



REVISED (SECOND)

AGENDA REQUEST FORM
THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Special Order Request

☐ Yes ☒ No

Time

ITEM No.:

II-1.

MEETING DATE

AGENDA ITEM

CATEGORY

DEPARTMENT

Aug 18 2015 10:15AM - Regular School Board Meeting

OPEN ITEMS

II. OFFICE OF THE SUPERINTENDENT

BECON

Open Agenda

☒ Yes ☐ No

TITLE:

Renewal Agreement with Learn360

REQUESTED ACTION:

Approve the proposed agreement with Facts On File d/b/a and The School Board of Broward County, Florida.

SUMMARY EXPLANATION AND BACKGROUND:

Learn360 is a nationally recognized K-12 educational content provider offering media on demand service for teachers and students. Learn360 promotes educational content to over 10 million teachers and students in their community of subscribers. BECON produces original educational and instructional content. BECON desires to partner with Learn360 in a non-exclusive digital content, media streaming and downloading license agreement with a competitive royalty structure. The agreement will allow BECON to generate revenue and further promote BECON's educational content to the K-12 educational community.

SCHOOL BOARD GOALS:☐ Goal 1: High Quality Instruction ☒ Goal 2: Continuous Improvement ☐ Goal 3: Effective Communication**FINANCIAL IMPACT:**

There is a potential positive financial impact. The School Board of Broward County, Florida BECON will receive royalties for digital content media streaming and downloads based on royalty calculations in the agreement.

EXHIBITS: (List)

(1) Summary of Learn360 Agreement (2) Agreement Learn360

BOARD ACTION:**APPROVED**

(For Official School Board Records Office Only)

SOURCE OF ADDITIONAL INFORMATION:

Name: Eric Powell

Phone: 754-321-1000

Name:

Phone:

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**Senior Leader & Title**

Tracy Clark - Public Information Officer

Signature

Tracy A. Clark

Thursday, August 13, 2015 12:13:19 PM

Approved In Open
Board Meeting On:

AUG 18 2015

By:

School Board Chair

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
OFFICE OF THE SUPERINTENDENT

ROBERT W. RUNCIE
SUPERINTENDENT OF SCHOOLS

Telephone: (754) 321-2600

Facsimile: (754) 321-2701

August 17, 2015

TO: School Board Members

FROM: Tracy Clark
Chief Public Information Officer TC
Public Information Office

VIA: Robert W. Runcie RR
Superintendent of Schools

SUBJECT: **Second Revision to Item II-1. , Renewal Agreement with Learn360,
scheduled for the August 18, 2015 Regular School Board Meeting**

Attached is a second revision for item II-1, Renewal Agreement with Learn360,
scheduled for the August 18, 2015 Regular School Board Meeting.

The agreement with Learn360 is a **new agreement**, not a renewal. It would be
necessary to remove the word "Renewal" from the **Title** of the Agenda Request Form.
Please note this agreement has been approved as to form and legal content by the
School Board Attorney.

RWR/TC/EP:cy
Attachments

c: Senior Leadership Team

Summary of SBBC Agreement with Learn360

- BECON produces original educational and instructional content for broadcast and digital distribution, and generates revenue by licensing this content to other school districts and educational entities.
- Learn360 is a nationally recognized K-12 educational content distributor, offering media on demand services to teachers and students in their community of over 10 million subscribers.
- SBBC seeks to enter into a mutually beneficial, non-exclusive agreement with Learn360 to provide digital content, media streaming and downloading licenses for BECON produced content to Learn360 subscribers.
- SBBC will receive royalties from the funds collected from Learn360 subscription sales based on the SBBC's share of content in the entire Learn360 collection and the type of distribution for that content.
- Learn360 offers SBBC a competitive royalty structure consistent with that offered to its other content providers.
- The term of the Learn360 agreement is for two years with a successive one-year renewal option.

AGREEMENT

THIS AGREEMENT is made and entered into as of this 12th day of August, 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 Facts On File D/B/A Learn360 (hereinafter referred to as "Learn360"), whose principal place of business is 132 West 31st Street, 17th Floor, New York, NY 10001.

Whereas Learn360 is a nationally recognized K-12 educational content provider offering a media on demand service for teachers and students; and

Whereas Learn360 promotes their educational content to the over 10 million teachers and students that exist in the Learn360 community of subscribers; and

Whereas BECON TV produces original educational and instructional content which can be accessed on demand and seeks to increase revenue in Title sales and promote BECON produced educational series to the K-12 educational community that Learn360 serves; and

Whereas SBBC seeks to partner with Learn360 to ensure a mutually benefitting business relationship in a **non-exclusive** Digital Content and Media Streaming and Downloading license offering a competitive royalty structure;

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.

ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence upon execution by all parties and conclude on June 30th, 2017.

2.02 **License.** SBBC grants the Learn360 a **non-exclusive** Digital Content and Media Streaming and Downloading license (defined herein) to the Titles listed in **Exhibit A** throughout North America to all educational (non-theatrical) institutions through digital streaming, including but not limited to, schools, colleges, public, private, and charter pre-school and preK-12 schools, day care centers and chains, school districts, educators, related administrators or teachers

working for those previously listed institutions, and public or private agencies that serve school-age children, libraries, text book companies, and hospitals (hereinafter “Customers”) for the term of this Agreement.

2.03 **Distribution Rights.** SBBC grants to Learn360 the non-exclusive digital streaming and downloading rights for the videos listed in **Exhibit A**, hereinafter referred to as the “Titles”.

2.04 **Additional Titles.** SBBC also grants Learn360 the **non-exclusive rights** to add the Titles to Learn360’s online educational databases and video streaming services, which are sold to Customers on a subscription basis. Learn360 is further granted the rights to license Titles to sub-distributors within the scope of rights granted in this agreement, conditioned upon the financial performance of the sub-distributors being aggregated with that of the Learn360 when calculating Royalties.

2.05 **Grant Of Rights.** In connection with the grant of rights herein, SBBC acknowledges and agrees that Learn360 will be permitted to segment Digital Content (defined herein) into short video clips. These clips will be able to be searched for and played separately from the full video. A link to the full video will be provided on both the search results and player page to ensure that the Customer is able to access both the full video and any/all associated clips that have been created.

2.06 **Guarantee.** SBBC shall seek, obtain and, during the term of this Agreement, maintain in its own name and at its own expense, appropriate trademark or copyright protection for the Titles. The SBBC represents and guarantees to Learn360 that the materials created by SBBC included in the Titles contain no libelous or unlawful matter; that they in no way infringe on any copyright or trademark, or violate any right belonging to others; and that SBBC will hold Learn360 harmless and indemnify it against any claim, demand, or suit brought against the Learn360 by reason of material in the Titles supplied by SBBC.

2.07 **Royalties.** Royalties shall be calculated pursuant to the terms of **Exhibit B** attached hereto.

Royalties shall be paid by the Learn360 based on actual cash received on all sales, defined as the sale, license, or lease of digital content of the Titles. The term “actual cash received” as used in the Agreement refers to monies actually received by Learn360 from sales or leases of the Titles in a digital content, audio streaming, or downloading format.

For Titles distributed on Learn360, Learn360’s streaming service to K-12 market, the Royalty Pool shall be twenty-five percent (25%) of all cash received from subscription sales. The Royalty Pool shall first be divided into separate pools for video and audio based on each type of media’s share of total usage. Twenty percent (20%) of the Royalty Pool for video shall be dedicated for content contribution and paid to SBBC according to its pro rata share of the video content in a collection. Only full-length videos are counted; clip collections shall be prorated for this calculation to achieve a full video ratio. Eighty percent (80%) of the Royalty Pool for video shall be dedicated for usage and calculated as follows: the Royalty Pool for video usage divided

by the total views of the collection multiplied by the number of views of SBBC Titles. Each such stream or download shall count as one usage within the categories as described above. SBBC's total usage will be determined by adding all the streams and downloads of it's contributed Titles, including video clips. (See **Exhibit B**)

For Titles distributed as part of Learn360's streaming subject-collections sold to colleges, government agencies, and public libraries, and databases sold to all educational institutions, Learn360 shall pay to SBBC a pro-rated royalty amount from the Royalty Pool, based on the number of Views each Title receives. A "View" shall mean 30 seconds-plus of viewing a Title. "Royalty Pool" for streaming collections shall mean twenty-five percent (25%) of all cash receipts from streaming collection subscriptions. "Royalty Pool" for databases shall mean two percent (2%) of cash receipts from database subscriptions. The royalty shall be calculated as follows: the Royalty Pool divided by the total views of the collection multiplied by the number of views of SBBC's Titles.

Royalties shall be payable semi-annually for the periods of July 1st through December 31st and January 1st through June 30th. Payments shall be due within sixty (60) days following the end of each royalty period during the term of this Agreement.

2.08 Definitions. As used in this Agreement, the following terms have the following definitions:

a) **Digital Content.** Audio, still image and/or video content stored in an electronic format, known as a file, as complete Titles as well as bits or units of information, allowing for listening and/or viewing of content in smaller segments if so determined by the Learn360.

b) **Downloading.** The delivery of digital information via a digital file to a client (customer) over the Internet or internal network from a host server(s), to a Customer's machine(s) where it is then stored or transferred to a local server or other storage device where it can be listened to and/or viewed at a later time.

c) **Streaming Video.** Streaming media is sound (audio) and pictures (video or still images) that are transmitted on the Internet or internal host server in a streaming or continuous fashion, using data packets. Streaming media is media that may be consumed (heard or viewed) while it is being delivered or may be permanently stored in the recipient's system.

2.09 Inspection of Learn360's Records by SBBC. Learn360 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 Learn360'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 Learn360 or any of Learn360's payees pursuant to this Agreement. Learn360'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. Learn360'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) **Learn360's Records Defined.** For the purposes of this Agreement, the term "Learn360's Records" shall include, without limitation, supporting documents that would substantiate, reconcile or refute any charges and/or expenditures related to this Agreement.

(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 Learn360'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 to SBBC by Learn360 pursuant to this Agreement.

(c) **Notice of Inspection.** SBBC's agent or its authorized representative shall provide Learn360 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 Learn360'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 Learn360 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 Learn360's claims for payment by SBBC.

(f) **Overcharges and Unauthorized Charges.** If an audit conducted in accordance with this Section discloses overcharges or unauthorized charges to SBBC by Learn360 in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by Learn360. If the audit discloses billings or charges to which Learn360 is not contractually entitled, Learn360 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.** Learn360 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 Learn360 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 Learn360 pursuant to this Agreement and such excluded costs shall become the liability of Learn360.

(h) **Inspector General Audits.** Learn360 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.

2.10 **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: General Manager, BECON/ or Designee
6600 SW Nova Dr.
Ft. Lauderdale, FL 33317

To Learn360: Anne Feldkamp
Director of Learn360 Library Management
132 West 31st Street, 17th Floor
New York, NY 10001
T: 917-974-0041
email: afeldkamp@Learn360.com

With a Copy to: Kathy Tan
Director of Acquisitions
132 West 31st Street, 17th Floor
New York, NY 10001
T: 212-967-8800
Email: ktan@infobaselearning.com

2.11 **Background Screening:** Learn360 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 Learn360 or its personnel providing any services under the conditions described in the previous sentence. Learn360 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 Learn360 and its personnel. The parties agree that the failure of Learn360 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. Learn360 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 in Learn360's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

2.12 **Indemnification.** 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 Learn360: Learn360 agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs, and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which SBBC, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by Learn360, its agents, servants or employees; the equipment of Learn360, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of Learn360 or the negligence of Learn360's agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including SBBC's property, and injury or death of any person whether employed by Learn360, SBBC or otherwise.

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 thirty (30) days written notice to the other parties of its desire to terminate this Agreement.

If the agreement is terminated before June 30th, 2018 without just cause, SBBC will reimburse Learn360 \$100/title, not to exceed a total reimbursement of \$7,000.

This Agreement may also be terminated as follows:

- a) At any time upon mutual written agreement of the parties;
- b) By either party if (i) the other party is in material breach of its obligations hereunder and such breach continues uncured for a period of thirty (30) days after written notice to the defaulting party, or (ii) the other party makes a general assignment for the benefit of its creditors, appoints or has appointed a receiver, trustee in bankruptcy or similar officer to take charge of all or part of its property, files or has a petition filed against it in any bankruptcy (unless such petition is dismissed within sixty (60) days of its filing), and/or is adjudged insolvent or bankrupt.

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.

3.09 **Public Records.** 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.

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 Section 1002.22, Florida Statutes, or any other state or federal law or regulation regarding the confidentiality of student information and records. Each such party agrees, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Section 1002.22, 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.

3.11 **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.

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.** Exhibits 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.

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 **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.

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

By 
Donna P. Korn, Chair

ATTEST:


Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

 05/07/15
Office of the General Counsel

FOR Learn360

(Corporate Seal)

ATTEST:

Facts On File D/B/A Learn 360

By



_____, Secretary

-or-

Kathy Tan

Director of Program Acquisitions

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 N.J.

COUNTY OF Middlesex

The foregoing instrument was acknowledged before me this 21 day of
April, 20 15 by Kathy Lee of
Name of Person
Info base Training, on behalf of the corporation/agency.
Name of Corporation or Agency

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

My Commission Expires:

Doreen J. Paolo
Signature – Notary Public

Doreen Paolo
Printed Name of Notary

(SEAL)

Notary's Commission No.



SWORN TO AND SUBSCRIBED
BEFORE ME THIS DATE
APR 21 2015
DOREEN THERESA PAOLO
Notary Public of New Jersey
My Commission Expires 9/30/2016

Exhibit A

List of Titles

Total: 93 Titles

Science Titles:

Science & Me – Sixteen-15 minute titles for grades K-2, Copyright 2004-2006

- What's The Mattes
- Matter Matters
- Energetic Energy
- Energy Encounters
- Moving Right Along
- A Force, Of Course, As The World Turns
- Weather or Not
- Reach for The Stars
- Our Space in Space
- Tree of Life
- Growing and Knowing
- It's Alive!
- Wild Worlds
- Science Sense Tech Tools

Soaring Into Science – Eight-30 minute titles for grades 3-5, Copyright 2002-2003

- The Nature of Matter
- Energy
- Force and Motion
- Processes that Shape the Earth
- Earth and Space
- Processes of Life
- Living Things, Part 1
- Living Things, Part 2

Realtime Science Connections – Eighteen-30 minute titles for grades 4-8, Copyright 2003-2005

- Energy: To Work or not to Work
- Science Innovations: Laser, Robotics & Simulations
- Fantastic Physics: From Newton to Roller Coasters
- Our Dynamic Globe: Forces that Affect the Earth
- Mighty Wind Storms: Hurricanes
- Space Exploration: One Small Step
- Good Vibrations: The Human Ear
- The Everglades: The River of Grass
- The Eye and the Brain: Making Observations
- Behind the Science Scene: A Backstage Pass

Science Matters – Eight-30 minute titles for Middle & High school students, Copyright 2009-2013

- Energy Works
- A Matter of the Atom
- Forcing the Issue
- Our Changing Planet
- Beyond Earth
- That's Life
- Living Environments
- Scientific Thinking

Community Titles:

Crossing Cultures/ Changing Lives – Ten-30 minute titles for Middle, High school & Adults, Copyright 2008

- Color is a Family Matter
- When He or She Don't Speak the Same Language
- Building Bridges in the Workplace
- Projects Can Make a Difference
- Coffee, Tea and Diversity
- Mom, My Friend Looks Different
- Loving Across the Lines
- Is Faith an Action Word?
- Seeing the World through Different Glasses
- New Voices of Race and Change

Youth Titles:

Hall Pass - Ten-30 minute titles for Middle & High school students, Copyright 2009

- Fitting In & Finding Your Way
- Learn to Earn
- Health & Fitness for Life
- Manners in a Mannerless World
- Career Match
- Public Speaking & Communicating with Confidence
- Live Smart
- Follow Me
- There is No "I" in Team
- Goal Setting & Getting Organized

Math Titles:

Measuring Up - Ten-15 minute programs for grades 4 – 8, Copyright 2001

- History of Measurement
- Linear Measurement
- The Inch
- Capacity
- Weight
- Linear Measurement in the Metric System
- Capacity in the Metric System
- Weight in the Metric System
- Measuring Temperature in Fahrenheit and Celsius
- Measuring Time

Career:

Career Watch - Ten – 30 minute programs for middle, high school students, and adults. Copyright 2008

- Aviation
- Hospitality
- Manufacturing
- Port Everglades
- Marine Industry
- Engineering
- Bioscience
- Construction
- Healthcare
- Green Collar

Concussion Management: 30 minute program for middle, high school students and adults. Copyright 2012

Lesbian, Gay Bisexual and Transgender: Expanding the Definition of Diversity - 30 minute program for middle, high school students and adults. Copyright 2014

Crossings of the Racial Divide: Hollywood Stories: 30 minute program for middle, high school students

Exhibit B

Royalty Pool		
Distributor net cash receipts	1,000,000	
Royalty pool %	25%	
Royalty pool	250,000	

Royalty Pool Allocation	Current Quarter's		Royalty Pool Allocation \$
	Royalty Pool Allocation %	Royalty Pool	
Video	90%	250,000	225,000
Audio	10%	250,000	25,000
	100%		250,000

Audio Royalty Calculation		a	b	c	a * b * c
<u>Company Name</u>	Usage	Usage %	Royalty Pool Allocation \$	Royalty Rate	Royalty Due
Company #1	3,600	35.0%	25,000	100%	8,737.86
Company #2	2,500	24.3%			
Company #3	4,200	40.8%			
	10,300	100.0%			

Video Royalty Calculation					
	Video Pool Allocation	Video Royalty Pool Allocation \$			
Video-Content	20%	45,000			
Video-Usage	80%	180,000			
	100%	225,000			
<u>Video-Content</u>					
Company Name	Contributed Content	Contributed Content %	Contributed Content Royalty Pool	Royalty Rate	Royalty Due - Video Content
Company #1	56	47.1%	45,000	100%	21,176.47
Company #2	27	22.7%			
Company #3	36	30.3%			
	119	100.0%			
<u>Video-Usage</u>					
Company Name	Content Usage	Content Usage %	Content Usage Royalty Pool	Royalty Rate	Royalty Due - Video Usage
Company #1	1,235	26.3%	180,000	100%	47,378.52
Company #2	2,345	50.0%			
Company #3	1,112	23.7%			
	4,692	100.0%			