

Case Study and Press Release Agreement

THIS AGREEMENT is made and entered into this ____ day of _____ 2017, 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 Microsoft Corporation (hereinafter referred to as “Microsoft”), whose principal place of business is One Microsoft Way, Redmond, WA 98052.

WHEREAS, Microsoft would like the opportunity to participate in certain Press Release activities with SBBC in order to showcase SBBC as a thought leader in delivering technology solutions to help students achieve desired learning outcomes using Microsoft technologies; and

WHEREAS, the purpose of this Case Study & Press Release is to describe the activities in which SBBC will agree to participate and the rights of the parties with regard to any documentation resulting from these activities. Unless otherwise agreed to in writing by the parties, this release will apply to all occurrences of the activities you select from the list below.

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:

1. **Recitals.** The parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.
2. **Term of Agreement.** Unless terminated earlier pursuant to Paragraph 7 of this Agreement, the term of this Agreement shall commence upon execution by all parties and conclude on November 16, 2018.
3. SBBC agrees to participate in the following activities:
 - a. **Written Case Study** – a document/story describing how SBBC is utilizing Microsoft technologies to improve learning outcomes across the district helping a diverse student body prepare for college and future careers.
 - b. **Video Case Study** – a video version of the written case study working with teachers, faculty and students (with parental permission) to share their experience of how Microsoft technologies deliver learning outcomes and preparing students for college and future careers.
 - c. **Press Release/Blog Post** – issued to education, business and technology press and media in order to make a newsworthy announcement showcasing SBBC as a thought leader in utilizing Microsoft technology to achieve learning outcomes.

- d. **Reference Customer** – speak at Microsoft events and/or with other educational peers about your experience with Microsoft technologies

SBBC agreement to participate in these activities does not obligate Microsoft to create any of them or to offer the opportunity to SBBC.

- 4. The following terms apply to all documentation created under this Agreement:
 - a. Microsoft may interview, tape, videotape, record, and photograph you and your employees and/or students (with parental consent) to gather information for creating the documentation/story. You agree to obtain sufficient permissions from any of your employees and/or participants whose quotes, names, or pictures appear in the document/story, in order to grant the rights described in this release.
 - b. SBBC certifies that SBBC will be the author and owner of any documentation SBBC provides to Microsoft. SBBC will ensure that any documentation SBBC provides does not infringe any intellectual property, personality, publicity, or privacy rights of any third party.
 - c. Each Party may display the other party's name, trademarks, service marks, logos, and other identifying information in the documentation, as approved by the Parties during review of and in connection with the documentation.
 - d. Prior to the first public release of any form of documentation, Microsoft will obtain SBBC approval of the final content. SBBC agrees to review the final content for factual accuracy and to prevent the inadvertent release of any of confidential information. SBBC agrees to provide Microsoft with approval or comments in writing - email is acceptable.
 - e. Except for any of your trademarks, service marks, logos, and other identifying information contained in the documentation, SBBC will assign all rights in the documentation to Microsoft, and Microsoft will grant SBBC a perpetual, worldwide, royalty-free, irrevocable license to use and distribute the documentation for your own advertising and marketing efforts.
- 5. Both parties will have the right to publish, use, reference, and display the final, approved documentation, in whole or through unedited excerpts, in all forms of media now or hereafter known, and to sublicense the foregoing rights to third parties. Both parties agree that the content of the documentation will not be altered without prior written consent from the other party.
- 6. Insurance. Microsoft shall comply with the following insurance requirements throughout the term of this Agreement.
 - 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/Completed Operations Aggregate.
 - b) Professional Liability/Errors & Omissions. Limit not less than \$1,000,000 per occurrence covering services provided under this Agreement.

- c) **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.
 - d) **Verification of Coverage.** Proof of the required insurance must be furnished by Microsoft to SBBC Risk Management Department by Certificate of Insurance within 15 days of notification of award. To streamline this process, SBBC has partnered with EXIGIS Risk Works to collect and verify insurance documentation. All certificates (and any required documents) must be received and approved by SBBC before any work commences to permit Microsoft time to remedy any deficiencies. FAX CERTIFICATES OF INSURANCE TO SBBC RISK MANAGEMENT AT 866-897-0424. (Certificate Holder: The School Board of Broward County, Florida, c/o EXIGIS Risk Management Services, P. O. Box 4668-ECM, New York, New York 10163-4668.)
 - e) **Required Conditions.** Liability policies must contain the following provisions. In addition, the following wording must be included on the Certificate of Insurance:
 - 1. The School Board of Broward County, Florida, its members, officers, employees and agents are added as additional insured.
 - 2. All liability policies are primary of all other valid and collectable coverage maintained by The School Board of Broward County, Florida.
 - f) **Cancellation of Insurance.** Microsoft is prohibited from providing services under this Agreement with SBBC without the minimum required insurance coverage and must notify SBBC within two business days if required insurance is cancelled.
 - g) The School Board of Broward County, Florida reserves the right to review, reject or accept any required policies of insurance, including limits, coverage's or endorsements, herein throughout the term of this Agreement.
 - h) Microsoft may, at its option, meet the insurance requirements outlined above via commercial insurance, self-insurance, alternative risk financing techniques, or a combination of these options.
7. **Termination.** This Agreement may be canceled with or without cause by SBBC or Microsoft during the term hereof upon ninety (90) days written notice to Microsoft of its desire to terminate this Agreement. SBBC shall have no liability for terminating this Agreement. Upon termination, BCSD agrees to stop distributing, publicly referencing, and displaying the documentation at any time upon written request from Microsoft; and Microsoft agrees to stop distributing, publicly referencing, and displaying the documentation at any time upon written request from SBBC.
8. **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.
9. **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.

10. **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.
11. **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.
12. **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.
13. **Student Records.** SBBC shall not provide any student records to Microsoft. If applicable, 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. 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 Sections 1002.22 and/or 1002.221, Florida Statutes.

14. **Compliance with Laws.** Each party shall comply with all applicable federal, state and local laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.
15. **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. Microsoft agrees and admits that the state courts of the Seventeenth Judicial Circuit of Broward County, Florida and the Southern District of Florida shall have jurisdiction over Microsoft.
17. **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.
18. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
19. **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.
20. **Incorporation by Reference.** Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.
21. **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 affect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.
22. **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.

23. **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.
24. **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.
25. **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.
26. **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.
27. **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.
28. **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.
29. **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

ATTEST:

By _____
Abby M. Freedman

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

Office of the General Counsel

FOR MICROSOFT

MICROSOFT, INC.,

Agency or Other Legal Entity

ATTEST:

Director Product Marketing

, Secretary

By [Signature]

-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 Washington

COUNTY OF King

The foregoing instrument was acknowledged before me this 20th day of April, 2017 by Jason Campbell of

Name of Person

Microsoft, on behalf of the corporation/agency.

Name of Corporation or Agency

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

My Commission Expires:

[Signature]

Signature - Notary Public

Jacqueline Do

Printed Name of Notary

Notary's Commission No.

