identified on Exhibit B.

1.3 **"Derivative Work"** shall mean a copyrightable work derived in any respect from the Spark Works. Derivative Works include any materials and products derived from the research used in the development of the Licensed Material, as well as all future research conducted by SDSURF, SDSU, their faculty, staff, research, and/or consultants in connection with the Licensed Material. The copyrights in all Derivative Works shall be the exclusive property of SDSURF.

1.4 **"Intellectual Property Rights"** shall mean any copyrights and/or trademark rights pertaining to Licensed Material in any media format that SDSURF may own, acquire, or have the right to license in the "Territory."

1.5 **"Market"** shall mean the act of commercialization of Licensed Material by LICENSEE or Sublicensees including without limitation: (1) the marketing and promotion of the Licensed

Material; (2) the sublicensing by LICENSEE to Sublicensees of the right to promote, market and sell the Licensed Material; (2) the sale or other transfer of Licensed Material by LICENSEE or Sublicensees to End Users. The term Market shall include the right of LICENSEE and Sublicensees to use and demonstrate Licensed Material or portions thereof for the purpose of commercializing the Licensed Material.

1.6 **"Sublicensee"** shall mean any party entering into a sublicense agreement or other agreement with LICENSEE to Market the Licensed Material.

1.7 **"End User"** shall mean any individual, public agency, school district, corporation, limited liability company, partnership, or other entity of any nature whatsoever, which buys, leases, borrows, and/or uses the Licensed Material.

1.8 **"Territory"** shall mean worldwide.

1.9 **"Revenue"** shall mean the gross Revenue collected by LICENSEE from the sale, leasing, licensing or other distribution of the Licensed Material, less any actual shipping charges, sales taxes and value added taxes included in the amounts collected.

1.10 **"Host"** shall mean to make electronic copies of the Licensed Material available for use either directly online, or in downloadable form.

1.11 **"SPARK Trademark"** means any trademark that includes the word SPARK in any form and is approved by SDSURF for use by LICENSEE under the terms of this Agreement.

2. Grant of License and Rights Associated Therewith

2.1 SDSURF grants an exclusive license to the LICENSEE to Market, whether independently and/or through a Sublicensee, the Licensed Material in the Territory in consideration for LICENSEE's compliance with this License Agreement, including without limitation the royalty payments required under section 4.1 hereof. This grant shall include:

(1) the LICENSEE's exclusive right to print, publish, Host and sell the Licensed Material and any Derivative Works, separately or as part of any other publication of the LICENSEE;

(2) the LICENSEE's exclusive right to reproduce the Licensed Material, in whole or in part, in all languages, formats or media, whether now known or later developed;

(3) the LICENSEE's exclusive right to market and promote the Licensed Material;

(4) the LICENSEE's exclusive right to make or have made any revisions or new editions of the Licensed Materials through consultation and approval by SDSURF, such approval shall not be unreasonably denied. All such revisions and/or modifications of any nature whatsoever shall be included in the definition of Derivative Works as set forth in Section 1.3.

2.2 The term of this Agreement shall commence on the date of the signing of this Agreement and shall continue until terminated in accordance with Article 11 hereof.

2.3 SDSURF retains a non-exclusive, royalty-free, license to the Licensed Material for academic purposes only, including use in research and for fulfillment of any grants related to such development.

2.4 SDSURF will have reasonable oversight and approval authority of any Derivative Works produced by LICENSEE. Prior to the marketing of any Derivative Works, LICENSEE shall

notify SDSURF in writing of the proposed Derivative Works and solicit the input of SDSURF in the development of such Derivative Works. If SDSURF approves the proposed Derivative Works, LICENSEE shall have the right to market, sell, lease, or otherwise purvey such Derivative Works pursuant to the terms of this License Agreement. If SDSURF does not notify LICENSEE of SDSRUF's disapproval of any submissions by LICENSEE, and the reasons for any such disapproval, within thirty (30) days of such submission to the individual identified in Section 12.5, SDSURF shall be deemed to have approved the materials in the submission.

2.5 LICENSEE shall neither grant any sublicense nor renegotiate the material terms thereof without prior notification to and the prior written approval of SDSURF, which consent shall not be unreasonably withheld. Any and all sublicenses shall be made at arm's length and on commercially reasonable terms consistent with the mutual intent of LICENSEE and SDSURF to commercialize the Licensed Material in a profitable manner. SDSURF may in its sole and absolute discretion agree to reduce the twenty two percent (22%) royalty due on sublicenses in order to commercialize the Licensed Material in a profitable manner; however, any such agreement must be in writing signed by an authorized representative of SDSURF.

2.6 SDSURF shall not grant any license to any other entity to make any use of Licensed Material without first obtaining LICENSEE's written consent.

3. Trademark

3.1 SDSURF owns the SPARK trademark for use in connection with the Licensed Material, as well as any and all other rights conferred now or in the future with respect to the SPARK trademark.

3.2 LICENSEE acknowledges that the nature and quality of the Licensed Material and the SPARK trademark has a material influence on the reputation of SDSURF and SDSU.

3.3 LICENSEE agrees to allow SDSURF to inspect samples of the Licensed Material and all Derivative Work upon request by SDSURF. SDSURF shall bear the reasonable cost, if any, of such inspections. Unreasonable refusal to honor a request by SDSURF to inspect any of the Licensed Material or Derivative Work shall constitute a material breach of this License Agreement.

3.4 SDSURF agrees to obtain and maintain U.S. trademark registrations on the SPARK marks used by LICENSEE with the consent of SDSURF.

4. Reporting and Payment

4.1 LICENSEE agrees to pay SDSURF a royalty equal to eleven percent (11%) of all Revenue derived from the sale by LICENSEE, or by any sublicensee affiliated with LICENSEE, of the Licensed Material. If LICENSEE has or otherwise acquires any ownership interest, whether actual or beneficial, in a sublicensee, such sublicensee shall be deemed affiliated with LICENSEE for purposes of calculating the eleven percent (11%) royalties due SDSURF. If LICENSEE sublicenses the Licensed Material to any entity not an affiliate of LICENSEE, LICENSEE will pay SDSURF twenty-two percent (22%) of the Revenues received by LICENSEE from a sublicensee. No royalty shall be paid on revenues for training, provided that LICENSEE'S charges and prices for training are reasonable and provided for the purpose of supporting the sales of the curriculum products.

a. In any case where the Licensed Materials are included in a package with other products of LICENSEE for a single price ("Bundled Sales"), the Revenues attributable to the Licensed Materials shall be determined by prorating the receipts from the package based upon LICENSEE'S list prices for the separate products contained in such package. The Royalty shall then be applied to the amounts so allocated to the Licensed Material. If one or more of the products contained in such package does not have a list price assigned to it by LICENSEE for any reason, including that the particular product is not sold separately, LICENSEE shall allocate the net amount received in light of the relative cost of the products contained in such package. LICENSEE warrants that the Bundled Sales of the Products will not have a material adverse effect on the payment of Royalties by LICENSEE to SDSURF.

b. All payments shall be made in United States Dollars to SDSURF at the address set forth for notices or to a bank which may be designated by SDSURF from time to time. In the event that any currency conversion is required in connection with any fees payable under this Agreement, such conversion shall be made by using the exchange rate prevailing at the Chase Manhattan Bank (N.A.) on the last business day of the calendar quarter reporting period to which said payment relates. All payments shall be due no later than forty-five (45) calendar days from the end of the quarter for which such payments are due. Failure to timely pay royalties due hereunder shall constitute a material breach of this License Agreement.

4.2 LICENSEE shall maintain full, clear and accurate books of account with respect to all Licensed Material sold by LICENSEE or Sublicensees. The books of account shall be prepared in accordance with generally accepted accounting principles ("GAAP") for the United States. The books of account shall be kept at the principal place of business of LICENSEE. Such books and the supporting data shall be open at all reasonable times for four (4) years following the end of the fiscal year to which they pertain, to the inspection of representatives of SDSURF for the purpose of verifying LICENSEE's royalty statement or compliance in other respects with this Agreement. SDSURF shall have the right to cause an independent, certified public accountant reasonably acceptable to the LICENSEE to audit such records to confirm royalty payments for up to the past four (4) preceding fiscal years. SDSURF shall bear the full cost of such audit unless such audit discloses an underpayment by more than 5% or $10,000, whichever is more, of the amount due under this Agreement. In such case, the LICENSEE shall bear the full cost of such audit and pay for such shortcomings immediately upon such findings being delivered to the LICENSEE. Any non-payment of such amounts will constitute a breach hereunder. Failure to maintain accurate books of account and provide accurate accounts to SDSURF on a timely basis shall constitute a material breach of this License Agreement.

4.3 LICENSEE shall make and deliver each quarter a written accounting to SDSURF of all copies of the Licensed Material sold by LICENSEE and Sublicensees for the respective three-month periods. All such written accountings shall be made no later than forty-five (45) calendar days from the end of each quarter and shall include the following:

(1) Total number of sales and gross revenues received on a product by product basis, so as to reasonably apprise SDSURF of each product sold, the revenue received from such sales, and the royalties due thereon; and

(2) Total fees due SDSURF.

4.4 With each such report submitted, LICENSEE shall pay to SDSURF the royalties due under this License Agreement. If no fees shall be due, LICENSEE shall so report. Failure of LICENSEE to account for and/or remit payment to SDSURF as provided herein shall constitute a material breach of this Agreement.

5. Confidentiality

5.1 LICENSEE shall not sell, assign, lease, license, disclose, give, or otherwise transfer said Licensed Material or any copy thereof to any other person except in strict accordance with this License Agreement.

5.2 In the course of this License Agreement, each party may learn confidential information of the other party. Each party agrees that it will release confidential information, software, or material only to an employee or subcontractor of that party who has need for such information, software or material. Each party shall safeguard any and all copies of confidential information, against any unauthorized disclosure, and shall take all reasonable steps to ensure that the provisions of this License Agreement are not violated by Sublicensees or any person under its control or in its services.

5.3 For avoidance of doubt, the general existence of this Agreement, and the identification of the properties licensed under this Agreement, shall not constitute confidential information under this provision, whereas the specific financial terms of this Agreement shall be treated as confidential information under this Agreement.

5.4 These obligations of confidentiality shall survive the termination of this License Agreement.

6. Reproduction and Copyrights

6.1 LICENSEE acknowledges that the Licensed Material and documentation are entitled to protection under the Copyright Laws of the countries within the Territory. Except as expressly permitted by the terms of this Agreement, LICENSEE may not copy or otherwise reproduce any part of the Licensed Material without the prior written consent of SDSURF.

6.2 SDSURF maintains the copyright to Licensed Material and all Derivative Works.

6.3 Any copies of the Licensed Material or portions thereof shall have affixed thereto a copyright notice in such a manner as to give reasonable notice of SDSURF's claim of copyright.

6.4 SDSURF may use the Licensed Material for noncommercial, noncompetitive internal research and educational purposes. SDSURF will notify LICENSEE prior to each such activity.

7. Due Diligence

7.1 LICENSEE shall use diligent commercial efforts to promote, market, and sell the Licensed Material in the Territory through a diligent program to obtain maximum commercialization of Licensed Material. Maximum commercialization of the Licensed Material shall include adequate funding for marketing, research, development, and sales of the Licensed Material, as measured by market standards for similar business enterprises in the physical education marketplace. SDSURF reserves the right to reasonably determine whether LICENSEE is using diligent commercial efforts to promote, market, and sell the Licensed Material in a diligent manner, which may be measured by, *inter alia*, historic sales, market share, and/or market visibility. The failure to use diligent commercial efforts to promote, market, and sell the

Licensed Material in order to obtain maximum commercialization of the Licensed Material shall constitute a material breach of this License Agreement.

7.2 LICENSEE shall hold quarterly meetings each year of this License Agreement for the purpose of reviewing, reporting and discussing the financial activities related to the Licensed Material, as well as discussing and making strategic decisions concerning the future promotion, marketing, and sale of the Licensed Material. LICENSEE agrees that SDSURF has the right to designate up to three (3) individuals to attend and participate in such quarterly meetings for purposes of ensuring performance of this License Agreement and acting as liaisons between LICENSEE and SDSURF. LICENSEE covenants to exercise good faith and due diligence in the appointment of the Executive Director or other executive, howsoever denominated (collectively "Executive Director"), controlling performance of this License Agreement in order to ensure that such Executive Director is qualified and administers the License Agreement in a manner consistent with the good name and reputation of SDSURF.

7.3 LICENSEE shall conduct all promotional, marketing, and sales efforts in a manner consistent with the good reputation of SDSU, SDSURF and the Licensed Material, as well as refrain from any activities that might diminish, tarnish, or otherwise damage the good reputation of SDSU, SDSURF, and the Licensed Material.

7.4 As a material inducement to SDSURF consenting to this License Agreement, LICENSEE agrees not to, and shall not, promote, market, and/or sell any products competitive to the Licensed Material, that is, curriculum products directed to children from pre-school through high school. This provision does not prohibit LICENSEE from selling equipment under different trademarks even though the equipment is comparable to any equipment licensed to use the SPARK trademark.

8. Infringement

8.1 In the event of any infringement upon the Intellectual Property Rights, SDSURF expressly reserves the right to pursue civil action in its own name to obtain injunction, damages or any other form of redress for such infringement. Such right is without exclusion to LICENSEE's right to also seek injunction, damages or any other form of redress for such infringement. SDSURF and LICENSEE agree to cooperate with one another, each at its own expense, in pursuing any remedies for any infringement of the Intellectual Property Rights. If LICENSEE sues an infringer and receives any award for such infringement, LICENSEE shall pay to SDSURF, after deduction for all litigation expenses incurred by LICENSEE in the course of the litigation, royalties on the balance received as follows: (a) to the extent any such balance is received as sales lost by LICENSEE, the royalty defined in Section 4.1 as to that portion; (b) to the extent that any such balance is received as lost profits by LICENSEE, twenty-two percent (22%) of that portion of the balance; and (c) to the extent that any such balance is received as reasonable royalties by LICENSEE, fifty percent (50%) of that portion of the balance.

8.2 Each party shall inform the other promptly in writing of any alleged infringement of the Intellectual Property Rights by a third party and of any available evidence thereof. Notwithstanding the foregoing, SDSURF and LICENSEE may agree in writing on a case by case basis to modify the rights as defined herein for the pursuit of any injunctions, damages, or other form of redress for infringement upon the Intellectual Property Rights.

9. Export Controls

9.1 LICENSEE hereby agrees that it shall not sell, transfer, export or re-export any Licensed Material or related information in any form, or any direct products of such information, except in compliance with all applicable laws, including the export laws of any U.S. government agency and any regulations thereunder, and will not sell, transfer, export or re-export any such Licensed Material or information to any persons with regard to which there exist grounds to reasonably suspect or believe that they are violating such laws. LICENSEE shall be solely responsible for obtaining all licenses, permits, or authorizations required from the U.S. and any other government for any such export or re-export.

10. Representations and Warranties

10.1 SDSURF represents and warrants that:

(1) SDSURF has the right to enter into this License Agreement, as well as all necessary approvals and rights have been secured from third parties as necessary to enable the formation of this Agreement;

(2) The Authors are the sole Authors of the Licensed Material;

(3) The Licensed Material does not infringe upon any statutory copyright or upon any common law right, privacy right, publicity right, proprietary right or any other whatsoever, or contain any obscene, indecent, scandalous, libelous, defamatory, or unlawful matter; and

(4) All statements contained in the Licensed Material purporting to be facts are true.

10.2 LICENSEE represents and warrants that:

(1) LICENSEE is duly incorporated in the state of Delaware and has the legal capacity to enter into this Agreement;

(2) LICENSEE has the right to enter into this License Agreement and all necessary approvals and rights have been secured from third parties as necessary to enable the formation of this Agreement; and

(3) LICENSEE has the capacity, sophistication, and knowhow to perform the License Agreement;

(4) LICENSEE has read, understands, and agrees to perform the terms of this License Agreement in good faith.

10.3 All warranties and representations contained in Article 10 are made by the party making the warranty or representation for the benefit of the other party and are acknowledged as being material to this Agreement.

11. Term and Termination

11.1 This Agreement shall terminate thirty (30) days after written notice of termination by one party or the other for any material breach of any obligation of this License Agreement, unless such breaching party remedies or otherwise cures such breach before the end of such thirty (30) day period, or, if the breach is of a type that cannot be cured within thirty (30) days, then unless such breaching party begins in earnest to remedy or otherwise cure the breach. Additionally, unreasonably repetitive violations of this License Agreement and/or any misuse of the Licensed

Material shall constitute a "material breach" justifying termination of this License Agreement, even if cured. For the avoidance of doubt, the right to cure does not extend to fraud, deceit, or other repetitive violations of this License Agreement; it is only a right to cure inadvertent, material breaches of this License Agreement.

11.2 SDSUF and LICENSEE agree that protecting the reputation of SDSU, SDSUF, and the Licensed Material is a material inducement to this License Agreement, and the declaration of insolvency, appointment of a receiver, or any other assignment for the benefit of creditors would be detrimental to the reputation of SDSU, SDSUF, and the Licensed Material. Thus, it is contractually agreed that this License Agreement shall terminate immediately if an assignment is made of LICENSEE's business for the benefit of creditors, if a receiver, trustee in bankruptcy or like official is appointed to take all or part of LICENSEE's property, or if LICENSEE ceases doing business in the ordinary course.

11.3 The termination of this License Agreement shall automatically terminate all sublicense agreements entered by LICENSEE. Consequently, any sublicense agreement must contain an enforceable clause making the termination of the sublicense agreement coterminous with the termination of this License Agreement.

11.4 Upon termination, LICENSEE shall:

(1) Discontinue use of Licensed Material, except that if LICENSEE is itself a purchaser of copies of the Licensed Material, LICENSEE may continue to use such Licensed Material, but only in accordance with the terms governing all End Users at the time of the purchase;

(2) Remove the Licensed Material from LICENSEE's possession or control that incorporates or uses the Licensed Material in whole or in part;

(3) Be entitled to sell on a non-exclusive basis the remaining Licensed Material in its inventory and to complete and deliver any sales that originated prior to the date of termination including contract obligations; and

(4) Notify all Sublicensees that their sublicense agreement is terminated, as well as ensure that all Sublicensees abide by the provisions of Section 11.4, subdivision (1) through (3).

12. General Terms

12.1 This License Agreement, the licenses granted hereunder, and any of the terms and conditions as set forth in this License Agreement, may not be assigned or otherwise transferred in whole or part by the LICENSEE without the prior written consent of the SDSURF, which consent shall not be unreasonably withheld or delayed. Any attempt to transfer such rights except as specifically set forth in this License Agreement or without the prior written consent of the other Party shall be void.

12.2 This License Agreement, including its Exhibit A, sets forth the entire agreement and understandings between the Parties as to the subject matter hereof and merges all prior discussions between them, such that no Parties shall be bound by any conditions, definitions, warranties, understandings or representations with respect to such subject matter other than as expressly provided herein.

12.3 This License Agreement, and any dispute arising hereunder, shall be construed and enforced in accordance with, and be governed by, California law. The Parties hereto agree that

proper jurisdiction and venue for any suit brought to interpret or enforce any term or provision of this License Agreement shall be in San Diego County, California, or in federal court located in San Diego, California.

12.4 The Parties acknowledge that this License Agreement, in its final form, is the result of the combined efforts of the Parties hereto and that should any provision of this License Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this License Agreement in favor of or against any Party herein, but rather by construing the terms of this License Agreement fairly and reasonably in accordance with their generally accepted meaning and the purposes for which this License Agreement is made.

12.5 Any payment, notice or other communication pursuant to this License Agreement shall be sufficiently made or given on the date of receipt of mailing if sent to such party by certified first class mail, postage prepaid, addressed to it as its address below or as it shall designate by written notice given to the other Party, return receipt requested:

In the case of SDSURF:

Michael Rondelli
Director, Technology Transfer Office
San Diego State University Foundation
5250 Campanile Drive
San Diego, CA. 92182-1998
Telephone: (619) 594-3336
FAX: (619) 594-5174
Email Address: mrondelli@foundation.sdsu.edu

In the case of LICENSEE:

Karen Riching, Assistant Secretary
Sportime, LLC
W6316 Design Drive
Greenville, WI 54942
Telephone: (920) 882-5604
Fax: 920-882-5863
Email: Karen.Riching@schoolspecialty.com

With copies to:

Nicholas A. Kees
Godfrey & Kahn, S.C.
780 North Water Street
Milwaukee, WI 53202
Telephone: 414-273-3500
Fax: 414-273-5198
Email: nakees@gklaw.com

12.6 In the event any term, covenant, condition, provision or agreement herein contained is held to be invalid or void by any court of competent jurisdiction, the invalidity of any such term,

covenant, condition, provision or agreement shall in no way affect any other term, covenant, condition, provision or agreement herein contained.

12.7 LICENSEE is an independent contractor, not an employee or agent of SDSURF. LICENSEE has no authority or power by any act to grant any sublicense or distribution rights in any way related to the Licensed Material to any entity, government or organization of any sort, except as expressly provided herein.

12.8 Failure of SDSURF or LICENSEE to seek a remedy for the breach of any portion of this Agreement shall not constitute a waiver of its rights with respect to the same or any subsequent breach. No waiver shall be effective unless transmitted in writing and in accordance with the provisions herein for notice requirements.

12.9 This License Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. This License Agreement may also be executed and a copy of such executed License Agreement transmitted by facsimile or e-mail, which when received can be used as an original of the License Agreement for all purposes.

12.10 Upon the termination or expiration of this Agreement, whatever the cause, the following provisions shall remain effective: Articles 5, 6, and 12.

13. Execution

IN WITNESS THEREOF, the parties hereto have set their hands by an officer duly authorized as of the date first above written.

LICENSEE

SPORTIME, LLC

By: _____

Printed: David N. Vander Ploeg

Title: VP-Treasurer

SDSURF

San Diego State University Research Foundation

By: _____

Timothy Hushen

Title: Associate Executive Director

Date: 10-28-2013

SDSURF

EXHIBIT A

LICENSED MATERIAL

The Licensed Material include the following products, whether sold individually or as part of a bundle, package or set.

SPARK EARLY CHILDHOOD PHYSICAL EDUCATION PROGRAM

1. **Early Childhood Physical Education Curriculum Manual**
   Printed Early Childhood Physical Education manual containing program activities, musical activities for warm-up and cool-down, academic integration tools, inclusion strategies and limited space adaptations.
2. **Early Childhood Physical Education Music CD**
   Compact discs containing the audio/music content needed to teach the Early Childhood Physical Education program.
3. **Early Childhood Physical Education SPARKfolio**
   Box containing physical versions of Early Childhood Physical Education program content downloaded from SPARKfamily.org, including color-coded and laminated cards divided by tabs.
4. **Early Childhood Physical Education SPARKfamily.org**
   Complete "e-Manual" with digital files of all content, instructional videos of Early Childhood Physical Education program activities and dances, interactive alignment and assessment tools, skill and task cards in English and Spanish, and audio files for use with iPod or MP3 player

K-2 PHYSICAL EDUCATION PROGRAM

5. **K-2 Physical Education Curriculum Manual**
   Printed K-2 Physical Education Manual containing program activities, daily lesson plans aligned to National Association for Sport and Physical Education standards, academic integration tools and brain based activities, and social skills themes by grade level.
6. **K-2 Physical Education Music CD**
   Compact discs containing the audio/music content needed to teach the K-2 Physical Education program, including warm-up music, long and short music intervals for skill/fitness circuits, and songs (cultural, current, country, etc.) to instruct SPARK Dances
7. **K-2 Physical Education SPARKfolio**
   Box containing physical versions of K-2 Physical Education program content downloaded from SPARKfamily.org, including color-coded and laminated cards divided by tabs.
8. **K-2 Physical Education SPARKfamily.org**
   Complete "e-Manual" with digital files of all content, instructional videos of K-2 Physical Education program activities and dances, interactive alignment and assessment tools, skill and task cards in English and Spanish, and audio files for use with iPod or MP3 player

3-6 PHYSICAL EDUCATION PROGRAM

9. **3-6 Physical Education Curriculum Manual**
   Printed 3-6 Physical Education Manual containing program activities aligned to National Association for Sport and Physical Education standards, academic integration tools and brain based activities, and social skills themes by grade level.
10. **3-6 Physical Education Music CD**
    Compact discs containing the audio/music content needed to teach the 3-6 Physical Education program, including warm-up music, long and short music intervals for skill/fitness circuits, and songs (cultural, current, country, etc.) to instruct SPARK Dances
11. **3-6 Physical Education SPARKfolio**
    Box containing physical versions of 3-6 Physical Education program content downloaded from SPARKfamily.org, including color-coded and laminated cards divided by tabs.
12. **3-6 Physical Education SPARKfamily.org**
    Complete "e-Manual" with digital files of all content, instructional videos of 3-6 Physical Education program activities and dances, interactive alignment and assessment tools, skill and task cards in English and Spanish, and audio files for use with iPod or MP3 player

MIDDLE SCHOOL PHYSICAL EDUCATION PROGRAM

13. **Middle School Physical Education Curriculum Manual**
    Printed Middle School Physical Education Manual containing program activities aligned to National Association for Sport and Physical Education standards, suggested plans for grade level specific instruction, materials to promote successful behavioral techniques, and materials focused on management and organizational techniques to increase moderate-to-vigorous physical activity.
14. **Middle School Physical Education Music CD**
    Compact discs containing the audio/music content needed to teach the Middle School Physical Education program, including warm-up and cool-down music, and long and short intervals for circuit training.
15. **Middle School Physical Education SPARKfolio**
    Box containing physical versions of Middle School Physical Education program content downloaded from SPARKfamily.org, including color-coded and laminated cards divided by tabs.
16. **Middle School Physical Education SPARKfamily.org**
    Complete "e-Manual" with digital files of all content, instructional videos of Middle School Physical Education program activities and dances, interactive alignment and assessment tools, personally fit wellness extensions with home activity challenges, skill and task cards in English and Spanish, and audio files for use with iPod or MP3 player.

HIGH SCHOOL PHYSICAL EDUCATION PROGRAM

17. **High School Physical Education Curriculum Manual**
    Printed High School Physical Education Manual containing instructional units, "Character Matters" educational resources to promote and assess character development, year-round fitness sections to promote lifelong wellness, and sections focused on management and organizational techniques to increase moderate-to-vigorous physical activity.
18. **High Physical Education Music CD**
    Compact discs containing the audio/music content needed to teach the High School Physical Education program, including warm-up and cool-down music.
19. **High Physical Education SPARKfolio**
    Box containing physical versions of High School Physical Education program content downloaded from SPARKfamily.org, including color-coded and laminated cards divided by tabs.
20. **High Physical Education SPARKfamily.org**
    Complete "e-Manual" with digital files of all content, instructional videos of High School Physical Education program activities and dances, interactive alignment and assessment tools, personally fit wellness extensions with home activity challenges, skill and task cards in English and Spanish, and audio files for use with iPod or MP3 player.

AFTER SCHOOL PHYSICAL EDUCATION PROGRAM

21. **After School Physical Education Curriculum Manual**
    Printed After School Physical Education Manual containing activities, ASAP (Activities to get kids Active Soon As Possible), STEM Academic Connections, Character Matters development resources, The Right Fit suggestions for group size or limited space, and Food Facts nutrition education integrations.
22. **After School Physical Education Music CD**
    Compact discs containing the audio/music content needed to teach the After School Physical Education program.
23. **After School Physical Education SPARKfolio**
    Box containing physical versions of After School Physical Education program content downloaded from SPARKfamily.org, including color-coded and laminated cards divided by tabs.
24. **After School Physical Education SPARKfamily.org**
    Complete "e-Manual" with digital files of all content, instructional videos of After School Physical Education program activities and dances, interactive alignment and assessment tools, personally fit wellness extensions with home activity challenges, skill and task cards in English and Spanish, and audio files for use with iPod or MP3 player.

EXHIBIT B

SPARK WORKS

SPARK EARLY CHILDHOOD PHYSICAL EDUCATION PROGRAM

1. **Early Childhood Physical Education Curriculum Manual**
   Printed Early Childhood Physical Education manual containing program activities, musical activities for warm-up and cool-down, academic integration tools, inclusion strategies and limited space adaptations.
2. **Early Childhood Physical Education SPARKfolio**
   Box containing physical versions of Early Childhood Physical Education program content downloaded from SPARKfamily.org, including color-coded and laminated cards divided by tabs.
3. **Early Childhood Physical Education SPARKfamily.org**
   Complete "e-Manual" with digital files of all content, instructional videos of Early Childhood Physical Education program activities and dances, interactive alignment and assessment tools, skill and task cards in English and Spanish, and audio files for use with iPod or MP3 player

K-2 PHYSICAL EDUCATION PROGRAM

4. **K-2 Physical Education Curriculum Manual**
   Printed K-2 Physical Education Manual containing program activities, daily lesson plans aligned to National Association for Sport and Physical Education standards, academic integration tools and brain based activities, and social skills themes by grade level.
5. **K-2 Physical Education SPARKfolio**
   Box containing physical versions of K-2 Physical Education program content downloaded from SPARKfamily.org, including color-coded and laminated cards divided by tabs.
6. **K-2 Physical Education SPARKfamily.org**
   Complete "e-Manual" with digital files of all content, instructional videos of K-2 Physical Education program activities and dances, interactive alignment and assessment tools, skill and task cards in English and Spanish, and audio files for use with iPod or MP3 player

3-6 PHYSICAL EDUCATION PROGRAM

7. **3-6 Physical Education Curriculum Manual**
   Printed 3-6 Physical Education Manual containing program activities aligned to National Association for Sport and Physical Education standards, academic integration tools and brain based activities, and social skills themes by grade level.

8. **3-6 Physical Education SPARKfolio**
   Box containing physical versions of 3-6 Physical Education program content downloaded from SPARKfamily.org, including color-coded and laminated cards divided by tabs.
9. **3-6 Physical Education SPARKfamily.org**
   Complete "e-Manual" with digital files of all content, instructional videos of 3-6 Physical Education program activities and dances, interactive alignment and assessment tools, skill and task cards in English and Spanish, and audio files for use with iPod or MP3 player

MIDDLE SCHOOL PHYSICAL EDUCATION PROGRAM

10. **Middle School Physical Education Curriculum Manual**
    Printed Middle School Physical Education Manual containing program activities aligned to National Association for Sport and Physical Education standards, suggested plans for grade level specific instruction, materials to promote successful behavioral techniques, and materials focused on management and organizational techniques to increase moderate-to-vigorous physical activity.
11. **Middle School Physical Education SPARKfolio**
    Box containing physical versions of Middle School Physical Education program content downloaded from SPARKfamily.org, including color-coded and laminated cards divided by tabs.
12. **Middle School Physical Education SPARKfamily.org**
    Complete "e-Manual" with digital files of all content, instructional videos of Middle School Physical Education program activities and dances, interactive alignment and assessment tools, personally fit wellness extensions with home activity challenges, skill and task cards in English and Spanish, and audio files for use with iPod or MP3 player.

HIGH SCHOOL PHYSICAL EDUCATION PROGRAM

13. **High School Physical Education Curriculum Manual**
    Printed High School Physical Education Manual containing instructional units, "Character Matters" educational resources to promote and assess character development, year-round fitness sections to promote lifelong wellness, and sections focused on management and organizational techniques to increase moderate-to-vigorous physical activity.
14. **High Physical Education SPARKfolio**
    Box containing physical versions of High School Physical Education program content downloaded from SPARKfamily.org, including color-coded and laminated cards divided by tabs.
15. **High Physical Education SPARKfamily.org**
    Complete "e-Manual" with digital files of all content, instructional videos of High School Physical Education program activities and dances, interactive alignment and assessment tools, personally fit wellness extensions with home activity challenges, skill and task cards in English and Spanish, and audio files for use with iPod or MP3 player.

AFTER SCHOOL PHYSICAL EDUCATION PROGRAM

16. **After School Physical Education Curriculum Manual**
    Printed After School Physical Education Manual containing activities, ASAP (Activities to get kids Active Soon As Possible), STEM Academic Connections, Character Matters development resources, The Right Fit suggestions for group size or limited space, and Food Facts nutrition education integrations.
17. **After School Physical Education SPARKfolio**
    Box containing physical versions of After School Physical Education program content downloaded from SPARKfamily.org, including color-coded and laminated cards divided by tabs.
18. **After School Physical Education SPARKfamily.org**
    Complete "e-Manual" with digital files of all content, instructional videos of After School Physical Education program activities and dances, interactive alignment and assessment tools, personally fit wellness extensions with home activity challenges, skill and task cards in English and Spanish, and audio files for use with iPod or MP3 player.