

AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2015, by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(hereinafter referred to as "SBBC"),

a body corporate and political subdivision of the State of Florida,

whose principal place of business is

600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

K12 Florida, LLC

(hereinafter referred to as "K12 Florida"),

whose principal place of business is

2300 Corporate Park Drive, Suite 200

Herndon, VA 20171

WHEREAS, Section 1002.45 (2) (c), Florida Statutes, allows SBBC to enter into a contract with an approved Florida Department of Education vendor to obtain curriculum and related services to offer an instruction program to students enrolled in its school district ; and

WHEREAS, K12 Florida is willing to provide such curriculum and related services to enable SBBC to provide a virtual instruction program to SBBC's students.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1 - RECITALS

1.01 **Recitals.** The parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on upon execution by all parties and conclude on June 30, 2016.

2.02 **Priority of Documents.** In the event of a conflict between documents, the following priority of documents shall govern.

First: This Agreement, then;

Second: **Appendix A**, then;

Third: **Appendix B**.

ARTICLE 2 – SPECIAL CONDITIONS

2.03 **Description of Services.** K12 Florida will provide SBBC with products and services including, where applicable, a limited, non-exclusive, non-transferable license, without sublicense right, for access to the K12 Florida or Affiliates online courses, curriculum, learning management system and applicable instructional tools and online services, for the term of this Agreement. K12 Florida also provides curriculum and instructional materials aligned to Florida's Next Generation State Standards, and the K12 curriculum will comply with and adhere to the implementation timeline for Common Core State Standards published by the State of Florida. K12 will maintain confidentiality of student information in a secure manner and provide student data to SBBC in a timely manner.

2.04 **Price and Payment.** The prices and billing terms for the products, services, and licenses will be as set forth in **Appendix A**. Invoices shall be submitted to SBBC by K12 Florida and full payment of such invoices shall be due by SBBC no more than thirty (30) days from the date of an invoice. If full payment is not timely received, K12 Florida, in its sole discretion, may cease the provision of any or all products, services and licenses. SBBC agrees to pay interest at one and one quarter percent (1%) per month on any unpaid balance from 30 days after the due date in accordance with the Local Governmental Prompt Payment Act, Florida Statute Chapter 218. If SBBC wishes to dispute any charge invoiced to SBBC by K12 Florida or its affiliates, SBBC must submit a good faith claim regarding the disputed amount, in a format clearly delineated to coincide with the format of the disputed invoice and with documentation as may reasonably be required by K12 Florida and its affiliates to support the claim no later than ninety (90) days after the date of the invoice. K12 Florida will provide written notice of any price increase to SBBC at least (90) days' prior to the start of the Renewal Period (if any) for which it would be applicable. Customer may, in its sole discretion, terminate the Agreement within (30) days of such notice. Such termination will be effective at the end of the then-current Period or Renewal Period (if any).

2.04 **Taxes.** SBBC represents that it is exempt from sales and use taxes imposed by the state and local government divisions in which it is located; SBBC must provide K12 Florida with SBBC's exemption certificates or other proof of SBBC tax-exempt status.

2.05 **Information Requirements.** SBBC will provide K12 Florida with all information reasonably required by K12 Florida to provide the products, services, and licenses required under this Agreement.

2.06 **Special Education and Disabilities.** As a public entity receiving federal Title I funds, SBBC agrees that it is the Local Education Agency responsible for the provision of special education. The provision of special education, the creation, implementation or provision of Individualized Education Program (IEPs), the provision of reasonable accommodations or any services of any nature under the Individuals with Disabilities Education Act, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act or any similar law, whether federal, state or local are not services provided under this Agreement. Notwithstanding the forgoing, during the term of this Agreement, K12 Florida will discuss, formulate and make adjustments and accommodations in furtherance of IEPs or reasonable accommodations established by SBBC, but solely to the extent that K12 Florida may do so without incurring direct or indirect costs.

ARTICLE 2 – SPECIAL CONDITIONS

2.07 Intellectual Property: SBBC acknowledges and agrees that all courses, content, software, graphics, pictures documents, licenses, designs and materials and any and all derivatives thereof (collectively referred to herein as “Works”) made available to SBBC pursuant to this Agreement are protected by copyrights, trademarks, service marks, patents, trade secrets, or other proprietary rights and laws and K12 Florida (or its affiliates or licensors) own all right, title and interest in and to the Works and has no rights to make any use of such Works except as expressly granted herein. Except as expressly authorized in writing by an officer of K12 Florida, SBBC agrees not to sell, license, sub-license, rent modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit or create derivative works from any of the Works. SBBC will not act or permit any action that would impair any of K12 Florida’s (or its Affiliates’ or licensors’) rights in the Works. SBBC agrees not to: (a) disassemble, reverse compile, reverse engineer or otherwise attempt to discover the source code of or trade secrets embodied in the Works (or any portion thereof); (b) distribute, lend, rent, sell, transfer or grant sublicenses to, or otherwise make available the Works (or any portion thereof) to third parties, including, but not limited to, making such works available (i) through resellers, OEMs, other distributors, or (ii) as an application service provider, service bureau, or rental source, unless expressly permitted in the Order; (c) embed or incorporate in any manner the Works (or any element thereof) into other applications of SBBC or third parties; (d) use or transmit the Works in violation of any applicable law, rule or regulation, including any export/import laws, (e) in any way access, use, or copy any portion of the Works (including the logic and /or architecture thereof and any trade secrets included therein) to directly or indirectly develop, promote, distribute, sell or support any product or service that is competitive with the Works, (f) remove, obscure or alter any copyright notices or any name, log, tagline or other designation of K12 Florida or its affiliates displayed on any portion of the Works. SBBC shall not permit any third party to perform any of the foregoing actions and shall be responsible for all damages and liabilities incurred as a result of such actions. SBBC acknowledges that in the event SBBC breaches any provision contained in this Paragraph, K12 Florida’s interests will be irreparably injured, the full extent of K12 Florida’s damages may be impossible to ascertain, and monetary damages will not be an adequate remedy. SBBC agrees that K12 Florida will be entitled to enforce this Agreement by an injunction or other legal or equitable relief without the necessity of posting bond or security, in addition to its right to seek monetary damages or any other remedy.

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ARTICLE 2 – SPECIAL CONDITIONS

2.08 **Publicity.** During the term of this Agreement, SBBC hereby agrees that K12 Florida and its affiliates shall have the right, but not the obligation, to list SBBC as a customer in other materials promoting the Content. K12 Florida will remove SBBC's name from any such list within thirty (30) days after any termination of this Agreement.

2.09 **Warranty.** K12 Florida warrants that the services will be performed in a professional and workmanlike manner in accordance with commercially reasonable industry standards. THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND K12 FLORIDA MAKES NO GUARANTEES AS TO THE RESULTS OR ACHIEVEMENTS OF THE STUDENTS. WITHOUT LIMITING THE FOREGOING, K12 FLORIDA MAKES NO GUARANTEES AND SHALL NOT BE LIABLE FOR OUTAGES OR OTHER NON-ACCESSIBILITY TO THE K12 FLORIDA WEBSITE, END-USER CONNECTION SPEED OR CONNECTIVITY PROBLEMS REGARDLESS OF THE CAUSE. K12 FLORIDA OFFERS NO WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCTS OR SERVICES PROVIDED PURSUANT TO THIS AGREEMENT. K12 FLORIDA DOES NOT WARRANT THAT USE THE SITE OR CONTENT WILL BE UNINTERRUPTED OR ERROR-FREE, THAT ERRORS WILL BE CORRECTED OR THAT IT WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

2.10 **Audit Rights.** This section shall only be applicable if a Non-Hosting Solution is applicable to the order placed by SBBC. SBBC shall maintain books and records in connection with its use of the FuelEd courses for the Term of this Agreement and for at least three (3) years after the date this Agreement terminates or expires. K12 Florida or its representatives may audit the relevant books and records of SBBC during the term of this Agreement, and for three (3) years after the expiration of this Agreement to ensure compliance with this Agreement. Any such audit shall be conducted during regular business hours at SBBC's facilities and shall not unreasonably interfere with SBBC's business activities. Audits shall be conducted to no more than once annually. If an audit reveals that SBBC has underpaid fees due to K12, all such fees shall be paid immediately, together with interest at the rate of prime plus one percent (1%); and in the event such underpayment is in excess of five percent (5%) of the total (ii) in accordance with its then current practices at periodic intervals designated by K12 Florida, K12 Florida may request that SBBC deliver in writing to K12 Florida a summary of the actual number of students that are currently enrolled by SBBC and using the courses. Unless otherwise set forth in the applicable Order, all license fees shall be payable in accordance with the number of students served to be determined pursuant to the Reporting Process.

ARTICLE 2 – SPECIAL CONDITIONS

2.11 **Inspection of K12 Florida Records by SBBC.** K12 Florida shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All K12 Florida's Records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC's agent or its authorized representative to permit SBBC to evaluate, analyze and verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify any and all invoices, billings, payments and/or claims submitted by K12 Florida or any of K12 Florida's payees pursuant to this Agreement. K12 Florida's Records subject to examination shall include, without limitation, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement. K12 Florida's Records subject to this section shall include any and all documents pertinent to the evaluation, analysis, verification and reconciliation of any and all expenditures under this Agreement without regard to funding sources.

(a) **K12 Florida's Records Defined.** For the purposes of this Agreement, the term "K12 Florida's Records" shall include, without limitation, and any supporting documents that would substantiate, reconcile or refute any charges and/or expenditures related to this Agreement. This definition shall exclude any privileged documents or attorney work product. Prior to such inspection, SBBC and any agents conducting the audits shall execute a Confidentiality and Non-Disclosure agreement to K12 Florida's reasonable satisfaction, in which SBBC and agents shall hold non-public, proprietary information as confidential.

(b) **Duration of Right to Inspect.** For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to K12 Florida's Records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to K12 Florida pursuant to this Agreement.

(c) **Notice of Inspection.** SBBC's agent or its authorized representative shall provide K12 Florida reasonable advance notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction.

(d) **Audit Site Conditions.** SBBC's agent or its authorized representative shall have access to K12 Florida's facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

(e) **Failure to Permit Inspection.** Failure by K12 Florida to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this Section shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the denial of some or all of any K12 Florida's claims for payment by SBBC.

ARTICLE 2 – SPECIAL CONDITIONS

(f) Overcharges and Unauthorized Charges. If an audit conducted in accordance with this Section discloses overcharges or unauthorized charges to SBBC by K12 Florida in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by K12 Florida. If the audit discloses billings or charges to which K12 Florida is not contractually entitled, K12 Florida shall pay said sum to SBBC within twenty (20) days of receipt of written demand under otherwise agreed to in writing by both parties.

(g) Inspection of Subcontractor's Records. K12 Florida shall require any and all subcontractors, insurance agents and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by K12 Florida to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payee's costs from amounts payable by SBBC to K12 Florida pursuant to this Agreement and such excluded costs shall become the liability of K12 Florida.

(h) Inspector General Audits. K12 Florida shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

2.12 **Dispute Resolution.** The parties agree that they will use their best efforts to settle any and all disputes arising out of, under or in connection with this Agreement, including without limitation, the validity, interpretation, performance and breach hereof, prior to initiating any legal proceeding, whether judicial or administrative in nature. The efforts shall be primarily between the Chief Operating Officer for K12 and the Superintendent of the SBBC or their respective designees.

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ARTICLE 2 – SPECIAL CONDITIONS

2.13 **Notice.** When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

To SBBC: Superintendent of Schools
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

With a Copy to: Principal – Broward Virtual School
1400 Northwest 44th Avenue
Coconut Creek, Florida 33066

To K12 Florida: Sales Contract Administrator
K12 Florida LLC
2300 Corporate Park Drive, Suite 200
Herndon, VA 10271

With a Copy to: Office of the General Counsel
K12 Florida LLC
2300 Corporate Park Drive, Suite 200
Herndon, VA 20171

2.14 **Miscellaneous.** a) K12 Florida is not a division or any part of SBBC. SBBC is not a division or any part of K12 Florida. Nothing herein is intended to be construed as or to create a partnership or joint venture by or between K12 Florida and SBBC. b) SBBC and all users of licensed products shall comply with the terms and conditions of the Terms of Use pertaining to the use of courseware, web sites and learning management systems, as such terms are set forth therein. c) All representations, warranties and indemnities made in this Agreement will survive termination of this Agreement. d) K12 Florida will provide all services, licenses and materials under this Agreement either directly or in conjunction with its affiliates. An “affiliate” of K12 is an entity that controls, is controlled by, or under common control with, K12 Florida and “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of an entity, whether through the ownership of securities, by contract or otherwise. K12 Florida and its affiliates shall be referred to collectively as K12 Florida.

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ARTICLE 2 – SPECIAL CONDITIONS

2.15 **Background Screening.** K12 Florida agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of K12 Florida or its personnel providing any services under the conditions described in the previous sentence. K12 Florida shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to K12 Florida and its personnel. The parties agree that the failure of K12 Florida to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. K12 Florida agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from K12 Florida's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

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ARTICLE 2 – SPECIAL CONDITIONS

2.16 **Insurance Requirements.** Proof of the following insurance will be furnished by K12 Florida to SBBC by Certificate of Insurance.

- A. GENERAL LIABILITY: Limits not less than \$1,000,000 per occurrence for Bodily Injury/Property Damage; \$1,000,000 General Aggregate. Limits not less than \$1,000,000 for Products and Completed Operations Aggregate.
- B. PROFESSIONAL LIABILITY: Limits not less than \$1,000,000 per occurrence covering services provided under this contract.

REQUIRED CONDITIONS

ACCEPTABILITY OF INSURANCE CARRIERS: The insurance policies shall be issued by companies qualified to do business in the State of Florida. The insurance companies must be rated at least A- VI by AM Best or Aa3 by Moody's Investor Service.

CANCELLATION OF INSURANCE: Vendors are prohibited from providing services under this contract with SBBC without the minimum required insurance coverage and must notify SBBC within two business days if required insurance is cancelled.

THE FOLLOWING WORDING must be included on the Certificate of Insurance:

- The School Board of Broward County, FL are added as additional insured.
- All liability policies are primary of all other valid and collectable coverage maintained by the School Board of Broward County, Florida.
- Certificate Holder: School Board of Broward County, 600 Southeast Third Avenue, Fort Lauderdale, Florida 33301.

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ARTICLE 2 – SPECIAL CONDITIONS

2.17 **Liability.** This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

A. By SBBC: SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

B. By K12 Florida: K12 Florida agrees to defend, indemnify, and hold harmless SBBC and its employees, contractors, officers, and board members from and against any and all liabilities, claims, damages, injuries, judgments, demands and expenses, including court costs and attorney's fees, that arise out of or in connection with any acts or omissions of K12 Florida related to or arising from this Agreement (collectively "Claims") except to the extent that such Claims arise out of actions or omissions of Customer and subject to the conditions precedent that a) SBBC provide written notice to K12 Florida within thirty (30) days of its receipt of the Claim and b) SBBC permits K12 Florida to assume the control and defense of the Claim with counsel selected by K12 Florida.

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ARTICLE 3 – GENERAL CONDITIONS

3.01 **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.02 **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

3.03 **Independent Contractor.** The parties to this agreement shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party or its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other party unless specifically authorized in writing to do so. No right to SBBC retirement, leave benefits or any other benefits of SBBC employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. SBBC shall not be responsible for social security, withholding taxes, contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

3.04 **Equal Opportunity Provision.** The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Agreement.

3.05 **Termination.** This Agreement may be canceled with or without cause by SBBC during the term hereof upon ninety (90) days written notice to K12 Florida of its desire to terminate this Agreement, except that no termination shall become effective while any student is enrolled in a course. In the event of such termination, SBBC shall pay K12 Florida for all services rendered through the effective date of termination. SBBC shall have no liability for any property left on SBBC's property by any party to this Agreement after the termination of this Agreement. Any party contracting with SBBC under this Agreement agrees that any of its property placed upon SBBC's facilities pursuant to this Agreement shall be removed within ten (10) business days following the termination, conclusion or cancellation of this Agreement and that any such property remaining upon SBBC's facilities after that time shall be deemed to be abandoned, title to such property shall pass to SBBC, and SBBC may use or dispose of such property as SBBC deems fit and appropriate.

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ARTICLE 3 – SPECIAL CONDITIONS

3.06 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) days notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

3.07 **Annual Appropriation.** The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

3.08 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC with interest calculated from the date of the erroneous payment or overpayment. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by SBBC.

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ARTICLE 3 – SPECIAL CONDITIONS

3.09 **Public Records.** Pursuant to Section 119.0701, Florida Statutes, any party contracting with SBBC is required to (a) keep and maintain available for public inspection any records that pertain to services rendered under this Agreement; (b) provide the public with access to public records on the same terms and conditions that SBBC would provide such records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer, at no cost to SBBC, all public records in that party's possession upon termination of its Agreement with SBBC and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All of such party's records stored electronically must be provided to SBBC in a format that is compatible with SBBC's information technology systems. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law. Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets. The parties agree that applicable state and federal law regarding the retention of documents shall prevail when in conflict with anything to the contrary in this section.

3.10 **Student Records:** Notwithstanding any provision to the contrary within this Agreement, any party contracting with SBBC under this Agreement shall fully comply with the requirements of Sections 1002.22 and 1002.221, Florida Statutes; FERPA, and any other state or federal law or regulation regarding the confidentiality of student information and records. In addition, the parties shall comply with the requirements of **Appendix B** which is attached hereto and incorporated herein by reference.

3.11 **Compliance with Laws.** Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.12 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.13 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida or the Federal courts residing therein.

ARTICLE 3 – SPECIAL CONDITIONS

3.14 **Entirety of Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

3.15 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3.16 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

3.17 **Incorporation by Reference.** **Appendix A and B** attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

3.18 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.19 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.20 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.21 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.22 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

ARTICLE 3 – SPECIAL CONDITIONS

3.23 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense (“Force Majeure”). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.24 **Survival.** All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.25 **Contract Administration:** SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

3.26 **Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

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IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the date first above written.

FOR SBBC

(Corporate Seal)

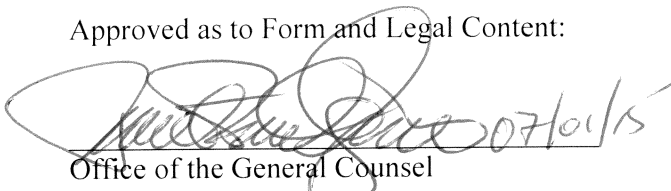
THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Donna P. Korn, Chair

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:


Office of the General Counsel

FOR K12 Florida

(Corporate Seal)

K12 Florida, LLC

ATTEST:

By _____

_____, Secretary

-or-

Witness

Witness

The Following Notarization is Required for Every Agreement Without Regard to Whether the Party Chose to Use a Secretary's Attestation or Two (2) Witnesses.

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me this 23 day of June, 2015 by Gregg Levin of K12 Florida, LLC on behalf of the corporation/agency.

He/She is personally known to me or produced Known to me as identification and did/did not first take an oath. Type of Identification

My Commission Expires:

Signature - Notary Public

Printed Name of Notary

Notary's Commission No.



Nancy E. Ryan
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #7389686
My Commission Expires
June 30, 2015

Contract #5340/5342



This Online Educational Products and Services Order (this "Order"), dated as of July 1, 2015 (the "Order Effective Date"), is between BROWARD, 600 SE Third Ave, Ft. Lauderdale, FL, 33301 ("Customer") and K12 Florida LLC ("K12"), 2300 Corporate Park Drive Herndon, VA 20171. This Order incorporates and is in all respects subject to the FuelEd Online Educational Products and Services Agreement Terms (the "Terms") that is published at <http://www.getfueled.com/online-educational-products-services-agreement-terms> on the date that this Order bears the signatures of both Customer and FuelEd. All capitalized terms that are not defined in this Order will have the meanings assigned to those terms in the Terms. I am authorized by Customer to enter into this Order for the products, services and licenses indicated herein, at the prices set forth below and pursuant to the Terms.

Accepted by Customer

_____ (Signature) _____ (Date)

_____ (Print Name) _____ (Title)

Accepted by K12:

_____ (Signature) _____ (Date)

_____ (Print Name) _____ (Title)

1. Period: July 1, 2015 through June 30, 2016 and is not eligible for a renewal period.
2. Territory: BROWARD, FL
3. For the Services and/or Products provided under this Order, Customer shall pay to FuelEd and/or its Affiliates the following Fees:

Product	Product Description	Sales Price
Training: Annual User License	Access for one user to all asynchronous courses, continued education online training sessions, and on-demand training materials and video.	\$550.00
FTS Comprehensive K-5 Student License (6 Courses, Instruction)	K-5 FTS Comprehensive Program with FuelEd teachers for 6 courses per student.	\$4,295.00
FTS Comprehensive K-8 Student License (6 Courses)	K-8 FTS Comprehensive Program for 6 courses per student.	\$2,500.00
K12 Instructor Materials K-8	K12 instructor course materials for six courses in a single grade, K-8.	\$400.00
K12 K-8 Online Course Enrollment License (Content, Hosting)	License for a single student in a K12 Standard K-8 year course. Includes content and hosting.	\$340.00
K12 K-8 Online Course	License for a single student in a K12 Standard K-8 year course. Includes content,	\$590.00

Enrollment License (Content, Hosting, Instruction)	hosting and instruction.	
HS Online Course Enrollment License (Content)	License for a single student in a FuelEd Online Standard HS semester course (non-AP). Includes content only.	\$50.00
AP Online Course Enrollment License (Content)	License for a single student in a FuelEd Online AP semester course. Includes content only.	\$50.00
MS Online Course Enrollment License (Content)	License for a single student in a FuelEd Online Standard MS semester course (non-AP). Includes content only.	\$50.00

4. Description of Educational Products. Customer will be provided the Educational Products specified in this order.

FuelEd Online Courses: FuelEd's expansive course catalog covers all core subjects, six world languages, dozens of electives, and 19 high school credit recovery courses. This option enables students and educators to license courses on an individual basis. FuelEd may from time to time, in its sole discretion, deliver or otherwise make available to Customer certain updated courseware, which such updates shall also be subject to all of the Terms. Customer acknowledges and agrees that certain courseware and updates thereto may be designed to utilize separate textbook products or course materials and Customer shall be responsible for procuring such materials. A complete list of required materials may be accessed at <http://www.getfueled.com/required-materials>

K12 Courses: for student taking 1 to 3 courses, including, but not limited to, summer program enrollments.

An enrollment portal into which Customer will enroll its students in the Territory into available K12 courses including Language Arts/English, Math, Science, History, Art, Music, available World Languages and, for grades 9 to 12, electives. Customer is responsible for determining the proper placement of students in appropriate courses. Within two (2) weeks following FuelEd's receipt of a completed account set-up form from Customer, FuelEd will provide access for Customer to enroll its students.

A Learning Management System (LMS) or "FuelEd Hosting Services" for the delivery of FuelEd courses and access to a synchronous collaboration tool and system generated reports on academic performance, attendance and progress.

Materials:

Instructional text or e-books, supplies and teaching tools (collectively, "Materials") for K-8 students. Materials for Customer's teachers and High School students are ordered separately. A complete list of required materials may be accessed at <http://www.getfueled.com/required-materials>. FuelEd will reclaim durable Materials by informing Customer and/or its students which Materials need to be returned and providing pre-paid return shipping labels. FuelEd Materials are intended solely for the use of the teachers and the students enrolled in FuelEd courses to whom FuelEd provides the Materials. Customer shall not transfer or resell the Materials to any other person. If a replacement component is required or a durable Material is not returned, the Customer will be invoiced for the component or Materials (plus shipping, if applicable). Customer will provide FuelEd with reasonable assistance in obtaining durable Materials from students and their parents.

5. Description of Services.

Instructional Services: Customer will be provided licensed teachers for instruction to enrolled students for selected courses.

FuelEd Non-Hosting Solution: A copy of all applicable FuelEd courses via tangible media (i.e., CD or DVD) or electronic delivery methods for use within Customer's learning management system software ("LMS") solely for the provision of educational services to its students in the Territory enrolled in Customer's educational programs. Customer agrees that (i) it is solely responsible for obtaining all necessary rights in and to, and the maintenance of, any such LMS and that (ii) FuelEd shall not be responsible for the hosting of or any issues related to such LMS, including without limitation the interoperability of any FuelEd courses with such LMS. The parties agree that in connection with any electronic delivery of courses, Customer shall cooperate with FuelEd and provide all necessary assistance to facilitate FuelEd's access to Customer's LMS. Customer may make up to two archival copies of the FuelEd courses provided pursuant to this paragraph solely for backup purposes as permitted by 17 U.S.C. § 117

6. Billing Terms.

K12 Course Terms: Special course material fee applies to lab sciences, advanced placement and technology courses. A complete list of required materials may be accessed at <http://www.getfueled.com/required-materials>

FuelEd Course Terms: FuelEd provides a 14-day grace period for students who enroll. If a student withdraws within 14 days from when the student enrolls, FuelEd will refund 50% of the course fees but only if this withdrawal was received in writing by FuelEd by fax or email before the grace period ended. Enrollments under the subscription license model will be invoiced on a monthly basis

FLORIDA AMENDMENT TO THE ONLINE EDUCATIONAL PRODUCTS AND SERVICES ORDER

This Amendment is entered into between Customer and K12, 2300 Corporate Park Drive, Herndon, VA 20171 as of the date on which it bears the authorized signatures of both parties and is intended to amend only the terms and conditions of the Online Educational Products and Services Order (“Order”) and the K12 Online Educational Products and Services Agreement Terms (the “Terms”) that are incorporated into said Order.

The following Florida Virtual Instruction Program Requirements §1002.45 shall be added to the K12 Online Educational Products and Services Agreement Terms (the “Terms”). In the event of a conflict between the Amendment and the Order or Terms, this Amendment shall control.

1. K12 shall comply with all statutory requirements of § 1002.45 F. S.
2. K12 represents that to the best of its knowledge, all curriculum provided complies in all material respects to the Florida Next Generation Sunshine State Standards for Each grade level and subject. Detailed course, and unit descriptions for grades K-8 are available at <http://www.k12.com/courses/k-8-courses> and for high school at <http://www.k12.com/courses/high-school-courses> and <http://aventallearning.com/state-standards/florida>

All courses include detailed assessments to ensure student mastery of Florida requirements. Details about the assessments are available from the Florida Department of Education in the K12 Florida LLC provider application.

3. In the event K12 provides products and services to students in grades 9 through 12, as required by § 1003.428, s. §1003.429, or s. §1003.43 K12 shall provide a method for determining that a student has satisfied graduate requirements for an applicable course. K12 provides a percentage grade to the customer and the customer can use these percentage grades within their own system. K12 does not assign letter grades. Schools can make the determination regarding how best to use the information supplied.
4. **TEACHER RATIOS:** K¹² takes into account the needs of the individual students, families, schools and teachers in assigning teacher loads. Student-teacher ratios will vary program to program. An average ratio for grades K-3 full-time is 65:1, grades K-3 part-time (0.5 teacher) is 30:1, 4th-8th grade full-time is 65:1, 4th-8th grade part-time (0.5 teacher) is 30:1. In high school grades 9th-12th core courses with full-time teachers have an average ratio of 200:1. Part-time teacher ratios for 9th-12th grade core courses are broken down as follows: 0.75 part-time teachers have a 150:1 ratio, 0.5 part-time teachers have a 100:1 ratio, and 0.25 part-time teachers have a 50:1 ratio. 9th-12th grade elective courses with full-time teacher ratios are 250:1.
5. Method for resolving conflicts among parties:
DISPUTE RESOLUTION: The parties agree that they will use their best efforts to settle any and all disputes arising out of, under or in connection with this Agreement, including without limitation the validity, interpretation, performance and breach hereof, prior to initiating any legal

proceeding, whether judicial or administrative in nature. The efforts shall be primarily between the Executive Vice President of Operations for K12 and the Superintendent of the Customer or their respective designees. The laws of the State of Florida, without regard to its conflict of laws provisions, will govern all disputes arising out of or related to this Agreement, including the validity, enforceability or construction thereof. Each party submits to the jurisdiction of the state and federal courts located in the State of Florida for purposes of any action, suit or proceeding arising out of or related to this Agreement and agrees not to plead or claim that any action, suit or proceeding arising out of or related to this Agreement that is brought in such courts has been brought in an inconvenient forum.

6. Authorized reasons for termination of contract:

NOTICE OF NON-RENEWAL: The period of this Agreement is as specified in the Order (“Period”). Following the Subscription Period, this Agreement will automatically extend for successive additional Subscription Periods of one (1) year (each such period a “Renewal Period”), unless (a) either party provides the other with written notice of non-renewal at least six (6) months before the expiration of the then-current Subscription Period or Renewal Period (as applicable); (b) the Agreement is sooner terminated under the section labeled Termination; or (c) the Customer (as defined in the Order) provides K12 with written notice of non-renewal as set forth under the section of these K12 Online Educational Products and Services Agreement Terms labeled Price And Payment.

TERMINATION FOR CAUSE: Either party may terminate this Agreement at any time with ninety (90) days’ prior written notice to the other party for cause. Termination for cause may be used if a party breaches any material term or fails to fulfill any representation, warranty, or material condition, term, provision or obligation contained in this Agreement and fails to cure within thirty (30) days of such notice from the terminating party. Upon termination, the non-breaching party shall be entitled to seek any remedies to which it shall be entitled at law or in equity. If any change in applicable law that is enacted after the date hereof could reasonably be expected to have a material adverse effect on the ability of any party to carry out its obligations under this Agreement, such party, upon written notice to the other party may request renegotiation of this Agreement. Such renegotiation shall be undertaken in good faith. If the parties are unable to renegotiate and agree upon revised terms within 120 days of such notice of renegotiation, then this Agreement shall be terminated effective at the end of the school year in which such notice was given. Termination of this Agreement does not relieve Customer of any obligations for payments outstanding to K12 as of the date of termination and does not relieve either party of any obligations that continue upon termination.

TERMINATION DUE TO ANNUAL FEE INCREASE: K12 reserves the right to change the prices set forth in any Order no more often than once per Renewal Period (if any). K12 will provide written notice of any price increase to Customer at least ninety (90) days’ prior to the start of the Renewal Period (if any) for which it would be applicable. Customer may, in its sole discretion, terminate the Agreement within thirty (30) days of such notice. Such termination will be effective at the end of the then-current Period or Renewal Period (if any).

7. As required by Florida statute, K12 shall be responsible for all debts for the Customer’s virtual instruction program that arise out of K12’s performance of this contract if the contract is not renewed or is terminated. This does not excuse the Customer from paying any obligations

incurred resulting from its obligations under this contract or from the payment of any debts incurred under this contract for termination, unless such termination is as provided for under the clause titled Termination for Cause.

8. The Section of the Terms labeled **Price and Payment** is revised to read:

PRICE AND PAYMENT: The prices and billing terms for the products, services, and licenses will be as set forth in this Amendment. Invoices shall be submitted to Customer by K12 and full payment of such invoices shall be due by Customer no more than forty five (45) days from the date of an invoice. If full payment is not timely received, K12, in its sole discretion, may cease the provision of any or all products, services and licenses. Customer agrees to pay interest at one percent (1%) per month on any unpaid balance from 30 days after the due date in accordance with the Local Governmental Prompt Payment Act, Fla. St. Chapter 218. If Customer wishes to dispute any charge invoiced to Customer by K12 or its Affiliates, Customer must submit a good faith claim regarding the Disputed Amount, in a format clearly delineated to coincide with the format of the disputed invoice and with documentation as may reasonably be required by K12 and its Affiliates to support the claim no later than ninety (90) days after the date of the invoice.. K12 will provide written notice of any price increase to Customer at least ninety (90) days' prior to the start of the Renewal Period (if any) for which it would be applicable. Customer may, in its sole discretion, terminate the Agreement within thirty (30) days of such notice. Such termination will be effective at the end of the then-current Period or Renewal Period (if any).

9. All other terms, conditions and provisions of the Order and Terms remain in full force and effect.

Safeguarding the Confidentiality of Student Records and Information

The parties acknowledge that Sections 1002.022, 1002.221 and 1002.222, Fla. Stat. and the Family Educational Rights and Privacy Act (FERPA, 20 U.S.C. § 1232g) and its implementing regulations (34 C.F.R. Part 99), protect the privacy rights of students and their parents with respect to information and records created and/or maintained by public schools. The student personally identifiable information (PII) may be disclosed only in compliance with FERPA. Pursuant to FERPA, the information provided by SBBC shall be limited to that which is necessary to effectively serve the student.

Each party participating in this Agreement further agrees to:

(1) Hold the student records and information in strict confidence and not use or disclose except as required by this Agreement or as required or permitted by law unless the parent of a student provides prior written consent for their release. All shared student records will be disclosed only to those who have a need to access the information in order to perform their assigned duties in the performance of this Agreement. Absent consent from the parent or eligible student, student records and information will not be disclosed except as allowed by the aforementioned laws.

(2) Safeguard the student records through administrative, physical and technological safety standards to ensure adequate controls are in place to protect the student information in accordance with FERPA's privacy requirements.

(3) Continually monitor its operations and take all actions necessary to assure that the student information and records are safeguarded in accordance with the terms of this Agreement, and

(4) Ensure that all employees, appointees or agents of each party to this Agreement who are granted access to shared student records will have successfully completed (1) the background screening requirements under Section 435.04, Florida Statutes, under Level 2 screening standards and (2) the FERPA training webinars, as they may become available, at the U.S.

Department of Education, Privacy Technical Assistance Center website:

<http://www2.ed.gov/policy/gen/guid/ptac/index.html>, <http://ptac.ed.gov/> including, but not limited to, <http://www2.ed.gov/policy/gen/guid/ptac/pdf/slides.pdf>

Each party to this Agreement agrees to notify the other party immediately upon discovery of a breach of confidentiality of student information and to take all necessary notification steps as may be required by federal and Florida law. A breach of the confidentiality requirements shall constitute grounds for immediate termination of this Agreement without advance notice. Any provisions within this Agreement concerning the resolution of disputes shall not be applicable to a breach of the requirements of this Attachment "B."

This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such student records are returned to The School Board of Broward County, Florida ("SBBC") or disposed of in compliance with the applicable Florida Retention Schedules and a written acknowledgment of said disposition is provided to SBBC.

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