

## AGREEMENT

**THIS AGREEMENT** is made and entered into as of 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

**IO Education LLC**

(hereinafter referred to as “VENDOR”),  
whose principal place of business is  
**1380 Peachtree Industrial Blvd., Suite 2000,**  
**Suwanee, GA 30024, USA**

**WHEREAS**, the VENDOR will provide SBBC with licenses in order to conduct online evaluations of the District’s Instructional leaders using The Vanderbilt Assessment of Leadership in Education (VAL-ED) tool.

**WHEREAS**, The Vanderbilt Assessment of Leadership in Education (VAL-ED) is a research-based evaluation tool that quantifies the effectiveness of school leaders through a 360-degree, evidence-based, multi-rater assessment focused on learning-centered leadership behaviors that influence teachers, staff, and most importantly, student achievement.

**WHEREAS**, the SBBC and VENDOR desire to memorialize the terms and conditions of their agreement;

**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

1.0 **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

2.0 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.06 of this

Agreement, the term of this Agreement shall commence upon approval from SBBC and conclude on December 31, 2018, and by mutual agreement between VENDOR and SBBC be renewable for one (1) additional year. SBBC, through the Purchasing Department will, if considering renewing, request a letter of intent to renew from VENDOR prior to the end of the current contract period.

2.01 **Description of Goods or Services Provided.** The WALLACE Foundation Grant will provide training and support for the District's Instructional Leaders (including Principals and CADRE Directors) based on evidence from VAL-ED, which is a standards based leadership assessment system. The purpose of VAL-ED is to yield performance information to guide the behaviors of leaders and their teams. The findings from the assessment will be educative and serve as a launch pad for professional development of the leaders. VAL-ED includes feedback from the entire teacher faculty; a response group that is best able to provide insight on their principal's instructional leadership that, in turn will impact the training provided.

2.02 **Cost of Services.** SBBC shall pay VENDOR for services rendered under this Agreement for 228 end user licenses, discounted for a total cost of \$68,126.40 with payment term of net 60 days from the date that the VENDOR submits its invoice to SBBC, see **Attachment A**. In addition to the licenses stated above, if needed, VENDOR shall provide SBBC with twenty-two (22) end user additional licenses at no additional charge.

SBBC's preferred method of payment is via ACH electronic payments. An electronic payment can reduce processing time and administrative overhead costs for both parties, resulting in expedited payment upon invoice approval, and reduces exposure to check fraud. SBBC will not pay convenience fees, surcharges, or any additional costs for payments made by electronic payment.

2.03 **SBBC Responsibilities:**

- a. The terms, conditions or provisions of the purchase order or other administrative document issued by SBBC shall not modify, alter or expand the rights, duties or obligations of the parties, regardless of any failure of VENDOR to separately object to such terms, provisions, or conditions.
- b. SBBC will not provide any student personally identifiable information to VENDOR. However, SBBC will provide to VENDOR the employee personally identifiable information listed below:
  - Supervisor Name, Email address for unique login
  - Principal Name: Email address for unique login
- c. **Data Use:** VENDOR's use of the Assessments and Services offered may be subject to a license from third parties who hold proprietary rights thereto. SBBC agrees that SBBC Data generated via the Services may be disclosed to VENDOR licensors and their agents for the purpose of i) research by such licensors and their agents ii) validation of Assessment measures, iii) improve and administer the Services and iv) provide for continuity of Assessment and similar services upon expiration or termination of this Order.

d. **SBBC Data:**

*i) License; Rights.* The term “SBBC Data” means information SBBC creates or otherwise owns, licensed by SBBC from third parties or otherwise provided to VENDOR on SBBC’s behalf and, in each case, that is uploaded to or processed or accessed by the Services. SBBC Data provided will not include student personally identifiable information. However, SBBC Data provided will include employee personally identifiable information as listed in 2.03b. With respect to any SBBC Data provided to VENDOR, SBBC: (i) grants VENDOR the right to use, copy, modify, manipulate and create derivative works of the SBBC Data solely as necessary in order for VENDOR to provide and perform the Services; (ii) agrees to secure rights in the SBBC Data necessary for VENDOR to provide the Services without violating the rights of any third party, or otherwise obligating VENDOR to SBBC or any third party (except as otherwise set out in this Agreement). Except as otherwise required by applicable law, VENDOR does not and will not accept any obligations in any separate license or other agreement that may apply to the SBBC Data or use of the Services. VENDOR may transmit or disclose SBBC Data to third parties in accordance with SBBC’s or its End User’s directions (whether via the Services or otherwise).

*ii) Treatment of SBBC Data upon Termination.* Upon expiration or termination of any Order, SBBC must notify VENDOR (which may be via email) within five (5) days of expiration or termination whether to (i) disable all SBBC accounts relating to the terminated Services and delete the SBBC Data in such accounts; or (ii) provide SBBC with limited access to its account for a period of ninety (90) days after the date of such expiration or termination (the “Retention Period”) for the sole purpose of permitting SBBC to retrieve its SBBC Data, in which case SBBC will reimburse VENDOR if there are any applicable costs; provided, however, that the provisions of subsection (ii) will not apply unless SBBC has paid all amounts due to VENDOR through the effective date of termination no later than five (5) days after such date. If SBBC does not indicate (i) or (ii), VENDOR will retain the SBBC Data in accordance with subsection (ii). Following the expiration of the Retention Period, VENDOR will disable all SBBC accounts relating to the terminated Services and delete the SBBC Data contained in those accounts. SBBC agrees that, other than as described in this Section e ii) and notwithstanding any other term in this Agreement, VENDOR has no obligation to continue to hold or return any SBBC Data. SBBC also agrees that VENDOR has no liability for deletion of any SBBC Data pursuant to these terms.

*iii) Privacy and Security.* VENDOR acknowledges that SBBC Data provided will include employee personally identifiable information. However, no student personally identifiable information will be provided to VENDOR. VENDOR’s access to any personally identifiable information in the SBBC Data is authorized solely in connection with VENDOR’s provision of the Services pursuant to this Agreement.

*iv) System Metrics.* VENDOR may automatically collect usage and volume statistical information regarding SBBC's and its End User's usage of the Services (collectively, the "System Metrics"). VENDOR uses the System Metrics internally to diagnose technical problems, administer the Services, and improve its offerings and marketing. The System Metrics do not include any personal information or data related to the user of the Services. Notwithstanding any term to the contrary set forth herein, SBBC agrees and consents to VENDOR's collection and use of the System Metrics as set forth herein, and SBBC further agree that the System Metrics are VENDOR's sole and exclusive property.

e. **Access Credentials.** SBBC is responsible for maintaining the confidentiality of all usernames, passwords and related information (collectively, "Access Credentials") assigned to or connected with its licenses. SBBC will not permit the sharing of Access Credentials and related information by its end users. If a faculty or administrator end user leaves the employ of SBBC or transfers to an unrelated position in SBBC's employ, SBBC may designate a replacement end user without charge.

#### 2.04 **VENDOR Services and Responsibilities:**

a. The VAL-ED instrument assesses the intersections of what a school leader must accomplish to improve academic and social learning for all students using six (6) core components, and how they create those core components using six (6) key processes.

##### **Core Components:**

- High standards of learning
- Rigorous curriculum
- Quality instruction
- Culture of learning and professional behaviors
- Connections to external communities
- Systematic performance accountability

##### **Key Processes**

- Planning
- Implementation
- Supporting
- Advocating
- Communicating
- Monitoring

b. This Agreement represents a renewal of SBBC's license to the System (described below); VENDOR shall make the VAL-ED instrument available for use via Vendor's proprietary data platform software application (the "System") upon the effective date of this Agreement.

c. **License Grant.** Subject to the terms and conditions of this Agreement, VENDOR grants to SBBC, during the term of this Agreement, a limited, nontransferable, nonexclusive license to (i) permit its employees to access over the Internet and use the System and the VAL-ED instrument available thereon solely to support SBBC's normal course of business and according to the access authority levels configured or assigned by SBBC; (ii) to the extent permitted by applicable law, publish the output generated from SBBC's or its end users use of the System (the "Output") in research reports or other publications published or issued in SBBC's usual and ordinary course of business to SBBC's constituents (whether in paper or electronic form) (each, an "Authorized Publication"); and (iv) disseminate those Authorized Publications, provided that those Authorized Publications are not distributed or sold or subscribed to for consideration or compensation.

d. **Restrictions on Use.** SBBC and its end users may not (i) use, license, sell, redistribute, lease, extract or otherwise transfer or assign the Data Services, VENDOR Data, Third Party Add-Ons or any component thereof, except as expressly permitted herein; (ii) alter or permit a third party to alter any part of the Data Services, VENDOR Data or Third Party Add-Ons; (iii) use or permit the use of the Data Services, VENDOR Data or Third Party Add-Ons for any unlawful purpose; (iv) reverse engineer or otherwise attempt to derive source code or other trade secrets from the Data Services, VENDOR Data or Third Party Add-Ons; (v) use the Data Services in a way that could harm VENDOR's network or System or impair a third party's use of the Data Services (including by transmitting by or uploading to the System any viruses, worms, Trojan horses or other malicious code); or (vi) use the Data Services to try to gain unauthorized access to any service, data, account or network by any means.

e. **SBBC Support.** VENDOR will provide SBBC and its faculty and administrator End Users with reasonable technical assistance by phone and email or other Internet-based communication with respect to the access and use of the System and the identification and reporting of problems or errors with the System; VENDOR shall resolve such problems and errors. VENDOR will respond to SBBC within a reasonable period of time from a request placed by SBBC during VENDOR's normal support hours, 8 a.m. to 8 p.m., Eastern Standard/Daylight Time, Monday through Friday, holidays excepted; such hours are subject to change without notice. VENDOR may also provide support and technical assistance or reference guides to End Users online, via the System or at such other locations as VENDOR may elect, in its sole discretion.

f. **System Changes.** VENDOR may from time to time update the functionality, features, user interface, user documentation, training and educational information, and any other aspects of or relating to the System in its sole discretion, provided that such changes do not materially adversely affect the functionality of the System.

g. **Limited Warranties.** VENDOR warrants that (i) it has the necessary ownership or license rights to grant the licenses granted to SBBC herein; (ii) it will use commercially reasonable efforts to integrate SBBC Data provided by SBBC and provide the System and Val-Ed assessment to SBBC, provided that SBBC and all end users have used equipment,

settings and software that meet the System Requirements; and iii) the Services will perform in all material respects in accordance with its specifications. If such Services does not perform in all material respects in accordance with its specifications, then VENDOR shall have an opportunity to cure pursuant to Article 3.07. If VENDOR is not able to cure, then the SBBC shall be entitled a pro rata refund for the period of time it did not receive Services and any other remedy existing in law or in equity or by statute or otherwise. EXCEPT AS SET FORTH IN THIS SECTION 2.04(i), THE SYSTEM AND THE VAL-ED ASSESSMENT MADE AVAILABLE THEREBY ARE PROVIDED EXCLUSIVELY ON AN "AS IS" BASIS, AND VENDOR DISCLAIMS ANY AND ALL OTHER EXPRESS, IMPLIED AND STATUTORY WARRANTIES WITH RESPECT TO THE SERVICES OR, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, PERFORMANCE, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE. VENDOR DOES NOT WARRANT THAT THE SYSTEM WILL BE UNINTERRUPTED OR ERROR-FREE. AS BETWEEN THE PARTIES, SBBC IS SOLELY RESPONSIBLE FOR ENSURING THE ACCURACY OF ALL SBBC DATA PROVIDED BY SBBC IN CONNECTION WITH THIS AGREEMENT.

- h. **Service Suspension:** VENDOR may suspend the Services in whole or in part and without notice: i) if VENDOR believes SBBC or its End users' use of the Services represents a direct or indirect threat to the function or integrity of the Services; ii) if reasonably necessary to prevent unauthorized access to SBBC's data (including, without limitation, SBBC's Data); or iii) to the extent necessary to comply with legal requirements. If VENDOR suspends the Service without notice, VENDOR will provide the reason for such suspension, upon SBBC's request. Any suspension of services for the foregoing reasons will apply to the minimum necessary portion of the online portion of the Service and only be in effect for as long as reasonably necessary to address the issues giving rise to the suspension. VENDOR may also, upon such notice as is reasonably practicable under the circumstances, perform scheduled or emergency maintenance (including temporary suspension of the Services as necessary) to maintain or modify the Services or VENDOR's Technology.
- i. **Termination of Service Agreement:** VENDOR's ability to provide the Services may be subject to various licenses or other agreements (each a "Service Agreement") between VENDOR and its third party suppliers. In the event of the expiration or termination of any applicable Service Agreement, VENDOR will use commercially reasonable efforts to obtain alternative suppliers in order to avoid suspension or disruption in the Services. If VENDOR is unable, for any reason, to obtain such an alternative or replacement Service Agreement, or if VENDOR reasonably determines that the provision of any Services would be a violation of any applicable law or regulation or any VENDOR license in any jurisdiction or is no longer permitted under any of the same, VENDOR may terminate this Agreement upon written notice to SBBC. SBBC shall be entitled to a pro rata reimbursement of all fees paid for the time period after the termination. VENDOR will give SBBC at least sixty (60) days prior written notice to SBBC (or, if it is not possible to give 60 days' notice, as much notice as possible under the circumstances) of the termination or expiration of a Service Agreement governing VENDOR's ability to deliver

the Services, or any other condition arising under such Service Agreement that is likely to adversely affect SBBC's use of the Services or VENDOR's ability to provide the Services. If VENDOR terminates this Agreement pursuant to this Section, and SBBC has prepaid for any Services under this Agreement, then VENDOR will, after applying such prepayment to all fees and charges due under the Agreement, return the unused portion of such prepayment to SBBC within forty-five (45) days after the date of termination.

- j. **Nondisclosure:** Unless considered a public record pursuant to Chapter 119, Florida Statutes, VENDOR's Confidential Information expressly includes information IO creates or otherwise owns or licenses from third party and related to the Services, including, without limitation, all of VENDOR's proprietary software and other technology with respect to the Services, all documentation relating to the Services (both printed and electronic), and any derivatives, improvements, enhancements, upgrades and updates of the foregoing conceived, reduced to practice or otherwise developed during the term of this Agreement by either party (collectively, the "VENDOR Technology"), together with any processing, storage and transmission information that may be necessary for VENDOR to perform its obligations under this Agreement, but excluding SBBC Data. Each party will protect the confidentiality of the Confidential Information of the other party by employing the same measures (but in no event less than reasonable measures) as it takes to protect its own Confidential Information. The obligations of this Section will last during and after the term of this Agreement.
  
- k. **Legal Disclosure.** The receiving party may disclose Confidential Information pursuant to the requirements of a validly issued subpoena, governmental agency or by operation of law. The terms of this Section are subject to the requirements of applicable trade secret, public records and similar laws.
  
- l. **Proprietary Rights.** Exclusive of SBBC Data, VENDOR and its licensors will retain all right, title, and interest (including copyright and other intellectual property rights or informational rights) in and to the Services and all legally protectable elements or derivative works of the foregoing, including, without limitation, the VENDOR Technology. Consistent with the term of this Agreement, VENDOR may place copyright and/or other proprietary notices, including hypertext links, within the Services, and neither SBBC nor any of its End Users will remove such notices without VENDOR's written permission. Notwithstanding anything to the contrary in this Agreement, VENDOR will not be prohibited or enjoined at any time by SBBC from utilizing any skills, knowledge or information of a general nature acquired during the course of providing the Services, including, without limitation, knowledge or information publicly known or available or that could reasonably be acquired in similar work performed for another customer of VENDOR.

2.05 **Inspection of VENDOR Records by SBBC:** VENDOR 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 *VENDOR* 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 *VENDOR* or any of *VENDOR'S* payees pursuant to this Agreement. *VENDOR* 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. *VENDOR* 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) VENDOR Records Defined. For the purposes of this Agreement, the term "VENDOR Records" shall include, without limitation, accounting records, payroll time sheets, cancelled payroll checks, W-2 forms, written policies and procedures, computer records, disks and software, videos, photographs, executed subcontracts, subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including sufficient supporting documentation and documentation covering negotiated settlements), and any other 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 *VENDOR* 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 *VENDOR* pursuant to this Agreement.

(c) Notice of Inspection. SBBC's agent or its authorized representative shall provide *VENDOR* 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 *the VENDOR'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 *VENDOR* 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 *VENDOR* 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 *VENDOR* in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be



paid by *the* *VENDOR*. If the audit discloses billings or charges to which *the* *VENDOR* is not contractually entitled, the *VENDOR* 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. *VENDOR* 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 *VENDOR* 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 *VENDOR* pursuant to this Agreement and such excluded costs shall become the liability of *the* *VENDOR*.

(h) Inspector General Audits. *VENDOR* 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.

2.06 **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: Director, Service Quality  
610 NE 13 Avenue  
Pompano Beach, Florida 33060

To VENDOR: Mr. Andrew Eggleston, VP, Performance Mgmt.  
**IO Education LLC**  
3423 Piedmont Road NE,  
Suite 300,  
Atlanta GA  
30305, USA

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

2.08 **Insurance Requirements.** Vendor 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 Insurance must be furnished within 15 days of execution of this Agreement. To streamline this process, SBBC has partnered with EXIGIS RiskWorks 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 Awardee time to remedy any deficiencies. EXIGIS RiskWorks will send an email notification within three (3) business days after receipt of the award letter.
  - New vendors will receive an email notification requesting account verification and insurance agent information.
  - Existing vendors will receive an email notification of current status.
- (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.

3. 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

- (f) Cancellation of Insurance. Vendors are 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.

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.

### 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 **M/WBE Commitment.** Throughout the term of the Agreement, VENDOR shall take commercially reasonable steps and use commercially reasonable resources to identify SBBC-certified M/WBE VENDORS who may be engaged to fulfill various aspects of the Agreement, including, for instance, without limitation, M/WBE VENDORS to provide office supplies, travel, printing, janitorial supplies/services, consulting services, trade services, installation and repair services, medical supplies, where feasible. VENDOR agrees to provide monthly reports and to conduct quarterly meetings with SBBC to discuss progress in meeting the SBBC's objectives regarding M/WBE participation, including dollars spent on M/WBE VENDORS for the quarter; and to continue to assess throughout the term of the Agreement new possibilities for M/WBE VENDOR participation suggested by SBBC. If at any time during the term the parties agree that it is reasonably feasible to include a specific dollar figure for M/WBE participation, the Agreement shall be amended to include the dollar participation objective.

3.06 **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. 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.

3.07 **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.

3.08 **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.

3.09 **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.

3.10 **Public Records:** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. VENDOR shall keep and maintain public records required by SBBC to perform the services required under this Agreement. Upon request from SBBC's custodian of public records, VENDOR shall provide SBBC with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. VENDOR shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the Agreement if VENDOR does not transfer the public records to SBBC. Upon completion of the Agreement, VENDOR shall transfer, at no cost, to SBBC all public records in possession of VENDOR or keep and maintain public records required by SBBC to perform the services required under the Agreement. If VENDOR transfer all public records to SBBC upon completion of the Agreement, VENDOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If VENDOR keeps and maintains public records upon completion of the Agreement, Insert Name shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to SBBC, upon request from SBBC's custodian of public records, in a format that is compatible with SBBC 's information technology systems.

**IF A PARTY TO THIS AGREEMENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 754-321-1900, [REQUEL.BELL@BROWARDSCHOOLS.COM](mailto:REQUEL.BELL@BROWARDSCHOOLS.COM), RISK MANAGEMENT DEPARTMENT, PUBLIC RECORDS DIVISION, 600 SOUTHEAST THIRD AVENUE, FORT LAUDERDALE, FLORIDA 33301.**

3.11 **Student Records.** 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.

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

3.13 **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.

3.14 **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. VENDOR 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 VENDOR.

3.15 **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.

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

3.17 **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.

3.18 **Incorporation by Reference.** Attachment A, attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

3.19 **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.

3.20 **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.

3.21 **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.

3.22 **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.

3.23 **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.

3.24 **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.

3.25 **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.

3.26 **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.

3.27 **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 VENDOR: VENDOR 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 to a third party (collectively, "Losses") on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, brought by a third party (each, an "Action")\_and arising or alleged to have arisen out a breach of VENDOR'S representations, warranties or covenants set forth in Sections 2.03(c), 2.03(d), 2.04(h), 2.04(k), 2.07, 3.10, 3.12 or 3.27 of this Agreement; the equipment of VENDOR, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of VENDOR or the negligence of VENDOR'S agents when acting within the scope of their employment, with respect to any tangible damage to property including SBBC's property, and bodily injury or death of any person whether employed by VENDOR, SBBC or otherwise. VENDOR'S indemnification obligations under this Agreement shall be subject to: (i) receiving prompt written notice of the existence of any Action; (ii) it being able to control the settlement and defense of any such Action (provided, however, that Vendor shall not settle any Action or otherwise consent to the entry of any order or judgment in any Action if such settlement, order or judgment admits any liability of SBBC or requires SBBC to take or to refrain from taking any action, other than the payment of damages); (iii) permitting SBBC to participate in the defense of any Action, at SBBC'S option and expense; and (iv) receiving cooperation of SBBC in the defense thereof. With respect to any Action alleging a breach of Section 2.04(h), VENDOR shall have the further right, if applicable or appropriate, to procure a license sufficient to continue offering the System and Val-Ed assessment; and terminate this Agreement upon written notice to SBBC and providing a pro-rata refund of the fees paid hereunder (provided that VENDOR will continue to remain liable for its indemnification obligations in such event).

C. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXCEPT TO THE EXTENT THE SAME ARE "LOSSES" PAYABLE TO THIRD PARTIES PURSUANT TO SECTION 3.27(B), ABOVE, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO ANYONE FOR LOST PROFITS OR REVENUE OR FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, COVER, SPECIAL, RELIANCE OR EXEMPLARY DAMAGES, OR INDIRECT DAMAGES OF ANY TYPE OR KIND, INCLUDING COST OF REPLACEMENT GOODS, LOSS OF TECHNOLOGY, RIGHTS OR SERVICES, LOSS OF INFORMATION OR DATA, OR INTERRUPTION OR LOSS OF USE OF SERVICE OR EQUIPMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING UNDER ANY THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

D. IN NO EVENT WILL THE MAXIMUM LIABILITY OF EITHER PARTY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY LICENSE, USE OR OTHER EMPLOYMENT OF ANY SERVICE OR SYSTEM, ARISING UNDER ANY THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EXCEED AN AMOUNT EQUAL TO THE FEES PAYABLE TO VENDOR UNDER THIS AGREEMENT. NOTWITHSTANDING THE PREVIOUS SENTENCE, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY TO THE EXTENT SUCH LIABILITY



WOULD NOT HAVE OCCURRED BUT FOR THE OTHER PARTY'S OWN FAILURE TO COMPLY WITH THE TERMS OF THIS AGREEMENT. NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT, THIS ARTICLE 3.27(D) SHALL NOT APPLY TO LIMIT THE AMOUNT THAT SBBC MAY RECOVER (I) AS TO ANY CLAIMS ON VENDOR'S INSURANCE THAT SBBC MAY MAKE UNDER ARTICLE 2.08, OR (II) .FOR "LOSSES" PAYABLE TO THIRD PARTIES PURSUANT TO ARTICLE 3.27(B), OTHER THAN "LOSSES" PAYABLE TO THIRD PARTIES WITH RESPECT TO AN "ACTION" ARISING OUT OF A BREACH OR ALLEGED BREACH OF HE WARRANTIES IN SECTIONS 2.04(h)(ii) or (iii) , TO WHICH THE LIMITATIONS IN THIS ARTICLE 3.27(D) SHALL APPLY.

3.28 **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 \_\_\_\_\_  
Nora Rupert, Chair

\_\_\_\_\_  
Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

**Janette M. Smith**

Digitally signed by Janette M.

Smith

Date: 2017.11.28 13:55:19 -05'00'

\_\_\_\_\_  
Office of the General Counsel

**FOR VENDOR**

(Corporate Seal)

IO EDUCATION LLC

ATTEST:

By [Signature] VP of Performance mgmt  
[Name, Title]

\_\_\_\_\_, Secretary

-or-  
[Signature]

Witness  
[Signature]  
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 Georgia

COUNTY OF Fulton

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of November, 2017 by \_\_\_\_\_ of

\_\_\_\_\_, Name of Person  
\_\_\_\_\_, 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:



[Signature]  
Signature - Notary Public

Joshua R Marshall  
Printed Name of Notary

My 6, 2019  
Notary's Commission No.

**ATTACHMENT A**  
**IO EDUCATION QUOTE**



**Quotation**  
Quote #: Q-09032-1  
Expires On: 11/6/2018

**IO Education**  
*Improving Educational Outcomes*

1380 Peachtree Industrial Blvd, Suite 200 Suwanee, GA 30024 US  
Phone: (666) 817-0726 Fax: (229) 389-2785  
Email: info@ioeducation.com

Ship To  
Donna Boruch  
Broward County Public Schools  
600 SE 3RD Avenue, 10TH FL  
Fort Lauderdale, FL 33301-3125  
US  
(754) 321-3850  
(754) 321-2783  
donna.boruch@browardschools.com

Bill To  
Broward County Public Schools  
600 SE Third Ave.  
Fort Lauderdale, FL 33301  
US

SALESPERSON	EXT	EMAIL	DELIVERY METHOD	PAYMENT METHOD
Andrew Eggleston	x	aeggleston@ioeducation.com		Net30

QTY	Code	PRODUCT NAME	UNIT PRICE	NET PRICE	EXTENDED
228.00	VAL-ED	VAL-ED	\$360.00	\$298.80	\$82,080.00
				<b>DISCOUNT:</b>	\$13,953.60
				<b>TOTAL:</b>	\$68,126.40