MASTER SERVICES AGREEMENT
UPLAND SOFTWARE, INC. - SAAS

This Master Services Agreement ("**MSA**"), including all Quotes, Statements of Work, Support Agreement, and Product Addendums (all such terms as defined below) agreed to by the parties (collectively, the "**Agreement**"), is between the entity listed below ("**Customer**") and Upland Software, Inc. ("**Supplier**" "**we**" or "**our**") and sets forth the terms and conditions under which Upland will make available certain Services and Applications (as defined below), and Customer will be permitted to use and access such Services and Applications. This Agreement is effective as of the effective date provided in the signature box, below ("**Effective Date**"). By signing this MSA, Customer and Upland agree to be bound by the terms of the Agreement.

TERMS AND CONDITIONS

1. DEFINITIONS

1.1. "**Affiliate**" means any person or entity that controls, is controlled by, or is under common control with a party to this Agreement. The term "control" as used in the immediately preceding sentence means the right to exercise, directly or indirectly, more than fifty percent of the voting rights attributable to the shares, partnership interests, membership shares, or similar evidences of ownership of an entity.

1.2. "**Application**" means the software program identified in the applicable Quote.

1.3. "**Customer Data**" means the data inputted by Customer or its Users for the purpose of using an Application or facilitating Customer's use of an Application.

1.4. "**Documentation**" means user documentation that describes the principles of the operation or functionality of the applicable Application and that are embedded with such Application (e.g., on-line help files).

1.5. "**Maintenance and Support**" means ongoing maintenance and technical support services for the applicable Application, as further described in the applicable Maintenance and Support Terms and Conditions and Quote (collectively, the "**Support Agreement**").

1.6. "**Non-User-Based Application**" means an Application that is made available to Customer on a basis other than a per-User basis.

1.7. "**Professional Services**" means all software implementation, training, configuration, data migration, consulting and professional services performed by or on behalf of Supplier for Customer pursuant to this Agreement.

1.8. "**Quote**" means the ordering document for purchases of Services hereunder, including addenda thereto, that are entered into between Customer and Supplier from time to time.

1.9. "**Services**" means each Application, Maintenance and Support Services and Professional Services, collectively.

1.10. "**Subscription Fees**" means any fees relating to Services and Application (including fees for Maintenance and Support, User Subscriptions and fees for exceeding Scope Limitations).

1.11. "**Subscription Term**" for each Application means the period that Customer has the right to use such Application and associated Documentation as set forth in the applicable Quote, including the Initial Term and any renewal terms.

1.12. "**User-Based Application**" means an Application that is made available to Customer on a per-User basis, i.e., a User Subscription must be purchased by Customer for each User that is authorized to access the applicable Application.

1.13. "**User Subscription**" means a subscription purchased by Customer that entitles one User to access and use the

applicable Application and Documentation during the applicable Subscription Term.

1.14. "**Users**" means individuals who are authorized by Customer to use the applicable Application, for whom subscriptions to such Application have been purchased (in the case of User-Based Applications), and who have been supplied Supplier-issued user identifications and passwords by Customer. "Users" may include but is not limited to Customer employees, consultants, contractors and agents.

2. USE OF THE APPLICATION

2.1. Quotes. Customer's right to use any particular Application is only valid during the period that both the applicable Quote and the applicable Subscription Term are in effect.

2.2. Use of the Application. Subject to the terms and conditions of this Agreement, Supplier hereby grants to Customer and Customer hereby accepts from Supplier a limited, non-exclusive, revocable, non-transferable (except as permitted in Section 14.2 (Assignability)), non-sublicensable right during the applicable Subscription Term as follows:

2.2.1. For each User-Based Application, allow Users to use the Application specified on the applicable then-valid Quote solely in connection with Customer's internal business operations; and

2.2.2. for each Non-User-Based Application, to allow Users to use the Application in accordance with the scope of use specified in the applicable then-valid Quote.

2.3. Use of the Documentation. Subject to the terms and conditions of this Agreement, Supplier hereby grants to Customer a limited, non-exclusive, revocable, non-transferable (except as permitted in Section 14.2 (Assignability)), non-sublicensable license during the applicable Subscription Term to reproduce, without modification, and internally use a reasonable number of copies of the Documentation solely in connection with Users' use of the applicable Application in accordance with this Agreement.

2.4. Use Limitations. Customer's right to use each Application is contingent upon Customer's compliance with the limitations on Customer's use of such Application specified in this Agreement. Customer agrees that it will not exceed the maximum allowed usage (e.g., images, documents, storage or users) for such Application as specified in the applicable Quote or Documentation ("**Scope Limitations**"). Customer undertakes that: (i) the maximum number of Users that it authorizes to access and use each User-Based Application will not exceed the number of User Subscriptions it has purchased for such Application, and (ii) it will not allocate any User Subscription to more than one individual User unless it has been reassigned in its entirety to another individual User, in which case the prior User will no longer have any right to access or use the applicable Application or Documentation.

2.5. Audit. Customer shall permit Supplier to audit Customer's use of each Application. Such audit may be conducted no more

than once per twelve months, at Supplier's expense, and this right will be exercised with reasonable prior notice of no less than two weeks, in such a manner as not to interfere with Customer's normal conduct of business. If the audit reveals that Customer has underpaid any Services fees to Supplier, Customer shall pay to Supplier an amount equal to such underpayment within thirty days of the date it receives notice of such underpayment

2.6. Reservation of Rights. Except for licenses provided hereunder, as between Supplier and Customer, Supplier and its licensors retain all right, title, and interest to all software, products, works, and other intellectual property created, used, or provided by Supplier for the purposes of this Agreement, including, but not limited to, each Application and all Documentation. Supplier owns all right, title, and interest in and to all modifications or derivatives of, and improvements to, each Application and all Documentation and any other part of the Services (created by either party). Customer hereby makes all assignments necessary to provide Supplier the ownership rights set forth in the preceding sentence.

2.7. Customer Data. Supplier hereby acknowledges and agrees that all rights, title and interest in and to Customer Data are and shall remain the property of Customer and all intellectual property rights in Customer Data are the property of Customer. Customer hereby grants to Supplier throughout the term of this Agreement, and after the term as necessary for any of Supplier's post-termination obligations to Customer, the necessary rights or license to use, reproduce, promote, distribute, modify, publicly display and perform, cache, and transmit Customer Data via the applicable Application solely as necessary for the purposes of this Agreement. Without limiting any of Customer's obligations under an SOW, Customer shall provide Supplier, in the form and format and on the schedule mutually agreed to by Customer and Supplier, all Customer Data reasonably required for Supplier's performance hereunder.

2.8. Feedback. If Customer provides any feedback to Supplier concerning the functionality and performance of an Application (including identifying potential errors and improvements), Customer hereby assigns to Supplier all right, title, and interest in and to the feedback, and Supplier is free to use the feedback without payment or restriction.

3. CUSTOMER'S RESPONSIBILITIES

3.1. Account Credentials. Customer is solely responsible for maintaining the confidentiality of the administrator and User logon user identifications, passwords and account information.

3.2. Compliance and Use. Customer shall (a) be responsible for Users' compliance with this Agreement, (b) be responsible for the accuracy, quality, integrity and legality of Customer Data and of the means by which Customer acquired Customer Data, (c) use commercially reasonable efforts to prevent unauthorized access to or use of each Application and all Documentation and immediately notify Supplier in writing of any such unauthorized access or use or violation by Customer or its Users of this Agreement, (d) use each Application only in accordance with the Documentation and (e) comply with all applicable laws and government regulations. Customer will cooperate and assist with any actions taken by Supplier to prevent or terminate unauthorized use of each Application or any Documentation.

3.3. Restrictions. Except as otherwise explicitly provided in this Agreement, Customer may not, and will not permit or authorize third parties to:

3.3.1. Attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Applications or Documentation in any form or media or by any means; or attempt to reverse compile, disassemble, reverse

engineer or otherwise reduce to human-perceivable form all or any part of the Applications; or

3.3.2. Access all or any part of the Applications or Documentation in order to build a product or service that competes with the Services or the Documentation;

3.3.3. License, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit the Applications or Documentation, or otherwise make the Applications or Documentation available to any third party (e.g., as a service bureau);

3.3.4. Circumvent or disable any security or other technological features or measures of the Applications;

3.3.5. Make the Services available to anyone other than Users

3.3.6. Use the Applications to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights;

3.3.7. Use the Services to store or transmit malicious code;

3.3.8. Interfere with or disrupt the integrity or performance of the Services or third-party data contained therein; or

3.3.9. Attempt to gain unauthorized access to the Applications or related systems or networks.

4. MAINTENANCE AND SUPPORT SERVICES

Maintenance and Support Services shall be provided in accordance with the terms of this MSA.

5. PROFESSIONAL SERVICES

For each request for Professional Services hereunder, the parties shall in good faith negotiate statements of work (each, an "**SOW**"). Each SOW will specify the scope of work and specific terms of the project(s) to be performed by Supplier in accordance with the terms and conditions of this MSA. Travel expenses, including reasonable transportation, lodging and meal expenses incurred in relation to the provision of Professional Services will be reimbursed by Customer in accordance Section 112.061, Florida Statutes outlining per diem and travel expenses and are in addition to the specified Professional Services fees. If Customer cancels a Professional Services visit less than 5 business days prior to the scheduled visit, Customer will pay all applicable travel (such as hotel, flight) cancellation costs.

6. PAYMENT AND FEES

6.1. Fees. Customer will pay Supplier the amounts specified by individual SOW's and Quotes governed under this Agreement. Fees are based on Services purchased and not on actual usage. Unless otherwise specified in the applicable Quote or SOW, all amounts payable under this Agreement are denominated in U.S. dollars, and Customer will pay all such amounts in U.S. dollars.

6.2. Additional Users or Usage. For User-Based Applications, Customer may, from time to time during the Subscription Term for the applicable Application, purchase additional User Subscriptions and Supplier shall grant access to the Application and the Documentation to such additional Users in accordance with the provisions of this Agreement. For Non-User-Based Applications, Customer may, from time to time during the Subscription Term for the applicable Application, to the extent specified in the applicable Quote or in accordance with Supplier's then-current applicable policies, purchase rights to exceed some or all of the then-applicable Scope Limitations; provided, however, that Customer acknowledges that certain Applications

may not allow an increase of any or all elements of the applicable Scope Limitations.

6.3. Renewal Fees. Supplier will give Customer at least 30 days' notice (which may be by email) of any proposed increase in the Service fees or any new charges and fees prior to the end of the applicable Initial Term. Any discounts offered for the Initial Term do not apply to renewal terms unless expressly provided in the applicable Quote.

6.4. Invoices and Payment Terms. The Subscription Fees will be invoiced annually in advance. Fees for additional User Subscriptions or other modifications to the Scope Limitations will be invoiced upon receipt of Customer's request for such purchase. If such additional User Subscriptions are purchased by Customer part way through the Initial Term or any renewal term, such fees shall be pro-rated for the remainder of the Initial Term or then-current renewal term. Professional Services will be invoiced upon execution of the applicable SOW. Customer will pay all amounts due within 30 days of the date of the applicable invoice. Customer acknowledges that Subscription Fees for renewal terms are due on or by the first day of such renewal term.

6.5. Late Payments. Any amount not paid when due will be subject to finance charges equal to 1.5% of the unpaid balance per month or the highest rate permitted by applicable usury law, whichever is less, determined and compounded daily from the date due until the date paid. Customer will reimburse any costs or expenses (including, but not limited to, collection agency fees, reasonable attorneys' fees and court costs) incurred by Supplier to collect any amount that is not paid when due. In the event of default in the payment of any undisputed invoices, installments or interest for a period in excess of 60 days past their due date, Supplier may, without notice or demand, declare the entire principal sum payable during the Term under all outstanding Quotes and SOWs, immediately due and payable.

6.6. Taxes. Other than net income taxes imposed on Supplier, unless Customer provides Supplier with a valid tax exemption or a properly completed direct pay certificate, Customer will bear all taxes, duties, and other governmental charges (collectively, "taxes") resulting from this Agreement. Customer will pay any additional taxes as are necessary to ensure that the net amounts received by Supplier after all such taxes are paid are equal to the amounts that Supplier would have been entitled to in accordance with this Agreement as if the taxes did not exist, regardless of whether such taxes were included on the initial applicable invoice to Customer.

7. TERM, RENEWAL AND TERMINATION

7.1. Agreement Term. This Agreement will commence upon the Effective Date and continue until the Subscription Term for each Quote has expired or is otherwise terminated in accordance with the terms of the applicable Quote unless this Agreement is terminated earlier as set forth herein.

7.2. Quote Term. The term for each Quote shall commence on the effective date of the applicable Quote (or, if no effective date is specified, on the date the Quote has been executed by both Customer and Supplier) and shall be in effect for the term specified in the Quote provided, that if no such term is indicated in the Quote, the initial term shall be for one year (the "**Initial Term**").

7.3. SOW Term. Each SOW will be in effect for the time period specified on the applicable SOW.

7.4. Termination for Material Breach. Either party may terminate this Agreement or an SOW if the other party does not cure its material breach of this Agreement or the applicable SOW

within 30 days of receiving written notice of the material breach from the aggrieved party. At the aggrieved party's election, such termination will apply only to the applicable Quote or SOW and related Services for a particular Application and not to Quotes for or SOWs related to other Applications governed by this Agreement. Termination of this Agreement will terminate any then-outstanding Quotes and SOWs. Termination in accordance with this Section 7.47.4 will take effect when the breaching party receives written notice of termination from the aggrieved party, which notice must not be delivered until the breaching party has failed to cure its material breach during the 30-day cure period. If Customer fails to timely pay any fees, Supplier may, without limitation to any of its other rights or remedies, suspend performance of all Services for Customer until Supplier receives all amounts due. In the event of termination as a result of Customer's failure to comply with any of its obligations under this Agreement, Customer shall be obligated to pay for Subscription Fees and fees for Professional Services rendered. Termination of the Agreement or any Quote or SOW shall be in addition to and not in lieu of any equitable remedies available to Supplier.

7.5. Transition Assistance. Following the termination of the applicable Quote or this Agreement, provided customer makes a written request within 14 days before the effective date of termination and subject to then-current Professional Service fees on a time and materials basis, Supplier shall offer transition assistance, which may include, to the extent practicable, an export of Customer Data from the applicable Application, in a format that is mutually agreed upon. To the extent Supplier makes available to Customer an API or other means to assist with such transition, the API shall be Supplier's Confidential Information (as defined in Section 8), and Customer is granted a personal, nonsublicensable, nonexclusive, nontransferable, limited license to use the API solely for Customer's internal use for exporting Customer's content from Supplier to the new Customer system. Customer shall not (a) copy, rent, sell, disassemble, reverse engineer or decompile (except to the limited extent expressly authorized by applicable statutory law), modify or alter any part of the API, or (b) otherwise use the API on behalf of any third party. The API license shall automatically terminate in the event Customer breaches this Section 7.5.

7.6. Post-Termination Obligations. If a Quote or SOW is terminated for any reason, (a) Customer will pay to Supplier any fees or other amounts that have accrued prior to the effective date of the termination pursuant to each such Quote or SOW, (b) any and all liabilities accrued prior to the effective date of the termination will survive, and (c) with respect to a terminated Quote, Customer will provide Supplier with a written certification signed by an authorized Customer representative certifying that all use of the applicable Application and Documentation ordered pursuant to the applicable Quote(s) by Customer has been discontinued.

7.7. Survival. Sections 2.5 (Audit), 2.6 (Reservation of Rights), 2.7 (Customer Data), 2.8 (Feedback), 3 (Customer's Responsibilities), 6.1 (Fees). 6.4 (Invoices and Payment Terms), 6.56.6 (Late Payments), 6.66.7 (Taxes), 7 (Term, Renewal and Termination), 8 (Confidentiality), 9.2 (Disclaimer), 11 (Limitations of Liability) and 14 (General) shall survive the termination of this Agreement.

8. CONFIDENTIALITY

8.1. Definition. As used herein, "**Confidential Information**" means all confidential information disclosed by or otherwise obtained from a party ("**Disclosing Party**") to or by the other party ("**Receiving Party**"), whether orally, visually or in writing, if it is considered a trade secret pursuant to Sections 119.07 and 812.081(1)(c), Florida Statutes. However, "Confidential

Information" does not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (c) is received from a third party without breach of any obligation owed to the Disclosing Party, or (d) was independently developed by the Receiving Party.

8.2. Protection of Trade Secrets or Confidential Information. Except as otherwise permitted in writing by the Disclosing Party, the Receiving Party shall (a) use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (b) limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Notwithstanding the foregoing, if the Customer receives a public records request for contract-related materials designated by the upland as "confidential" the Customer will provide notice to Upland and Upland will be responsible for designating the portions of the contract-related materials that are "confidential." If the requester asserts a right to examine contract-related materials designated as "confidential" the Customer will notify the Contractor. Upland will be responsible for responding to and resolving all claims for access to contract-related materials it has designated "confidential." If the Customer is served with a request for discovery of contract-related materials, the Customer will promptly notify Upland about the request, and Upland will be responsible for filing the appropriate motion or objection in response to the request for discovery. The Customer will provide materials designated "confidential only if upland fails to take appropriate action, within timeframes established by statute and court rule, to protect the materials designated as "confidential" from disclosure. Upland will protect, defend, and indemnify the Customer for claims, costs, fines and attorney's fees arising from or relating to its designation of contract-related materials as "confidential."

8.3. Student Records: SBBC will not disclose or provide access to education records to Upland pursuant to this agreement. 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 applicable 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, judgements or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party that either intentionally or negligently violates the provisions of section or of Sections 1002.22 and/or 1002.221, Florida Statutes.

9. **WARRANTIES AND DISCLAIMER**

9.1. Warranties. Each party represents and warrants to the other that: (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such party in accordance with its terms; and

(b) no authorization or approval from any third party is required in connection with such party's execution, delivery, or performance of this Agreement.

9.2. Disclaimer. EXCEPT AS SET FORTH IN SECTION 9.19.1 (Warranties), EACH APPLICATION, ACCESS THERETO, THE DOCUMENTATION AND ANY SERVICES PROVIDED HEREUNDER ARE PROVIDED ON AN "AS IS" BASIS, AND SUPPLIER AND ITS AFFILIATES AND AGENTS (A) DO NOT MAKE, AND HEREBY EXPRESSLY DISCLAIM, ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUALITY, ACCURACY AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE; OR (B) DO NOT WARRANT THAT ACCESS TO ANY APPLICATION WILL BE UNINTERRUPTED, ERROR-FREE, OR SECURE, OR THAT ANY INFORMATION, SOFTWARE, OR OTHER MATERIAL ACCESSIBLE OR PROVIDED THROUGH ANY APPLICATION IS ACCURATE, COMPLETE OR FREE OF VIRUSES OR OTHER HARMFUL CONTENTS OR COMPONENTS. SUPPLIER EXERCISES NO CONTROL OVER AND EXPRESSLY DISCLAIMS ANY LIABILITY ARISING OUT OF OR BASED UPON THE RESULTS OF CUSTOMER'S USE OF ANY APPLICATION, DOCUMENTATION OR SERVICES. SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN WARRANTIES. IN SUCH JURISDICTIONS, SUPPLIER'S LIABILITY SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

10. **MUTUAL INDEMNIFICATION**

10.1. Indemnification by Supplier. Supplier shall defend Customer against any claim, demand, suit, or proceeding ("**Claim**") made or brought against Customer by a third party alleging that the use of any Application as permitted hereunder infringes or misappropriates the intellectual property rights of a third party, and shall indemnify Customer for any damages finally awarded against Customer, and for reasonable attorney's fees incurred by, Customer in connection with any such Claim; provided, that Customer (a) promptly gives Supplier written notice of the Claim; (b) gives Supplier sole control of the defense and settlement of the Claim (provided that Supplier may not settle any Claim unless the settlement unconditionally releases Customer of all liability); and (c) provides to Supplier all reasonable assistance, at Supplier's expense.

10.2. Exclusions from Obligations. Supplier will have no obligation under this Section 10 for any infringement or misappropriation to the extent that it arises out of or is based upon (a) use of an Application in combination with other products or services if such infringement or misappropriation would not have arisen but for such combination; (b) use of an Application by Customer for purposes not intended or outside the scope of the license granted to Customer; (c) Customer's failure to use an Application in accordance with instructions provided by Supplier, if the infringement or misappropriation would not have occurred but for such failure; or (d) any modification of an Application not made or authorized in writing by Supplier where such infringement or misappropriation would not have occurred absent such modification.

10.3. Mitigation of Infringement Action. If Customer's use of any Application is, or in Supplier's reasonable opinion is likely to become, enjoined or materially diminished as a result of a proceeding arising under Section 10.1 (Indemnification by Supplier), then Supplier will either: (a) procure the continuing right of Customer to use the Application; (b) replace or modify the Application in a functionally equivalent manner so that it no longer

infringes; or if, despite its commercially reasonable efforts, Supplier is unable to do either (a) or (b), Supplier will (c) terminate Customer's right with respect to the Application and refund to Customer all unused Subscription Fees pre-paid by Customer with respect to such Application.

10.4. Limited Remedy. This Section 10 states Supplier's sole and exclusive liability, and Customer's sole and exclusive remedy, for the actual or alleged infringement or misappropriation of any third party intellectual property right by any Application.

10.5. Indemnification by Customer. Customer shall defend Supplier against any Claim made or brought against Supplier by a third party alleging that Customer Data, or Customer's use of the Services in violation of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law, and shall indemnify Supplier for any damages finally awarded against, and for reasonable attorney's fees incurred by, Supplier in connection with any such Claim; provided, that Supplier (a) promptly gives Customer written notice of the Claim; (b) gives Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle any Claim unless the settlement unconditionally release Supplier of all liability); and (c) provides to Customer all reasonable assistance, at Customer's expense.

11. LIMITATIONS OF LIABILITY

11.1. Disclaimer of Indirect Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, SUPPLIER WILL NOT HAVE ANY LIABILITY TOWARDS CUSTOMER FOR ANY DAMAGES CAUSED BY (A) THE USE OR INABILITY TO USE ANY APPLICATION, DOCUMENTATION OR SERVICE, (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES, (C) ACCURACY OF DATA TRANSFERRED TO ANY OTHER SOFTWARE OR SERVICE, OR (D) INSTANCES IN WHICH CUSTOMER DATA STORED OR COMMUNICATED THROUGH ANY APPLICATION IS ACCESSED BY THIRD PARTIES THROUGH ILLEGAL OR ILLICIT MEANS; INCLUDING WITHOUT LIMITATION SITUATIONS IN WHICH CUSTOMER DATA IS ACCESSED THROUGH THE EXPLOITATION OF SECURITY GAPS, WEAKNESSES OR FLAWS THAT MAY EXIST. EXCEPT FOR LIABILITY ARISING OUT OF BREACHES OF SECTION 8 (CONFIDENTIALITY), IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR LOST PROFITS OR REVENUES, OR FOR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

11.2. Cap on Liability. EXCEPT FOR LIABILITY ARISING OUT OF BREACHES OF SECTION 3 (CUSTOMER'S RESPONSIBILITIES), SECTION 6 (PAYMENT AND FEES) OR SECTION 10 (MUTUAL INDEMNIFICATION), IN NO EVENT SHALL EITHER PARTY'S AGGREGATE, CUMULATIVE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT OF SUBSCRIPTION FEES PAID BY CUSTOMER. THE FOREGOING SHALL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS HEREUNDER.

11.3. Independent Allocations of Risk. EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY SUPPLIER TO CUSTOMER AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT. THE LIMITATIONS IN THIS SECTION 11 WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY IN THIS AGREEMENT.

12. PUBLICITY

12.1. Press Release. Immediately upon the execution of this Agreement, Supplier shall prepare and issue a mutually approved press release announcing this Agreement. A senior member of Customer's team will provide a quote for the press release within 7 days of the execution and delivery of this Agreement. Any future announcements which refer to the other party or its products must be approved by the other party prior to release. Customer agrees to work in good faith with Supplier in producing blog post, testimonial video, case study, telephone reference (up to 4 times/year), or other mutually agreeable communication. Customer may withhold approval for contacts that are, or are likely to become, competitors of Customer. Nothing contained herein shall waive or alter the parties' rights and/or obligations with respect to Confidential Information.

12.2. Video or Podcast Interview. After 60 days of service for each particular Application, Customer agrees to a video or podcast interview for Supplier's website or blog. The video or podcast will focus on Customer's business challenge and their decision-making process regarding how they chose Supplier to fulfill their needs. Supplier reserves the right to edit the video or podcast interview in its discretion, and agrees to submit the video or podcast interview to Customer for its approval which shall not be unreasonably withheld, delayed or conditioned.

12.3. Customer List. Customer agrees that, subject to Customer's brand guidelines, Supplier may include Customer name and logo, in Supplier's lists of other customers of the Services, in printed or web-based marketing materials (including its website) and in Supplier's marketing presentations.

12.4. Earnings Call. Customer agrees that Supplier may reference Customer by name during the conference call or press releases of Supplier's quarterly earnings for any quarter in which Customer utilizes Supplier's Services.

13. INSURANCE

13.1.   Supplier shall, at its own cost and expense, procure and maintain in full force and effect during the term of this Agreement, policies of insurance, of the types and in the minimum amounts stated herein, with responsible insurance carriers duly qualified in those states (locations) where the Services are to be performed, covering the operations of Service Provider, pursuant to this Agreement.

13.1.1.   TYPES OF INSURANCE LIMITS OF LIABILITY (Minimum Amounts)

· Commercial General Liability Insurance: $1,000,000 per occurrence, $2,000,000 aggregate.

· Excess Liability (Umbrella) insurance: $3,000,000 per occurrence, $3,000,000 aggregate

· Except in jurisdiction where not applicable, Workers' Compensation and Employer's Liability: $1,000,000 per accident

· Business Automobile Liability Insurance including coverage for owned, hired, and non-owned vehicles with a combined single limit including bodily injury and property damage of not less than $1,000,000 each accident;

- Technology Errors and Omissions Insurance: $4,000,000 per occurrence

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.

Verification of Coverage: Upon request, proof of Insurance shall be furnished to SBBC within 15 days of such request.

Required Conditions. Liability policies must contain the following provisions. In addition, the following working must be included on the Certificated 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 10163-4663.

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.

14. GENERAL

14.1. Relationship. Supplier will be and act as an independent contractor (and not as the agent or representative of Customer) in the performance of this Agreement.

14.2. Assignability. Neither party may assign performance of this Agreement or any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other.

14.3. Subcontractors. Supplier may utilize a subcontractor or other third party to perform its duties under this Agreement so long as Supplier remains responsible for all of its obligations under this Agreement.

14.4. Notices. All notices to a party shall be in writing to the appropriate party at the address set forth on the signature page of this Agreement and shall be made either via email to the extent expressly permitted to be sent by email as set forth in this Agreement), conventional mail, overnight courier or facsimile. Notice sent via conventional mail, using registered mail, shall be deemed received four business days after mailing. Supplier may broadcast notices or messages through the applicable Application or by posting notices or messages on Supplier's web site to inform Customer of changes to the Services, or other matters of importance; Supplier shall inform Customer of such broadcast by e-mail addressed to Customer's system administrator. Either party may change its address for receipt of notice by notice to the other party in accordance with this Section 14.4.

14.5. 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. Neither party shall be liable in damages or have the right to terminate this Agreement or any Quote or SOW for any delay or default in performing hereunder if such delay or default is caused by Force Majeure.

14.6. Dispute Resolution. Any and all disputes, controversy or claims related to or arising in connection with this Agreement shall first be referred to the Chief Operations Officers of each of the parties for an informal resolution. If this informal resolution does not resolve the dispute within 30 days, the parties hereto agree to submit the dispute to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("**AAA**") then in effect. This provision shall not limit either party's right for interim judicial relief, such as an injunction, an order of eviction, or similar actions. Any such arbitration shall proceed in accordance with the laws of the State of Texas and the venue of any such Arbitration shall be held in Austin, Texas. Within ten calendar days after the arbitration demand is served upon a party, the parties must jointly select an arbitrator with at least five years' experience in that capacity. If the parties do not agree on an arbitrator within ten calendar days, a party may petition the AAA in order to appoint an arbitrator. The decision of the arbitrator shall be final and binding and no party shall have rights of appeal. Each party shall bear its own costs and fees in connection with the arbitration, however, the arbitrator shall have the power to order one party to contribute to the reasonable costs and expenses of the other party, or to pay all or any portion of the costs of the arbitration.

14.7. Waiver. The waiver by either party of any breach of any provision of this Agreement does not waive any other breach. The failure of any party to insist on strict performance of any covenant or obligation in accordance with this Agreement will not be a waiver of such party's right to demand strict compliance in the future, nor will the same be construed as a novation of this Agreement.

14.8. Severability. Should any term and condition hereof be declared illegal or otherwise unenforceable, it shall be severed from the remainder of this Agreement without affecting the legality or enforceability of the remaining portions.

14.9. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For purposes of executing this Agreement, a facsimile copy or a ".pdf" image delivered via email of an executed copy of this Agreement will be deemed an original.

14.10. Entire Agreement. This Agreement and the exhibits or attachments, if any, constitutes the entire agreement between the parties hereto regarding Customer's use of each Application and receipt of all Services and supersedes and replaces all prior agreements, representations, warranties, statements, promises, information, arrangements and understandings, whether oral or written, express or implied, with respect to the subject matter hereof. In the event of conflict between the terms of any Quote or SOW and the terms herein with regard to the subject matter of this provision, the terms of this Agreement will prevail. These terms and conditions apply to future purchases of products and services by Customer from Supplier. No usage of trade or other regular practice or method of dealing between the parties will be used to modify, interpret, supplement, or alter the terms of this Agreement. This Agreement may be changed only by a written agreement signed by an authorized agent of the party against whom enforcement is sought. Supplier will not be bound by, and specifically objects to, any term, condition, or other provision that is different from or in addition to this Agreement (whether or not it would materially alter this Agreement) that is proffered by Customer in any receipt, acceptance, confirmation, correspondence, or otherwise, unless Supplier specifically

agrees to such provision in writing and signed by an authorized agent of Supplier.

FOR SBBC

(Corporate Seal)   THE SCHOOL BOARD OF BROWARD
                                    COUNTY, FLORIDA

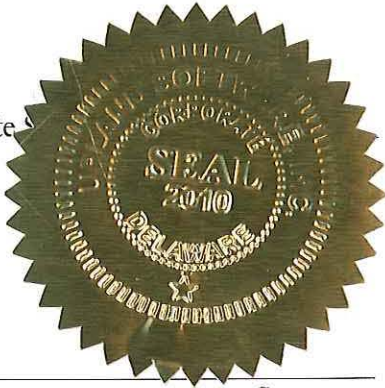   By_____

ATTEST: Nora Rupert, Chair

_____   Approved as to Form and Legal Content:
Robert W. Runcie, Superintendent of Schools

                                    _____
                                        Office of the General Counsel

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW]

upland

FOR UPLAND

(Corporate Seal)

ATTEST:

Upland Software, Inc.

By _____

_____, Secretary

-or-

_____
Witness

_____
Witness

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

STATE OF ___TEXAS___

COUNTY OF ___TRAVIS___

The foregoing instrument was acknowledged before me this ___6th___ day of ___December___, 20_17_ by ___Timothy Mattox___ of
                                                Name of Person
___Upland Software, Inc.___, on behalf of the corporation/agency.
     Name of Corporation or Agency
He/She is personally known to me or produced _____ as
identification and did/did not first take an oath.   Type of Identification

My Commission Expires: 10/03/2021
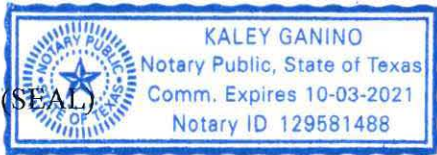
_____
Signature – Notary Public

_____
Printed Name of Notary

_____
Notary's Commission No.