



AGENDA REQUEST FORM

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

MEETING DATE	2018-04-24 10:05 - Regular School Board Meeting
AGENDA ITEM	ITEMS
CATEGORY	EE. OFFICE OF STRATEGY & OPERATIONS
DEPARTMENT	Procurement & Warehousing Services

Special Order Request <input type="radio"/> Yes <input checked="" type="radio"/> No
Time
Open Agenda <input checked="" type="radio"/> Yes <input type="radio"/> No

ITEM No.:
EE-4.

TITLE:
Recommendation to Approve Agreement - 59-031E - Chess4Life Learning Platform

REQUESTED ACTION:
Approve the recommendation to award the above agreement. Contract Term: July 1, 2018 through June 30, 2021, 3 Years; User Department: Applied Learning; Award Amount: \$435,000; Awarded Vendor(s): Chess4Life LLC; Small/Minority/Women Business Enterprise Vendor(s): None.

SUMMARY EXPLANATION AND BACKGROUND:
 The Applied Learning Department desires to continue, expand, and improve its chess offering to students throughout the District by collaborating with Chess4Life and licensing its curriculum, teaching methods, and tools.
 This Agreement has been reviewed and approved as to form and legal content by the Office of the General Counsel.
 This Agreement will be executed after School Board approval.

SCHOOL BOARD GOALS:
 Goal 1: High Quality Instruction Goal 2: Continuous Improvement Goal 3: Effective Communication

FINANCIAL IMPACT:
 The estimated financial impact to the District will be \$435,000. The funding source will come from the Applied Learning Department's operating budget. The financial impact amount represents an estimated contract value; however, the amount authorized will not exceed the estimated contract award amount.

EXHIBITS: (List)
 (1) Executive Summary (2) Agreement (3) Financial Analysis Worksheet

BOARD ACTION:
APPROVED
(For Official School Board Records Office Only)

SOURCE OF ADDITIONAL INFORMATION:	
Name: Susan Cantrick	Phone: 754-321-1859
Name: Mary C. Coker	Phone: 754-321-0501

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

Maurice L. Woods - Chief Strategy & Operations Officer

Signature
Maurice Woods
 4/16/2018, 4:04:47 PM

Approved In Open Board Meeting On:
 By:

APR 24 2018

Nora Rupert
 School Board Chair

EXECUTIVE SUMMARY

Recommendation to Approve Agreement 59-031E - Chess4Life Learning Platform

This request is to approve the agreement, starting July 1, 2018 through June 30, 2021, with a spending authority of \$435,000 representing the annual license charge. The budget will be taken from the Applied Learning Department's operating budget.

The Applied Learning Department desires to continue, expand, and improve its chess offering to students throughout the District by continuing its collaboration with Chess4Life inclusive of licensing its curriculum, teaching methods, and tools. The game of chess presents an incredible opportunity for students to develop and master skills that will be applicable throughout their lives. A student who learns the game of chess develops critical thinking, learns to work with others, learns to adapt to constantly changing environments, and develops mental resolve. Students who play chess regularly display greater memory, concentration, and problem-solving abilities. The Chess4Life Learning platform will continue to be available District-wide K-12 and integrated into Second Grade. Chess4Life will provide bi-yearly in-person trainings, monthly webinars, and on-going program support to assist in continued successful implementation throughout the District.

Procurement Method

This agreement was done through direct negotiation based on Purchasing Policy 3320, Section II, H, which states the requirement for requesting competitive solicitation for commodities or contractual services from three (3) or more sources is waived as for the District's purchase of computer software.

Program Details

Chess4Life tools are designed to empower teachers with little or no chess knowledge to bring the benefits of chess to their students and believes the nine (9) fundamental life skills enforced through this platform are:

- Sportsmanship
- Focus
- Respect
- Goal Setting
- Planning
- "Can Do" attitude
- Better Together
- Healthy Habits
- Always Improve

Detailed Project Implementation Plan

The Applied Learning Department has developed a detailed project plan for the implementation of this platform, see highlights below.

School Personnel

- Every Broward County Public School Second Grade teacher will be encouraged to integrate thirty-five (35) one (1) hour Chess4Life lessons into their curriculum.
- Every Broward County Public K-12 school will be encouraged to have a designated chess club sponsor.

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- Schools will be responsible for paying a supplement for their sponsor, but full access to all Chess4Life resources and materials will be made through Applied Learning.
- All participating schools will be encouraged to attend the end-of-year chess tournament.

Training

- Chess4Life personnel will conduct a full training for every new second-grade teacher and school chess club sponsor (1,000-1,200 individuals) on during pre-planning week. Teachers and sponsors will be trained in both the basics of the game of chess and the specifics of the Chess4Life online program/platform.
- Chess4Life will make monthly online training resources available, but the in-person August training will be much more interactive, hands-on, and provide higher-value training that will increase the likelihood of successful implementation.
- Chess4Life will provide continual teacher support throughout the year via email and phone. A dedicated support specialist will be available via phone five (5) days a week from 11 a.m. to 8 p.m. with email support availability 24/7.

Data Reporting

- Chess4Life will provide monthly tracking reports.
- Chess4Life will track and report the following data on student use: time logged in, time played, etc.
- Chess4Life tracks ALL data related to the online use of its program and will provide real-time data, as needed.

In the most recent (August 2017-April 2018) Chess4Life usage report, Broward County Public Schools (BCPS) K-12 students have clocked over one (1) million minutes interacting with the Chess4Life platform, every elementary school has registered users, and twenty-five (25) schools have had students play over 1,000 online chess games. The data also shows significant diversity among multiple demographic data marks.

Financial Impact

The total spending authority requested is \$435,000 representing the annual license charge and includes the chess curriculum and content, training, program support, and reporting for K-12 schools. It should be noted that prior to this year, the cost of offering chess to the District provided access to Second and Third-grade students only. Now all BCPS K-12 students have access to chess.

AGREEMENT

THIS AGREEMENT is made and entered into as of this 27th day of April, 2017~~8~~, 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

Chess4Life, LLC
(hereinafter referred to as "Chess4Life"),
whose principal place of business is
12503 Bel Red Road, Suite 201, Bellevue, Washington, 98005.

WHEREAS, pursuant to SBBC Policy 3320, Section II, H, and pursuant to the Department of Education, Rule 6A-1.012, 1 l(b), Florida Administrative Code as authorized by Section I010.04(4)(a), Florida Statutes, the requirement for requesting competitive solicitation for commodities or contractual services from three (3) or more sources is hereby waived as for the SBBC's purchase of computer software; and

WHEREAS, Chess4Life intends to provide SBBC a license to use proprietary chess curriculum, teaching methods, and tools to bring the benefits of chess to SBBC students ; and

WHEREAS, SBBC desires to continue, expand, and improve its chess offering to students in the district by partnering with Chess4Life and licensing its curriculum, teaching methods, and tools.

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

ARTICLE 1 - RECITALS

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

ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on approval by the School Board and conclude on June 30, 2021.

2.02 Chess4Life will provide a non-exclusive, non-transferable, annual license for Chess4Life's curriculum, activities, and teaching methods to be used by SBBC for the 2018 / 2021 school years.

2.03 Chess4Life's licensed content may be used within SBBC Grade 2 classrooms plus chess clubs within all SBBC schools.

2.04 Chess4Life will make Chess Club Tools available to every student K-12 in SBBC, as shared via the Clever SSO integration.

2.05 Chess4Life Club Tools will be integrated into all grade 2 classrooms.

2.06 Chess4Life will provide 1 day of in-person training for teachers that will be involved in delivering the program in grade 2, plus an additional webinar training for those that cannot attend the in-person training.

2.07 Chess4Life will provide ongoing program support by email and phone to SBBC program administrators.

2.08 Chess4Life will deliver an end of year chess tournament or Passport to Chess activity for students for SBBC students at the conclusion of the 2018-2021 school years. Chess4Life will conduct 2 additional site visits annually to assist in training and guidance of SBBC educators and administrators.

2.09 SBBC Grade 2 students plus students attending afterschool chess clubs within SBBC schools will have basic access to the chess4life online learning platform for the duration of this agreement as well as Premium Access via the Clever SSO integration.

2.10 Chess4Life will work with SBBC to provide usage data from the program.

2.11 Chess4Life will work with SBBC to develop reports which will contain de-identified and/or aggregate student information as listed in 2.12 (b). SBBC shall not provide personally identifiable information regarding any student without receiving prior consent from the parent or student age 18 or older.

2.12 **SBBC Disclosure of Education Records.**

(a) SBBC will provide vendor the records listed in 2.12 (b) through the integration of Clever single sign on technology with SBBC platforms and Chess4Life web applications. Information provided will be used to respond to technical support requests and to provide SBBC with reports on student use of the Chess4Life online system.

(b) SBBC will provide Chess4Life with the following education records through integration with the Clever platform:
Student first name, student last name, school of attendance for each student, date of birth, state id and student identification number.

In addition, the following student information will be utilized in reports created by Chess4Life:

1. Number of games played by school.
2. Total games played YTD
3. Total minutes played TYD
4. Number of games played by month
5. Number of games played by type (Checkmate Challenge, Make a Mate, Pawn Game, Play v Computer, Play v Player)
6. Minutes played by game type (Checkmate Challenge, Make a Mate, Pawn Game, Play v Computer, Play v Player)
7. Game Wins by Color (Black / White)

(c) SBBC will obtain written consent from each student's parent/guardian or student age 18 or older prior to disclosing education records as listed in 2.12 (b) to Chess4Life.

2.13 Chess4Life Confidentiality of Education Records.

(a) Notwithstanding any provision to the contrary within this Agreement, Chess4Life shall:

1) fully comply with the requirements of Sections 1002.22, 1002.221, and 1002.222, Florida Statutes; the Family Educational Rights and Privacy Act, 20 U.S.C § 1232g (FERPA) and its implementing regulations (34 C.F.R. Part 99), and any other state or federal law or regulation regarding the confidentiality of student information and records;

2) hold any education records in strict confidence and not use or redisclose same except as required by this Agreement or as required or permitted by law unless the parent of each student or a student age 18 or older whose education records are to be shared provides prior written consent for their release;

3) ensure that, at all times, all of its employees who have access to any education records during the term of their employment shall abide strictly by its obligations under this Agreement, and that access to education records is limited only to its employees that require the information to carry out the responsibilities under this Agreement and shall provide said list of employees to SBBC upon request;

4) safeguard each education record through administrative, physical and technological standards to ensure that adequate controls are in place to protect the education records and information in accordance with FERPA's privacy requirements;

5) utilize the education records solely for the purposes of providing products and services as contemplated under this Agreement; and shall not share, publish, sell, distribute, target advertise, or display education records to any third party;

6) notify SBBC immediately upon discovery of a breach of confidentiality of education records by telephone at 754-321-0300 (Manager, Information Security), and 754-321-1900 (Privacy Officer), and email at privacy@browardschools.com; and take all necessary notification steps as may be required by federal and Florida law, including, but not limited to, those required by Section 501.171, Florida Statutes;

7) fully cooperate with appropriate SBBC staff, including Privacy Officer and/or Information Technology staff to resolve any privacy investigations and concerns in a timely manner;

8) prepare and distribute, at its own cost, any and all required breach notifications, under federal and Florida Law, or reimburse SBBC any direct costs incurred by SBBC for doing so, including, but not limited to, those required by Section 501.171, Florida Statutes;

9) be responsible for any fines or penalties for failure to meet breach notice requirements pursuant to federal and/or Florida law;

10) provide SBBC with the name and contact information of its employee who shall serve as SBBC's primary security contact and shall be available to assist SBBC in resolving obligations associated with a security breach of confidentiality of education records; and

11) securely erase education records from any media once that media equipment is no longer in use or is to be disposed; secure erasure will be deemed the deletion of the education records using a single pass overwrite Secure Erase (Windows) or Wipe (Unix).

(b) All education records shall remain the property of SBBC, and any party contracting with SBBC serves solely as custodian of such information pursuant to this Agreement and claims no ownership or property rights thereto and, upon termination of this Agreement shall, at SBBC's request, return to SBBC or dispose of the education records in compliance with the applicable Florida Retention Schedules and provide SBBC with a written acknowledgment of said disposition.

(c) Chess4Life shall, 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. This section shall survive the termination of all performance required or conclusion of all obligations existing under this Agreement.

2.13 **Cost of Services.** SBBC shall pay Chess4Life for consideration of their services rendered under this Agreement within thirty (30) days of receipt of an appropriate invoice in the amount of \$145,000 per year.

2.14 **Inspection of Chess4Life's Records by SBBC.** *Chess4Life* 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 *Chess4Life's* Records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC's agent or its authorized representative to permit SBBC to evaluate, analyze and verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify any and all invoices, billings, payments and/or claims submitted by *Chess4Life* or any of *Chess4Life's* payees pursuant to this Agreement. *Chess4Life's* Records subject to examination shall include, without limitation, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement. *Chess4Life's* Records subject to this section shall include any and all documents pertinent to the evaluation, analysis, verification and

reconciliation of any and all expenditures under this Agreement without regard to funding sources.

(a) Chess4Life's Records Defined. For the purposes of this Agreement, the term "*Chess4Life's* 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 *Chess4Life's* Records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to *Chess4Life* pursuant to this Agreement.

(c) Notice of Inspection. SBBC's agent or its authorized representative shall provide *Chess4Life* 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 *Chess4Life'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 *Chess4Life* 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 *Chess4Life's* claims for payment by SBBC.

(f) Overcharges and Unauthorized Charges. If an audit conducted in accordance with this Section discloses overcharges or unauthorized charges to SBBC by *Chess4Life* in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by *Chess4Life*. If the audit discloses billings or charges to which *Insert Name* is not contractually entitled, *Chess4Life* 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. *Chess4Life* 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 *Chess4Life* 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 *Chess4Life* pursuant to this Agreement and such excluded costs shall become the liability of *Chess4Life*.

(h) **Inspector General Audits.** *Chess4Life* 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.

2.15 **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, Applied Learning Department
600 SE Third Avenue
Fort Lauderdale, Florida 33301

To *Chess4Life*: *Chess4Life*
12503 Bel Red Road, #201,
Bellevue, WA 98005

2.16 **Background Screening.** *Chess4Life* 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 *Chess4Life* or its personnel providing any services under the conditions described in the previous sentence. *Chess4Life* 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 *Chess4Life* and its personnel. The parties agree that the failure of *Chess4Life* 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. *Chess4Life* 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 *Chess4Life's* failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

2.17 **Insurance Requirements.** *Chess4Life* 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/Technical Errors & Omissions. Limits not less than \$1,000,000 per occurrence covering services provided under this Agreement.
- (c) Workers' Compensation. Florida Statutory limits in accordance with Chapter 440; Employer's Liability limits not less than \$100,000/\$100,000/\$500,000 (each accident/disease-each employee/disease-policy limit).
- (d) Auto Liability. Owned, Non-Owned and Hired Auto Liability with Bodily Injury and Property Damage limits of not less than \$1,000,000 Combined Single Limit.
- (e) 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.
- (f) 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 Risk Works to collect and verify insurance documentation. All certificates (and any required documents) must be received and approved by SBBC before any work commences to permit Awardee time to remedy any deficiencies. Please verify your account information and provide contact details for your company's Insurance Agent via the link provided in the email upon award.
- (g) 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
- (h) 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 **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.

3.06 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party

additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) days notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

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

3.08 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC.

3.09 **Public Records.** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. *Chess4Life* 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, *Chess4Life* 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. *Chess4Life* 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 *Chess4Life* does not transfer the public records to SBBC. Upon completion of the Agreement, *Chess4Life* shall transfer, at no cost, to SBBC all public records in possession of *Chess4Life* or keep and maintain public records required by SBBC to perform the services required under the Agreement. If *Chess4Life* transfer all public records to SBBC upon completion of the Agreement, *Chess4Life* shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If *Chess4Life* keeps and maintains public records upon completion of the Agreement, *Chess4Life* 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, RISK

**MANAGEMENT DEPARTMENT, PUBLIC RECORDS DIVISION, 600
SOUTHEAST THIRD AVENUE, FORT LAUDERDALE, FLORIDA 33301.**

3.11 **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.

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

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

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

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

3.16 **Assignment.** Neither this Agreement or any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

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

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

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

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

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

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

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

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

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

3.26. **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 *Chess4Life*: *Chess4Life* agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs, and

expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which SBBC, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by *Chess4Life*, its agents, servants or employees; the equipment of *Chess4Life*, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of *Chess4Life* or the negligence of *Chess4Life's* agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including SBBC's property, and injury or death of any person whether employed by *Chess4Life*, SBBC or otherwise.

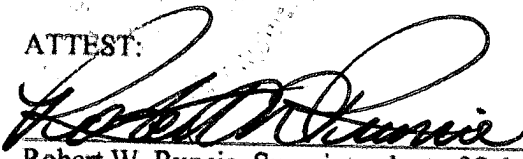
3.27 **Travel.** Local travel shall not be billed as a reimbursable expense. Out of county travel and per diem may be allowable at the sole discretion of SBBC. SBBC has delegated authority to the Superintendent of Schools or his/her designee to provide prior approval to *Chess4Life* for any and all travel and per diem. Should any out of county travel and/or per diem be allowed, then it shall be billed and reimbursed in compliance with the current or updated School Board Policy 3400 and/or other relevant School Board Policies.

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.


(Corporate Seal)

ATTEST:


Robert W. Runcie, Superintendent of Schools

FOR SBBC

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

By 
Nora Rupert, Chair

Approved as to Form and Legal Content:

Janette M. Smith

Digitally signed by Janette M.
Smith

Date: 2018.04.16 15:20:55 -04'00'

Office of the General Counsel

FOR Chess4Life, LLC

(Corporate Seal)

Chess4Life, LLC

ATTEST:

By *Elliott Neff*

_____, 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 Washington

COUNTY OF King

The foregoing instrument was acknowledged before me this 16th day of April, 2018 by Elliott Neff of

Chess4Life, LLC, on behalf of the corporation/agency.
Name of Person
Name of Corporation or Agency

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

My Commission Expires: 8-14-21 *[Signature]*
Signature – Notary Public

Trela Herman
Printed Name of Notary

NIA
Notary's Commission No.



